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S. HRG. 111–695, Pt. 8

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

SEPTEMBER 29, and NOVEMBER 17, 2010

PART 8

Serial No. J–111–4

Printed for the use of the Committee on the Judiciary

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NOMINATIONS OF JAMES E. GRAVES, JR., NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT; PAUL K. HOLMES, III, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS; ANTHONY J. BATTAGLIA, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA; EDWARD J. DAVILA, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA; AND, DIANA SALDAÑA, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

WEDNESDAY, SEPTEMBER 29, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:03 p.m., SD–Room 226, Dirksen Senate Office Building, Hon. Al Franken, presiding.

Present: Senators Whitehouse, Franken, Sessions, and Cornyn.

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

Senator FRANKEN. Good afternoon. This hearing will come to order.

Today we will consider five judicial nominations. First, we will hear from Justice James Graves, Jr., who is nominated for circuit judge for the fifth circuit.

Our second panel will consist of district court nominees, Judge Diana Saldaña of Texas, Paul Holmes of Arkansas, Judge Anthony Battaglia of California, and Judge Edward Davila, also of California.

We are fortunate to have some of these nominees' home State Senators here to introduce them, and we will turn to them shortly.

Before we do, I will turn the floor over to my friend, the Ranking Member, Senator Sessions, for his opening remarks.

Senator.

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STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. It is good to be with you, and have enjoyed serving with you on the Committee. You have taken a great interest in these important matters, spend time on them, and that speaks well of your approach to law and justice in America; and, have had the good judgment to correct me on occasion when I have been wrong.

Senator FRANKEN. Very, very, very rarely.

Senator SESSIONS. You are very, very nice and kind.

Senator FRANKEN. Thank you.

Senator SESSIONS. We have had, I think, a good Committee and we try to do our job right. It is the only real opportunity the American people have in a public forum to have the nominees answer questions and discuss the issues.

I have looked at the record of the nominees. I have some concerns. We will discuss some of those today. But we try to be supportive of good nominees, and I have voted for an overwhelming number of those. And most have received unanimous votes out of the Committee.

I would like to take a moment to address the notion, that I think is mistaken, that district court nominees that the President has submitted have been treated unfairly or in an unprecedented manner. On average, Senators have had only 55 days this year to prepare for hearings, that is, from nomination to hearing of district court nominees.

By contrast, during the Bush Administration, Senators had an average of 120 days before the district court nominees had a hearing.

Last week, one of our colleagues raised the question of whether or not we are violating tradition when two home State Senators approve a nominee, and he felt that they should get a straight up or down vote without delay. But that has not been the tradition, as many have suggested.

Fourteen of President Bush's district court nominees had the support of their home State Senators, but did not get an up or down vote, because they were delayed mostly in committee. Thomas Farr of North Carolina had the support of both Senators Burr and Dole and waited 757 days and never got a hearing. He was rated unanimously well qualified by the ABA, and no concerns were ever raised about his nomination.

Richard Honaker of Wyoming had the support of both Senators Enzi and Barrasso and waited 655 days for an up or down vote in the Senate, but it never came. He was rated unanimously well qualified, the highest rating by the ABA. And the only concerns raised were his co- sponsorship of a pro-life bill in 1991, while serving as a Democratic member of the Wyoming House of Representatives.

Gus Puryear of Tennessee had the support of Senators Alexander and Corker and waited 569 days for an up or down vote on the Senate floor, but never got it. The ABA rated him unanimously qualified, and none of the concerns raised were significant.

Richard Barry of Mississippi had the support of Senators Wicker and Cochran and waited 155 days just for a hearing, but it never

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came. He was rated well qualified by the ABA, and no concerns were raised.

So I just wanted to make that point. We are in a lot of give-and-take and fussing here. So we do have a responsibility, I think all of us in the Senate, to make sure the nominees are well treated and we do take seriously the support of home State Senators.

Thank you.

Senator FRANKEN. Thank you. Thank you, Mr. Ranking Member.

Senator Cornyn, you are going to speak for your nominee. So I guess what we are going to do now is go to my colleagues, who are going to speak on behalf of the nominees from their state, and we will start with Senator Lincoln.

PRESENTATION OF PAUL K. HOLMES, III, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS BY HON. BLANCHE LINCOLN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator LINCOLN. Well, thank you, Mr. Chairman and to the members of the Judiciary Committee. I certainly want you all to know I appreciate the opportunity to appear before you today to introduce an enormously well qualified candidate and nominee, Paul K.—we call him P.K.—Holmes, III, who has been nominated to serve on the U.S. District Court in the Western District of Arkansas.

First, I would also like to thank Chairman Leahy for granting my request that Mr. Holmes receive a hearing so that the Judiciary Committee can learn about P.K. and why he is such an outstanding candidate for the Federal bench.

I would also like to recognize P.K.'s wife, Kay, who is also here with us today, and we appreciate always having family with our nominees when they come. It is a great opportunity for us to show that you get teamwork in Arkansas. And that is what you get out of the Holmes, that is for sure.

P.K. is very well known and very well respected as a lawyer from Fort Smith, Arkansas, with a wealth of experience in both the public and the private sector. He is currently a partner at Warner, Smith & Harris in Fort Smith, where he also started out as an associate in 1978.

From 1993 to 2001, P.K. left the firm when President Bill Clinton appointed him and the Senate confirmed him as the U.S. Attorney for the Western District of Arkansas. So he has got great experience and, again, very well qualified, and certainly well respected.

P.K. is a 1973 graduate of Westminster College in Fulton, Missouri and received his J.D. from the University of Arkansas in Fayetteville in 1978. He is also known as a leader in his community. P.K. has been named Lawyer of the Year for the Arkansas Volunteer Lawyers for the Elderly.

He is on the board of trustees for Lyon College in Batesville, which is one of our very esteemed liberal arts colleges in Arkansas. And he is an elder and trustee at the First Presbyterian Church of Fort Smith.

Much of that is to tell you that I know P.K. not only as an incredibly professional lawyer, attorney, and certainly a great U.S.

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Attorney from the Western District, but, also, from a family standpoint, we have a tremendous connection.

My brother-in-law and P.K. were undergraduates together. He served as an attorney for my husband's grandmother, who passed away a year ago, a year ago last week, a week shy of 112. So you not only know that he is a good lawyer, he has got great patience and stamina, as well.

He received an outpouring of support for his candidacy from Arkansans, who know him both professionally and personally. And the dozens of letters and calls that we have received all expressed confidence that P.K. has the experience, the intelligence, the character, and fairness that qualify him for a Federal judgeship, and many other exemplary qualifies one would hope to find in a nominee, as well. I think you can see that from all of the activities that he is engaged with.

In closing, I would like to thank, again, Chairman Leahy and the Judiciary Committee, all of the members here, for allowing P.K. Holmes to receive a hearing, and request your full attention, careful consideration of his nomination, and know that he has all of my confidence in terms of the incredible job that he can do serving on the Federal bench.

So thank you, Mr. Chairman and Ranking Member Sessions. I appreciate your attention, and certainly want to welcome P.K. Holmes to the Judiciary Committee and tell him how proud we are in Arkansas of him.

Thank you.

Senator FRANKEN. Thank you. I hope he can live up to that introduction.

After my distinguished colleagues make their introductions, feel free to go back to your other duties. All of us, I know, have very busy schedules.

So, Senator Lincoln, if you would like to leave us now—you are welcome to stay, of course.

I would now like to recognize the distinguished Senators from Texas. Senator Hutchison, thank you for joining us, and Senator Cornyn, to introduce Judge Saldaña.

PRESENTATION OF DIANA SALDAÑA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you very much, Mr. Chairman. It is my pleasure to introduce Diana Saldaña, who has been nominated to serve as a Federal judge for the Southern District in Texas, Laredo, to sit in Laredo.

Judge Saldaña received a B.A. in history and government from the University of Texas and then received her J.D. degree from the University of Texas Law School.

Judge Saldaña's career has given her a breadth of experience, and I believe she will serve well on the Federal bench.

She was born in Carrizo Springs, Texas, only a stone's throw from where she is currently serving as U.S. Magistrate in Laredo. Prior to being selected to serve as a magistrate, Judge Saldaña served 4 years as an assistant U.S. attorney. She handled as many

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as 350 active Federal criminal cases, ranging from immigration to narcotics to health care. It was in this capacity that she was selected court coordinator for Judge Kazen.

Before her work in the U.S. Attorney's office, Judge Saldaña spent time as a lawyer for the U.S. Department Justice in the Civil Rights Division and the U.S. Department of Agriculture in the General Counsel's office. She also served as a law clerk to Chief Judge George Kazen in the Southern District of Texas.

Judge Saldaña has a solid academic foundation, with impressive professional experience, and is very respected in the south Texas community. I believe she is well qualified and highly competent and would be an effective Federal district judge in south Texas.

I recommend Judge Saldaña to the Committee. Senator Cornyn and I interviewed her and we feel that she is the best qualified nominee for this bench.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you very much, Senator Hutchison. And, again, feel free to—thank you for appearing and feel free to go back to your duties, unless you feel some obligation to listen to your junior Senator, which my senior Senator never seems to feel.

[Laughter.]

Senator FRANKEN. No, she sometimes enjoys listening to me.

Senator Cornyn.

PRESENTATION OF DIANA SALDAÑA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS BY HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Mr. Chairman, I wondered how you were going to get your way out of that one, but you did very well.

Senator FRANKEN. Thank you.

[Laughter.]

Senator CORNYN. Mr. Chairman, I am pleased to join Senator Hutchison in welcoming Judge Diana Saldaña of Laredo, Texas, to the Senate and to the Judiciary Committee. We want to welcome her two sons, who I think are here, Thomas and Luke. Are they present? Would you mind if they stood? They are next door.

As well as her mother, Blanca Hernandez Rodriguez. And there she is. Welcome. We are glad you are here.

We also want to acknowledge Diana's husband, Robert. There is Robert. Thank you, Robert. Robert serves as a police officer in the city of Laredo, Texas. Robert, we thank you for your service, as well.

Senator Hutchison has detailed why we believe Judge Saldaña is the best qualified candidate for this position and why we recommended her to the President. And we are glad we have had a meeting of the minds with the President on that and he has nominated her.

I want to take just a couple of minutes to talk about why she is such a remarkable person and why she is an inspiration and role model to so many people, because her story really represents the American dream.

Throughout the selection process, the more I learned about Judge Saldaña's story, the more I grew to admire not only what she has

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accomplished, but what she stands for and how she represents our Nation, which is a beacon of opportunity for all.

At the age of 10, she began traveling with her mother and siblings from their home in Carrizo Springs, Texas, to Minnesota and to North Dakota to work as migrant farmers in the soybean, sugar beet and potato fields. Because of the seasonal nature of that work, Diana and her siblings would often leave South Texas before school had ended and return after the next school year had begun, which, of course, made keeping up with school all the more difficult.

She traveled the 1,500 miles north and worked with her family in the fields every summer through high school and college. She even worked in the fields during her first year of law school.

Despite these challenges, she was the first in her immediate family to earn a college degree. She has recalled to others that while working in the fields, her mother had told her that an education was the only way of not being a farm worker and working in those fields anymore.

Diana was once asked what person had the greatest impact on her life, and, not surprisingly, she answered, without hesitation, her mother. Diana explained, "My mother has a third grade education, but she was able to raise six children by working hard and having a deep faith in God. I remember her working up to three jobs at one time, taking naps in the family car, when our finances were especially tight, to make ends meet. My mother instilled in us a strong work ethic and encouraged us to dream of a better life."

Today, Judge Saldaña mentors young people using her own story as inspiration and stressing that anything is possible if you are willing to work hard and sacrifice and stay focused.

Let me conclude with this, Mr. Chairman. Diana has been nominated to fill the vacancy left by her mentor, Judge George Kazen, who is taking senior status. Judge Kazen knows Diana well. She served as his law clerk, appeared before him as a Federal prosecutor, and presided over many of his cases as a Federal magistrate judge.

He described Diana as, quote, "One of the finest law clerks he ever had; a tough, no nonsense prosecutor, and a quintessential judge; intelligent, hardworking, honest, fair and decisive."

Finally, Judge Kazen told us that it would be his personal honor if Judge Saldaña were confirmed as his successor. I cannot think of much higher praise.

Mr. Chairman, I look forward to working with you and all of our colleagues on the Judiciary Committee to swiftly confirm Diana Saldaña as United States District Judge for the Southern District of Texas and look for an expeditious consideration of her nomination on the floor and an affirmative vote.

Thank you.

Senator FRANKEN. Thank you, Senator Cornyn, and thank you, Senator Hutchison, for the very eloquent introduction of Judge Saldaña.

I would now like to welcome my distinguished colleagues from Mississippi, Senator Cochran and Senator Wicker, to introduce Justice James Graves, Jr.

Senators, thank you both for being here. We will start with Senator Cochran.

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PRESENTATION OF JAMES E. GRAVES, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you very much. I am very pleased to introduce Justice James Graves to the Judiciary Committee. He has been nominated by the President to serve as a circuit court judge on the United States Court of Appeals for the Fifth Circuit.

He received his undergraduate degree from Millsaps College in Jackson, Mississippi. He earned a law degree from Syracuse University College of Law, and he has a master's degree of public administration from Syracuse University.

Justice Graves has served as legal counsel in the Mississippi Attorney General's office in the Divisions of Human Services and Health Law. He also served as director of the Child Support Enforcement Division at the Mississippi Department of Human Services.

Justice Graves currently serves as a presiding justice on the Mississippi Supreme Court. Before his appointment to our State Supreme Court in 2001, he served as a Mississippi trial court judge for 10 years. His other experiences include working with the Mississippi Legal Services and other community organizations in our State.

Soon after his graduation from law school, he served as an adjunct professor at several universities in our State. He has received many honors, and the Mississippi legal community is very proud to have joined in endorsing him and recommending his nomination to the Committee.

So I am pleased to recommend his confirmation to the Senate.

Senator FRANKEN. Thank you, Senator.

Senator Wicker.

PRESENTATION OF JAMES E. GRAVES JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT BY HON. ROGER WICKER, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator WICKER. Thank you, Mr. Chairman and members of the Committee. I am glad to join Senator Cochran here today, and I appreciate this opportunity to say a few enthusiastic words regarding the nomination of Mississippi Supreme Court Justice James Graves to serve on the United States Court of Appeals for the Fifth Circuit.

Of course, Justice Graves will have an opportunity to introduce his wife, Betty, and his family. They are here with him today. I know that this is a significant moment of accomplishment for the family, as well, and I congratulate them.

I support this nomination for all of the reasons that Senator Cochran has already outlined—this candidate's education, his professional experience, and his life experience.

I would add to the specifics mentioned by Senator Cochran the fact that Justice Graves has been recognized on numerous occasions with awards noting his true servant's spirit, which I believe is a testament to his dedication to his family and community.

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Those who know him know that he is particularly committed to teaching, motivating and inspiring young people, particularly the young people of his native State of Mississippi. For example, he has coached high school, college and law school mock trial teams, including the Jackson Murrah High School mock trial team, which won the 2001 State championship. Also, in 2001, he was honored as the Jackson Public School District Parent of the Year.

These are just some of the many examples that demonstrate his remarkable service to the public, in addition, of course, to the education and professional accomplishments that Senator Cochran mentioned.

So in conclusion, let me say, Mr. Chairman, that I support this nomination and I congratulate Justice Graves and wish him all the best.

Thank you to the members of the Committee for your hard work in this confirmation process. Thank you.

Senator FRANKEN. Thank you, Senator. I would like to thank both of my distinguished colleagues from Mississippi.

I see now that Senator Pryor has joined us to introduce P.K. Holmes. I have learned now it is P.K., and not just Paul. Thank you for joining us.

Senator Pryor.

PRESENTATION OF PAUL K. HOLMES, III, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS BY HON. MARK PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman. And thank you for having me here, and thank all the members of the Committee.

I come here today to say a few words about P.K. Holmes. And let me tell you, when the vacancy arose in the Western District of Arkansas, typically, as you all know, there is a long line of people who want to be a Federal Judge. But as soon as P.K. Holmes' name arose, everybody else dropped off the list.

Everybody defers to P.K. Holmes. The fact that he was an outstanding U.S. Attorney for the Western District for 8 years, from 1993 to 2001; the fact that he has practiced law in Fort Smith in the areas of commercial litigation and white collar criminal matters with Warner, Smith & Harris there for years and years; and, just the fact that he has built his reputation all over the State of Arkansas for outstanding character, for the right kind of hard work, the right kind of proper judicial temperament, just the right kind of commitment to the legal profession, and respect for the courts.

Basically, everybody else just said, "Hey, if P.K. wants it, then he would do a much better job than I could ever do," and one-by-one, they just dropped off the list.

So it really is my privilege today to say a few kind words about P.K. I know Senator Lincoln was here a few moments ago.

Just as a personal matter, I have known P.K. since I was probably about 12 years old or younger probably, and he has just always been an outstanding person and we have all watched and admired his legal career and how he handles himself with his family and in his profession and in his community, and he is just exactly

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the kind of person I think we would all want on the Federal bench and someone that we will all be very proud of.

Thank you for having me today.

Senator FRANKEN. Thank you, Senator Pryor. And, again, thank you for coming here, for that introduction, and feel free to get back to your duties.

My colleagues, Senator Feinstein and Senator Boxer, unfortunately, cannot be here, but have submitted, of course, positive blue slips for both Judge Battaglia and Judge Davila. I have statements from both Senator Feinstein and Senator Boxer, which I will submit for the record.

[The statements appear as a submission for the record.]

Senator FRANKEN. Let me just highlight just a part of Senator Boxer's statement. She writes, "For the past 16 years, Judge Battaglia has served with distinction as a magistrate judge on the Southern District of California. He has a reputation as a judge's judge, hardworking, thoughtful and fair.

When he was in high school, Judge Battaglia took a class trip to tour the San Diego Superior Court Building. He said he was awestruck by the solemnity and dignity of the proceedings and the judges he saw on that tour. He aspired 1 day to become a judge.

Today, he says that he hopes that maybe, just maybe, he can give something back by inspiring a child the way he was inspired."

About Judge Davila, Senator Boxer said, "For the past 8 years, Judge Davila has served on the Santa Clara County Superior Court, where he has drawn praise from fellow judges and lawyers for his hard work, integrity and fairness.

In a recent survey by the Santa Clara County Bar Association, Judge Davila's performance was rated excellent or very good by more than 80 percent of participants with respect to his work ethic, knowledge of the law, and procedure integrity, dispute resolution, and judicial temperament."

So for all the nominees who have been introduced, I thank you all for your service to our country and for offering yourselves up for this great responsibility.

Justice Graves, will you take your seat on our panel, please? Actually, before you do, why do you not just stand and raise your hand, swear in the oath?

[Nominee sworn.]

Senator FRANKEN. Please have a seat. Justice Graves, I understand some of your family and friends are here. So please feel free to introduce them on this proud day.

STATEMENT OF JAMES E. GRAVES, JR., NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Justice GRAVES. Thank you very much, Mr. Chairman. I'd like to first thank the President for nominating me to serve as a judge on the Fifth Circuit Court of Appeals. I want to thank Chairman Leahy for an opportunity to appear before this Committee. I want to thank Ranking Member Sessions. Thank you, Mr. Chairman. Thank all on the Senate Judiciary Committee for the opportunity to be here today to answer any questions the Committee may have.

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I appreciate the opportunity to introduce members of my family who are present here today, and I am asking them to stand when they are introduced.

My wife, who has been married to me sometimes for longer than she cares to recall, is here and I am going to ask her to stand. My parents are here, both my mother and father.

Senator FRANKEN. Welcome, and congratulations.

Justice GRAVES. I have three sons and, actually, I didn't look back to see if the third son had made it. But my three sons——

Senator FRANKEN. That is yes, I think.

Justice GRAVES. Is that a yes? He is here.

Senator FRANKEN. Well, I see a hand up.

Justice GRAVES. Very good. I am very happy, son.

[Laughter.]

Justice GRAVES. That would be my son, Chris. And my son, James, and his wife, Tiffany. My son, Jeffrey, and his wife, Eyra. And someone should be holding my beautiful granddaughter.

Senator FRANKEN. Your daughter-in-law is holding your granddaughter.

Justice GRAVES. Wonderful. They told me not to look back. They said, "Talk into the microphone, don't look back."

Senator FRANKEN. You can look and then talk.

Justice GRAVES. I can look and then talk.

Senator FRANKEN. Yes.

Justice GRAVES. That's going to be hard.

Senator FRANKEN. Well, it is not a qualification for judge.

Justice GRAVES. And I think that's all of the immediate family that's here. Well, my brother, Darrell, is here. He's only 6′6″, so it's easy to understand how I might have overlooked him. Darrell is here.

And then I have some of my chamber staff who are here, my clerk, Sherwood Colette is here. My assistant, Jackie Losset is here. My other clerk, Susan Huett, I am absolutely certain is watching the live Webcast. And I want to thank all those people for the support they have given me over the years. I thank them for being here.

My three sisters, I am certain, are watching the live Webcast, as are my colleagues, I hope, or at least they're going to tell me they saw it, my colleagues at the Mississippi Supreme Court.

But I really do appreciate this opportunity. I thank all my family and all the other friends who are here today.

And having no formal remarks, Mr. Chairman, I'd be pleased now to answer any questions the Committee may have.

Senator FRANKEN. Absolutely. And I would like to welcome your family and your staff members who are here on this, which must be a very proud day for them.

Justice Graves, we met yesterday.

Justice GRAVES. Yes.

Senator FRANKEN. I must say I was very impressed during our conversation. You have served on Mississippi's highest court for nearly 10 years. If you are confirmed to the fifth circuit, more of your work will involve interpreting our work here; and by that, I mean, of course, Federal statutes.

How will you make sure that you interpret Federal statutes in line with our intent in passing them?

Justice GRAVES. Well, I think I would—with regard to my work as an appellate judge, if confirmed for the court of appeals, I would approach those cases the same as I've approached the handling of cases in the 9 years now that I've been a Mississippi Supreme Court justice.

I would examine the record, look at the law that was applicable to the record, the facts of that particular case, apply the law to the facts, in trying to reach an appropriate result in whatever case is before me as a judge.

Senator FRANKEN. Well, is there any way you feel that your job would be different as a Federal appellate judge than as a Supreme Court justice in the State of Mississippi?

Justice GRAVES. I'm certain it would be different to the extent that I would be dealing with Federal law. Now, as a Supreme Court justice in the State of Mississippi, obviously, I am, for the most part, dealing with cases that arise either under our constitution or under our state laws and the laws passed by our legislature.

As a Federal judge, I know that I would be dealing primarily with Federal law and, as you stated, laws passed by the U.S. Congress, and it would be necessary for me to read—study that law and apply it to the facts in the particular case that would be coming before the court of appeals.

Senator FRANKEN. As a Supreme Court justice, how did you determine the intent of the State legislators when they passed those laws? Would you just simply go by the text of the law? Would you go into the record that was made while the law was debated and passed?

Justice GRAVES. I think on first approach, you look at the statute and try and determine what the language of the statute says, and that's the first place to look in determining what the statute means. Hopefully, it says what it means and it means what it says.

And in the State of Mississippi, there is a dearth of legislative history. And so there's not a lot of that there in terms of recorded history with regard to debate that preceded legislation, those kinds of things.

So typically, it's looking at the statute, trying to interpret what the statute means, if it means what it says. The next thing you'd do is look at whether or not there is any precedent, any case law, where there have been judicial interpretations of a particular statute, and you would look to that precedent for guidance in reaching a decision involving that statute, in the State of Mississippi.

Now, I recognize that with the U.S. Congress, there could be some more extensive records, history regarding legislative intent.

Senator FRANKEN. Thank you. Justice Graves, I think it is remarkable that you have remained so active in your community, despite the rigors of your position as justice in the State Supreme Court.

Can you tell me about your work on the board of Operation Shoestring and the Mississippi Children's Museum?

Justice GRAVES. Operation Shoestring is an organization which started more than 40 years ago in an area of Jackson, which is now

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sort of a—it has been a blighted area, but the area is being revitalized.

But Operation Shoestring promotes and sponsors after school programs to educate and involve the children in that community. They have programs for teaching children, which have resulted in improvement in their test scores, reading programs, literacy programs, and sometimes just feeding programs and daycare and after school programs for children in the community.

And I've been serving on that board now for more than 3 years, because I think Operation Shoestring does such important work in the community.

Mississippi has no children's museum. And so several years ago, some members of the Junior League and a couple of other organizations got the idea to start a children's museum, and they asked me to serve on the advisory committee. And I just have a deep concern for children and education.

And my vision was that a children's museum would be a great vehicle for educating children, and so I agreed to serve on the advisory committee, and then on the board. When the project began, it was determined that there was a need to raise about $25 million, and this was maybe 5 years ago, to get the museum started.

I, as a judge, obviously, can't be involved in fundraising, but every other aspect of the museum that I could be involved in, I have been involved in.

I am pleased to report that the grand opening for the Mississippi Children's Museum—and they'll be happy I'm doing this now—the grand opening for the Mississippi Children's Museum will be this fall. It is the first children's museum in the State of Mississippi.

Senator FRANKEN. Thank you, Your Honor. And I will turn it over to the Ranking Member.

Senator SESSIONS. Thank you. Justice Graves, it is a pleasure to be with you again. I enjoyed our opportunity to talk and appreciated your comments at that time, and I enjoyed that opportunity in dialogue.

It is good that you have your home State Senators' support. And you have had a good bit of time now, 8 years, on the Mississippi Supreme Court. Well, by now, you have probably decided whether you like writing opinions or not.

Do you like that work?

Justice GRAVES. Yes, sir.

Senator SESSIONS. The burden on judges is significant, and I think the caseload burden on our justices probably will remain high. There are several reasons I think that we should not add judges just to continue a certain fixed number of cases.

I guess we are going to have to do better and keep the collegiality and smaller numbers, where possible. And I suppose you are willing to serve for the pay that has been offered. Do you know what the pay is?

Justice GRAVES. I have a general idea, but I am certain I am willing to serve for that pay.

Senator SESSIONS. And we hope 1 day judges can get pay raises, but we are in a tight budget. So it cannot be guaranteed.

Let me ask you about *Doss* v. *State*; your former colleague on the Supreme Court of Mississippi, Judge Diaz, wrote, in dissent, and

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you joined it, and stated the following: "When our founding fathers ratified the Federal and State Constitutions in 1788 and 1890, they did not consider all forms of the death penalty to be violative of our bans on cruel and unusual punishment." And I certainly would agree with that.

"But just as we would disagree with our framers," he went on to say that, "for example, the execution of a child, necessarily amounts to a violation of the Eighth Amendment, our society's notion of what is cruel and unusual changes with time."

Do you personally agree with that, that the cruel and unusual definition changes with time?

Justice GRAVES. Senator, that *Doss* opinion, was handed down by the Mississippi Supreme Court, I believe, in 2008 and Justice Diaz did write a dissenting opinion in that case, which I joined.

But I'd like to point out that there were two issues about which I was chiefly concerned in that case, and those two issues had to do with the ineffective assistance of counsel and the mental retardation issue.

His dissenting opinion addressed, in part one, those two issues. And those were the only two issues raised by the defendant in that case. Those were the substantive issues. Those were the issues about which I was concerned, and I take responsibility for joining that opinion.

But I have not now nor have I ever espoused any view that the death penalty was unconstitutional, and, in fact, that case was brought back on re-hearing before the Mississippi Supreme Court in 2009 and I had an opportunity to author a majority opinion in that case and I addressed in that majority opinion one of the chief issues which concerned me, and that was the ineffective assistance of counsel issue.

I wrote a dissenting opinion in that case with regard to the mental retardation issue. But that case has been withdrawn. A new opinion has been handed down, and everything that I wanted to say about *Doss* and the issues involved in the *Doss* case I said and had every opportunity to say in the new opinion which was handed down in 2009, and I chose to address those two issues and nothing else.

Senator SESSIONS. Well, I understand that, and cases come fast and furious to a court. But language does have meaning, I think.

Later on, one of the decisions Justice Diaz cited was the Supreme Court's opinion in *Roper* v. *Simmons*. In that decision, the Supreme Court relied on foreign law in holding that the execution of minors violated the Eighth Amendment.

Do you think it is proper to look to foreign law to define the Eighth Amendment of the United States Constitution?

Justice GRAVES. I think it's proper to look to the laws of the United States and the Constitution of the United States in making determinations about the Eighth Amendment to the United States Constitution.

Senator SESSIONS. Well, I think I agree with what you said. Justice Diaz's dissent went on to conclude, quote, "The death penalty is reduced to pointless and needless extinction of life, with only marginal contributions to any discernable social or public purpose. A penalty with such negligible returns to the State is patently ex-

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cessive and cruel and unusual punishment, violative of the Eighth Amendment," close quote.

That, I suppose, is the phrase that worried me the most. It seems that you went along with the opinion that he had written that the death penalty is pointless and needless extinction of life. That is a matter we can talk about and disagree.

But I am more worried about the apparent statement that it is so negligible in returns to the State, that it is patently excessive and cruel and unusual punishment, violative of the Eighth Amendment.

Is that your position today?

Justice GRAVES. No, it is not, Senator. And all I can say is that when I read what he wrote, I viewed it as his plea for a dialog on the efficacy of the death penalty.

In retrospect, I can see how it may not be clear, but I never intended to adopt his thoughts, his concerns with regard to the death penalty. My chief concern was the ineffective assistance of counsel issue, the mental retardation issue.

Senator SESSIONS. Well, the Constitution deserves a fair interpretation, it seems to me, and what essentially the people who ratified it meant. And would you not agree that there are multiple references in the Constitution from the earliest draft through various amendments, the Fourteenth Amendment and others later, that refer to capital crimes? You cannot take life without due process, but you could take life with due process. I think there are six or eight such references.

So it would be difficult to interpret the Eighth Amendment, cruel and unusual punishment, it seems to me, as the Constitution prohibiting all death penalty. Would you agree with that analysis?

Justice GRAVES. Senator, I fully expect that if I am confirmed, I will take an oath and that oath will be to uphold the laws and the Constitution of the United States. And the United States Supreme Court has determined that the death penalty does not constitute cruel and unusual punishment, and I would follow the law as handed down by the United States Supreme Court.

Senator SESSIONS. Well, we had two members of the Supreme Court that dissented in every case, Justices Marshall and Brennan, and they contended the death penalty was cruel and unusual and that it was unconstitutional.

No longer are such dissents occurring. It seems to me that Judge Diaz and you signed an opinion that agreed with that view. But I hear you saying that that did not necessarily represent your carefully considered intellectual view of that particular issue. It was more a willingness to sign on to Justice Diaz's dissent as an expression of concern about this case. But it did say more than that, apparently. It seemed to say a good bit more.

Would you just share once more your thoughts about this fundamental question about whether you could use the Eighth Amendment to declare all death penalties unconstitutional?

Justice GRAVES. I think, Senator Sessions, that maybe the best evidence of how I would handle death penalty matters, if they came before me as a judge on the Fifth Circuit Court of Appeals, is the way I've handled them as a Mississippi Supreme Court justice.

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In the 9 years that I've been a Supreme Court justice in the State of Mississippi, I've had an opportunity to vote on at least a dozen death penalty cases, where I've voted to affirm both a conviction and a sentence of death.

I've voted to affirm convictions and death sentences both before that *Doss* opinion and since the *Doss* opinion.

Senator SESSIONS. I appreciate that. I guess I would go one more step here and say as you analyze the Constitution and laws of the United States that come before you, will you seek to enforce them as they are written, fairly interpreting them as best you are able, to carry out the will of the populous who elected them through their elected representatives, passed them through their elected representatives?

And the fact that you may or may not agree that the death penalty is good policy—and I think people can disagree about that—do you think that the Constitution prohibits its implementation, if left to your judgment?

Justice GRAVES. If left to my judgment, I'm going to follow the law as handed down by the United States Supreme Court, and it clearly is that the death penalty does not constitute cruel and unusual punishment.

Senator SESSIONS. But you signed an opinion that seemed to say that you do not agree with that, that you believe that it is of negligible benefit to the State; therefore, it is unconstitutional. Is that what you meant to say?

Justice GRAVES. It is not.

Senator SESSIONS. Thank you.

Senator FRANKEN. Remember, you said the thing about——

Senator SESSIONS. My time is over.

Senator FRANKEN.—my correcting you. Thank you.

Senator SESSIONS. The Chairman has a right to bring the hammer down on elongated questioning.

Senator FRANKEN. Yes. Thank you. I would like to thank the Ranking Member. And thank you, Justice Graves. We will now proceed to the second panel.

Justice GRAVES. Thank you.

Senator FRANKEN. Why do not you all come forward and instead of sitting, please remaining standing so that you can swear the oath.

[Nominees sworn.]

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   James Earl Graves, Jr.

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

   United States Circuit Judge for the Fifth 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: Mississippi Supreme Court
   450 High Street
   Jackson, MS 39201

   Residence: Jackson, MS 39204

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

   1953; Hinds County, Mississippi

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

   Summer 1977 – Spring 1980, Syracuse University School of Law; Syracuse, New York; J.D., 1980

   Summer 1979 – Spring 1980, Syracuse University, The Maxwell School of Citizenship and Public Affairs; Syracuse, New York; M.P.A. – Public Administration, 1981

   Fall 1971 – Spring 1975, Millsaps College; Jackson, Mississippi; B.A. – Sociology

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.

66817.001

2001 – Present
Mississippi Supreme Court
450 High Street
Jackson, MS 39201
Current position: Presiding Justice (January 2009 – present)
Previous position: Associate Justice (2001 – 2008)

2003 – Present
R. Palmer Enterprises, LLC
180 Bristol Boulevard
Jackson, MS 39204
Position held: Proprietor

2009, 2006 and 2004
Tougaloo College
500 West County Line Road
Jackson, MS 39174
Position held: Adjunct Professor, Department of Journalism
Subject: Media Law

2005
Millsaps College
1701 North State Street
Jackson, MS 39216
Position held: Adjunct Professor, Departments of Sociology and Political Science
Subject: Law and Society

1991 – 2001
Hinds County Circuit Court
407 East Pascagoula Street
Jackson, MS 39201
Position held: Circuit Court Judge

1990 – 1991
Mississippi Department of Human Services
750 North State Street
Jackson, MS 39202
Position held: Director of the Division of Child Support Enforcement

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1986 – 1990
Office of the Attorney General of the State of Mississippi
550 High Street, Suite 1200
Jackson, MS 39201
Position held: Special Assistant Attorney General (1986 – 1990)
Position held: Chief Legal Counsel, Human Services Division (1989 – 1990)
Position held: Legal Counsel, Health Law Division (1986 – 1989)

1984 – 1986
Walker and Walker, Attorneys at Law
1410 Livingston Lane, Suite A
Jackson, MS 39213
Position held: Associate Attorney

1983 – 1984
Murrain and Graves, Attorneys at Law
3175 J.R. Lynch Street
Jackson, MS 39209
Position held: Partner

1980 – 1983
Central Mississippi Legal Services
414 South State Street, Third Floor
Jackson, MS 39205
Position held: Staff Attorney

1980 – 1997
Jackson State University
1400 Lynch Street
Jackson, MS 39217
Position held: Adjunct Professor
Department of Mass Communications, Subject: Media Law (Fall 1980 – Spring 1982; Spring 1985 – Spring 1997)
Department of Political Science, Subject: Civil Rights Law (Spring 1990)
Department of Public Policy & Administration, Subject: Black Perspectives in Public Administration (Spring 1996)
Department of Public Policy & Administration, Subject: Correctional Systems (Spring 1995)

1978 – 1979
Department of Community Development
201 East Washington Street, Room 612
Syracuse, NY 13202
Position held: Clerk

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1975 – 1977
Department of Public Welfare
1775 Wilson Boulevard
Jackson, MS 39204
Positions held: Eligibility Worker, Social Worker

Uncompensated Positions

Board Member, National Consortium on Racial and Ethnic Fairness in the Courts, 2007 – present
c/oJohn Douglas
Sr. Court Management Consultant
National Center for State Courts
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202-3429

Board Member, Greater Jackson Arts Council, 2007 – present
Mailing Address:
P.O. Box 17
Jackson, MS 39205

Board Member, Mississippi Children's Museum, 2009 – present
3010 Lakeland Cove
Flowood, MS 39232-9784

Board Member, Operation Shoestring, 2006 – present
1711 Bailey Avenue
Jackson, MS 39203-1204

Board Member, Mississippi Center for Education Innovation, 2009 – present
200 South Lamar Street
Jackson, MS 39201-4016

President, Wingfield Place Neighborhood Association, 2000 – 2002
No permanent address

1984
Jackson Urban League
2310 Highway 80 West
Jackson, MS 39204
Position held: Interim Board Chair (uncompensated)

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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.

Maxwell Public Administration Award, The Maxwell School, Syracuse University, 2009

Oasis of Freedom and Justice Award, Dream 365, 2008

President's Award, National Conference of Black Mayors, 2006

Equal Justice Award, 100 Black Men of America, 2005

NAACP Legal Award, Mississippi Chapter, 2004

Livesay Service Award, Millsaps College, 2004

Award of Excellence, Mississippi Council for the Social Studies, 2003

Doctor of Laws, Honorary Degree, Millsaps College, 2002

Law-Related Public Education Award, Mississippi Bar Foundation, 2002

Humanized Education Award, Mississippi Association of Educators, 2002

Special Achievement Award, Jackson Federal Executive Association, 2002

Thurgood Marshall Award, City of Jackson's Martin Luther King Celebration, 2002 and 1994

Parent of the Year (First Alternate) State of Mississippi, 2000 – 2001

Parent of the Year, Jackson Public School District, 2000 – 2001

Commissioner's Award, United States Department of Health and Human Services, 2001

Innovation Award, Hinds County Bar Association, 2000

Government Service Award, Magnolia Bar Association, 1998 and 1993

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66817.005

Distinguished Jurist Award, National Bar Association, 1996

R. Jess Brown Award, Magnolia Bar Association, 1994

Community Service Award, Alpha Phi Alpha Fraternity, 1993 (I am not a member of any Greek organization)

Alumnus of the Year, Millsaps College Black Students Association, 1993

Judge of the Year, National Conference of Black Lawyers, 1992

Champion Adopter, Mentor in Lake Elementary Schools – Boys for a Brighter Tomorrow Program, 1991

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

Chair, Mississippi Supreme Court Rules Committee on Criminal Practice and Procedure, 2010 – present

Board Member, National Consortium on Racial and Ethnic Fairness in the Courts, 2007 – present; Chair of the History CD Committee, 2009 – present

Chair, Courts and the Media Committee, Mississippi Supreme Court, 2001 – present

Chair, Mississippi Supreme Court Committee on Administrative and Related Matters, 2009

Chair, Public Defender's Task Force, 2005 – 2009

Mississippi Bar Association, current member
Fellow (2005 – present)
Designated Trustee, Mississippi Bar Foundation, Inc. (2003 – 2004)

Board Member, Mississippi Access to Justice Commission, 2006 – present

Magnolia Bar Association, current member
Central District Representative (1985 – 1987)

American Bar Association, current member
Chair-Elect, National Conference of State Trial Judges (2001)
Vice-Chairman, National Conference of State Trial Judges (2000)
Member, Executive Committee of the National Conference of State Trial Judges (1994 – 2001)
Chairman, Law and Technology Committee, National Conference of State Trial Judges

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66817.006

Delegate, America Bar Association on behalf of the Mississippi Conference of Circuit Judges (1993 – 2001)

Hinds County Bar Association, former member

Association of Trial Lawyers of America, former member

Mississippi Trial Lawyers Association, former member

American Association of Public Welfare Attorneys, former member
Executive Committee (1989 – 1991)

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.

Mississippi, 1980

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.

Admitted to practice in all Mississippi State Courts in September 1980 with no lapse in membership.

Admitted to practice in the United States District Courts for the Northern and Southern Districts of Mississippi in September 1980 with 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.

Board Member, Greater Jackson Arts Council, 2007 – present

Board Member, Mississippi Children's Museum, 2009 – present

Board Member, Operation Shoestring, 2006 – present

Board Member, Mississippi Center for Education Innovation, 2009 – present

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66817.007

Chairman, Anti-Violence Committee, 100 Black Men of America, 1994 – 1996

Millsaps College Alumni Advisory Council, 2000 – 2002

Wingfield Place Neighborhood Association, Member, 1991 – present, President, 2000 – 2002

100 Black Men of Jackson, Mississippi, 1992 – 2009

Interim Board Chair, Jackson Urban League, 1984

National Association for the Advancement of Colored People (NAACP), 1980 – 1992

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.

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.

Bold indicates that the publication is included in the attachment. For all others, I do not have a copy.

***Judicial Independence: The Courts and the Media*, Bench Press, at 114, (Stanford University Press 2007).**

"I Quit!"- Commonsense Guide to Taking Back Control of Your Career, By Verna Felton, Foreword by James Graves, (Xlibris Corporation 2006)

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66817.008

The Constitution and Judicial Independence, The 2005 Judge William H. Keady Lecture, 25 Miss. C. L. Review 283 (2006).

The Judges' Journal (American Bar Association), Spring 2004, Article Entitled "Brown v. Board of Education: A Look Back"

The Mississippi Lawyer, October 2001, Article Entitled, "Technology in the Courtroom - Changes in Hinds County"

The Judges' Journal (American Bar Association), Summer 2001, Article Entitled, "Technological Changes in Hinds County" (Same text as above.)

The Mississippi Lawyer, May – June 1999, Article Entitled, "The Big Case: A Perspective from the Bench"

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 not prepared or contributed in the preparation of any such report, memoranda or policy statement.

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

To the best of my recollection, I have never given any such testimony, official statements or other communications.

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

The following represents, to the best of my recollection, all of my speeches, talks, remarks, lectures, panel discussions, conference presentations, political speeches and question-and-answer sessions. Readily available transcripts, recordings, press reports are noted.

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66817.009

In most cases, I do not speak from a prepared text. I do use notes and frequently rely on previously used notes. However, it is a very rare occasion where everything which appears in my notes is actually delivered during my address. Hence, my pre-speech notes may include topics and statements that were never made during the actual presentation.

Additionally, during 2004 I was involved in an election campaign. During that year I made a significant number of speeches, often without notes. I have also done a significant number of speeches for which notes were not retained.

Bold indicates that speech notes are included in attachment. For all others, no notes exist.

2010

January 27, 2010 – Broadmeadow Methodist Church After School Program, Jackson, Mississippi. Guest Speaker.

January 21, 2010 – Keynote address to Mississippi Economic Council Leadership Mississippi Annual Dinner, Jackson, Mississippi.

2009

December 11, 2009 – Keynote address to Greenwood Voters League, Greenwood, Mississippi.

November 16, 2009 – Pike County Drug Court Graduation, Magnolia Mississippi.

November 14, 2009 – Mississippi School Nutritionist Association 40th Annual Awards Banquet, Jackson, Mississippi.

November 10, 2009 – Mississippi Black Leadership Summit, Jackson Mississippi. Panelist, "Expanding the Judiciary."

October 16, 2009 – Career Day, McWillie Elementary School, Jackson, Mississippi.

October 5, 2009 – Watchdogs for Dads, John Hopkins Elementary School, Jackson, Mississippi.

September 21 – 25, 2009 – Harvard Trial Advocacy Workshop, Cambridge, Massachusetts. Teaching team member.

September 15, 2009 – Gulfport High School Constitution Week Program, Gulfport, Mississippi.

August 8, 2009 – Norman Chapel Church Youth Rally, Jackson, Mississippi. Motivational speech to church youth.

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66817.010

July 31, 2009 – ABA Annual Meeting, Drake Hotel, Chicago, Illinois. Panel moderator, "Courts and the Media in the 21st Century: Twitterers, Bloggers, the New Media, the Old Media, and What's A Judge to Do?"

July 27 – 28 – Basic Legal Affairs for Journalists, National Center for the Courts and Media, Reno, Nevada.

July 21, 2009 – Education for Democracy Camp for Teachers, State Capitol, Jackson, Mississippi. Guest speaker, "The Civil Rights Movement." Scholarly presentation to group of international teachers.

June 27, 2009 – United Way Day of Action Volunteer Rally, Hal & Mal's, Jackson, Mississippi. Motivational speech to volunteers.

June 18, 2009 – Mississippi Department of Employment Security Leadership Development Program, Reservoir Pointe, Ridgeland, Mississippi. Interactive presentation on leadership.

June 17, 2009 – "We the People" Institute, State Capitol, Jackson, Mississippi. Guest lecturer on the topic of Courts and Judicial Review.

June 8, 2009 – National Association of Unemployment Insurance Appellate Boards Conference, Oxford, Mississippi. Lunch presentation on the topic of Professionalism.

May 24, 2009 – Boys State, Wesson, Mississippi. Guest speaker.

May 23, 2009 – Corinth Contraband Camp Memorial Park Dedication, Corinth, Mississippi. Co-keynote address with Senator Thad Cochran.

May 22, 2009 – Mississippi School for the Blind Commencement, Jackson, Mississippi. Keynote address.

May 16, 2009 – Commissioning of Gravely DDG-107, Northrop Grumman Shipbuilding, Pascagoula, Mississippi.

April 16, 2009 – Mississippi Economic Council 2009 Education Celebration, Jackson Convention Center, Jackson, Mississippi. Keynote address and STAR Student Award presentation.

March 19, 2009 – Veterans of the Mississippi Civil Rights Movement Annual Conference, Jackson State University, Jackson, Mississippi. Keynote speaker, "The Movement that Produced Change Now Empowers our Youth in the 21st Century."

February 22, 2009 – Glen Addie United Methodist Church, Anniston, Alabama.

February 15, 2009 – National Council of Negro Women Black History Program, Jackson, Mississippi.

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66817.011

February 10, 2009 – Mission Mississippi Governor's Prayer Luncheon, Jackson, Mississippi.

February 9, 2009 – NATLE Winter Meeting, Sheraton, New Orleans, Louisiana. Presentation on "A Commitment to Diversity."

February 6, 2009 – Mississippi Conference of Black Mayors Luncheon, McComb Events Center, McComb, Mississippi. Keynote speaker.

February 3, 2009 – Donuts for Dads, Jackson State University, Jackson, Mississippi. Motivational speech to fathers of children in campus childcare program.

January 27, 2009 – Lee Elementary School / Jackson Chamber of Commerce Core Traits Program. Keynote speaker on topic of justice.

January 23, 2009 - The Alliance for Graduate Education in Mississippi Winter Scholar Symposium. Jackson, Mississippi. Motivational speech.

January 22, 2009 – Mississippi Economic Council Leadership Mississippi Annual Dinner, Fairview Inn, Jackson, Mississippi. Keynote address.

January 12, 2009 – Mayor's Youth Council Awards Ceremony, McComb Sports Park, McComb Mississippi. Keynote address.

2008

December 8, 2008 – League of Women Voters Forum, Willie Morris Library, Jackson, Mississippi. Panelist for forum on judicial selection process.

November 11, 2008 – Magnolia Bar Association Fall CLE, Marriott, Jackson, Mississippi. Presenter, "Appellate Brief Writing and Oral Argument."

November 17, 2008 – National Center for Courts and the Media, Reno, Nevada. Presenter, "Changes in the Courts – What the Media should know about new challenges and opportunities facing the Courts."

September 25, 2008 – Mississippi Minority Enterprise Development Luncheon, Jackson, Mississippi. Luncheon speaker.

September 12, 2008 – Mississippi Center for Justice Annual Dinner, Jackson, Mississippi. Emcee.

August 29, 2008 – Blues Trail Marker Dedication Ceremony, Piney Woods School, Rankin County, Mississippi. Presenter.

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66817.012

August 24, 2008 – Mount Beulah Baptist Church Men's Day Program, Indianola, Mississippi. Guest speaker.

August 12, 2008 – Coahoma Community College Opening Convocation, Clarksdale, Mississippi.

July 27, 2008 – National Center for Courts and the Media, Reno, Nevada. Presenter.

July 13 2008 – "Appellate Brief Writing and Oral Argument," AAJ Annual Convention, Philadelphia, Pennsylvania, July 13 2008. Presenter.

June 26, 2008 – Hometown Hero & SUMITT Awards, Jackson, Mississippi. Co-emcee.

June 13, 2008 – Mississippi Postal Workers Convention, Jackson, Mississippi.

July 12, 2008 – New Heights Seventh Day Adventist Church, Men's Prayer Summit, Jackson, Mississippi.

June 10, 2008 – Coahoma Community College Commencement, Clarksdale, Mississippi.

May 14, 2008 – Hattiesburg Police Department Memorial Service, Hattiesburg, Mississippi.

May 9, 2008 – Central Elementary School, Gulfport, Mississippi

March 27, 2008 – Mississippi Paralegal Association Luncheon, Jackson, Mississippi.

March 8, 2008 – Mississippi NAACP State Conference Luncheon, Jackson, Mississippi.

February 28, 2008 – Sixth Judicial Circuit Drug Court Graduation, Natchez, Mississippi.

February 18, 2008 – University of Toledo Martin Luther King Scholarship Dinner and Student Luncheon, Toledo, Ohio.

February 1, 2008 – Beth Israel Temple Social Justice / Tikkun Olam Sabbath, Jackson, Mississippi.

January 19, 2008 – Joshua Project Martin Luther King Gala, Columbus, Mississippi.

2007

Man to Man Breakfast, Clinton Jr. High School, Clinton, Mississippi, November 8, 2007

Legal Services Check Presentation, Jackson, Mississippi, October 28, 2007

Wells Grove Missionary Baptist Church 110th Anniversary, Clinton, Mississippi, October 28, 2007

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66817.013

Adams County School District Teachers Professional Development, Natchez, Mississippi, October 25, 2007

NAACP Clinton Branch, Jackson, Mississippi, October 19, 2007

Mississippi Arts Commission Halbrook Awards Banquet, Jackson, Mississippi, October 7, 2007

GEAR UP Birmingham, Birmingham, Alabama, August 8, 2007

Canton Public School District Opening Convocation, Canton, Mississippi, August 6, 2007

William Carey University Summer Commencement, Hattiesburg, Mississippi, August 4, 2007

Tipton County Board of Education Teachers In-Service, Brighton, Tennessee, August 3, 2007

Leflore County School District Opening Convocation, Greenwood, Mississippi, August 1, 2007

Rotary Club of West Jackson, Jackson, Mississippi, July 31, 2007

Alliance of Prison Ministries Organizations and Affiliates Annual Convention Awards Banquet, Downers Grove, Illinois, July 28, 2007

New Heights Seventh Day Adventist Community Guest Day, Jackson, Mississippi, May 26, 2007

Syracuse University College of Law Spring Commencement, Syracuse, New York, May 20, 2007

Florida School Nutrition Association, Orlando, Florida, May 4, 2007

Moss Point – Jackson County NAACP Freedom Fund Awards Banquet, Biloxi, Mississippi, April 27,2007

S.V. Marshall High School Scholarship Banquet, Lexington, Mississippi, March 2, 2007

Georgia Legislative Black Caucus Heritage Dinner, Atlanta, Georgia, February 19, 2007

J.D. Empowerment Day, Baton Rouge, Louisisana, February 24, 2007

Perry Burroughs Democratic Women's Club Black History Month Brunch, Toledo, Ohio, February 17, 2007

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66817.014

Wayne County High School Black History Program, Waynesboro, Mississippi, February 14, 2007

Mt. Matthew Missionary Baptist Church Black History Program, Jackson, Mississippi, February 4, 2007

St. Andrew's Episcopal School Martin Luther King Program, Ridgeland, Mississippi, January 16, 2007

Medgar Evers / Martin Luther King Day Ceremony, Decatur, Mississippi, January 15, 2007

Mississippi Association of County Administrators, January 9, 2007

Judge Veldore Young Investiture, January 3, 2007

2006

HBCU-ETS Summit, Jackson, Mississippi, December 4, 2006

Rotary Club of Greenwood, Greenwood, Mississippi, December 4, 2006

100 Black Men of Memphis Black Tie Gala, Memphis, Tennessee, December 1, 2006

Presenter, "Election v. Appointment: Rethinking the Judicial Selection Process, the Constitution and Judicial Independence," Delta State University, Itta Bena, Mississippi, November 28, 2006

AIM-IRS 2006 Southeast Regional Fall Conference, Jackson, Mississippi, October 21, 2006

Presenter, Department of Health and Human Services Office of Civil Rights, "Eliminating Health Disparities in Mississippi: Diabetes and Obesity," Jackson, Mississippi, October 20, 2006

International Reading Association Southeastern Regional Conference, Mobile, Alabama, October 16, 2006

100 Black Men of Jackson Scholarship Banquet, Jackson, Mississippi, October 7, 2006

Watkins Elementary School Parents Conference, Jackson, Mississippi, September 21, 2006

National Forum for Black Public Administrators, Atlanta, Georgia, September 20, 2006

Tipton County School District, Covington, Tennessee, September 16, 2006

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66817.015

Hattiesburg School District Opening Convocation, Hattiesburg, Mississippi, August 7, 2006

Jackson Public Schools Opening Convocation, Jackson, Mississippi August 3, 2006

McComb High School Professional Development, McComb, Mississippi, August 2, 2006

Jackson State University Executive Ph.D. Program Lecture, "The Constitution and Judicial Independence," Jackson, Mississippi, July 13, 2006

Southeast Regional Civil Rights Training Conference, Jackson, Mississippi, July 11, 2006

New Hope Baptist Church Men's Day Service, Jackson, Mississippi, June 25, 2006

Hinds County Bar Association Luncheon, Jackson, Mississippi, June 20, 2006

Presenter, "We the People" Lecture Series, MississippiState University, June 20, 2006

Mississippi Coalition, "Putting Victims First," Philadelphia, Mississippi, June 2, 2006

Alcorn State University National Alumni Association, Birmingham, Alabama, June 2, 2006

Southern Minority Leadership Conference, Tunica, Mississippi, May 30, 2006

Rosa Fort High School Spring Commencement, Tunica, Mississippi, May 28, 2006

Northwest Rankin High School Commencement, Brandon, Mississippi, May, 23, 2006

Mississippi State University at Meridian Spring Commencement, Meridian, Mississippi, May 12, 2006

Mayor's Prayer Breakfast, Hattiesburg, Mississippi, May 4, 2006

Boys and Girls Club, Batesville, Mississippi, April 6, 2006

Brandon High School Black History Program, Brandon, Mississippi, February 27, 2006

Hope Springs Missionary Baptist Church Black History Program, Jackson, Mississippi, February 26, 2006

2005

Sunflower / Humphreys Counties Head Start Program, December 16, 2005

Gate City Bar Association, "The Judiciary and the Role of Judges," Atlanta, Georgia, December 2, 2005

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66817.016

Mt. Pisgah Missionary Baptist Church, Memphis, Tennessee, November 20, 2005

Guest Speaker, Belhaven College Chapel Service, Jackson, Mississippi, November 15, 2005

Judge William H. Keady Lecture, "The Constitution and Judicial Independence," Jackson, Mississippi, October 24, 2005

Panelist, "Bench Press: The collision of Media, Politics, Public Pressure, and an Independent Judiciary." Washington, D.C., October, 2005.

Bolivar County D.M. Smith Middle School, Cleveland, Mississippi, September 8, 2005

Mississippi Juvenile Justice Conference, Biloxi, Mississippi, August 4, 2005

Leon County School District Opening Convocation, Tallahassee, Florida, August 3, 2005

Jim Hill High School 1970 Class Reunion, Jackson, Mississippi, July 9, 2005

Sumner Hill High School Class Reunion, Jackson, Mississippi, July 2, 2005

National Judges Association, Biloxi, Mississippi, June 30, 2005

Fannin Missionary Baptist Church, Fannin, Mississippi, June 12, 2005

Ruleville Central High School Spring Commencement, Ruleville, Mississippi, May 21, 2005

Meridian Community College Spring Commencement, Meridian, Mississippi, May 16, 2005

Keynote, International Reading Association, San Antonio, Texas, May 4, 2005

Louisiana GEAR UP Explorers Clubs, Ruston, Louisiana, April 22, 2005

Gulf Coast Fair Housing Conference, Gulfport, Mississippi, April 21, 2005

Presenter, "Mississippi Judicial System," Millsaps College, Jackson, Mississippi, March 4, 2005

Woodman Hill Missionary Baptist Church Black History Program, February 27, 2005

Rock Star Baptist Church Black History Program, February 27, 2005

Cassie Pennington Jr. High School, "Citizenship, Scholarship, Sportsmanship," Indianola, Mississippi, February 23, 2005

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66817.017

Perry Burroughs Democratic Women's Club Black History Month Brunch, Toledo, Ohio, February 19, 2005

Ridgeland High School, "Citizenship, Scholarship, Sportsmanship," Ridgeland, Mississippi, February 15, 2005

100 Black Men Families and Mentors Conference, Hardy Middle School, Jackson, Mississippi, February 12, 2005

8th Annual Mississippi Youth Service Summit, February 10, 2005

Black History Month Program, Crystal Springs Middle School, Crystal Springs, Mississippi, February 6, 2005

Black History Month Program, Central Elementary School, Gulfport, Mississippi, February 4, 2005

John Hopkins Elementary School Fathers & Sons Breakfast, Jackson, Mississippi, February 3, 2005

Simpson County NAACP, Mendenhall, Mississippi, January 17, 2005

Mississippi Museum of Art Martin Luther King Day Program, Jackson, Mississippi, January 17, 2005

Claiborne County NAACP Martin Luther King Program, Port Gibson, Mississippi, January 17, 2005

2004

Keynote, NAACP Banquet, DeKalb County, Mississippi, October 23, 2004

Guest Speaker, Springhill Association Meeting, Florence, Mississippi, October 9, 2004

Candidate Forum, State Farm Legislative Outreach, Flowood, Mississippi, October 6, 2004

Keynote, Mount Zion Missionary Baptist Church Mens Day, Bentonia, Mississippi, October 3, 2004

Guest Speaker, Fourth Annual Fannie Lou Hamer Celebration, Cleveland, Mississippi, October 2, 2004

Candidate Forum, Blacks in Government / Deltas Candidates Forum, Vicksburg, Mississippi, October 1, 2004

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66817.018

Guest Speaker, Jackson Junior League "Girls Night Out," Jackson, Mississippi, September 28, 2004

Candidate Forum, Central Mississippi Medical Center Political Forum, Jackson, Mississippi, September 23, 2004

Guest Speaker, Mississippi College School of Law Christian Legal Society, Jackson, Mississippi, September 21, 2004

Guest Speaker, Southern Union Conference of Seventh Day Adventists, Brunswick, Georgia, September 17, 2004

Guest Speaker, Greenville Kiwanis Club, Greenville, Mississippi, September 14, 2004

Keynote Speaker, Kemper County High School Assembly, Dekalb, Mississippi, September 13, 2004

Keynote, White Star Missionary Baptist Church, Belzoni, Mississippi, September 12, 2004

Guest Speaker, AFL-CIO Picnic, Jackson, Mississippi, September 6, 2004

Guest Speaker, Warren County Bar Association, Vicksburg, Mississippi, August 30, 2004

Presenter, Canton Gospel Awards Show, Canton, Mississippi, August 29, 2004

Keynote, Mississippi Valley State University Faculty & Staff Luncheon, Itta Bena, Mississippi, August 16, 2004

Virginia College Commencement, Jackson, Mississippi, August 14, 2004

Annual Pre-Service Training For Hinds County Head Start, Jackson, Mississippi, August 2, 2004

Guest Speaker, Metcalfe Youth Mass Choir Anniversary Banquet, Greenville , Mississippi, July 30, 2004

Political Speech, Neshoba County Fair, Philadelphia, Mississippi, July 29, 2004

Guest Speaker, Jackson Medical Mall Officer Appreciation & Crime Prevention Luncheon, Jackson, Mississippi, July 22, 2004

Presenter, Legal Services Check Presentation, Jackson, Mississippi, July 21, 2004

Guest Speaker, General Assembly of Baptists, Jackson, Mississippi, July 19, 2004

Keynote, Holmes County NAACP Banquet, Lexington, Mississippi, July 16, 2004

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66817.019

Keynote, Greater Ross Chapel Youth Program, Gluckstadt, Mississippi, July 11, 2004

Mississippi NAACP Banquet, Jackson, Mississippi, July 4, 2004

Keynote, Tchula Town Hall, Tchula, Mississippi, July 2, 2004

Guest Speaker, Municipal League Conference, Biloxi, Mississippi, June 28, 2004

Keynote, Port Gibson Town Hall Meeting, Port Gibson , Mississippi, June 26, 2004

Keynote, Lighthouse Outreach Youth Drug Rally, Jackson, Mississippi, June 26, 2004

Guest Speaker, Madison Stewpot, Madison, Mississippi, June 25, 2004

Guest Speaker, Drug Court Graduation, Greenville, Mississippi, June 24, 2004

Luncheon Speaker, Central / Southwest Mississippi Legal Services Conference, Biloxi, Mississippi, June 22, 2004

Keynote, St. James Vacation Bible School, Hazlehurst, Mississippi, June 21, 2004

Guest Speaker, Cade's Chapel Church Men's Day, Jackson, Mississippi, June 20, 2004

Guest Speaker, Philadelphia Civil Rights Workers Memorial, Philadelphia, Mississippi, June 20, 2004

Keynote, Noxubee County Courthouse Address, Macon, Mississippi, June 19, 2004

Keynote, Jackson Young Lawyers Luncheon, Jackson, Mississippi, June 18, 2004

Guest Speaker, AFL-CIO 22nd Annual Convention, Jackson, Mississippi, June 16, 2004

Keynote, Antonelli College Commencement, Jackson, Mississippi, June 15, 2004

Lecturer, Mississippi State University "We The People," Starkville, Mississippi, June 9, 2004

Guest Speaker, Mississippi Board of Education MEGA Conference, Biloxi, Mississippi, June 7, 2004

Guest Speaker, Boy's State, Wesson, Mississippi, June 2, 2004

Guest Speaker, Investiture Of Chief Judge Leslie King, Jackson, Mississippi, June 1, 2004

Keynote, Siwell Middle School Commencement, Jackson, Mississippi, May 21, 2004

Keynote, East Side High School Commencement, Cleveland, Mississippi, May 20, 2004

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66817.020

Keynote, Port Gibson Middle School Graduation, Port Gibson, Mississippi, May 20, 2004

Guest Speaker, American Association of Blacks in Energy, Jackson, Mississippi, May 19, 2004

Guest Speaker, Prentiss High School Graduation, Prentiss, Mississippi, May 16, 2004

Keynote, Mississippi College School of Law School Senior Banquet, Jackson, Mississippi, May 13, 2004

Guest Speaker, Hattiesburg Police Memorial Service, Hattiesburg, Mississippi, May 12, 2004

Guest Speaker, Mississippi Department of Education Conference, Jackson, Mississippi, May 7, 2004

Guest Speaker, Ruleville High School Career Day, Ruleville, Mississippi, May 7, 2004

Guest Speaker, Provine High School Annual Academic Ceremony, Jackson, Mississippi, May 5, 2004

Panelist, Magnolia Bar Association Conference, Biloxi, Mississippi, April 29, 2004

Guest Speaker, Rotary Club of Jackson, Jackson, Mississippi, April 26, 2004

Guest Speaker, Truelight Baptist Church Men's Day Program, Jackson, Mississippi, April 25, 2004

Guest Speaker, 2004 Crime Victims Week, Gulfport, Mississippi, April 20, 2004

Keynote, Hinds County Head Start Parents Banquet, Jackson, Mississippi, April 15, 2004

Guest Speaker, Madison Middle School 8th Grade Assembly, Madison, Mississippi, April 14, 2004

Keynote, NOT HERE Foundation Youth Leadership Seminar, Jackson, Mississippi, April 13, 2004

Keynote, Simpson Central School, Pinola, Mississippi, April 5, 2004

Guest Speaker, Truelight Baptist Men's Day, Jackson, Mississippi, April 4, 2004

Guest Speaker, Hinds Community College "Mississippi and the Arts Week," Raymond, Mississippi, April 2, 2004

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66817.021

Guest Speaker, Youth Crime Watch Rally, Clinton, Mississippi, April 1, 2004

Keynote, Greater Hinds Street Baptist Men's Day, Greenville, Mississippi, March 28, 2004

Keynote, Society Ridge Baptist Church Spring Prom Conference, Pocahontas, Mississippi, March 27, 2004

Celebrity Juror, Magnolia Bar Mock Trial Competition, Jackson, Mississippi, March 27, 2004

Keynote, Central Elementary Black History Assembly, Gulfport, Mississippi, February 27, 2004

Keynote, Chevron Texaco's "Black History Awareness Celebration," Pascagoula, Mississippi, February 26, 2004

Keynote, Pennington Jr. High School, Black History Month Program, Indianola, Mississippi, February 25, 2004

Keynote, Forest Hill High School, Black History Program, Jackson, Mississippi, February 24, 2004

Presenter, Mississippi Trial Lawyers Association "Daubert From A Judicial Standpoint," Jackson, Mississippi, February 24, 2004

Keynote, "Brown vs. Board of Education Anniversary," U.S.D.A. Facility , Stoneville, Mississippi, February 23, 2004

Guest Speaker, St. Luke's Presbyterian Church Black History Program, Jackson, Mississippi, February 22, 2004

Guest Speaker, New Travelers Rest Missionary Baptist Church Black History Program, Jackson, Mississippi, February 15, 2004

Guest Speaker, Mount Zion Baptist Church Black History Program, Canton, Mississippi, February 15, 2004

Guest Speaker, Priestley Chapel Baptist Church Black Hist. Program, Canton, Mississippi, February 8, 2004

Keynote, "Take Flight" Awards Banquet, Mississippi Valley State University, Greenville, Mississippi, February 7, 2004

Keynote, Pearl Street A.M.E. Church Scholarship Banquet, Jackson, Mississippi, February 6, 2004

Guest Speaker, West Oktibbeha County High School, Maben, Mississippi, February 3, 2004

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66817.022

Keynote, Jackson Public Schools Just For Dads Conference, Jackson, Mississippi, January 29, 2004

Presenter, Haley Barbour Inaugural Lecture on Civic Virtue, Mississippi Humanities Council, Jackson, Mississippi, January 12, 2004

2003

Mississippi Center For Justice Event with Henry Kirksey & Mike Moore, Jackson, Mississippi, November 18, 2003

Spann Elementary School, Jackson, Mississippi, November 18, 2003

Mississippi College School of Law Moot Court Competition, Jackson, Mississippi, November 10, 2003

NAACP Annual Banquet "Having Our Say, Telling The Truth," Hazlehurst, Mississippi, November 8, 2003

Forest Hill High School, Spanish I, Jackson, Mississippi, October 27, 2003

Mississippi Council for the Social Studies Fall Conference, Greenwood, Mississippi, October 24, 2003

Presenter, "Cameras in the Courtroom," Trial Judges, Prosecutors, Journalists, and Court Administrators Conferences, 2003

Vicksburg Rotary Luncheon, Vicksburg, Mississippi, October 16, 2003

Seminar In State Government, Politics and Criminal Justice, Jackson State University, Jackson, Mississippi, October 9, 2003

Greenville High School, Greenville, Mississippi, October 7, 2003

Mississippi Association of Professionals In Corrections, Gulfport, Mississippi, September 18, 2003

Memorial Service, Mississippi Supreme Court Staff, Jackson, Mississippi, September 11, 2003

Civitas Exchange, Budapest, Hungary, August 31, 2003

Teamsters National Black Caucus, Jackson, Mississippi, August 23, 2003

Mississippi Trial Lawyers Asocition "Changes In The Legal Profession" Seminar, Biloxi, Mississippi, August 22, 2003

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Hazlehurst High School, Hazlehurst, Mississippi, August 5, 2003

Mississippi Department of Education, Management Information Systems Motivational Speech, Biloxi, Mississippi, July 28, 2003

New Judges Seminar, Jackson, Mississippi, July 17, 2003

Presenter, "We The People" Lecture on the U.S. Constitution, Mississippi State University, June 18, 2003

Farish Street Baptist Church Father's Day Service, Jackson, Mississippi, June 16, 2003

Blacks In Government Juneteenth Day Celebration, Vicksburg, Mississippi, June 14, 2003

A.S.I. Luncheon, Huntsville, Alabama, June 7, 2003

Mississippi Department of Education Conference, "Leadership In The 21st Century," Biloxi, Mississippi, June 5, 2003

Northwest Rankin Graduation, Jackson, Mississippi, May 27, 2003

Timberlawn Elementary School Promotion Day, Jackson, Mississippi, May 22, 2003

Mccomb High School Positive Incentive Program, Mccomb, Mississippi, May 16, 2003

Jury Selection in Mississippi, Jackson, Mississippi, April 30, 2003

Mississippi Judicial College Spring Conference, "Courts And The Media," Gulfport, Mississippi, April 24, 2003

Not Here Foundation "Growing Tomorrow's Leaders Today," Jackson, Mississippi, April 22, 2003

Ole Miss National Remote Sensing and Space Law Center "Technology In The Courthouse," Oxford, Mississippi, April 16, 2003

Illinois Assocation of Prison Ministries, Hyde Park Seventh Day Adventist Prison Ministry Day, Chicago, Illinois, April 12, 2003

"Protecting The Civil Rights Of The Elderly," Mississippi Association of Planning and Development Districts, Biloxi, Mississippi, April 9, 2003

Chastain Middle School, "Parent Involvement," Jackson, Mississippi, April 5, 2003

YMCA 23rd Annual Youth Assembly Conference, Jackson, Mississippi, April 4, 2003

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66817.024

Jim Hill High School Athletic Banquet, Jackson, Mississippi, April 3, 2003

Biloxi High School Social Studies Department assembly, "Pride In State," Biloxi, Mississippi, April 1, 2003

Men Of Excellence, University of Southern Mississippi, Hattiesburg, Mississippi, April 1, 2003

Mississippi Coalition Against Sexual Assault, Jackson, Mississippi, March 27, 2003

Pleasant Green Baptist Church Men's Day Program, Clinton, Mississippi, March 23, 2003

Eliathah Seventh Day Adventist Church, Tamarac, Florida, March 15, 2003

Forum/Lecture, Syracuse University College Of Law, Jurist-In-Residence, Syracuse, New York, March 5, 2003

Stanford Law School "Politicizing The Judiciary," Stanford, California, February 25, 2003

Overstreet Elementary School, Starkville, Mississippi, February 25, 2003

Missionary Union Baptist Church Black History Program, February 23, 2003

Alcorn State University Black History Month Program, Lorman, Mississippi, February 20, 2003

Clinton Jr. High School, "Black History Month," Clinton, Mississippi, February 19, 2003

Mississippi Judicial College, Chancery Court Clerks Seminar, Jackson, Mississippi, February 18, 2003

Lizzie Coleman Middle School, Progressive Art & Civic Club "Lizzie Coleman Day," Greenville, Mississippi, February 16, 2003

Simmons High School, Hollandale, Mississippi, February 13, 2003

Jackson State University "Leadership By Examples," Jackson, Mississippi, January 28, 2003

Millsaps College Mentor Orientation, Jackson, Mississippi, January 21, 2003

Mount Bethel Baptist Church Martin Luther King, Jr. Convocation, Greenville, Mississippi, January 20, 2003

Vicksburg Alpha Phi Alpha - Martin Luther King, Jr. Program, Vicksburg, Mississippi, January 20, 2003

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66817.025

Greenville 100 Black Men Martin Luther King, Jr. Program, Greenville, Mississippi, January 20, 2003

Hanson Place Seventh Day Adventist Church, Brooklyn, New York, January 18, 2003

Siwell Middle School, International Baccalaureate Program, Jackson, Mississippi, January 15, 2003

Tougaloo College Martin Luther King, Jr. Program, Jackson, Mississippi, January 15, 2003

Jack And Jill Of America Founder's Day Program, Jackson, Mississippi, January 12, 2003

Louis C. Westerfield Judicial Symposium, Jackson, Mississippi, January 10, 2003

2002

Jackson County Youth Court / Rotary Club "Face to Face," Pascagoula, Mississippi, December 18, 2002

100 Black Women, Inc. , Jackson, Mississippi, November 30, 2002

Panelist, "Courtroom Etiquette and Decorum," Magnolia Bar Association Fall CLE, Jackson, Mississippi, November 22, 2002

Moot Court Competition, Mississippi College, Jackson, Mississippi, November 18, 2002

Career Development Center, Jackson, Mississippi, November 7, 2002

North Jackson Exchange Club, Jackson, Mississippi, November 4, 2002

Illinois Association of Prison Ministries Annual Awards Banquet, Chicago, Illinois, October 20, 2002

"Youth On Fire 2002," Ephesus Seventh Day Adventist Church, Birmingham, Alabama, October 19, 2002

Mississippi Attorney General's Conference On Domestic Violence, Jackson, Mississippi, September 30, 2002

College Hill Baptist Church, Jackson, Mississippi, September 18, 2002

100 Black Men Inaugural Brunch,Washington, D.C., September 14, 2002

Adventist Risk Management, "Your Day In Court – Settle In Or Settle Out," Miami, Florida, September 9, 2002

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66817.026

Division of Family Services Partnership, "United We Stand," Biloxi, Mississippi, August 22, 2002

ABA Annual Meeting, Judicial Branch Bar and Bench Program, Washington, DC, August 11, 2002

Jackson State University Summer Commencement Address, Jackson, Mississippi, August 3, 2002

New Mount Zion Men's Conference, Jackson, Mississippi, July 19, 2002

Alcohol and Drug Free Conference, Crystal Springs, Mississippi, July 18, 2002

New Zion Baptist Church, Jackson, Mississippi, June 15, 2002

Mississippi American Legion Boys State 2002, Cleveland, Mississippi, June 13, 2002

Panelist, Courtroom Etiquette and Decorum, Jackson Young Lawyers Conference, Biloxi, Mississippi, June 6, 2002

Millsaps College Commencement Address, Jackson, Mississippi, May 11, 2002

Central United Methodist Church, Men's Day Program, Jackson, Mississippi, April 28, 2002

Millsaps Pre-Med Alumni Banquet, Jackson, Mississippi, April 27, 2002

Lauderdale County Bar Association, Meridian, Mississippi, April 26, 2002

Mississippi Economic Council STAR Student Program, Mississippi College, Clinton, Mississippi, April 26, 2002

Lexington Elementary School P.T.S.A. Banquet, Lexington, Mississippi, April 25, 2002

Mississippi Judicial College Spring Conference For Court Administrators, Bay St. Louis, Mississippi, April 25, 2002

Youth Crime Watch Rally, Jackson, Mississippi, April 19, 2002

Hinds Community College Utica Campus Honors And Awards Day Program, Utica, Mississippi, April 10, 2002

National Drug Court Month, Drug Court Graduation, Jackson, Mississippi, April 8, 2002

University of Mississippi Black Law Students Association Banquet, Oxford, Mississippi, March 23, 2002

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Mississippi Association of Educators Humanized Education Award Recipient, Jackson, Mississippi, March 11, 2002

Missionary Union Baptist Church, Black History Program, Columbus, Mississippi, February 23, 2002

2002 ABA Mid-year Meeting, Philidelphia, Pennsylvania, January 30, 2002

Panelist, Courtroom Etiquette and Decorum, Magnolia Bar Association Mid-Winter Banquet, Jackson, Mississippi, January, 2002

Speaker, Diversity in the Workplace, United States Department of Agriculture, 2002

2001

14th Circuit Drug Court Graduation, Brookhaven, Mississippi, December 17, 2001

True Light Community Center, Walnut Grove, Mississippi, December 8, 2001

Investiture of Mississippi Supreme Court Justice James Graves, November 15, 2001

YMCA Youth Governor's Breakfast, Jackson, Mississippi, November 9, 2001

New Heights Men's Day Program, Jackson, Mississippi, August 11, 2001

Digital Discovery, A Fred Friendly Seminar hosted by Law Professor, Charles Nesson, University of Mississippi Law, Center, 2001

2000

Capital Area Student Council Workshop, Mississippi College Office of Continuing Education, Clinton, Mississippi, October 25, 2000

Mississippi Legal Services State Conference, Jackson, Mississippi, June 17, 2000

Blacks In Energy Scholarship Banquet, Jackson, Mississippi, May 11, 2000

Presenter, Technology in the Courtroom, Mississippi Trial Lawyers Association, Biloxi, Mississippi, 2000

Presenter, Technology in the Courtroom, Mississippi Judicial College, Jackson, Mississippi, 2000

Presenter, Insurance Litigation, Mississippi Trial Lawyers Association, Jackson, Mississippi, 2000

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66817.028

Presenter, Technology in the Courtroom, American Trial Lawyers Association, San Juan, Puerto Rico, 2000

1999 & earlier

Seven Springs United Methodist Church Lock-In, Raymond, Mississippi, July 30, 1999

Volunteer Law Project, Jackson, Mississippi, July 23, 1999

Mount Olive Church, Bolton, Mississippi, June 20, 1999

New Heights Seventh Day Adventist Church Graduation Program, Jackson, Mississippi, May 22, 1999

Presenter, Technology in the Courtroom, Hinds County Bar Association, Jackson, Mississippi, April 7, 1999

New Heights Seventh Day Adventist Church Career Day, Jackson, Mississippi, March 28, 1999

St. Peters Missionary Baptist Church, Utica, Mississippi, March 24, 1999

Martin Luther King Dedication, Biloxi, Mississippi, January 1, 1999

Presenter, Improving Trial Skills, Mississippi Trial Lawyers Association, Jackson, Mississippi, 1998

Presenter, Workshop on Re-Inventing Government, 100 Black Men of America, New Orleans, Louisiana, 1998

Judge, "We the People" Competition, Washington, D.C., 1997, 1998

Presenter, Workshop on Violence Prevention Strategies, Congressional Black Caucus Foundation, Washington, D.C., 1994, 1995, 1996 and 1997

Speaker, Safe Schools Rally, Alton, Illinois, 1996

Presenter, Mississippi Department of Public Safety, Workshop on Domestic Violence, Jackson, Mississippi, 1996

Presenter, Ethics for Lawyers, Magnolia Bar Association, Jackson, Mississippi, 1996

Westside Community Center, "Empowerment Through Awareness," February 11, 1995

Federal Employees, "Booker T. Washington," Jackson, Mississippi, February 16, 1995

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Presenter, "Community Involvement," Central Mississippi Chapter of Bank Administration Institute, Jackson, Mississippi, February 16, 1995

Guest speaker, Men's Day Program, Faith Presbyterian Church, October 29, 1995

Presenter, Mississippi Bar Association, Jackson, Mississippi, 1995

Presenter, Anti-Violence Seminar (Domestic Violence), NAFEO, Washington, D.C., 1995

Speaker, Youth Crime Summit, City of Jackson, Mississippi, 1995

Presenter, Ethics for Lawyers, American Trial Lawyers Association, Maui, Hawaii, 1995

Presenter, Ethics for Lawyers, Mississippi Trial Lawyers Association, Jackson, Mississippi, 1995

Presenter, Improving the Effectiveness of Counsel: A Perspective from the Bench, American Trial Lawyers Association, New York, New York, 1995

Presenter, Southern Regional Victim Assistance Conference, New Orleans, Louisiana, 1995

Presenter, Violence Prevention Workshop, National Conference on Strategies by Historically Black Colleges and Universities to Prevent Violence in African-American Communities, Charleston, South Carolina, 1994

Presenter, Magnolia Bar Association, Views from the Bench, Biloxi, Mississippi, 1994

Presenter, 100 Black Men of America National Convention, Workshop on Violence Prevention Strategies, Nashville, Tennessee, 1994

Guest speaker, "The Whole Duty of Man," Greater Mt. Calvary Church, Jackson, Mississippi, June 18, 1994

Guest speaker, Greater Allen Temple A.M.E. Church, Jackson, Mississippi, November 20, 1994

US Department of Justice, Bureau of Justice Assistance Developing and Implementing Anti-stalking Codes, Central Regional Seminar, Chicago, IL, October 27 – 28, 1994

Guest speaker, Pathfinder's Day, Riverside Seventh Day Adventist Church, Nashville, Tennessee, September 11, 1993

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.

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Items listed in **bold** are included in attachment. No clips or transcripts available for all others.

"May It Please the Court," Jackson Young Lawyers, Summer Issue, 2009.

Hinds County Bar Association Newsletter, Aug. 2009.

Marilyn Tinnin, "Renaissance Man," Metro Christian Living, Sep. 2006.

Audrey Stovall, Roy Brown, "James Graves: Dialogue with a Supreme Court Judge in Mississippi," College and University Dialogue, 2006.

"Five Questions with James Graves," Magnolia Report, 2005.

Kevin Chappell, Scotty Ballard, Clarence Waldron, "Katrina Aftermath," Jet, September 26, 2005.

"Graves Wins High Court Runoff," Clarion Ledger, Nov. 17, 2004

Casey Parks, "The JFP Interview Justice James Graves," Jackson Free Press, Oct. 21, 2004.

Midday Mississippi, WLBT, Aug. 6 2004.

Editorial Board Interview, Clarion Ledger, June 28, 2004

Statewide Live, "Cameras in the Courtroom," A Panel Discussion, Mississippi Educational Television, 2003

"Trading Democracy," Bill Moyers Reports, PBS, 2002.

Statewide Live, "Government in Mississippi," A Panel Discussion, Mississippi Educational Television, 2002

A Black History Month promotional honoring Dr. Martin Luther King, 2002, Local UPN Affiliate

Judges and Journalists, A Fred Friendly Seminar hosted by Harvard Law Professor, Arthur Miller, Public Television, 2000

The Public Affairs Office at the Mississippi Supreme Court periodically prepared press releases which contained quotes from me. Those that could be located are listed below and attached:

"Justice Graves Receives Public Service Award," June 26, 2009.

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"Justice Graves to Unveil Blues Trail Marker at Piney Woods School," Aug., 26, 2008.

"Justice Graves Will Speak at Gulfport Central Elementary May 9," May 6, 2008.

"Justice Graves Will Read to Students at Barr Elementary," Feb. 29, 2008.

"Justices to Present $193,000 from Civil Legal Assistance Fund," Oct. 24, 2007.

"Justice Graves to Teach Trial Advocacy at Harvard Law School," Sep. 14, 2007

"Justice Graves to Deliver Commencement Address at Syracuse University College of Law," Mar. 30, 2007.

"Supreme Court Justices Read Dr. Seuss," Mar. 2, 2007.

"Justice Graves Honored by National Conference of Black Mayors," Apr. 17, 2006.

"Justice Graves Receives 100 Black Men of America Award," Sep. 29, 2005.

"Hurricane Katrina Judicial Assessment Committee Preliminary Report Issued," Sep. 15, 2005.

"Justice Graves Speaks to International Reading Association," May 6, 2005.

"Justice Graves to Teach at Millsaps and Participate in Lovett Elementary Program," Jan. 14, 2005.

"Justices Present Funds to Assist Civil Representation of the Poor," July 21, 2004.

"4th Circuit Drug Court Celebrates Graduation," June 25, 2004.

"Millsaps College Honors Justice Graves with Livesay Service Award," Feb. 20, 2004

"Justice Graves Discusses Civics Education With Hungarian Officials and Students," Sep. 10, 2003.

"Supreme Court Justices Visit North Mississippi Rural Legal Services," July 17, 2003.

"Camera Coverage Allowed in Mississippi Courts," Apr. 17, 2003.

"Justice Graves Teaches Trial Advocacy at Harvard Law School," Oct. 2, 2002.

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"Media and the Courts Study Committee to Meet Oct. 11 in Meridian," Sep. 27, 2002

"Study Committee Favors Cameras in Some Trial Court Proceedings," Dec. 20, 2002.

"Media and the Courts Study Committee to Meet Aug. 30 inGulfport," Aug. 19, 2002.

"Media and the Courts Study Committee to Meet Sept. 20 in Greenville," Aug. 23, 2002.
"Justice Graves Honored for Advancing Public Understanding of the Law," July 16, 2002.

"Justice Graves to Lecture on Constitution at MSU Program," June 11, 2002.

"Media and the Courts Study Committee to Meet in Tupelo," May 31, 2002.

"Graves is Featured Speaker for Black Law Students Association Banquet," Mar. 31, 2002.

"Public Access Committee Calls for Meetings with Media," Mar. 19, 2002.

"Graves is Featured Speaker for Black History Programs," Feb. 15, 2002.

"Justice Graves Will Head Committee to Study Court and Media Issues," Nov. 29, 2001.

"Justice Graves Pledges to Serve With Honor, Dignity and Integrity," Nov. 15, 2001.

"Justice Graves Will Spotlight Education at Nov. 15 Investiture," Nov. 7, 2001.

"Justice James E. Graves Jr. to Address Youth Legislature," Nov. 7, 2001.

"Winston L. Kdd is Sworn In As Hinds County Circuit Judge," Nov. 5, 2001.

"Governor Appoints Judges George C. Carlson and James E. Graves Jr. to Supreme Court," Oct. 29, 2001.

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

In 1991, I was appointed as a circuit judge of Hinds County. I was elected to that seat in 1991 and re-elected in 1994 and 1998. In 2001, I was appointed to the Mississippi Supreme Court. I was elected to that seat in 2004.

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

As a circuit judge, I made rulings in hundreds of cases which were finally disposed of by settlement, summary judgment or dismissal for various reasons.

However, as a circuit judge, I presided over approximately 250 cases that proceeded through trial to verdict.

i. Of these, approximately what percent were:

jury trials? 90%; bench trials 10% [total 100%]

civil proceedings? 75%; criminal proceedings? 25% [total 100%]

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

Majority Opinion citations:

Miss. Bar v. DeLaughter, --- So. 3d ----, 2010 WL 2197429 (Miss. June 3, 2010)
Rice v. Merkich, --- So. 3d ----, 2010 WL 1795605 (Miss. May 6, 2010)
Long v. State, --- So. 3d. ----, 2010 WL 1795455 (Miss. May 6, 2010)
Prewitt v. City of Oxford, --- So. 3d ---, 2010 WL 1379984 (Miss. April 8, 2010)
Miss. Comm'n on Judicial Performance v. DeLaughter, 29 So. 3d 750 (Miss. 2010)
Barnes v. State, 30 So. 3d 313 (Miss. 2010)
Dialysis Solution, LLC v. Miss. State Dep't of Health, --- So. 3d ---, 2010 WL 548188 (Miss. Feb. 18, 2010)
Miss. Bar v. Burlison, --- So. 3d ---, 2009 WL 4679878 (Miss. Dec. 10, 2009)
Doss v. State, 19 So. 3d 690 (Miss. 2009)
King v. State, 23 So. 3d 1067 (Miss. 2009)
Stuart v. Univ. of Miss. Med. Ctr., 21 So. 3d 544 (Miss. 2009)
Solanki v. Ervin, 21 So. 3d 552 (Miss. 2009)
Edmonds v. Williamson, 13 So. 3d 1283 (Miss. 2009)
Am. States Ins. Co. v. Rogillio, 10 So. 3d 463 (Miss. 2009)

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Jordan (ex rel. Est. of Guillotte) v. Delta Health Group, Inc., 5 So. 3d 393 (Miss. 2009)
Byrd v. Simmons, 5 So. 3d 384 (Miss. 2009)
Caldwell v. State, 6 So. 3d 1076 (Miss. 2009)
Eash v. Imperial Palace of Miss., LLC, 4 So. 3d 1042 (Miss. 2009)
Trinity Mission Health & Rehab of Holly Springs, LLC v. Lawrence, 19 So. 3d 647 (Miss. 2009)
Wilson v. Nance, 4 So. 3d 336 (Miss. 2009)
J.C.N.F. v. Stone County Dept. of Human Servs., 996 So. 2d 762 (Miss. 2008)
Wong v. Miss. Bar, 5 So. 3d 369 (Miss. 2008)
Derouen v. State, 994 So. 2d 748 (Miss. 2008)
Univ. Med. Ctr. v. Martin, 994 So. 2d 740 (Miss. 2008)
A.D.R. v. J.L.H., 994 So. 2d 177 (Miss. 2008)
U.S. Fid. & Guar. Co. of Miss. v. Martin, 998 So. 2d 956 (Miss. 2008)
Jordan v. State, 995 So. 2d 94 (Miss. 2008)
In re Enlarging, Extending and Defining the Corporate Limits and Boundaries of the City of Meridian, 992 So. 2d 1113 (Miss. 2008)
Parchman v. Amwood Prods., Inc., 988 So. 2d 346 (Miss. 2008)
McLemore v. Miss. Transp. Comm'n, 992 So. 2d 1107 (Miss. 2008)
In re Hines, 978 So. 2d 1275 (Miss. 2008)
Bishop v. State, 982 So. 2d 371 (Miss. 2008)
Chim v. State, 972 So. 2d 601 (Miss. 2008)
Miss. Bar v. Whitfield, --- So. 2d ---, 2008 WL 161674 (Miss. Jan. 17, 2008)
Pate v. Conseco Life Ins. Co., 971 So. 2d 593 (Miss. 2008)
Burleson v. Lathem, 968 So. 2d 930 (Miss. 2007)
Bauhaus USA, Inc. v. Copeland (In re Guardianship of Holmes), 965 So. 2d 662 (Miss. 2007)
Hodgin v. State, 964 So. 2d 492 (Miss. 2007)
Miss. Bar v. Naugle, 968 So. 2d 1266 (Miss. 2007)
Burrows v. State, 961 So. 2d 701 (Miss. 2007)
In re Estate of Holmes, 961 So. 2d 674 (Miss. 2007)
Miss. Comm'n on Judicial Performance v. Roberts, 952 So. 2d 934 (Miss. 2007)
Gatlin v. Sanderson Farms, Inc., 953 So. 2d 220 (Miss. 2007)
Flowers v. State, 947 So. 2d 910 (Miss. 2007)
Brown v. State, 948 So. 2d 405 (Miss. 2006)
Smith v. King, 942 So. 2d 1290 (Miss. 2006)
Edmonds v. Edmonds, 935 So. 2d 980 (Miss. 2006)
Flowers v. State, 2004-DP-00738-SCT, 2006 Miss. LEXIS 356 (Miss. Jun. 29, 2006) (opinion withdrawn and superseded on denial of rehearing)
Bennett v. McCaffrey, 937 So. 2d 11 (Miss. 2006)
J.P.M. v. T.D.M., 932 So. 2d 760 (Miss. 2006)
Aldridge v. West, 929 So. 2d 298 (Miss. 2006)
Johns v. State, 926 So. 2d 188 (Miss. 2006)
Wooten v. Miss. Farm Bureau Ins. Co., 924 So. 2d 519 (Miss. 2006)
Bedford Care Center-Monroe Hall, LLC v. Lewis, 923 So. 2d 998 (Miss. 2006)
Allred v. Fairchild, 916 So. 2d 529 (Miss. 2005)

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Wooten v. Miss. Farm Bureau Ins. Co., 2005-CA-00303-SCT and 2003-CA-024560-SCT, 2005 Miss. LEXIS 716 (Miss. Oct. 27, 2005) (opinion withdrawn and superseded on denial of rehearing)
Keener Properties, LLC v. Wilson, 912 So. 2d 954 (Miss. 2005)
Prime Rx, LLC v. McKendree, Inc., 917 So. 2d 791 (Miss. 2005)
Ferrara v. Walters, 919 So. 2d 876 (Miss. 2005)
Yarbrough v. State, 911 So. 2d 951 (Miss. 2005)
Willis v. State, 911 So. 2d 947 (Miss. 2005)
Dycus v. State, 910 So. 2d 1100 (Miss. 2005)
USF & G Ins. Co. of Miss. v. Walls, 911 So. 2d 463 (Miss. 2005)
Chesney v. Chesney, 910 So. 2d 1057 (Miss. 2005)
James v. State, 912 So. 2d 940 (Miss. 2005)
Powers v. Tiebauer, 939 So. 2d 749 (Miss. 2005)
Shaw v. State, 915 So. 2d 442 (Miss. 2005)
Miss. Bar v. Robinson, 918 So. 2d 1264 (Miss. 2005)
Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022 (Miss. 2005)
Johnson v. State, 904 So. 2d 162 (Miss. 2005)
Stephens v. State, 911 So. 2d 424 (Miss. 2005)
USF & G Ins. Co. of Miss. v. Walls, 2002-IA-00185-SCT, 2005 Miss. LEXIS 326 (Miss. Jun. 9, 2005) (opinion withdrawn and superseded on rehearing)
Mercer v. Moody, 918 So. 2d 664 (Miss. 2005)
Miss. Bar v. Drungole, 913 So. 2d 963 (Miss. 2005)
Tupelo Redevelopment Agency v. Abernathy, 913 So. 2d 278 (Miss. 2005)
Kelly v. State, 910 So. 2d 535 (Miss. 2005)
Price v. State, 898 So. 2d 641 (Miss. 2005)
Manix v. State, 895 So. 2d 167 (Miss. 2005)
Owens v. Mai, 891 So. 2d 220 (Miss. 2005)
Ferguson v. Snell, 905 So. 2d 516 (Miss. 2004)
Phillips v. Phillips, 904 So. 2d 999 (Miss. 2004)
Jenkins v. State, 888 So. 2d 1171 (Miss. 2004)
Rinehart v. State, 883 So. 2d 573 (Miss. 2004)
Noxubee County School Dist. v. United Nat. Ins. Co., 883 So. 2d 1159 (Miss. 2004)
Brooks v. Roberts, 882 So. 2d 229 (Miss. 2004)
Farmland Mut. Ins. Co. v. Scruggs, 886 So. 2d 714 (Miss. 2004)
McIntosh v. Dept. of Human Servs., 886 So. 2d 721 (Miss. 2004)
Perez v. Garden Isle Cmty. Ass'n, 882 So. 2d 217 (Miss. 2004)
Brown v. State, 890 So. 2d 901 (Miss. 2004)
Easley v. Roach, 879 So. 2d 1041 (Miss. 2004)
Janssen Pharmaceutica, Inc. v. Keys, 879 So. 2d 446 (Miss. 2004)
Cooper Tire & Rubber Co. v. McGill, 890 So. 2d 859 (Miss. 2004)
Janssen Pharmaceutica, Inc. v. Scott, 876 So. 2d 306 (Miss. 2004)
Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004)
Goeldner v. Miss. Bar, 891 So. 2d 130 (Miss. 2004)
Morley v. Jackson Redevelopment Authority, 874 So. 2d 973 (Miss. 2004)
Snow v. State, 875 So. 2d 188 (Miss. 2004)

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Willie v. State, 876 So. 2d 278 (Miss. 2004)
Jacobs v. State, 870 So. 2d 1202 (Miss. 2004)
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In re Estate of Law, 869 So. 2d 1027 (Miss. 2004)
Barbour v. Gunn, 890 So. 2d 843 (Miss. 2004)
Murray v. State, 870 So. 2d 1182 (Miss. 2004)
Miss. Employment Sec. Comm'n v. Marion County Sheriff's Dep't, 865 So. 2d 1153 (Miss. 2004)
Gaines v. K-Mart Corp., 860 So. 2d 1214 (Miss. 2003)
Farm Servs., Inc. v. Oktibbeha County Bd. of Supervisors, 860 So. 2d 804 (Miss. 2003)
Woodell v. Parker, 860 So. 2d 781 (Miss. 2003)
Fairley v. State, 871 So. 2d 1282 (Miss. 2003)
Perkins v. State, 863 So. 2d 47 (Miss. 2003)
Moore v. State, 859 So. 2d 379 (Miss. 2003)
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Moore v. Miss. Valley Gas Co., 863 So. 2d 43 (Miss. 2003)
Tew v. Estate of Doe, 859 So. 2d 347 (Miss. 2003)
Perez v. Garden Isle Cmty. Ass'n, 2001-CA-01184-SCT, 2003 Miss. LEXIS 604, (Miss. Nov. 6, 2003) (opinion withdrawn and superseded on denial of rehearing)
Rinehart v. State, 2002-KA-00723-SCT, 2003 Miss. LEXIS 558 (Miss. Oct. 23, 2003) (opinion withdrawn and superseded on denial of rehearing)
Lee v. State, 858 So. 2d 124 (Miss. 2003)
Buchanan v. Ameristar Casino Vicksburg, Inc., 852 So. 2d 25 (Miss. 2003)
Paradise Corp. v. Amerihost Dev., Inc., 848 So. 2d 177 (Miss. 2003)
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Walker v. State, 815 So. 2d 1209 (Miss. 2002)
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Williams v. State, --- So. 3d ----, 2010 WL 1239538 (Miss. April 1, 2010)
Transocean Enterprise, Inc. v. Ingalls Shipbuilding, Inc., --- So. 3d ----, 2010 WL 817328 (Miss. March 11, 2010)
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Flagstar Bank, FSB v. Danos, 2007-CT-00418-SCT (Miss. Dec. 3, 2009) (separate written objection to order)
City of Laurel v. Williams, 21 So. 3d 1170 (Miss. 2009)
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Price v. Clark, 21 So. 3d 509 (Miss. 2009)
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River Region Medical Corp. v. Patterson, 975 So. 2d 205 (Miss. 2007)
Hayden v. State, 972 So. 2d 525 (Miss. 2007)
Prudential Ins. Co. of America v. Stewart, 969 So. 2d 17 (Miss. 2007)
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Bullock v. Lott, 964 So. 2d 1119 (Miss. 2007)
Century 21 Maselle & Assoc., Inc. v. Smith, 965 So. 2d 1031 (Miss. 2007)
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Lift-All Co., Inc. v. Warner, 943 So. 2d 12 (Miss. 2006)
Myers v. City of McComb, 943 So. 2d 1 (Miss. 2006)
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Hobgood v. State, 926 So. 2d 847 (Miss. 2006)
In re Adoption of Minor Child, 931 So. 2d 566 (Miss. 2006)
Shelter Mut. Ins.Co. v. Dale, 914 So. 2d 698 (Miss. 2005)
St. Dominic-Madison County Med. Ctr. v. Madison County Med. Ctr., 2004-SA-01240-SCT, 2005 Miss. LEXIS 560 (Miss. Sept. 8, 2005) (opinion withdrawn and superseded on rehearing)
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Alfa Ins. Corp. v. Ryals, 918 So. 2d 1260 (Miss. 2005)
Quitman County v. State, 910 So. 2d 1032 (Miss. 2005)
Wyeth Laboratories v. James, 918 So. 2d 1243 (Miss. 2005)
Miss. Farm Bureau Mut. Ins. Co. v. Parker, 921 So. 2d 260 (Miss. 2005)
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Miss. Bar v. Lumumba, 912 So. 2d 871 (Miss. 2005)
Wright v. Quesnel, 876 So. 2d 362 (Miss. 2004)
Williamson v. State, 876 So. 2d 353 (Miss. 2004)
Miss. Comm'n on Jud. Perf. v. U.U., 875 So. 2d 1083 (Miss. 2004)
Boddie v. State, 875 So. 2d 180 (Miss. 2004)
Gulley v. State, 870 So. 2d 652 (Miss. 2004)
Janssen Pharmaceutica, Inc. v. Armand, 866 So. 2d 1092 (Miss. 2004)
Howell v. State, 860 So. 2d 704 (Miss. 2003)
Ginn v. State, 860 So. 2d 675 (Miss. 2003)
State v. Oliver, 856 So. 2d 328 (Miss. 2003)
Ray v. Keith, 859 So. 2d 995 (Miss. 2003)
Gannett River States Pub. Corp. v. Jackson Advocate, 856 So. 2d 247 (Miss. 2003)
Venton v. Beckham, 845 So. 2d 676 (Miss. 2003)
Fancher v. Pell, 831 So. 2d 1137 (Miss. 2002)
Rigby v. State, 826 So. 2d 694 (Miss. 2002)
Farmer v. B & G Food Enters., Inc., 818 So. 2d 1154 (Miss. 2002)
Russell v. Miss. Dept. of Corrections, 814 So. 2d 802 (Miss. 2002)
In re Miss. Code of Judicial Conduct, Canon 3(E)(2) (Dissent published 2002-2004 and later removed from publication by internal rule of Mississippi Supreme Court)

I realize that a search of legal databases, including those on websites such as Westlaw and/or Lexis, may produce cases where the Mississippi Supreme Court issued a per curiam affirmance. In those cases, there is no written opinion. Therefore, those cases have not been included.

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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). No opinions or judgments were reported in any trial cases. They were docketed and placed in the court file.

I presided over these cases as a Circuit Court Judge in Hinds County. Copies of the judgments are not readily available. However, I included the appellate citation where applicable for matters that were subsequently appealed.

1. *Smith v. Chevron U.S.A., Inc.*, No. 25196511
Plaintiffs sued defendant Chevron over alleged environmental contamination of their retirement property in connection with a saltwater facility maintained on the land pursuant to a mineral lease by defendant Chevron. Although the jury found Chevron liable for compensatory damages, they could not resolve the issue of punitive damages. The trial judge granted a mistrial regarding punitive damages, but denied a new trial in connection with punitive damages, as Miss. Code §11-1-65 requires the same trier of fact to determine whether to award punitive damages after arriving at compensatory damages, if any. *Chevron U.S.A., Inc. v. Smith*, 844 So. 2d 1145 (Miss. 2002).

   Counsel:
   Luther T. Munford, Phelps Dunbar, P.O. Box 23066, Jackson, MS 39225 (601) 352-2300
   Reuben V. Anderson, Phelps Dunbar, P.O. Box 23066, Jackson, MS 39225 (601) 352-2300
   Robert L. Johnson, III, P.O. Box 1678, Natchez, MS 39121 (601) 442-9371
   Stuart H. Smith, Smith Stag LLC, 365 Canal Street, Suite 850, New Orleans, LA 70130 (504) 953-9600

2. *Taylor v. East Ford, Inc.*, No. 25100278
Defendant sought to enforce an arbitration agreement when Plaintiff-consumer sued Defendant, a vehicle dealership, alleging that a used vehicle was sold to him as new. The trial court held that the arbitration clause in the adhesive agreement was unconscionable where the clause was in very fine print and there was no discussion of the clause with the Plaintiff-consumer. *East Ford, Inc. v. Taylor*, 826 So. 2d 709 (Miss. 2002).

   Counsel:
   Brenda B. Bethany, Daniel Coker Horton & Bell, P.O. Box 1084, Jackson, MS 39215 (601) 969-7607
   William Liston, III, Liston & Lancaster, P.O. Box 22983, Jackson, MS 39225 (601) 944-0820

3. *IP Timberlands Operating Co. v. Denmiss Corp.*, No. 9065406
Plaintiff sued defendant in connection with a long-term land lease for timber. The trial court held that the "purchase option" of the lease called for appraisers, as opposed to arbitrators, to fix the value of land where contractual provisions indicated the an appraisal

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would determine land value, superseding any adherent clause for a panel of three arbiters to determine land value. *IP Timberlands Operating Co. v. Denmiss Corp.*, 726 So. 2d 96 (Miss. 1998).

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Ross F. Bass, Jr., Phelps Dunbar, P.O. Box 23066, Jackson, MS 39225 (601) 352-2300

4. *Abels v. Puckett*, No. 25195535
Plaintiff inmates filed a complaint alleging that a legislative amendment requiring that 85% of sentence be served was an ex post facto law for those who had committed offenses prior to the effective date of the amendment, but had not yet been sentenced. The trial court held that the amendment was an ex post facto law pursuant to Article I, §10, Clause 1 of the United States Constitution and *Beazell v. Ohio*, 269 U.S. 167 (1925), if applied retroactively, had the effect of increasing punishment beyond what was prescribed when the offenses were committed, by eliminating the possibility of parole that existed prior to passage of the amendment. *Puckett v. Abels*, 684 So. 2d 671 (Miss. 1996).

Counsel:
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Thomas M. Fortner, 505 W. Vernon Avenue, Phoenix, AZ 85003 (602) 374-5063

5. *Associated Press v. Bost*, No. 917086
When electronic and print media outlets sought permission to photograph and broadcast images from the trial of Byron De Le Beckwith for the murder of civil rights activist Medgar Evers, the Court held that while it favored the use of cameras in the courtroom, the matter of cameras therein was covered by a Mississippi Supreme Court rule which prohibited their use. Hence, the trial court ruled against the media and opined that the sole authority for changing the rule rested with the Mississippi Supreme Court inasmuch as those rules were not inconsistent with the time, place, and manner restrictions on Free Speech in accordance with the First Amendment of the United States Constitution. *Associated Press v. Bost*, 656 So. 2d 113 (Miss. 1995).

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Larry Stroud, Office of Hearings & Appeals, 100 West Capitol Street, Suite 1014, Jackson, MS 39269 (601) 965-4650

6. *Thomas v. Fordice*, No. 927438
The Court held that the Governor was an "agency" pursuant to Mississippi's Administrative Procedures Law, and thus was required to give public notice of his plans to adopt a Capacity Assurance Plan to deal with hazardous waste treatment, storage, and disposal. *Fordice v. Thomas*, 649 So. 2d 835 (Miss. 1995)

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T. Hunt Cole, Forman Perry Watkins Krutz & Tardy, P.O. Box 22608, Jackson MS 39225 (601) 960-8600

7. *Latham v. Molpus*, No. 25194937
The Court held that a party-endorsed candidate for the State Supreme Court was required to "qualify" pursuant to a newly-enacted statute which declared that judicial elections would be non-partisan. *Latham v. Molpus*, 642 So. 2d 1340 (Miss. 1994).

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Sandra Shelson, The Partnership for a Healthy Miss., 617 Renaissance Way, Suite 210, Ridgeland, MS 39157 (601) 898-7188

8. *Hobson v. Wilbourn*, 9170092
The Court held that it would be "an unconstitutional disenfranchisement of duly-qualified electors" if affidavit ballots were not counted solely because the "initialing manager" failed to initial the affidavit ballots. The counting of those ballots led the court to declare that the Plaintiff was winner of the election inasmuch the counting of the votes evidenced the will of the people. *Wilbourn v. Hobson*, 608 So. 2d 1187 (Miss. 1992).

Counsel:
Natie P. Caraway (deceased)
John L. Walker, Jr., Walker & Walker, P.O. Box 22849, Jackson, MS 39225 (601) 948-4589

9. *O'Keefe v. Loewen Group, Inc.*, No. 9167423
Plaintiffs/funeral homes sued Defendants for, *inter alia*, tortious interference with contractual relations, breach of contract, and intentional infliction of emotional distress. After a seven-week trial, the jury found for the Plaintiffs, and awarded four hundred

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million dollars in compensatory damages and one hundred million dollars in punitive damages. The court denied post-trial motions for judgment notwithstanding the verdict, and for a new trial. No appeal was taken, and the case was settled.

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Michael Allred, The Allred Law Firm, P.O. Box 3828, Jackson, MS 39207 (601) 944-0661
David Clark, Bradley Arant Boult Cummings LLP, P.O. Box 1789, Jackson, MS 39215 (601) 948-8000
Richard Sinkfield, Rogers & Hardin, 229 Peachtree Street NE, 2700 International Tower, Atlanta, GA 30303 (404) 522-4700

10. *McKenna v. Gaylord Chemical Corp.*, No. 25196493
A train car carrying nitrogen tetroxide exploded in Bogalusa, Louisiana. There were more than one thousand Plaintiffs and multiple defendants. After protracted pre-trial discovery, numerous pre-trial conferences, and unsuccessful settlement negotiations, a bellwether group of Plaintiffs presented their claims for damages in a ten-week long trial. The jury found for the Defendants. The court denied post-trial motions for judgment notwithstanding the verdict and for new trial. An appeal was taken, but the matter was subsequently settled.

Counsel:
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Tom Kuhns, Kirkland & Ellis, 300 North LaSalle, Chicago, IL 60654 (312) 862-2302

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. *Flowers v. State*, 947 So. 2d 910 (Miss. 2007)

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2. *Johns v. State*, 926 So. 2d 188 (Miss. 2006)

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Jeffrey Klingfuss, Office of the Attorney General, P. O. Box 220, Jackson, MS 39205 (601) 359-3811

3. *Booker v. State*, 5 So. 3d 356 (Miss. 2008)

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   James M. Hood, III, Office of the Attorney General, P. O. Box 220, Jackson, MS 39205 (601) 359-3680

4. *Barbour v. State ex rel. Hood*, 974 So. 2d 232 (Miss. 2008)

   Counsel:
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   Ricky G. Luke, Office of the Attorney General, P. O. Box 220, Jackson, MS 39205 (601) 359-3680

5. *Prudential Ins. Co. v. Stewart*, 969 So. 2d 17 (Miss. 2007)

   Counsel:
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   Alex A. Alston, Jr., 1304 Poplar Boulevard, Jackson, MS 39202 (601) 969-3351

6. *Arceo v. Tolliver*, 949 So. 2d 691 (Miss. 2006)

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   Edmund L. Brunini, Jr., Brunini Grantham Grower & Hewes, P.O. Drawer 119, Jackson, MS 39205 (601) 960-6854
   Deborah McDonald, P. O. Box 2038, Natchez, MS 39121-2038 (601) 445-5577

7. *Howell v. State*, 860 So. 2d 704 (Miss. 2003)

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   Marvin L. White, Jr., Office of the Attorney General, P. O. Box 220, Jackson, MS 39205 (601) 359-3813

8. *Quitman County v. State*, 910 So. 2d 1032 (Miss. 2005)

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9. *Janssen Pharmaceutica, Inc. v. Armond*, 866 So. 2d 1092 (Miss. 2004)

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   Merrida Coxwell, Coxwell & Associates, P. O. Box 1337, Jackson, MS 39215 (601) 948-1600

10. *U.S. Fid. & Guar. Co. of Miss. v. Martin*, 998 So. 2d 956 (Miss. 2008)

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

A review of Court records indicates that certiorari was requested or granted in the following cases in which I wrote a majority opinion:

Bauhaus USA, Inc. v. Copeland (In re Guardianship of Holmes), 965 So. 2d 662 (Miss. 2007), *cert. denied*, 552 U.S. 1243 (2008).

Brown v. State, 948 So. 2d 405 (Miss. 2006), *cert. denied*, 552 U.S. 848 (2007).

Green v. Cleary Water, Sewer & Fire Dist., 910 So. 2d 1022 (Miss. 2005), *cert. denied*, 547 U.S. 1098 (2006).

Brown v. State, 890 So. 2d 901 (Miss. 2004), *cert. denied*, 544 U.S. 981 (2005).

Dycus v. State, 875 So. 2d 140 (Miss. 2004), *cert. granted, judgment vacated*, 544 U.S. 901 (2005).

A review of Court records indicates that certiorari was requested or granted in the following cases in which I wrote a dissenting opinion:

Huss v. Gayden, 991 So. 2d 162 (Miss. 2008), *cert. denied*, --- S.Ct. ---, 2010 WL 149140 (2010).

Booker v. State, 5 So. 3d 356 (Miss. 2008), *cert. denied*, 130 S. Ct. 1135, 2010 WL 155057 (2010).

Howard v. State, 945 So. 2d 326 (Miss. 2006), *cert. denied*, 552 U.S. 829 (2007).

Hobgood v. Miss., 926 So.2d 847 (Miss. 2006), *cert. denied*, 549 U.S. 1118 (2007).

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Miss. Bar v. Lumumba, 912 So. 2d 871 (Miss. 2005), *cert. denied*, 546 U.S. 825 (2005).

Howell v. State, 860 So. 2d 704 (Miss. 2003), *cert. granted, Howell v. Miss.*, 542 U.S. 936 (2005); *cert. dismissed as improvidently granted*, 543 U.S. 440 (2005); *rehearing denied*, 544 U.S. 944 (2005).

Russell v. Miss. Dept. of Corrections, 814 So. 2d 802 (Miss. 2002), *cert. denied*, 537 U.S. 955 (2002).

Simmons v. State, 805 So. 2d 452 (Miss. 2001), *cert. denied, Simmons v. Miss.*, 537 U.S. 833 (2002).

A review of Court records indicates that certiorari was requested or granted in the following cases in which I was the trial judge:

East Ford, Inc. v. Taylor, 826 So. 2d 709 (Miss. 2002), *cert. denied*, 537 U.S. 1194 (2003).

Chevron U.S.A., Inc. v. Smith, 844 So. 2d 1145 (Miss. 2002), *cert. denied*, 540 U.S. 881 (2003).

Gross v. Chevrolet Country, Inc., 655 So.2d 873 (Miss. 1995), *cert. denied*, 516 U.S. 1094 (1996).

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.

The following appellate opinion was reversed by the United States Supreme Court:

1. *Dycus v. State*, 875 So. 2d 140 (Miss. 2004)

In 544 U.S. 901, 125 S. Ct. 1589, 161 L. Ed. 2d 271 (2005), the United States Supreme Court granted Dycus' petition for writ of certiorari, vacated the judgment and remanded the case to the Mississippi Supreme Court for further consideration in light of the subsequent decision of *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005).

The following Mississippi Court of Appeals or Mississippi Supreme Court decisions reversed in part or in whole my trial court decisions:

1. *McGee v. State*, 953 So. 2d 241 (Miss. Ct. App. 2005), *aff'd*, 953 So. 2d 211 (Miss. 2007).

The defendant was convicted of armed robbery. The Court of Appeals reversed and remanded, holding that gender discrimination occurred in the selection of the jury. The Mississippi

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Supreme Court initially reversed the Court of Appeals on certiorari, but then later affirmed the Court of Appeals on rehearing.

2. *Wayne Gen'l Hosp. v. Hayes*, 868 So. 2d 997 (Miss. 2004).
I denied a change of venue motion in a wrongful death suit after certain defendants had been dismissed from the case. The appellate court reversed and remanded.

3. *Miss. Dept. of Corrections v. Harris*, 831 So. 2d 1190 (Miss. Ct. App. 2002).
I affirmed a decision of the Employee Appeals Board to reinstate a security guard's employment. The Court of Appeals reversed, finding the Board's determination to be arbitrary and capricious.

4. *AmSouth Bank v. Gupta,* 838 So. 2d 205 (Miss. 2002).
Following a jury trial, I entered a judgment for a customer in a lawsuit against the bank for negligent misrepresentation, breach of fiduciary duty and breach of duty of disclosure. The appellate court affirmed in part, reversed and rendered in part, and reversed and remanded in part.

5. *Chevron USA, Inc. v. Smith*, 844 So. 2d 1145 (Miss. 2002).
I entered judgment on a jury verdict in favor of property owners who brought an action against the oil company for polluting water with radioactive materials. The appellate court reversed and rendered, holding that the property owners were required to exhaust their administrative remedies before the Oil and Gas Board.

6. *Stewart v. City of Jackson*, 804 So. 2d 1041 (Miss. 2002).
I granted summary judgment in favor of a city and a city employee in a personal injury case. The appellate court reversed and remanded, finding no immunity for the defendants and that there were genuine issues of material fact.

7. *City of Jackson v. Sutton*, 797 So. 2d 977 (Miss. 2001).
I denied the defendant's motion for summary judgment in an action where an injured motorist and a deceased motorist's family filed a complaint against the driver of a vehicle who collided with them, the officer who completed an accident report on that same driver earlier on the day of the fatal accident, and the city. The appellate court reversed and remanded, holding that the Tort Claims Act precluded the state constitutional claim.

8. *Rawson v. Jones*, 816 So. 2d 367 (Miss. 2001).
I entered judgment on a jury verdict for the parent of a deceased newborn in a wrongful death action. The appellate court reversed and remanded, holding that the parent was "not" ignorant of the names of the doctor and his medical group within the meaning of the rule allowing a plaintiff to sue fictitious defendants.

9. *Thompson v. Patino*, 784 So. 2d 220 (Miss. 2001).
In a medical malpractice action, I granted the defendant's motion to strike the patient's supplemental responses to interrogatories requesting names of expert witnesses because of the patient's delay in providing them, and I granted summary judgment for defendant. The Mississippi Court of Appeals affirmed. On certiorari, the Mississippi Supreme Court reversed and remanded, finding that striking the expert's affidavit was not warranted by the patient's discovery delays.

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10. *Sarris v. Smith*, 782 So. 2d 721 (Miss. 2001).
I entered summary judgment in favor of defendants on the ground that the medical malpractice claim was barred by the statute of limitations. The appellate court reversed and remanded, holding that the medical malpractice action accrued and the two-year statute of limitations began to run on the date nine months after death when the plaintiff first had access to the medical records.

11. *Turner v. Terry*, 799 So. 2d 25 (Miss. 2001).
I found promissory notes in which directors evidenced indebtedness to corporate chairman to be unenforceable, but enforced stock pledge and security agreements. The appellate court affirmed in part and reversed and remanded in part, holding that the directors failed to prove allegations of fraudulent behavior in creation of the notes.

12. *Edelen v. Jackson Coca-Cola Bottling Co.*, 782 So. 2d 1256 (Miss. Ct. App. 2001).
I granted additur after a jury verdict for the plaintiff and later denied the plaintiff's motion for new trial on the grounds of inadequacy of damages on condition of additur. The appellate court reversed and remanded, holding that the defendant did not accept additur within thirty days, which acted as accession to a new trial on damages.

13. *NCI Building Components v. Berry*, 811 So. 2d 321 (Miss. Ct. App. 2001).
I reversed a decision of the Mississippi Employment Security Commission finding that the claimant was disqualified from receiving unemployment benefits as he voluntarily left work without good cause. The appellate court reversed and reinstated the Commission's decision.

14. *Entergy Miss., Inc. v. Robinson*, 777 So. 2d 53 (Miss. Ct. App. 2000)
I affirmed a Workers' Compensation Commission decision awarding the claimant compensation. The appellate court reversed and remanded, holding that the Commission erred as a matter of law when it refused to consider the extent of the claimant's efforts to find other suitable employment better suited to his post-injury condition in assessing permanent injury partial disability.

15. *Smith v. Braden*, 765 So. 2d 546 (Miss. 2000).
I entered summary judgment in favor of the defendant doctor in a medical malpractice action. The appellate court reversed and remanded.

16. *Sullivan v. Washington*, 768 So. 2d 881 (Miss. 2000).
I entered judgment for the patient in a medical malpractice action. The appellate court reversed and rendered.

17. *Miller v. Meeks*, 762 So. 2d 302 (Miss. 2000).
I entered summary judgment in favor of the defendant doctor in a medical malpractice action. The appellate court reversed and remanded.

18. *City of Jackson v. Perry*, 764 So. 2d 373 (Miss. 2000).
I entered a judgment for damages in a personal injury case. The appellate court upheld my judgment but modified it to reflect that there was no joint and several liability.

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19. *Tyson Foods, Inc. v. Thompson*, 765 So. 2d 589 (Miss. Ct. App. 2000).
I reversed a Workers' Compensation Commission award and reinstated the Administrative Law Judge's decision. The appellate court reversed, holding that substantial evidence supported the Commission's decision.

20. *Johnson v. State*, 754 So. 2d 1178 (Miss. 2000).
The defendant was convicted of murder. The appellate court reversed and remanded, holding that a factual determination on the record was required in considering peremptory challenges.

21. *Richmond v. Miss. Dept. of Human Servs.*, 745 So. 2d 254 (Miss. 1999).
I reversed the Employee Appeals Board's reversal of a DHS employee's dismissal for use of a racial slur. The Mississippi Court of Appeals reinstated the Board's decision. On certiorari, the Mississippi Supreme Court held that a single use of a racial slur did not warrant dismissal, but might have warranted a lesser penalty. The court reversed and remanded to the Board for imposition of a lesser penalty.

22. *Burns v. Public Employees Retirement System of Miss.*, 748 So. 2d 181 (Miss. Ct. App. 1999).
I affirmed the denial of plaintiff's claim for disability benefits. The appellate court reversed and remanded.

23. *McNair v. Univ. of Miss. Medical Center*, 742 So. 2d 1078 (Miss. 1999).
I granted the defendant's motion to dismiss for failure to comply with the notice requirement of the Mississippi Tort Claims Act. The appellate court reversed and remanded, holding that substantial compliance was sufficient.

24. *Carrington v. Methodist Medical Center, Inc.*, 740 So. 2d 827 (Miss. 1999).
I granted summary judgment for the defendant in a wrongful death action. The Mississippi Court of Appeals affirmed. On certiorari, the Mississippi Supreme Court reversed and remanded.

25. *City of Jackson v. Williamson*, 740 So. 2d 818 (Miss. 1999).
I entered judgment on a jury verdict awarding damages in a negligence action. The Mississippi Court of Appeals affirmed in part and reversed in part. On certiorari, the Mississippi Supreme Court affirmed the judgment and remanded, holding that the City was not exempt from paying interest, that the City was required to pay the statutory penalty, and that the City was liable for costs.

26. *City of Jackson v. Brown*, 729 So. 2d 1231 (Miss. 1998).
I denied a motion for summary judgment on the ground of sovereign immunity and entered judgment on a jury verdict for the plaintiff in a wrongful death action. The appellate court reversed.

27. *State v. U.G.*, 726 So. 2d 151 (Miss. 1998).
Following the indictment of a fourteen-year-old defendant for armed robbery, I transferred the case to youth court. The appellate court reversed and remanded.

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28. *Cossitt v. Alfa Ins. Corp.*, 726 So. 2d 132 (Miss. 1998).
On remand, I entered summary judgment in favor of an insurance carrier on a bad faith claim and denied the insured's motion to amend pleading. The appellate court affirmed in part, reversed in part and remanded.

29. *Stevens v. State*, 717 So. 2d 311 (Miss. 1998).
The defendant was convicted of manslaughter. The appellate court reversed in part and remanded for a new trial.

30. *Estate of Jones v. Quinn*, 716 So. 2d 624 (Miss. 1998).
I denied a motion asserting improper venue. The appellate court reversed and remanded.

31. *J. & W. Foods Corp. v. State Farm Mut. Auto. Ins. Co.*, 723 So. 2d 550 (Miss. 1998).
I entered judgment on pleadings in favor of insurer in an action to recover uninsured motorist benefits. The appellate court reversed and remanded.

32. *Miss. Power & Light Co. v. Lumpkin*, 725 So. 2d 721 (Miss. 1998).
I entered judgment on a jury verdict that found automobile passenger fifty percent at fault, the utility company fifty percent at fault and the driver not at fault. In reversing and remanding, the appellate court overruled a previous decision.

33. *Hord v. City of Yazoo*, 702 So. 2d 121 (Miss. 1997).
I granted the City's motion to dismiss for failure to state a claim involving a state prison inmate's action for damages. The appellate court reversed and remanded.

34. *Lacy v. State*, 700 So. 2d 602 (Miss. 1997).
The defendant was convicted of manslaughter. The Mississippi Court of Appeals affirmed. The Mississippi Supreme Court reversed and remanded for a new trial.

35. *Perry v. Nationwide General Ins. Co.*, 700 So. 2d 600 (Miss. 1997).
I granted summary judgment to the insurer in an action to recover uninsured motorist benefits. The appellate court reversed and remanded.

36. *USPCI of Miss., Inc. v. State ex rel. McGowan*, 688 So. 2d 783 (Miss. 1997).
I issued a bench opinion that the Governor did not comply with the Administrative Procedures Law. The Mississippi Supreme Court reversed and rendered, holding that the APL does not apply to the Governor and that the resident lacked standing to obtain a writ of mandamus to enjoin the Governor in connection with a permit to build a hazardous waste treatment facility.

37. *Clark Printing Co., Inc. v. Miss. Employment Sec. Comm'n*, 681 So. 2d 1328 (Miss. 1996).
I affirmed a Mississippi Employment Security Commission decision regarding higher unemployment contribution rates involving the use of employee leasing firms. The appellate court reversed and remanded.

38. *Austin v. Padgett*, 678 So. 2d 1002 (Miss. 1996).
I entered summary judgment for successor and borrowers based on the successor's affirmative defense of accord and satisfaction. The appellate court reversed and remanded.

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39. *Allen v. Mac Tools, Inc.*, 671 So. 2d 636 (Miss. 1996).
I granted summary judgment for defendant on the plaintiff's inducement claim, and, following trial, I entered a judgment for the defendant on the counterclaim. The appellate court reversed and remanded.

40. *American Fire Protection, Inc. v. Lewis*, 653 So. 2d 1387 (Miss. 1995).
I awarded damages in a breach of contract action and denied the defendant's motion for directed verdict and motion for judgment notwithstanding the verdict. The appellate court affirmed in part and reversed in part on the direct appeal, and reversed and remanded on the cross-appeal.

41. *Canizaro v. Mobile Communications Corp. of America*, 655 So. 2d 25 (Miss. 1995).
I granted summary judgment for defendant in a breach of contract action. The appellate court reversed and remanded.

42. *T.M. v. Noblitt*, 650 So. 2d 1340 (Miss. 1995).
I dismissed a complaint against a school principal on the ground of qualified immunity. The appellate court reversed and remanded.

43. *Young v. Miss. State Tax Comm'n*, 635 So. 2d 869 (Miss. 1994).
I reversed the State Employee Appeal Board's reinstatement with back pay of a discharged employee. The appellate court affirmed in part and reversed and remanded in part.

44. *Housing Authority of City of Jackson v. Lampley*, 749 So. 2d 134 (Miss. 1999).
I denied the Housing Authority's motion for summary judgment in an action under the Mississippi Tort Claims Act. On interlocutory review, the Mississippi Supreme Court vacated the judgment and remanded for reconsideration in light of intervening decisions.

45. *Southland Management Co. v. Brown*, 730 So. 2d 43 (Miss. 1998).
Jury returned a verdict of $2 million against Southland in a personal injury action. I reduced the verdict to $1,980,000 and Southland appealed. The Mississippi Court of Appeals, 6-4 in an unpublished opinion, reversed and rendered, holding that the evidence could not support a finding of negligence as a matter of law. On certiorari, the Mississippi Supreme Court affirmed the decision of the Court of Appeals.

46. *IP Timberlands Operating Co., Ltd. v. Denmiss Corp.*, 726 So. 2d 96 (Miss. 1998).
I found that a purchase option called for appraisers to fix lands' value and that it called for lands' value to be appraised as unencumbered from the remainder of a prepaid ninety-nine-year lease. The appellate court reversed and remanded, holding that the Federal Arbitration Act applied, that the value of the purchase option was to be determined by arbitrators and that the lands were to be valued as encumbered.

47. *City of Jackson v. Lumpkin*, 697 So. 2d 1179 (Miss. 1997).
After a bench trial, I awarded $5,663.80 to the plaintiff in an action against the City and a police officer to recover damages caused from the officer's negligent driving. The appellate court vacated the judgment and dismissed the cause for failure to comply with the notice requirements of the Mississippi Tort Claims Act. However, the court later overruled *Lumpkin* on the notice issue. *Carr v. Town of Shubuta*, 733 So. 2d 261 (Miss. 1999).

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48. *Miss. Dept. of Corrections v. McClee*, 677 So. 2d 732 (Miss. 1996).
I affirmed an Employee Appeals Board determination that a Department of Corrections action terminating an employee was too harsh and that he should be reinstated with back pay. The appellate court reversed and remanded to the Board for reconsideration and application of the correct standard.

49. *Allstate Ins. Co. v. Chicago Ins. Co.*, 676 So. 2d 271 (Miss. 1996).
I granted declaratory judgment in an action in which a pharmacist sought coverage from his two insurers when he was sued for wrongful death. I ordered one insurer to pay the defense costs and potential liability for claim. The appellate court reversed and remanded, holding that the clauses were mutually repugnant and had to be disregarded, and that benefits would have to be prorated according to each policy's coverage limits.

50. *Travis v. State*, 687 So. 2d 786 (Miss. Ct. App. 1996).
The defendant was convicted of aggravated assault. In an unpublished opinion, the Mississippi Court of Appeals reversed and remanded for a new trial on the basis that the record did not establish that a unanimous verdict was reached where a juror first indicated a "no" as to whether she voted for the verdict, but then indicated "yes" and that "we all agreed" multiple times.

http://www.mssc.state.ms.us/Images/Opinions/Conv1474.pdf

51. *Barrett v. Int'l Paper Co.*, 687 So. 2d 762 (Miss. Ct. App. 1996).
I entered judgment on a jury verdict finding that Barrett was eighty-eight percent negligent and that the International Paper employee was twelve percent negligent in a suit from an automobile accident in which Barrett stopped his automobile on the interstate. The jury further awarded Barrett $1,000 in damages and his passenger, Jones, $2,400. In an unpublished opinion, the Mississippi Court of Appeals reversed and remanded as to Barrett's liability and Barrett's and Jones' damages, finding an error in the jury instructions.

http://www.mssc.state.ms.us/Images/Opinions/Conv1139.pdf

52. *MBF Corp. v. Century Business Communications Inc.*, 663 So. 2d 595 (Miss. 1995).
I granted directed verdict for defendant in an action against a competitor for tortious interference with business relationships of a corporation and its customers. The appellate court affirmed in part and reversed and remanded in part, finding that the issue of whether the acts of the defendant constituted tortious interference were questions for the jury and that the plaintiff was not entitled to amend the complaint to add the defendant's parent company as an additional defendant.

53. *Regency Nissan, Inc. v. Jenkins*, 678 So. 2d 95 (Miss. 1995).
I awarded treble damages after a jury trial in an action against a car dealer for fraudulent misrepresentation in violation of the Odometer Disclosure Act. The Mississippi Supreme Court affirmed. On rehearing, the court affirmed in part and reversed and remanded in part, finding that, on all issues, the defendant and third-party-defendant were entitled to indemnity.

54. *Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995).
I granted the City's motion to dismiss, or alternatively motion for summary judgment, in an action by a homeowner after the home burned from lack of water for fire protection. The appellate court affirmed in part and reversed and remanded in part, holding that summary

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judgment was improper as the issue regarding the City's claims fund was inadequately developed.

55. *Clark v. St. Dominic-Jackson Memorial Hosp.*, 660 So. 2d 970 (Miss. 1995).
I granted defendant's motion for summary judgment in a wrongful death action. The appellate court affirmed in part and reversed and remanded in part.

56. *Anderton v. Business Aircraft, Inc.*, 650 So. 2d 473 (Miss. 1995).
I granted partial summary judgment to defendant in a breach of contract suit. The appellate court reversed and remanded.

57. *Fordice v. Thomas*, 649 So. 2d 835 (Miss. 1995).
In a case involving procedural rights in the placement of a hazardous waste facility, I ruled that the procedures used were improper and enjoined all permits issued under that administrative process. The appellate court upheld my statement of the law but determined that the administrative process did not taint all permits and thus my injunction was too broad.

58. *Ferrill v. Miss. Employment Sec. Comm'n*, 642 So. 2d 933 (Miss. 1994).
I affirmed the denial of benefits to an unemployment compensation claimant who voluntarily quit his job. The appellate court reversed and remanded, finding that the appeals referee misallocated the burden of proof by requiring the claimant to prove that he left his job for good cause.

59. *In re Wilbourn*, 590 So. 2d 1381 (Miss. 1991).
I granted a temporary restraining order in a post-election dispute temporarily stopping a ballot recount and certification of a winner. The appellate court issued a writ of mandamus, holding that judicial intervention was not proper at that point.

A search also reveals that the following Mississippi Court of Appeals decisions reversed in part or in whole my trial court decisions. However, further information on these cases is not readily available.

1. *Young v. Miss. State Tax Comm'n*, 678 So. 2d 1035 (Miss. Ct. App. 1996).
The appellate court reversed and remanded on appeal from a judgment dated June 8, 1994.

2. *Miss. Power & Light Co. v. Washington*, 678 So. 2d 1014 (Miss. Ct. App. 1996).
The appellate court vacated a judgment dated April 14, 1993, and the appeal was dismissed.

3. *Joiner v. Joiner*, 675 So. 2d 1285 (Miss. Ct. App. 1995).
The appellate court reversed and remanded on appeal from a judgment dated December 12, 1994.

4. *Burton v. Johnson*, 669 So. 2d 787 (Miss. Ct. App. 1995).
The appellate court reversed and rendered as to the appellants only on an appeal from a judgment dated April 2, 1993.

5. *Griffin v. Wilson*, 662 So. 2d 190 (Miss. Ct. App. 1995).

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The appellate court reversed and remanded on appeal from a judgment dated December 14, 1992.

6. *McIntyre v. Plunkett*, 678 So. 2d 1019 (Miss. Ct. App. 1996).
The appellate court reversed and rendered in part and reversed and remanded in part on appeal from a judgment dated April 14, 1994.

In the following case, I wrote the majority opinion for the Court, which subsequently withdrew the opinion on rehearing and issued a new opinion with a different outcome:

1. *Wise v. Valley Bank*, 861 So. 2d 1029 (Miss. 2003)
The original opinion, 2000-CT-00443-SCT, 2003 Miss. LEXIS 231 (Miss. May 15, 2003), held that punitive damages may be appropriate against a bank for theft of money from client's account. The superseding opinion held that the bank did not have a trust relationship with the client and that restitution was the appropriate remedy.

The following decision was reversed by the Court of Appeals, but my trial-level decision was subsequently upheld by the Supreme Court:

1. *McGrone v. State*, 807 So. 2d 1232 (Miss. 2002).
I ruled that, absent evidence of a *Miranda* violation, cross-examination of a criminal defendant regarding his post-arrest silence did not violate his due process rights and he was convicted. The Court of Appeals reversed the conviction, but the Supreme Court reversed the Court of Appeals and affirmed the conviction.

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.

The Mississippi Supreme Court does not issue any unpublished opinions. I have, on occasion, issued orders in matters involving bar discipline that were not published. These orders are available on Lexis and/or Westlaw.

None of my written opinions as a trial judge were published. They have been filed with other case documents with the Hinds County Circuit 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.

This list contains significant opinions on federal or state constitutional issues in cases before the Mississippi Supreme Court:

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Doss v. State, 19 So. 3d 690 (Miss. 2009) (majority issue one and dissenting issue two)
Booker v. State, 5 So. 3d 356 (Miss. 2008) (dissenting)
Barbour v. State ex rel. Hood, 974 So. 2d 232 (Miss. 2008) (dissenting)
Flowers v. State, 947 So. 2d 910 (Miss. 2007) (majority)
Johns v. State, 926 So. 2d 188 (Miss. 2006) (majority)
Arceo v. Tolliver, 949 So. 2d 691 (Miss. 2006) (dissenting)
Garrison v. State, 950 So. 2d 990 (Miss. 2006) (dissenting in part)
Dycus v. State, 910 So. 2d 1100 (Miss. 2005) (majority)

This list contains appellate court decisions regarding my circuit court rulings on cases involving significant federal or state constitutional issues:

Puckett v. Abels, 684 So. 2d 671 (Miss. 1996)
Associated Press v. Bost, 656 So. 2d 113 (Miss. 1995)
Hobson v. Wilbourn, 608 So. 2d 1187 (Miss. 1992)

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

I have never sat by designation on a federal court of appeals.

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

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

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

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

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

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The Mississippi Code of Judicial Conduct sets forth standards for the ethical conduct of judges. It serves as my primary resource in matters regarding the necessity or propriety of recusal. My determination in that regard is influenced by: (1) my personal and family interests; (2) the existence, nature and duration of personal and professional relationships; (3) any other relevant factors which could lead to a reasonable question about my impartiality in a given case.

I have two sons who currently practice law in Mississippi. For a very brief period of the time at the beginning of their respective practices, they resided in my home. It was my routine practice to recuse from all cases involving my sons and/or the firms where they worked as associates while they resided in my household. Now that they no longer reside in my home, I routinely recuse from all cases involving my sons and my daughter-in-law. Of course, I was automatically recused from all cases appealed to the Mississippi Supreme Court wherein I was the trial judge.

To the best of my knowledge and recollection, there have been only two cases during my tenure on the Supreme Court in which a litigant has requested that I recuse myself. In Mayor Zachary Patterson v. Gregory Martin, July 2009, the appellant alleged that there was a "personal relationship of some sort" with the Mayor and therefore I should recuse. Upon review and consideration of the applicable Canons and in light of my limited contact with and knowledge of the appellee, (Mayor Patterson), I determined that I would not recuse myself.

In Robert W. Kennedy v. Illinois Central Railroad Company, September 2009, there was a motion for recusal which alleged that counsel for the appellant was a "major donor" in my 2004 election campaign. Upon review and consideration of the applicable Canons and in light of the Rules and Statutes regarding campaign contributions in judicial races, I determined that recusal was not warranted.

I am providing a list of all cases wherein Mississippi Supreme Court records indicate that I entered an Order of Recusal. The reasons for recusal in those cases were diverse. However, we are not required to state a reason in a sua sponte Order of Recusal and I have, for the most part, no independent recollection of the reason for recusal in each case listed. The likelihood is that a significant number of the cases wherein I recused involved matters where I was the trial judge. The remainder would be for reasons specific to each case listed and no reason for recusal is listed in the Order of Recusal.

1999-IA-01527-SCT
2000-CC-02011-SCT
2000-CA-01517-SCT
1999-CA-01658-SCT
1999-KA-01779-SCT
2000-IA-01527-SCT
1999-CT-01698-SCT
2000-CC-00508-SCT
1999-CA-00523-SCT
1999-CA-00557-SCT
2000-CA-01480-SCT
1999-CA-00257-SCT

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2000-CA-00977-SCT
2000-KA-00786-SCT
2001-JP-01910-SCT
2001-CA-01393-SCT
2001-CA-00900-SCT
2000-CA-01909-SCT
2001-CC-01269-SCT
2001-CA-00730-SCT
2002-CA-00653-SCT
2000-CA-01241-SCT
2001-CT-01400-SCT
2002-CA-00122-SCT
2001-CT-00277-SCT
96-CT-01136-SCT
2001-CA-01674-SCT
2001-KA-01854-SCT
2002-CT-02038-SCT
2003-CA-01471-SCT
2002-CA-01659-SCT
2002-KA-01832-SCT
2004-BD-00632-SCT
2002-CT-00261-SCT
2002-CT-00644-SCT
2002-CT-00857-SCT
2002-CT-00918-SCT
2002-CT-01025-SCT
2002-CT-01048-SCT
2002-CT-01208-SCT
2002-CT-01461-SCT
2002-CT-01658-SCT
2002-CT-00795-SCT
2002-CT-01026-SCT
2002-CT-01613-SCT
2001-CT-01622-SCT
2002-CT-00975-SCT
2002-CT-01071-SCT
2002-CT-01554-SCT
2002-CT-01738-SCT
2002-CT-01748-SCT
2001-CA-00869-SCT
2003-CA-00123-SCT
2003-CA-01728-SCT
2004-BD-00683-SCT
2003-CA-02046-SCT
2003-CA-00190-SCT
2003-KA-00946-SCT

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2003-CA-01013-SCT
1999-IA-01060-SCT
2003-CA-01413-SCT
2004-CA-00902-SCT
2003-IA-02533-SCT
2005-TS-00593-SCT
2005-BR-02366-SCT
2006-BD-00136-SCT
2005-IA-01001-SCT
2003-CA-02595-SCT
2005-CA-00206-SCT
2005-BA-01622-SCT
2006-SA-00358-SCT
2005-CA-01316-SCT
2005-IA-02020-SCT
2005-IA-01703-SCT
2006-SA-01088-SCT
2005-IA-02238-SCT
2006-CA-00669-SCT
2005-IA-01827-SCT
2005-CA-02328-SCT
2006-CA-02122-SCT
2007-M-00915-SCT
2007-TS-01041-SCT
2006-CA-00875-SCT
2006-IA-00872-SCT
2007-CA-00100-SCT
2006-CA-02120-SCT
2007-EC-01162-SCT
2008-BA-00081-SCT
2007-CP-01552-SCT
2008-CA-01335-SCT
2008-CA-01558-SCT
2008-KA-01318-SCT
2008-CA-00382-SCT

I have no independent recollection of any specific cases where a recusal motion was filed in a case where I was trial judge. However, in *In re Wilbourn*, November 1991, the plaintiff filed a recusal motion in an election dispute case. I determined that a recusal was not warranted in this situation. I only recall this case because the recusal motion is mentioned in a Mississippi Supreme Court opinion where the recusal was not discussed as an issue on appeal. Upon review of the appellate opinion, I then recalled that there was a motion for recusal of all four circuit judges in Hinds County, including me.

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

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

I have not held any public offices other than judicial offices.

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

In 1991, I was a candidate for election to the position of Hinds County Circuit Court Judge. (I had been appointed.) At this time Mississippi had partisan judicial elections. I ran as a Democrat, formed a campaign committee and raised campaign funds.

In 1994, I ran unopposed in the general election for my seat as Hinds County Circuit Court Judge. This was a non-partisan race. I had no formal campaign, formed no campaign committee and raised no funds.

In 1998, I ran unopposed in the general election for my seat as Hinds County Circuit Court Judge. This was a non-partisan race. I did form a campaign committee and raised funds to run a small campaign.

I was appointed to the Mississippi Supreme Court in 2001. Existing law required that I run as a non-partisan candidate in a special election in the fall of 2002 in order to retain my seat. In 2002 I formed a campaign committee through which funds were raised for this purpose. However, during the legislative session of 2002 the law was changed in such a way that I was no longer required to run in 2002 to keep my seat. The campaign committee was dissolved and campaign funds were transferred to my 2004 general election campaign.

In 2004, I was a candidate to retain my seat on the Mississippi Supreme Court to which I was appointed in 2002. This was a non-partisan race in which I had three opponents in the general election and one opponent in a run-off election. I formed a campaign committee through which funds were raised to run a large-scale campaign in a 22-county district.

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

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

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

I have never served as a clerk to a judge.

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.

2001 – Present
Mississippi Supreme Court
450 High Street
Jackson, MS 39201
Current position: Presiding Justice (January 2009 – present)
Previous position: Associate Justice (2001 – 2008)

1991 – 2001
Hinds County Circuit Court
400 East Silas Brown Street
Jackson, MS 39201
Position held: Circuit Court Judge

1990 – 1991
Mississippi Department of Human Services
750 North State Street
Jackson, MS 39202
Position held: Director of the Division of Child Support Enforcement

1986 – 1990
Office of the Attorney General of the State of Mississippi
550 High Street, Suite 1200
Jackson, MS 39201
Position held: Special Assistant Attorney General (1986 – 1990)
Position held: Legal Counsel, Human Services Division (1989 – 1990)
Position held: Legal Counsel, Health Law Division (1986 – 1989)

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1984 – 1986
Walker and Walker, Attorneys at Law
1410 Livingston Lane, Suite A
Jackson, MS 39213
Position held: Associate Attorney

1983 – 1984
Murrain and Graves, Attorneys at Law
3175 J.R. Lynch Street
Jackson, MS 39209
Position held: Partner

1980 – 1983
Central Mississippi Legal Services
414 South State Street, Third Floor
Jackson, MS 39205
Position held: Staff Attorney

Fall Semester, 1974
Community Legal Services of Mississippi (now Central Mississippi Legal Services)
414 South State Street, Third Floor
Jackson, MS 39205
Position held: Intern

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.

I began my legal career as a staff attorney for Central Mississippi Legal Services. From June 1980 through August 1983, I handled domestic relations cases, contract cases, consumer problems and juvenile cases. My duties and responsibilities included handling those matters from the initial client interview through litigation when litigation was necessary. I handled matters in Chancery, County, Justice, Circuit and Federal Courts.

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From August 1983 through August 1984, I was a partner at Murrain and Graves, Attorneys at Law. Ours was a general practice where we handled some Title VII Federal Court litigation, and some immigration matters. I handled matters in Chancery, County, Circuit and Federal Courts. In addition to practicing law it was also necessary to handle the administrative aspects of running a small business.

From September 1984 through November 1986, I was an associate attorney at Walker and Walker, Attorneys at Law. The firm was primarily a litigation firm which handled personal injury and workers' compensation cases. I was primarily responsible for handling workers' compensation cases and some personal injury claims. I handled both personal injury claims and workers' compensation claims from the initial stages of the investigations throughout the litigation. I also handled various other types of matters in Chancery, County, Circuit and Federal Court.

I served in the office of the Attorney General from November 1986 through June 1990. From August 1989 through July 1990, I served as Chief Legal Counsel to the Department of Human Services, providing legal counsel to all of the various divisions within the Department of Human Services and handling all of the department's litigation. From January 1989 through July 1998, I served the Civil Litigation Division of the Attorney General's Office where I handled both federal and state court litigation involving various state agencies. From November 1986 through December 1988, I served in the Health Law Section of the Attorney General's Office where I served primarily as legal counsel for the Mississippi Department of Health.

From July 1990 through October 1991, I served as Division Director of the Child Support Enforcement Division of the Mississippi Department of Human Services.

On November 1, 1991, I was appointed as a Hinds County Circuit Court judge where I served until my appointment to the Mississippi Supreme Court in 2001. I have served as a justice since that date.

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

My typical clients at Legal Services were indigents who could not afford counsel. We handled only civil matters and we handled no fee generating cases.

In private practice, I handled worker's compensation claims, personal injury claims, and family law matters. I handled a small amount of misdemeanor cases.

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At the Attorney General's Office, I represented state agencies in civil matters and I advised state boards and agencies on matters ranging from personnel issues to licensing issues involving doctors, nurses, and other professionals.

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.

About 75 percent of my practice involved litigation, but I only appeared in court approximately four to five times per month.

i. Indicate the percentage of your practice in:
   1. federal courts – 5%
   2. state courts of record – 80%
   3. other courts – 5%
   4. administrative agencies – 10%

ii. Indicate the percentage of your practice in:
   1. civil proceedings – 90%
   2. criminal proceedings – 10%

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

In courts of record, I tried approximately thirty cases to verdict, judgment or final decision. In most I served as co-counsel. In about ten cases I was sole counsel.

i. What percentage of these trials were:
   1. Jury – 30%
   2. non-jury – 70%

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

I have never practiced before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

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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. *[Unknown] v. Jerry Cox*; Simpson County Circuit Court; Hon. Joe Pigott; November 1985 – July 1985

I represented the defendant in an action regarding a suit against a co-employee under Alabama worker's compensation law. The defendant obtained a jury verdict.

Co-counsel: None

Opposing counsel:
James F. Brantley
407 Roses Bluff Drive
Madison, MS 39110
(601) 946-3820

2. *City of Jackson v. Redmond*; Civil Service Commission; Chairman Gene Wilkinson; June 1984 – November 1984

I represented Steven Redmond, who was terminated for alleged misconduct. Redmond was ordered reinstated with back pay.

Co-counsel: None
Opposing counsel:
John Hedglin
Office of City Attorney of Madison
1004 Madison Avenue
Madison, MS 39110
(601) 898-1118

Sara O'Reilly
P.O. Box 1167
Jackson, MS 39215
(601) 842-5105

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3. *Powell v. McGuffee*; Hinds County Chancery Court; Hon. Stuart Robinson; November 1984 – November 1986

I represented Powell in an action regarding fraud, misrepresentation and validity of a contract. The trial court ruled in favor of Powell.

Co-counsel: None

Opposing counsel:
Thomas W. Crockett, Jr.
Watkins Ludlam Winter & Stennis
190 East Capitol Street, Suite 800
Jackson, MS 39201
(601) 949-4900

William I. Gault, Jr.
401 Fontaine Place, Suite 101
Ridgeland, MS 39157
(601) 983-2255

4. *Majd v. Miss. Board of Medical Licensure, et al.*; United States District Court for the Southern District of Mississippi; Hon. John Countiss; September 1987 – June 1990

I represented the defendants in an action involving due process and racial discrimination. The verdict was for the defendants.

Co-counsel:
Sara DeLoach
Office of the Attorney General
450 High Street
Jackson, MS 39201
(601) 359-3680

Opposing counsel:
Jim Waide
Waide & Associates
332 North Spring Street
Tupelo, MS 38804
(662) 842-7324

5. *Osborne v. Hesselbein Tire Co.* & Transit Casualty Co.; Miss. Worker's Comp. Comm'n; Hon. Neil White; June 1985 - October 1986

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I represented Osborne in an action regarding temporary total and permanent partial disability. The case settled after a hearing on the merits.

Co-counsel: None

Opposing counsel:
James M. Anderson
Anderson Crawley & Burke PLLC
216 Draperton Court
Ridgeland, MS 39157
(601) 707-8800

6. *Lewis v. Wrenn*; Miss. Supreme Court; July 1985 – October 1985

I drafted an appellate brief for Lewis raising issues of comparative negligence and failure to grant jury instructions. The matter was affirmed on appeal.

Co-counsel:
John Walker
1410 Livingston Lane, Suite A
Jackson, MS 39213
(601) 948-4589

Opposing counsel:
Jack Dunbar
Holcomb Dunbar
1312 University Avenue
Oxford, MS 38655
(662) 238-7515

7. *Watkins v. Doss, et al.*; Hinds County Circuit Court; Hon. Breland Hilburn; February 1989 – September 1989

I was co-counsel for the defendants in an action regarding the wrongful denial of certification to operate a water treatment facility. The defendants obtained a directed verdict.

Co-counsel:
Gail Wright Lowery
1485 Livingston Lane, Suite 4
Jackson, MS 39213
(601) 366-4739

Opposing counsel:

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A.F. Lefeve, Jr.
15255 Poole Street
Gulfport, MS 39503-4307
(228) 863-4660

8. *Townsend v. Miss. State Dept. of Health*; Hon. John Whitten; August 1986 – July 1987

I represented the Miss. State Dept. of Health when Townsend was terminated for sexual harassment. The judgment was in favor of the defendant.

Co-counsel:
Sanford Horton
107 Mandon Lane
Pearl, MS 39208
(601) 936-2176

Opposing counsel:
William Catledge
Catledge & Associates
P. O. Box 1581
Tupelo, MS 38802-1581
(662) 844-0697

9. *Chappel v. East Miss. State Hospital, et al.*; United States District Court for the Southern District of Mississippi; Hon. Tom S. Lee; May 1987 – September 1987

I represented the defendant in an action regarding an alleged violation of Title VII of the Civil Rights Act of 1964 and other anti-discrimination legislation. The judgment was in favor of the defendants.

Co-counsel:
Sara DeLoach
Office of the Attorney General
450 High Street
Jackson, MS 39201
(601) 359-3680

Opposing counsel:
William Duke
Tollison Law Firm
100 Courthouse Square
Oxford, MS 38655
(662) 234-7070

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10. *Thompson v. Miss. State Hospital*; United States District Court for the Southern District of Mississippi; Hon. Henry T. Wingate; March 1988 – April 1988

    I represented the defendant in an action regarding an alleged violation of Title VII of the Civil Rights Act of 1964. The judgment was in favor of the defendant.

    Co-counsel:
    Sara DeLoach
    Office of the Attorney General
    450 High Street
    Jackson, MS 39201
    (601) 359-3680

    Opposing counsel:
    Firnist Alexander
    1435 Fourth Avenue
    Jackson, MS 39203
    (601) 352-5242

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.)

Over the years, as a practicing attorney, I obtained settlements for clients on personal injury and workers' compensation claims. I handled a variety of civil matters for various clients. I have never performed 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.

    1998 – 2009
    Harvard Law School
    1563 Massachusetts Avenue
    Cambridge, MA 02138
    Position held: Teaching Team Member for Trial Advocacy Workshop

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2004, 2006 and 2009
Tougaloo College
500 West County Line Road
Jackson, MS 39174
Position held: Adjunct Professor, Department of Journalism
Subject: Media Law

2005
Millsaps College
1701 North State Street
Jackson, MS 39216
Position held: Adjunct Professor, Departments of Sociology and Political Science
Subject: Law and Society

1992 – 1994
Brinkley Middle School
3535 Albermarle Road
Jackson, Mississippi 39213
Position held: Volunteer teacher
Subject: The Economics of Staying in School

1980 – 1997
Jackson State University
1400 Lynch Street
Jackson, MS 39217
Position held: Adjunct Professor
Department of Mass Communications, Subject: Media Law (Fall 1980 – Spring 1982; Spring 1985 – Spring 1997)
Department of Political Science, Subject: Civil Rights Law (Spring 1990)
Department of Public Policy & Administration, Subject: Black Perspectives in Public Administration (Spring 1996)
Department of Public Policy & Administration, Subject: Correctional Systems (Spring 1995)

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 will receive payments, upon retirement, from the Mississippi State Employees Retirement System.

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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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I have two sons and a daughter-in-law who practice law in Jackson, Mississippi. I would recuse myself in cases where any of them were involved as counsel.

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

Upon presentation and/or discovery of an issue regarding the necessity or propriety of recusal, I would review and consider the applicable rules of ethics and/or the Code of Conduct for United States Judges and determine whether or not recusal was warranted.

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 given speeches at more than 150 schools throughout the State of Mississippi. Upon being named Parent of the Year for the Jackson Public

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School District in 2009, I discovered that I had visited 52 of the 59 schools in the Jackson Public School District.

I coached high school mock trial teams at inner city public high schools for twelve years, winning a state championship in 2001. During those twelve years, we would practice at least twice per week for three months. Each practice would last approximately two hours.

I serve on the board of Operation Shoestring which provides after school educational programs for inner city children. I also serve on the board of the Mississippi Children's Museum where we are currently building the first Children's Museum in the state of Mississippi. I have recently been asked to serve on the board of the Mississippi Center for Educational Innovation which seeks to improve the quality of early education in our state.
I chaired the Anti-Violence Committee for the 100 Black Men of America from 1994 to 1996.

I regularly deliver motivational speeches at elementary, middle, and high schools throughout Mississippi.

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 my jurisdiction to recommend candidates for nomination to the federal courts. My resume was submitted to the Office of White House Counsel in September of 2009. On December 8, 2009, I was contacted by the Office of White House Counsel for the purpose of scheduling a telephonic interview with members of White House Counsel Staff. That interview was conducted on December 9, 2009. On January 15, 2010, I was contacted by the Department of Justice regarding the completion of a Senate Questionnaire and various other documents germane to the selection process. On January 19, 2010, I contacted the Department of Justice regarding completion of the paperwork in connection with the selection process. I was interviewed by representatives from the Department of Justice and White House Counsel's Office on February 26, 2010. The President nominated me on June 10, 2010.

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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 selection process has discussed any such case, issue or question with me.

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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
Graves, James E.	Fifth Circuit	06/09/2010
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 6/10/10 ☐ 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.**	
Mississippi Supreme Court 450 High Street Jackson, MS 39201	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 Member	R. Palmer Enterprises, LLC
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.	1986	State of MS Public Employees Retirement System: Pension upon retirement from state employment - fully vested
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Graves, James E.	Date of Report 06/09/2010

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	State of Mississippi Supreme Court - Employee Wages	$47,010.00
2. 2009	Mission Mississippi - Nonemployee Compensation - Speaking	$2,000.00
3. 2009	State of Mississippi Supreme Court - Employee Wages	$129,519.68
4. 2009	Tougaloo College - Nonemployee Compensation - Teaching	$1,750.00
5. 2009	Mississippi School Nutrition Association - Nonemployee Compensation - Speaking	$1,000.00
6. 2009	Mississippi State University - Nonemployee Compensation - Speaking	$500.00
7. 2008	State of Mississippi Supreme Court - Employee Wages	$128,041.00
8. 2008	University of Toledo Foundation - Speaking	$5,000.00

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. 2010	Jackson State University - Employee Wages
2. 2009	Jackson State University - Employee Wages
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 7	Name of Person Reporting Graves, James E.	Date of Report 06/09/2010

4.

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Graves, James E.	Date of Report 06/09/2010

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.	ACS	Student Loan	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Graves, James E.	06/09/2010

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. Tax Sheltered Annuity VALIC/AIG (no control)	A	Int./Div.	K	T	Exempt				
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
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
2. Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
	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 C3)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

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FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Graves, James E.	Date of Report 06/09/2010

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Graves, James E.	Date of Report 06/09/2010

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. Graves, Jr.

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		5	000	Notes payable to banks-secured		44	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		17	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-see schedule		138	000
Real estate owned-see schedule		225	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		102	000	Student Loan (spouse)		85	000
Cash value-life insurance							
Other assets itemize:							
Tax Sheltered Annuity (Spouse)		20	000				
State Retirement Plan		387	000				
				Total liabilities		284	000
				Net Worth		455	000
Total Assets		739	000	Total liabilities and net worth		739	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?	Yes		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 220,000
Undeveloped lot	5,000
Total Real Estate Owned	225,000
Real Estate Mortgages Payable	
Personal residence	$ 118,000
Home Equity Loan	20,000
Total Real Estate Mortgages Payable	$ 138,000

AFFIDAVIT

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

06/08/10
(DATE)

James E. Graves, Jr.
(NAME)

Rani Oswalt
(NOTARY)

STATE OF MISSISSIPPI NOTARY PUBLIC ID # 87469 RANI OSWALT Commission Expires Oct. 22, 2011 RANKIN COUNTY

Senator FRANKEN. Thank you. Please be seated.

I now invite you to introduce any members of your families that are here today. Why do we not start from my left?

Mr. Holmes.

STATEMENT OF PAUL K. HOLMES, III, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS

Mr. HOLMES. Thank you. First, let me thank the Chairman of the Committee and the Ranking Member for scheduling this hearing today and this opportunity to be heard, and thank you, Senator Franken, for chairing the Committee.

I'm really appreciative of the nomination by the President of the United States to be United States District Judge for the Western District of Arkansas. And I'm also appreciative of the support of Senators Blanche Lincoln and Mark Pryor in recommending my nomination to the President.

I would like to introduce my family here. I would like for my wife of 31 years, Kay, to please stand. And we have two sons who could not be here today, because they cannot miss college classes. Our son, Christopher Holmes, is in Batesville, Arkansas, watching on the Webcast; and, our son, Stephen Holmes, is in Fort Smith, Arkansas, watching on the Webcast.

And with that, I will be glad to answer any questions the Committee may have. Thank you.

Senator FRANKEN. Well, thank you.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Paul Kinloch Holmes, III

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

   United States District Judge for the Western District of Arkansas

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: Warner Smith & Harris, PLC
   400 Rogers Avenue
   Fort Smith, Arkansas 72901

   Residence: Fort Smith, Arkansas

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

   1951; Newport, Arkansas

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 – 1978, University of Arkansas School of Law, Fayetteville; J.D., 1978

   1975 – 1976, University of Arkansas School of Law, Little Rock; no degree

   1969 – 1973, Westminster College; B.A., 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.

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2001 – present
Warner Smith & Harris, PLC
400 Rogers Avenue
Fort Smith, Arkansas 72901
Of Counsel (2010 – present)
Partner (2001 – 2009)

1993 – 2001
United States Department of Justice
Office of the United States Attorney for the Western District of Arkansas
6th & Rogers
Fort Smith, Arkansas 72901
United States Attorney

1978 – 1993
Warner & Smith (now Warner Smith & Harris, PLC)
214 North 6th Street
Fort Smith, Arkansas 72901
Partner (1980 – 1993)
Associate (1978 – 1980)

1976 – 1978
Office of the Public Defender of Washington County, Arkansas
Washington County Courthouse
Fayetteville, Arkansas 72701
Investigator (part-time)

Summer 1976
William R. Wilson
Attorney at Law
Little Rock, Arkansas
Summer Law Clerk

Summer 1975
Mangan Rains Ginnaven Advertising Agency
Little Rock, Arkansas
Account Executive

1974
David Pryor, Candidate for Governor of Arkansas
Little Rock, Arkansas
Campaign Aide

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1973 – 1974
Union National Bank
Little Rock, Arkansas
Management Trainee

Other Affiliations

2009 – Present
PKH Properties, LLC
400 Rogers Avenue
Fort Smith, Arkansas 72901
Director & Shareholder (uncompensated)

2009 – Present
Fort Smith Symphony Association
5111 Rogers Avenue
Fort Smith, Arkansas 72903
Director (uncompensated)

2000 – Present
Lyon College
2300 Highland Road
Batesville, Arkansas 72501
Director (uncompensated)

1986 – Present
BECH Oil & Gas Company
400 Rogers Avenue
Fort Smith, Arkansas 72901
Director & Shareholder (compensated)

2002 – 2005
Fort Smith Museum of History
320 Rogers Avenue
Fort Smith, Arkansas 72901
Director (uncompensated)

2002 – 2004
Corporate Chaplaincy Services
423 North 8th Street
Fort Smith, Arkansas 72901
Director (uncompensated)

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1985 – 1988
United Way of Fort Smith
320 South 18th Street
Fort Smith, Arkansas 72901
Director (uncompensated)

1986 – 1989
Arkansas Volunteer Lawyers for the Elderly
2020 West 3rd Street
Little Rock, Arkansas 72205
Director (uncompensated)

1986
Fort Smith Rotary Club
P.O. Box 8193
Fort Smith, Arkansas 72902
President (uncompensated)

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

I have not served in the military. I registered for the Selective Service upon turning 18.

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

AV Rating, Martindale-Hubbell (1993 – present)

Lawyer of the Year, Arkansas Volunteer Lawyers for the Elderly (1989)

Paul Harris Fellow, Rotary International (1986)

Skulls of Seven, Westminster College, Senior Honorary Society (1972)

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
Section on Litigation (2001 – present)
American Board of Trial Advocates
Arkansas Bar Association
Member, House of Delegates (1983 – 1986)

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Chairman, Natural Resources Law Section (1988 – 1989)
Chairman, Natural Resources Law Institute (1988)
Arkansas Bar Foundation
Fellow (2005 – present)
Arkansas General Assembly Desegregation Litigation Oversight Committee
Non-Legislative Member (1989 – 1993)
Arkansas Supreme Court Committee on Model Jury Instructions, Civil (2005 – 2009)
Arkansas Volunteer Lawyers for the Elderly
Board Member (1986 – 1989)
Attorney General's Advisory Committee (1999 – 2000)
AGAC Subcommittees
Public Corruption, White Collar Crime and
Financial Litigation (1993 – 2000)
AGAC Domestic Security Working Group (1993 – 2000)
National Association of Former United States Attorneys (2001 – present)
Sebastian County (Arkansas) Bar Association
President (1994 – 1995)
United States District Court for the Western District of Arkansas
Member, Federal Practice Committee (1993 – 2001)

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.

Arkansas, 1978

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, 1982
United States Court of Appeals for the Eighth Circuit, 1978
United States District Court for the Western District of Arkansas, 1978
United States District Court for the Eastern District of Arkansas, 1978
Arkansas Supreme Court, 1978

There have been no lapses in admissions to any court.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which

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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.

Fort Smith Symphony
Board of Directors (1985 – 1990 & 2009 – present)
Lyon College, Batesville, Arkansas
Board of Trustees (2000 – present)
Fort Smith Museum of History
Board of Directors (2002 – 2005)
Corporate Chaplaincy Services
Board of Directors (2002 – 2004)
Hardscrabble Country Club (1989 – 1993 & 1999 – 2004)
Fort Smith Racquet Club (1994 – 1997)
Boy Scout Troop 110 Committee, Central Presbyterian Church (1998 – 2005)
St. Edward Mercy Medical Center
Advisory Board (1991 – 1993)
Westark Area Council, Boy Scouts of America (1991 – 1993)
Fort Smith Rotary Club (1978 – 1993)
President (1986)
Leadership Fort Smith (1990)
Alumni Board (1991)
United Way of Fort Smith
Board of Directors (1985 – 1988)

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.

Lyon College is a Presbyterian liberal arts college that did not admit African-American students until 1964. According to a history written of the college, there was no written policy of racial discrimination, but the lack of admission of African-American students until 1964 was probably due to accepted southern social custom. The college has had a diverse student body since 1964.

Hardscrabble Country Club was founded in the 1920s, and likely had a policy of discrimination on the basis of race. During my membership, the club had anti-discriminatory recruitment and membership policies, and had a diverse membership.

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The Fort Smith Rotary Club was an all men's civic club until 1986. During my tenure as President of the club in 1986, the board voted to accept women as members of the club. The club has had a diverse membership since 1986.

The other organizations listed do not, and have not, discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

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.

Arkansas Practice Series, Arkansas Model Jury Instructions – Civil (2009 Edition) Thomson-West

As a member of the Arkansas Supreme Court Committee on Model Jury Instructions – Civil, I received assignments to write and edit model jury instructions for the Arkansas Supreme Court.

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 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 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

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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. 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.

May 19, 2006 – CLE presentation on Immigration Law.
University of Arkansas at Fort Smith
5210 Grand Avenue
Fort Smith, Arkansas 72913
Hand-out attached. I have no transcript of the presentation.

December 2, 2002 – CLE presentation on Healthcare Fraud in Arkansas.
National Business Institute
Little Rock, Arkansas
PowerPoint presentation attached. I have no transcript of the presentation.

September 6, 2002 – Presentation to the Compliance Forum of the Arkansas Hospital Association on Healthcare Fraud Investigations.
Arkansas Hospital Association
419 Natural Resources Drive
Little Rock, Arkansas 72201
I have no notes or transcript of the presentation.

My presentation to the compliance forum related to my experience in handling health care fraud cases while I served as the United States Attorney. I discussed federal statutes used to prosecute criminal and civil cases, and statistics related to health care fraud prosecutions. I also discussed federal compliance programs that were imposed in settlements of criminal and civil cases.

April 2, 2001 – Sebastian County Bar Association
Fort Smith, Arkansas
After my tenure as United States Attorney, I was asked to speak to the Sebastian County Bar Association. Attached are notes from which I spoke.

March 7, 2001 – United States Naturalization Ceremony
Fort Smith National Historic Site
301 Parker Avenue
Fort Smith, Arkansas 72901
After my tenure as United States Attorney, I was asked to speak at a Naturalization Ceremony by the United States Department of Justice, Immigration Naturalization Service. Attached are notes from which I spoke.

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June 11, 1997 – Fort Smith Rotary Club
Fort Smith, Arkansas
During my tenure as United States Attorney, I was asked to speak to the Fort Smith Rotary Club. Attached are notes from which I spoke.

February 21, 1996 – Fort Smith Rotary Club
Fort Smith, Arkansas
During my tenure as United States Attorney, I was asked to speak to the Fort Smith Rotary Club. Attached are notes from which I spoke.
August 9, 1995 – Washington County Bar Association
Fayetteville, Arkansas
During my tenure as United States Attorney, I was asked to speak to the Washington County Bar Association. I have no notes or transcript of the speech.

My speech to the Washington County Bar Association primarily covered my duties and responsibilities as the United States Attorney, and the priorities of the office in federal criminal prosecution.

March 23, 1995 – Fort Smith Kiwanis Club
Fort Smith, Arkansas
During my tenure as United States Attorney, I was asked to speak to the Fort Smith Kiwanis Club. I have no notes or transcript of the speech.

My speech to the Fort Smith Kiwanis Club would have been similar to the speech that I made to the Fort Smith Rotary Club in 1996. The members of these civil clubs are not lawyers, and my remarks related to the duties and responsibilities of the Office of the United States Attorney.

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

As United States Attorney, I regularly commented to the media on matters pertaining to the office. This covered a period from 1993 to 2001. I have located some of the news articles from LexisNexis and from a personal file. I have produced as complete a list of these as I could, but it is still possible there are some I was not able to locate.

Holmes Gets Senators' Nod as New Judge, *Arkansas Democrat-Gazette*, December 17, 2009

Holmes Senators' Pick for Judgeship, *Southwest Times Record*, December 17, 2009

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Former U.S. Attorney Says New Sentencing Guidelines Restrict Discretion, *Southwest Times Record*, October 7, 2003

Tyson Trial Showed Injustice, *Southwest Times Record*, April 2, 2003

Lawyer Challenges Legality of Income Tax, *Southwest Times Record*, August 20, 2001

Motion in Rape Case Denied, *Southwest Times Record*, December 18, 2000

Vermont Men Go Home for Trial, *Arkansas Democrat-Gazette*, December 5, 2000

Prosecutors Erred, Says Attorney, *Southwest Times Record*, November 15, 2000

Feds Won't Pursue Charges in Arson Scam, *Southwest Times Record*, November 3, 2000

U.S. Attorney to Resign, *Southwest Times Record*, October 19, 2000

U.S. Attorney Holmes to Quit Post in January, *Arkansas Democrat-Gazette*, October 19, 2000

Feds Keep Fraud Suspect from Court, *Southwest Times Record*, October 12, 2000

2 Arrested in Cocaine Bust Plead Innocent, *Arkansas Democrat-Gazette*, October 3, 2000

Feds to Pursue Charges in Big Cocaine Bust, *Southwest Times Record*, September 23, 2000

Feds Step in on Drug Case, *Southwest Times Record*, August 24, 2000

"Lenient" State Sentence Prompts Federal Charges, *Arkansas Democrat-Gazette*, August 24, 2000

Documents Detail Helicopter Trade, *Arkansas Democrat-Gazette*, August 17, 2000

Drug Arrests End Months of Delving, *Arkansas Democrat-Gazette*, July 29, 2000

What's In A Name? More Than You Know, *Southwest Times Record*, July 24, 2000

Man Sentenced in Artifacts Case, *Southwest Times Record*, July 5, 2000

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Stilley: Tax Case Doomed to Fail, *Southwest Times Record*, June 5, 2000

U.S. Attorney Leads Nation in Granting Pretrial Diversion, *Arkansas Democrat-Gazette*, April 16, 2000

Landowners Left Holding Bag, *Arkansas Democrat-Gazette*, March 13, 2000

Man Faces Charges of Stealing, Child Exploitation, *Arkansas Democrat-Gazette*, March 9, 2000

Greenwood Teacher, 31, Pleads Innocent, *Arkansas Democrat-Gazette*, March 8, 2000

Bank's Foreclosure Unjust, *Arkansas Democrat-Gazette*, January 10, 2000

ATF Agents to Transfer to FS, *Southwest Times Record*, December 3, 1999

2 Face Counts in Bust, *Arkansas Democrat-Gazette*, September 25, 1999

LR Jury Quick to Find Informant Guilty, *Arkansas Democrat-Gazette*, September 14, 1999

Assistant U. S. Attorney Added to Fort Smith, *Arkansas Democrat-Gazette*, September 2, 1999

Former Car Dealer, Wife Sentenced, *Arkansas Democrat-Gazette*, August 21, 1999

Fraud Nets 8 Year Term, *Arkansas Democrat-Gazette*, August 19, 1999

Ex-Attorney, Whose Car Ignited During Chase, Faces Drug Charges, *Arkansas Democrat-Gazette*, July 10, 1999

The Meth Monster, *Arkansas Democrat-Gazette*, June 6, 1999

Suit Details Allegations, *Arkansas Democrat-Gazette*, May 13, 1999

Attorney Releases Secret Reports, *Arkansas Democrat-Gazette*, May 8, 1999

Man Guilty of Cheating Medicare, *Arkansas Democrat-Gazette*, April 23, 1999

FBI Focus on Ex-Official, *Arkansas Democrat-Gazette*, March 30, 1999

Man in Court After 13 Years on the Run, *Arkansas Democrat-Gazette*, January 30, 1999

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Voter Fraud Alleged, *Arkansas Democrat-Gazette,* November 10, 1998

FBI Helps State with Investigation, *Arkansas Democrat-Gazette,* September 26, 1998

260 Handgun Denials Duds, *Arkansas Democrat-Gazette,* September 23, 1998

Texas Man Takes Plea of Life in Kidnap Death, *Arkansas Democrat-Gazette,* June 24, 1998

Jury: Race Was Reason for Denial of Housing, *Southwest Times Record,* May 2, 1998

Meth Bust Illustrates Drug Trend, *Southwest Times Record,* January 15, 1998

Indictment is First Under Violence Act, *Arkansas Democrat-Gazette*, November 8, 1997

DTF Gets Almost $52,000 from Criminals, *Northwest Arkansas Times,* August 16, 1997

Internet Puts Kiddie Porn at Fingertips, *Arkansas Democrat-Gazette*, July 7, 1997

3-Agent Office in Fort Smith to Try to Stem Tide of Aliens, *Arkansas Democrat-Gazette,* May 9, 1997

Cocaine in Pickup Nets Charges for 2, *Arkansas Democrat-Gazette,* April 19, 1997

Four Are Accused of Fraud, *Arkansas Democrat-Gazette,* April 13, 1997

U.S. Trying to Help State as It Takes on Meth Labs, *Arkansas Democrat-Gazette,* December 23, 1996

Jury Finds Fraud Trial Pair Guilty, *Southwest Times Record,* November 16, 1996

Police Happy to Cash in Drug Spoils, *Arkansas Democrat-Gazette,* November 4, 1996

Former Bank Officer Charged in Loan Scam, *Arkansas Democrat-Gazette,* August 10, 1996

Lost-Hand Report, *Arkansas Democrat-Gazette,* July 13, 1996

Investigator Denies Plot, *Arkansas Democrat-Gazette,* July 11, 1996

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Police Reap Profits from Land Seized from "Peyote Parish," *Arkansas Democrat-Gazette,* June 14, 1996

Fake IDs Flooding Ozarks, *Arkansas Democrat-Gazette,* March 31, 1996

Whitewater Swamps the FBI, *Arkansas Democrat-Gazette,* March 23, 1996

Untitled, *Arkansas-Democrat Gazette*, December 2, 1995

Invoice Gets Guilty Pleas in Fraud Case, *Arkansas Democrat-Gazette,* November 15, 1995

School Case is Legal Shot Heard Round U.S., *Arkansas Democrat-Gazette,* October 23, 1995

U.S. to Take Over Prosecution of Drug Case, *Arkansas Democrat-Gazette,* June 22, 1995

Laws Take It Easy on Illegal Aliens, *Arkansas Democrat-Gazette,* June 4, 1995

The UA Drug Scandal: How Arrogance and Deception Trapped the Hogs, *Arkansas Democrat-Gazette,* December 4, 1994

U of A Drug Investigation Results in Indictments, Fine, *Southwest Times Record,* November 3, 1994

U.S. Attorney Sees "Awesome" Challenge, *Arkansas Democrat-Gazette,* October 7, 1993

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? ___%

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

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

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

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

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

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

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

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

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

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

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

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

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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 September 22, 1993, following confirmation by the United States Senate, I was appointed by President Clinton as the United States Attorney for the Western District of Arkansas. I served until January 9, 2001.

In 1989, I was appointed by Governor Clinton as a non-legislative member to the Desegregation Litigation Oversight Committee of the Arkansas General Assembly. I served until my appointment as United States Attorney in September 1993.

In 1977, I was appointed as a Presidential Elector by Governor David Pryor to vote in the Electoral College for President of the United States.

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 served as Sebastian County Coordinator for Senator Dale Bumpers, candidate for re-election to the United States Senate in 1992.

I served as Sebastian County Coordinator for Senator David Pryor, candidate for re-election to the United States Senate in 1984.

I served as Chairman of the Sebastian County Democratic Committee from 1979 to 1983.

I served as Chairman of the Sebastian County Election Commission from 1979 to 1983.

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I served as Campaign Aide for David Pryor, candidate for governor, in 1974.

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;

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.

1978 – 1993
Warner & Smith (now Warner Smith & Harris, PLC)
214 North 6th Street
Fort Smith, Arkansas 72901
Partner (1980 – 1993)
Associate (1978 – 1980)

1993 – 2001
United States Department of Justice
Office of the United States Attorney for the Western District of Arkansas
6th & Rogers
Fort Smith, Arkansas 72901
United States Attorney

2001 – present
Warner Smith & Harris, PLC
400 Rogers Avenue
Fort Smith, Arkansas 72901
Of Counsel (2010 – present)
Partner (2001 – 2009)

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.

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b. Descibe:

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

I began my legal career in 1978 as an associate with the law firm of Warner & Smith. Warner & Smith was a firm of 13 lawyers engaged in the general civil practice of law. In my early years, I was engaged in a general litigation practice. I also handled federal criminal cases in the United States District Court when I was appointed by the United States District Judge to defend Cuban refugees housed at Fort Chaffee, Arkansas. From 1981 to 1983, I began handling oil and gas litigation and transactions in addition to my general civil litigation practice. Until 1993, my practice consisted of general litigation, oil and gas litigation, environmental litigation, and class-action litigation representing royalty owners.

From 1993 to 2001, I served as the United States Attorney for the Western District of Arkansas. I had responsibility to prosecute federal criminal violations with a staff of 13 Assistant United States Attorneys. During my tenure, the United States Attorney's Office indicted 125 to 150 felony criminal cases each year. In addition to making decisions and supervising the office, I carried a caseload and tried two jury trials a year. I also briefed and orally argued those cases at the United States Court of Appeals for the Eighth Circuit. I served on the Attorney General's Advisory Committee (AGAC) for two years. I also served on the AGAC Subcommittees on Public Corruption, White Collar Crime, and Financial Litigation for eight years.

From 2001 to the present, I have engaged in the private practice of law in the areas of criminal and civil litigation. I have represented corporations and individuals in criminal cases involving immigration and environmental violations. I have handled two of the largest immigration cases in the United States. I have also handled corporate internal investigations involving criminal and civil matters. In my civil practice, I have handled business litigation involving commercial disputes.

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

In the early years of my practice, my general civil litigation involved representation of corporations and individuals in oil and gas litigation. I was involved in several royalty owner class action lawsuits involving "take or pay" gas purchase contracts. I also represented small businesses and individuals in commercial litigation.

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As United States Attorney, I represented the United States of America in primarily criminal cases, and some civil matters.

Since my return to private practice in 2001, I have represented corporations and individuals on federal criminal and civil violations. I have also handled commercial litigation for small businesses and individuals. My federal criminal experience has been in the area of white collar crime.

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 estimate that 80% of my civil and criminal practice involved litigation. During all stages of my career, I have appeared in court frequently. I have tried 33 jury trials, and a significant number of non-jury trials. My civil litigation experience includes motions and hearing, as well as trials.

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: 50%
   2. criminal proceedings: 50%

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

I have tried 33 jury cases to verdict or judgment, primarily as lead counsel, with the assistance of co-counsel in certain cases. I have also tried a number of non-jury cases and bench trials.

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.

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I represented the plaintiff in a declaratory judgment action over insurance coverage for clean-up costs incurred pursuant to a consent decree between the plaintiff and the U.S. Environmental Protection Agency. The United States Court of Appeals for the Eighth Circuit affirmed the district court's order ruling against the plaintiff. The plaintiff filed a petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit. The petition for Writ of Certiorari was granted. The judgment was vacated and remanded for further consideration. After the remand and further consideration, the district court's order was affirmed. Parker Solvents Company, Inc. v. Royal Insurance Companies of America, 950 F.2d 571 (8th Cir. 1991), *rev'd*, 502 U.S. 801 (1991). The brief filed with the Supreme Court of the United States is supplied.

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

    a. the date of representation;

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

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

1. United States v. Robert Hash, Tyson Foods, Inc., et al, Case No. 4:01-CR-61. United States District Court, Eastern District of Tennessee, Hon. R. Allan Edgar; July 2001 – March 2003.

    I represented Robert Hash, who was a corporate vice president of Tyson Foods, Inc. Mr. Hash was the highest corporate executive indicted for violation of criminal immigration laws in a 37-count indictment. Mr. Hash was charged with criminal violations that carried a five-year mandatory minimum sentence if he was convicted. There were four other company employees charged in the indictment. Two of the co-defendants pled guilty before trial and testified against Mr. Hash and the remaining co-defendants. After a trial lasting seven weeks, Mr. Hash and the co-defendants were acquitted of all charges in the indictment.

    Co-Counsel representing Tyson Foods, Inc. was Thomas C. Green, Sidley Austin LLP, 1501 K Street N.W., Washington, D.C. 20005; 202-736-8000.

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Co-Counsel representing Keith Snyder was Kenneth R. Shemin, Shemin Law Firm, PLLC, 3333 Pinnacle Hills Parkway, Suite 603, Rogers, Arkansas 72758; 479-845-3305.

Co-Counsel representing Gerald Lankford was Robert M. Adler, Nossaman LLP, 1666 K Street N.W., Suite 500, Washington, D.C. 20006; 202-887-1400.

Opposing counsel was John P. MacCoon, United States Attorney's Office, 1110 Market Street, Chattanooga, Tennessee 37402; 423-752-5140.

2. United States v. Wal-Mart Stores, Inc., Case No. 1:CV-05-0525. United States District Court, Middle District of Pennsylvania, Hon. Yvette Kane; October 2003 – May 2005.

I represented Wal-Mart Stores, Inc. in a criminal investigation by the United States Attorney's Office for the Middle District of Pennsylvania regarding alleged violations of criminal immigration laws. The government's investigation involved alleged criminal violations at Wal-Mart stores in 20 states. During the course of the Grand Jury investigation, I negotiated a settlement agreement with the United States Attorney to resolve all criminal and civil violations against the company. In a global settlement binding all United States Attorneys' Offices, the United States agreed not to bring criminal charges against Wal-Mart Stores, Inc. Wal-Mart Stores, Inc. entered into a consent decree and agreed to implement a corporate compliance program, and paid an $11 million civil penalty to the Department of Homeland Security. The settlement was approved by the district court.

Co-Counsel was James J. West, James J. West, LLC, 105 North Front Street, Suite 205, Harrisburg, Pennsylvania 17101; 717-233-5051.

Opposing counsel were Martin C. Carlson and Wayne P. Samuelson, United States Attorney's Office, 228 Walnut Street, Suite 220, Harrisburg, Pennsylvania 17108; 717-221-4482.

3. Wal-Mart Stores, Inc. v. Thomas M. Coughlin, 369 Ark. 365, 255 S.W.3d 424 (2007). Circuit Court of Benton County, Arkansas, Hon. Jay T. Finch; July 2005 – August 2007.

I represented Wal-Mart Stores, Inc. in a corporate investigation involving misconduct of a corporate executive who was a member of the Board of Directors of the company. The corporate officer pleaded guilty to federal criminal violations. I also represented Wal-Mart Stores, Inc. in the civil litigation in the Circuit Court of Benton County, Arkansas, to set aside a retirement agreement based on fraudulent inducement. The circuit judge ruled against Wal-Mart Stores, Inc., and the case was reversed on appeal by the Arkansas Supreme Court. The case was settled after it was remanded for trial. I primarily handled the corporate investigation, and the trial court

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hearings before the appeal. Gibson, Dunn and Crutcher primarily handled the appeal and subsequent settlement after remand.

Co-counsel were Thomas E. Holiday and Theodore J. Boutrous, Jr., Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071; 213-229-7000; Michael J. Mills, Gettman & Mills LLP, 10250 Regency Circle, Suite 200, Omaha, Nebraska 68114; 402-391-6500.

Opposing counsel were W. H. Taylor, Taylor Law Partners LLP, 303 East Millsap Road, Fayetteville, Arkansas 72703; 479-443-5222; and William W. Taylor, III, Zuckerman Spaeder LLP, 1800 M Street N.W., Suite 1000, Washington, D.C. 20036; 202-778-1810.

4. United States v. Leslie Isben Rogge, Case No. CR-86-10004-01. United States District Court, Western District of Arkansas, Hon. Harry F. Barnes; May 1996 – August 1997.

   Leslie Isben Rogge was indicted for bank robbery in 1986 and was a fugitive on the FBI's Ten Most Wanted List for over ten years. Rogge was captured in Guatemala and returned to the Western District of Arkansas for trial. As United States Attorney, I handled the trial that resulted in the conviction of Leslie Rogge, who was sentenced to 25 years in prison. The case presented a challenge because the trial occurred ten years after the bank robbery, and was based primarily on eye-witness identification by bank employees.

   Opposing counsel was George Lucas, Federal Public Defender's Office, 3739 Steele Boulevard, Room 280, Fayetteville, Arkansas 72701; 479-443-1904.

5. United States v. James Dale Barnes, 208 F.3d 218 (8th Cir. 2000) (unpublished opinion). United States District Court, Western District of Arkansas, Hon. H. Franklin Waters; January 1998 – March 2000.

   James Dale Barnes was indicted for money-laundering in connection with defrauding a federal healthcare program. Barnes was the owner of a home health agency in Springfield, Missouri. Barnes defrauded the United States Department of Human Services of $2.2 million through the submission of false cost reports, and he laundered funds through structured transactions at banks in Arkansas. As United States Attorney, I handled the grand jury investigation, indictment, and trial of the case. Barnes was convicted on all counts after a one week trial and was sentenced to prison for approximately eight years.
   Opposing counsel was Michael Baker, 3432 Culpepper Ct., Springfield, Missouri; 417-883-5340.

6. Stewman v. Mid-South Wood Products of Mena, Inc. and Ehlco Liquidating Trust, 993 F.2d 646 (8th Cir. 1993). United States District Court, Western District of Arkansas, Hon. Jimm Larry Hendren; May 1991 – June 1993.

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I represented the Ehlco Liquidating Trust whose predecessor was the owner of a wood manufacturing plant. Ten years after the plant was sold, it became an EPA Superfund site and the Ehlco Liquidating Trust was established to manage the EPA Superfund site for 30 years. The Ehlco Liquidating Trust was sued by surrounding land owners claiming contamination of their property from the wood manufacturing plant. The Plaintiffs' claims were based on the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and common law claims of trespass and nuisance. The Ehlco Liquidating Trust was the "deep pocket" in the litigation. The case was tried in federal court for ten days and resulted in a jury verdict for the Ehlco Liquidating Trust and its co-defendant. The case was affirmed on appeal by the United States Court of Appeals for the Eighth Circuit.

Co-Counsel representing Mid-South Wood Products of Mena, Inc. was William P. Thompson, Thompson and Llewellyn, P.A., 412 South 18th Street, Fort Smith, Arkansas 72901; 479-785-2867.

Opposing counsel was Robert D. Ridgeway, 127 Hawthorne Street, Hot Springs, Arkansas 71901.

7. Kuykendall v. Arkla, Inc., Case No. 89-2107. United States District Court, Western District of Arkansas, Hon. H. Franklin Waters; April 1989 – July 1991.

I represented royalty owners in a class action lawsuit over a gas purchase contract in Franklin County, Arkansas. I represented the royalty owners along with other counsel. The royalty owners were being paid at a rate of 16 cents on gas sold which had a current market value of over three dollars. The lessee and the gas purchaser claimed that the lease was subject to a life of the lease gas purchase contract that fixed the price at 16 cents until depletion of the gas wells. After several years of litigation, I negotiated a settlement with the defendants that resulted in an increase in royalties for the royalty owners from 16 cents to the market value of the gas. The settlement of the class action lawsuit was approved by the district court.

Co-counsel were Douglas O. Smith, Jr. of Warner Smith & Harris, PLC, 400 Rogers Avenue, Fort Smith, Arkansas 72901; 479-782-6041; Bradley D. Jesson and Rex Terry of Hardin, Jesson & Terry PLC, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72903; 479-452-2200; and Lonnie C. Turner, 801 East Commercial Street, Ozark, Arkansas 72949; 479-667-2155.

Opposing counsel was Jerry L. Canfield, Daily & Woods PLLC, 58 South 6th Street, Fort Smith, Arkansas 72902; 479-782-0361; and E. J. Ball (now deceased).

8. Klein v. Jones, 980 F.2d 521 (8th Cir. 1992). United States District Court, Western District of Arkansas, Hon. Morris S. Arnold; June 1990 – July 1993.

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I represented royalty owners along with other counsel in a class action lawsuit over the "take or pay" provisions of a gas purchase contract. The royalty owners were seeking a share of the proceeds from the settlement of a "take or pay" gas purchase contract between the lessee and the gas purchaser. The royalty owners claimed that the lessee should pay royalty on the $100 million in proceeds it received from the settlement of a "take or pay" gas purchase contract. The case was tried in a bench trial, which resulted in a judgment for the defendants. The case was appealed to the United States Court of Appeals for the Eighth Circuit, which reversed and remanded the case for a second trial in accordance with the opinion from the court of appeals. The case was remanded after I became the United States Attorney for the Western District of Arkansas; therefore, I did not participate in the second trial and subsequent settlement. Co-counsel successfully handled the case, which resulted in a settlement of approximately $10 million for the royalty owners.

Co-counsel were Douglas O. Smith, Jr. of Warner Smith & Harris, PLC, 400 Rogers Avenue, Fort Smith, Arkansas 72901; 479-782-6041; Bradley D. Jesson and Rex Terry of Hardin, Jesson & Terry PLC, 5000 Rogers Avenue, Suite 500, Fort Smith, Arkansas 72903; 479-452-2200; and Lonnie C. Turner, 801 East Commercial Street, Ozark, Arkansas 72949; 479-667-2155.

Opposing counsel were Jerry L. Canfield, Daily & Woods PLLC, 58 South 6th Street, Fort Smith, Arkansas 72901; 479-782-0361; and Mark Moll, Jones, Jackson & Moll PLC, 401 North 7th Street, Fort Smith, Arkansas 72901; 479-782-7203.

9. United States v. George's, Inc., Case No. 09-5069-CV-SW-Red. United States District Court, Western District of Missouri, Hon. Richard E. Dorr; May 2007 – August 2009.

I represented George's, Inc. on alleged criminal immigration violations resulting from a work-site enforcement action by the Office of Immigration & Customs Enforcement (ICE) in 2007. George's, Inc. owned and operated a poultry processing facility in Cassville, Missouri. ICE arrested employees at the plant who were undocumented aliens. The United States Attorney's Office conducted an investigation of the employment practices at the Cassville plant. I negotiated a settlement agreement with the United States Attorney to resolve the case on a civil basis. The company agreed to implement a corporate compliance program, and paid a $450,000 civil penalty to the Department of Homeland Security. The settlement was approved by a consent decree by the district court.

Co-counsel was W. H. Taylor, Taylor Law Partners LLP, 303 East Millsap Road, Fayetteville, Arkansas 72703; 479-443-5222.

Opposing counsel was Gary K. Milligan, United States Attorney's Office, 901 St. Louis Street, Suite 500, Springfield, Missouri 65806; 816-426-3122.

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10. Swaim v. Stephens Production Company, 359 Ark. 190, 196 S.W.3d 5 (2004). Circuit Court of Franklin County, Arkansas, Hon. John S. Patterson; August 2003 – October 2004.

Along with co-counsel, I represented royalty owners who claimed they were entitled to increased royalties based upon accretion of lands along the Arkansas River. The defendant claimed that the mineral owners were not entitled to the benefit of accreted lands, although the surface owners did acquire title to accreted land under settled law. The title to the minerals had been previously severed from the surface ownership. The trial court ruled in favor of the lessee on summary judgment. The royalty owners appealed to the Arkansas Court of Appeals, and the case was certified to the Arkansas Supreme Court as an issue of first impression. The Arkansas Supreme Court held that minerals rights accreted with surface rights, and the royalty owners were entitled to the benefit of accreted lands, which increased their royalty payments. The Arkansas Supreme Court reversed the trial court and ordered that judgment be entered for the royalty owners.

Co-counsel was Lonnie C. Turner, 801 East Commercial Street, Ozark, Arkansas 72949; 479-667-2155.

Opposing counsel was Thomas A. Daily, Daily & Woods PLLC, 58 South 6th Street, Fort Smith, Arkansas 72902; 479-782-0361.

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 can be described in two parts. The first part would be my private practice from 2001 to the present. I have represented corporations and individuals in white collar crime involving immigration violations. Shortly after leaving the United States Attorney's Office, I was retained by Tyson Foods, Inc. to represent a corporate executive who was later indicted on criminal immigration violations in the Eastern District of Tennessee. The corporate executive had management responsibility for poultry facilities in the eastern part of the United States. The government's four-year investigation included over 400 undercover audio tapes and 27 undercover video tapes. The case involved intense trial preparation. While the company was also charged, the corporate executive faced a five-year mandatory minimum sentence if convicted. The case was tried for seven weeks, and the corporate executive was acquitted.

After the Tyson Foods, Inc. case, I represented Wal-Mart Stores, Inc. in a criminal immigration case in the Middle District of Pennsylvania. In October 2003, the government carried out an immigration raid involving 62 stores in 20 states, and executed

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search warrants at the corporate headquarters. The government initiated a grand jury investigation. The corporate investigation took over one year. The company reached a civil settlement and the government agreed not to charge the company with criminal violations. Wal-Mart Stores, Inc. implemented a compliance program and paid an $11 million civil penalty. I was the lead counsel along with other counsel. I negotiated the settlement, which was a global criminal and civil settlement binding all United States Attorneys' Offices.

The Tyson Foods, Inc. case and the Wal-Mart Stores, Inc. case were two of the largest immigration cases in the United States. Since that time, I have represented other companies and individuals in criminal immigration cases in the United States.

The second part of my significant legal activities involved my tenure as the United States Attorney for the Western District of Arkansas. I established white collar crime as the top priority of the office during my tenure. I believed that white collar crime needed to be prosecuted because state court prosecutors did not have the time or resources to handle that type of case. White collar criminal cases take a long time to develop and prosecute. I coordinated federal law enforcement agencies in investigating and prosecuting white collar crime. The office increased the case load of white collar cases in addition to other federal criminal offenses.

I have not performed lobbying activities on behalf of a 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.

    I have not taught any courses during my legal career.

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 a participant in the Warner Smith & Harris, PLC Pension and Profit Sharing Plan. If confirmed, I will terminate my interest in the plan, and the benefits will be rolled over into a qualified retirement account.

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.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules and practices governing such circumstances. This includes cases involving former partners and associates at my law firm, and former clients that I have represented. I would not handle any case that was prosecuted or under investigation while I served as United States Attorney for the District to which I have been nominated, though the passage of time should mean there will be few of those cases.

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

       If confirmed, I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of Canon 3 of the Code of Conduct for United States Judges as well as other relevant Canon 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 became involved with Arkansas Volunteer Lawyers for the Elderly (AVLE) after it was formed in 1985. This is a state-wide organization for which I served as a member of the

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Board of Directors from 1986 to 1989. I received the Lawyer of the Year Award from AVLE in 1989 for the handling of a property dispute that resulted in a jury trial for the AVLE client. I continued to handle AVLE cases until I became the United States Attorney in 1993.

Throughout my 31 years of private practice, I have regularly and frequently performed legal services at no charge or on a reduced-fee basis for financially disadvantaged people. I have had clients during my private practice who have never had the ability to pay legal fees, and I have continued to represent these individuals when they needed assistance. I have performed legal work for charitable organizations that do not have funds to pay for legal services.

26. **Selection Process**:

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

In February 2009, I wrote Senator Blanche Lincoln and Senator Mark Pryor indicating my interest in the position of United States District Judge upon Judge Robert T. Dawson taking Senior Status. In the summer of 2009, I visited with Senator Blanche Lincoln and Senator Mark Pryor by telephone. In December 2009, Senators Lincoln and Pryor both called me to tell me they intended to send my name to the White House as their recommendation for the District Judge position.

Since January 2010, I have been in contact with pre-nomination officials from the Department of Justice. On March 2, 2010, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. The President submitted my nomination to the Senate 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.

I have had no such communications.

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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
Holmes, III, Paul K.	United States District Court Western District of Arkansas	04/26/2010
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 4/28/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 3/31/2010
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.**	
30 South 6th Street Fort Smith, Arkansas 72901	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. Of Counsel	Warner, Smith & Harris, PLC
2. Partner	Warner, Smith & Harris, PLC
3. Director	PKH Properties, LLC
4. Director	BECH Oil & Gas Company
5. Trustee	Lyon College
6. Director	Fort Smith Symphony Association

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2010	Warner, Smith & Harris, PLC- Of Counsel Agreement
2. 2009	Warner, Smith & Harris, PLC- Partnership Agreement
3. 2009-2010	Warner, Smith & Harris, PLC- Pension and Profit Sharing Plan

FINANCIAL DISCLOSURE REPORT Page 2 of 10	Name of Person Reporting Holmes, III, Paul K.	Date of Report 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	Warner, Smith & Harris, PLC- attorney's fees	$70,000.00
2. 2009	Warner, Smith & Harris, PLC- partnership	$379,463.00
3. 2008	Warner, Smith & Harris, PLC- partnership	$556,393.00
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	Fort Smith Public School District- substitute teaching
2. 2009	Fort Smith Public School District- substitute teaching
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 Holmes, III, Paul K.	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
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Name of Person Reporting	Date of Report
Holmes, III, Paul K.	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. ABFS Common	B	Dividend	L	T	Exempt				
2. CHS Common		None	J	T					
3. CNP Common	A	Dividend	J	T					
4. COP Common	B	Dividend	L	T					
5. FDX Common	A	Dividend	L	T					
6. DBRN Common		None	J	T					
7. GE Common	B	Dividend	K	T					
8. HD Common	B	Dividend	L	T					
9. HIG Common	A	Dividend	K	T					
10. HPQ Common	B	Dividend	M	T					
11. HOT Common	A	Dividend	J	T					
12. IBKC Common	B	Dividend	L	T					
13. INTC Common	A	Dividend	K	T					
14. JBHT Common	A	Dividend	L	T					
15. JNJ Common	B	Dividend	K	T					
16. MHS Common		None	K	T					
17. MON Common	A	Dividend	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
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Name of Person Reporting	Date of Report
Holmes, III, Paul K.	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. MSFT Common	B	Dividend	M	T					
19. NUE Common	C	Dividend	L	T					
20. PFE Common	D	Dividend	M	T					
21. RF Common		None	J	T					
22. RIG Common		None	K	T					
23. SLB Common	B	Dividend	M	T					
24. SO Common	C	Dividend	L	T					
25. T Common	A	Dividend	J	T					
26. WMMVY Common	A	Dividend	K	T					
27. WMT Common	D	Dividend	N	T					
28. Vanguard Total Stock Index Fund	B	Dividend	M	T					
29. Vanguard Extended Market Index Fund	A	Dividend	L	T					
30. Vanguard Growth Index Fund	A	Dividend	L	T					
31. Vanguard Capital Opportunity Fund	A	Dividend	M	T					
32. Vanguard Developed Markets Index Fund	A	Dividend	M	T					
33. Vangurd Total Int. Stock Index Fund	A	Dividend	K	T					
34. Vanguard Inter-Term Inv. Grade Fund	B	Dividend	L	T					

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

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Name of Person Reporting	Date of Report
Holmes, III, Paul K.	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. Vanguard Inflation-Protect Sec.	B	Dividend	L	T					
36. Vanguard Inter-Term Tax Exempt Inv.	C	Interest	L	T					
37. Fidelity Int. Muni Income Fund	D	Interest	M	T					
38. MFS Investors Trust-A Fund	A	Dividend	K	T					
39. T.Rowe Price Growth Stock Fund	A	Dividend	K	T					
40. T. Rowe Price Personal Strategy Growth Fund	A	Dividend	K	T					
41. T. Rowe Price New Horizons Fund		None	J	T					
42. T. Rowe Price International Stock Fund	B	Dividend	L	T					
43. U. S. Treasury Notes	D	Interest	L	T					
44. First National Bank of Fort Smith									
45. -First National Money Mkt. Fund	A	Interest	J	T					
46. -First National Acct.	A	Interest	L	T					
47. Schwab Cash Reserves	A	Interest	K	T					
48. T. Rowe Price Tax-Exempt Money Mkt. Fund	A	Interest	L	T					
49. Vanguard Tax-Exempt Money Mkt. Fund	B	Interest	O	T					
50. Vanguard Prime Money Mkt. Fund	A	Interest	L	T					
51. Fidelity Municipal Money Mkt. Fund	A	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
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Name of Person Reporting	Date of Report
Holmes, III, Paul K.	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. PKH Properties, LLC		None	J	W					
53. BECH Oil & Gas Company	D	Distribution	K	W					
54. Health Savings Accounts									
55. -HSA Bank Money Mkt. Fund	A	Interest	K	T					
56. -TD Ameritrade Money Mkt. Fund	A	Interest	J	T					
57. -TD Ameritrade SPY Index Fund	A	Dividend	K	T					
58. First National Trustee WSH Pension & Profit Sharing Plan	D	Dividend	N	T					
59. - VIMSX Fund									
60. - FIGRX Fund									
61. -FNB Money Mkt.									
62. T. Rowe Price- Rollover IRA Acct.	E	Dividend	O	T					
63. - POMIX									
64. - PRGIX									
65. - TRMCX									
66. - PRTIX									
67. - PRTXX									
68. - TRRBX									

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	
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FINANCIAL DISCLOSURE REPORT Page 8 of 10	Name of Person Reporting Holmes, III, Paul K.	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 (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. - RPSIX									
70. - INTC Common									
71. - MHS Common									
72. - MRK Common									
73. - NUE Common									
74. - CVX Common									
75. Lincoln National Whole Life		None	K	T					
76. Union Central Whole Life	A	Dividend	J	T					
77. Transamerica Whole Life	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 10	Name of Person Reporting Holmes, III, Paul K.	Date of Report 04/26/2010

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

I. POSITIONS- I serve on the Board of Trustees of Lyon College, a private liberal arts college.

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Holmes, III, Paul K.	Date of Report 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 Paul K. Holmes III

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		87	175	Notes payable to banks-secured			
U.S. Government securities-add schedule		100	000	Notes payable to banks-unsecured			
Listed securities-add schedule	3	036	772	Notes payable to relatives			
Unlisted securities–add schedule		25	000	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		400	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance		57	647				
Other assets itemize:							
Money Market Funds – see schedule	1	108	855				
Retirement Accounts – see schedule	1	491	788				
HSA Accounts – see schedule		32	981	Total liabilities			0
				Net Worth	6	365	218
Total Assets	6	365	218	Total liabilities and net worth	6	365	218
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged?	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Treasury Direct – U.S. Treasury Notes	$ 100,000
Listed Securities	
ABFS	$ 53,235
CHS	2,169
CNP	4,336
COP	62,424
DBRN	693
FDX	64,519
FLTMX	203,767
GE	45,825
HD	80,950
HIG	34,656
HOT	5,713
HPQ	199,650
IBKC	63,096
INTC	22,390
JBHT	51,635
JNJ	46,039
MHS	18,461
MITTX	45,224
MON	26,278
MSFT	116,640
NUE	91,900
PFE	170,800
PRGFX	28,562
PRITX	73,952
PRNHX	2,204
RF	5,423
RIG	17,133
SLB	145,283
SO	74,593
T	2,402
TRSGX	16,643
VDMIX	119,378
VEXMX	81,390
VFICX	83,752
VGTSX	38,555
VHCOX	109,868

VIGRX	54,133
VIPSX	76,138
VTSMX	121,611
VWITX	96,696
WMMVY	34,736
WMT	443,920
Total Listed Securities	$3,036,772
Unlisted Securities	
BECH Oil & Gas Company, 100 Shares	$ 25,000
Total Unlisted Securities	$ 25,000
Real Estate Owned	
Personal residence	$ 300,000
Undivided 1/5th Interest/Land and Improvements (spouse)	100,000
Total Real Estate Owned	$ 400,000
Money Market Funds	
VMMXX	$ 666,541
VMSXX	80,701
FTEXX	246,561
PTEXX	75,103
SWSXX	33,625
First National Bank	6,324
Total Money Market Funds	$1,108,855
Retirement Accounts	
T. Rowe Price	
POMIX – IRA	$ 87,731
TRMCX – Rollover IRA	97,439
PRTIX – Rollover IRA	132,161
TRRBX – Rollover IRA	187,685
RPSIX – Rollover IRA	114,613
PRTXX – Rollover IRA	20,566
INTC – Rollover IRA	44,780
MHS – Rollover IRA	7,692
MRK – Rollover IRA	18,855
NUE – Rollover IRA	91,900
CVX – Rollover IRA	29,449
PRGIX – IRA (spouse)	63,752

First National Bank, Trustee of Warner Smith & Harris, PLC Pension and Profit Sharing Plan	
VIMSX	183,705
FIGRX	169,129
FNB MMF	50,960
Thrift Savings Plan	
I Fund	85,193
S Fund	49,148
G Fund	57,030
Total Retirement Accounts	$1,491,788
HSA Accounts	
HSA Bank MMF	12,356
SPY	14,157
TD Ameritrade MMF	6,468
Total HSA Accounts	$ 32,981

AFFIDAVIT

I, **Paul K. Holmes, III,** do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

APRIL 26, 2010
(DATE)

Paul K. Holmes III
(NAME)

LINDA S. RATHBURN NOTARY PUBLIC SEBASTIAN CO., ARKANSAS My Commission Expires 3/22/2014

Linda S. Rathburn
(NOTARY)

Judge Battaglia—I did say Battaglia at the first pass by your name, I apologize. Any Battaglias here today?

STATEMENT OF ANTHONY J. BATTAGLIA, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge BATTAGLIA. There are, Senator. And thank you for chairing today's hearing. I'd like to thank Chairman Leahy for scheduling this and Ranking Member, Senator Sessions, as well. And let me thank, also, the President for the nomination; Senator Boxer for recommending to the President for consideration; and, Senator Feinstein, for her tremendous support in this process.

I'd like to introduce my wife of 33 years, Carol Battaglia, who is behind me, and I'd like her to stand.

Senator FRANKEN. Welcome.

Judge BATTAGLIA. Also, Carly Battaglia, now Nardin, my daughter, and her husband, Brandon Nardin, late of the U.S. Marine Corps, who are here with me. And my son, A.J., Anthony James Battaglia, who is here, as well.

Also, joining me from San Diego, I'd like to introduce, if I may, Russell Block, who is a professor at San Diego State and the husband of Judith N. Keep, who left us far too young. She was the chief judge that appointed me in 1993, a mentor, an inspiration, and I'm just so thrilled to have Rusty, as we call him here, on her behalf and his, to support me.

Our clerk of court, Sam Hamrick, from San Diego, who was in town and chose to come. The Honorable Mary Schroeder, former chief of the Ninth Circuit Court of Appeal, who has been a longtime friend, mentor and inspiration, as well. And I would be remiss if I didn't thank Tom Hnatowski, the chief of the Magistrate Judges Division of the Administrative Office; and, Margaret Irving, the chief of the Article III Division of the Administrative Office, who have attended today.

At home, I do have my 88-year-old mother watching on the Webcast, along with my brother, who is there caring for her. And I do have all of my magistrate judge colleagues, who are now in their noon meeting, watching me instead of attending to business, which I appreciate very much, and our district judges, who have supported me so faithfully throughout this process.

So thank you, Senator, for allowing me to recognize these very important folks.

Senator FRANKEN. Thank you very much, Judge Battaglia, and welcome to all of you.

Judge Davila.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Anthony Joseph Battaglia

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

   United States District Judge for the Southern District of California

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.

   940 Front Street
   Room 1145
   San Diego, California 92101

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

   1949; San Diego, California

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.

   1971-1974, California Western School of Law; J.D., 1974
   1969-1971, United States International University; B.A., 1971
   1967-1969, San Diego Mesa Junior College; no degree

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

   1993-present
   United States District Court for the Southern District of California
   940 Front Street
   San Diego, California 92101
   United States Magistrate Judge

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1991-1993
Battaglia, Fitzpatrick & Battaglia, A partnership of Professional Corporations
2550 Fifth Avenue
San Diego, California 92103
Attorney and Partner

1981-1991
Anthony J. Battaglia, A Professional Corporation
2550 Fifth Avenue, Suite 629
San Diego, California 92103
Attorney & Sole Proprietor

1980-1981
Anthony J. Battaglia Attorney at Law
1200 Third Avenue, Suite 1200
San Diego, California 92101
Attorney

1974-1980
Law Offices of John Marin
304 Kalmia Street
San Diego, California 92101
Attorney

1972-1974
Law Offices of Marinos & Styn
111 Elm Street, Suite 400
San Diego, California 92101
Law Clerk

1969-1974
Bank of America, Five Points Branch
1491 Hancock Street
San Diego, California 92103
Part-time Teller

Other Affiliations (uncompensated)

1999-present
Federal Magistrate Judges Association
c/o Hon. Tom Mummert, President
111 South 10th Street, Suite 13.156
St. Louis, Missouri 63102
Board of Directors (1999-present)
Immediate Past President (2009) / President (2008) / President Elect (2007)
Vice President (2006) / Treasurer (2005) / Secretary (2004)

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1994-2004
San Diego County Judges Association
Hon. Adam Wertheimer, President
San Diego Superior Court, PO Box 12274
San Diego, California 92112
Board of Directors (1994-2004)
President (1997) / Vice President (1996) / Treasurer (1995)

1989-1992
San Diego County Bar Association
1333 7th Avenue
San Diego, California 92101
Board of Directors (1989-1992)
President (1992) / Vice President (1991) / Treasurer (1990)

1992-1993
San Diego County Law Library
1105 Front Street
San Diego, California 92101
Trustee

1992-1993
Law Library Justice Foundation
1105 Front Street
San Diego, California 92101
Trustee

1977-1993
San Diego Trial Lawyers Association
Consumer Attorneys of San Diego
3633 Camino del Rio South Ste 100
San Diego, California 92108
Board of Directors (1981-1988)
President (1987) / Vice President (1985-1986) / Secretary (1984)

1980-1993
California Trial Lawyers Association
770 L St, Ste 1200
Sacramento, California 95814
Board of Directors (1987-1988)

1980-1993
Say No to Drugs, Inc
4688 Alvarado Canyon Road
San Diego, California 92120
Trustee and Pro Bono Attorney

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1989-1992
San Diego Volunteer Lawyers Program
625 Broadway, Suite 925
San Diego, California 92101
Board of Directors

1987-1990
San Diego Trial Lawyers Foundation
Consumer Attorneys of San Diego
3633 Camino del Rio South Ste 100
San Diego, California 92108
Chairman (1987-1988)
Secretary (1989-1990)

1980-1993
Scripps Ranch Old Pros
No physical address, contact by website and email
www.srop.org; jed@mediadirect.com
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 U.S. Military. I registered for selective service in 1967 upon turning 18 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.

Recognition for Service and Support of the San Diego Chapter, Federal Bar Association, 2006
Outstanding Trial Lawyer Award, San Diego Trial Lawyers Association, 1992
(for trial work in Kulick v. Hawthorne Rent It Service and Calavar Corporation, San Diego Superior Court, Case No. 61405)
Distinguished Service Award, San Diego Volunteer Lawyer Program, 1992
Recognition of Exceptional Service to the Building Operations Committee, San Diego County Bar Association, 1990
Special Commendation for Outstanding Leadership, San Diego Trial Lawyers Association, 1982

Law School Honors
$1000 Academic Scholarship from the Phi Delta Phi Legal fraternity
(for my second year of law school based upon my first year grades)

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Bancroft-Whitney Award for the Trial Practice Course
Diane C. Gafford Trial Practice Award
American Jurisprudence Award for the Trial Practice Course
Dean's Award for Academic Achievement (multiple semesters)

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.

Judicial Conference of the United States, Magistrate Judge Observer to the Judicial Conference, Appointed by Chief Justice John Roberts (2009-2011)
    Ex officio member of the Judicial Conference of the United States Committee on the Magistrate Judges System and an invitee to the Ninth Circuit Conference of Chief District Judges
Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure, Appointed by Chief Justice William Rehnquist (2003-2006), Reappointed by Chief Justice John Roberts (2006-2009)
    Chair, Subcommittee on Preliminary Procedures
    Chair, Subcommittee on Rule 41
    Chair, Subcommittee on Search Warrants for Electronically Stored Information
    Member, Subcommittee on Rule 16
    Member, Subcommittee on Victims Rights Amendments
Administrative Office of the United States Courts, Magistrate Judges Advisory Group (2008-2010)
    Member, Rule 16 Special Subcommittee (2010)
    Member, Working Group on Pro Se Attorney Staffing Formula (2009)
    Ex-officio Member (2000-2008)
Ninth Circuit Executive Board of Magistrate Judges (2005-2009)
    Chair (2006-2008)
Magistrate Judge Observer to the Judicial Council of the Ninth Circuit (2006-2008)
San Diego County Judges Association (1994-present)
    Board of Directors (1994-2004)
    President (1997)
    Vice President (1996)
    Treasurer (1995)
    Committees on Education, Bylaws and Public Relations (1995)
Federal Magistrate Judges Association (1993-present)
    Board of Directors (1999-present)
    Immediate Past President (2009)
    President (2008)
    President Elect (2007)
    Vice President (2006)
    Treasurer (2005)
    Secretary (2004)
    Chair, Past Presidents' Committee (2009-2010)
        Nominations and Elections Committee (2009-2010)

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Bylaws Committee (2006-2007)
Member, Budget Committee (2005-2009), Chair (2006-2008)
Member, Federal Rules Committee (1995-present), Chair (1996-2004)
Member, Annual Meeting Committee (2005-2009)
Host Committee and Co-Chair, Thirty Third Annual Convention (1995); and Thirty Ninth Annual Convention (2001)
Member, Diversity Committee (2000-2001)
Member, Special Projects Committee (2001-2002)
San Diego County Bar Association (1974-present)
Board of Directors (1989-1992)
President (1992)
Vice President (1991)
Treasurer (1990)
Chair, Building Committee (2006-2007)
Communications Committee (1996-1997)
Commission on Long Range Planning (1994)
Building Subcommittee (1994)
Judicial Funding Committee (1993)
Subcommittee on Judicial Compensation (1993)
Task Force on Fairness (1992)
Lawyer Referral and Information Service Committee (1990-1992)
Liaison, Federal Court Committee (1989-1991)
Municipal Court Committee (1990)
Judicial Relations Committee (1990)
Member, Courthouse Funding Committee (1991-1992)
Subcommittees on Settlement Conferences and Fast Track Monitoring (1988-1989)
Judicial Evaluation (1988)
Bench-Bar "Fast-Track" (1987-1989)
Committees on Arbitration (1980-1984)
Subcommittee on Trial Continuances (1987)
Federal Bar Association, Judicial Member (1994-present)
Member, Advisory Board of the San Diego Chapter (2001-present)
San Diego Trial Lawyers Association (1977-1993)
Board of Directors (1981-1988)
President (1987)
Vice President (1985-1986)
Secretary (1984)
Chair, Education Committee (1986)
Attorney Referral Service (1982-1985)
Lawyers Round Table (1982-1984)
Membership Committee (1981-1984)
Numerous Committee Memberships (1981-1989)
San Diego Trial Lawyers Foundation (1987-1990)
Chairman (1987-1988)
Secretary (1989-1990)

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California Trial Lawyers Association (1981-1993)
Board of Directors (1987-1988)
Member, Committee on Long Range Planning (1987)
San Diego Volunteer Lawyers Program
Board of Directors (1989-1992)
Executive Committee (1989-1991)
Ninth Circuit Judicial Conference
Lawyer Delegate for Southern District of California (1992-1993)
San Diego County Law Library Board of Trustees (1992-1993)
Vice President (1993)
Law Library Justice Foundation Trustees (1992-1993)
State Bar Local Committee on Professionalism and Public Action (1988)
American Bar Association (1974-present)
Member, Judicial Administration Division (1995-present)
Association of Trial Lawyers of America (1977-present)
Judicial Member (1993-present)
Maritime Law Association (1983-present)
Granted Proctor status (1993)
National Conference of Bar Presidents (1991-1993)
California Association of Local Bars, Executive Committee (1991-1992)
Advisory Panel to University of California Extension Program, Paralegal Certification Program for Advanced Litigation Support
Member, (2009-present)

10. **Bar and Court Admission**:

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

California, 1974

There has been no lapse in my membership. Under California law, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office.

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, 1980
United States Circuit Court of Appeals for the Ninth Circuit, 1984
United States District Court for the District of Arizona, 1990
United States District Court for the Central District Court of California, 1983
United States District Court for the Southern District of California, 1974
Supreme Court of California, 1974

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There has been no lapse in my memberships. I have not appeared as counsel in these courts since my appointment as a judge on November 15, 1993. Under California law, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office.

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.

Scripps Ranch Old Pros (1980-1993)
Board of Directors (1980-1983)
Scripps Ranch Soccer Club, Youth Soccer Coach (1989-2000)
All Saints Episcopal School (1994-1995)
Parents Advisory Association

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.

The Scripps Ranch Old Pros is a men's fraternal organization. It operated in conjunction with the Women's Athletic Club in Scripps Ranch to sponsor adult athletic leagues, Men's, Women's and Co-ed, as well as social events. I cancelled my membership in 1993 at the time of my appointment to the federal judiciary to avoid any appearance of impropriety. I took no direct steps to change the membership policy during my association with the organization.

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.

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The Path to Success in Motion Practice, San Diego County Bar Association, Young/New Lawyer Division newsletter, FOR THE RECORD; Scheduled for publication in February or May, 2010

Letters to the Editor, American Bar Association, ABA Journal, October 2009. A comment about an article on the "25 Greatest Legal TV Shows"

From the President, Federal Magistrate Judge Association, THE BULLETIN, October 2008, March 2009, and May 2009

Basic Rules of the Interrelationship between Federal and State Law under the Assimilative Crimes Act, Ninth Circuit Magistrate Judges Pretrial & Misdemeanor Sentencing Institute, San Diego, California, November 5, 2008

The Purpose of the Petty Offense Exception of 18 U.S.C. § 3561(a)(3), Ninth Circuit Magistrate Judges Pretrial & Misdemeanor Sentencing Institute, San Diego, California, November 5, 2008; republication pending, THE BULLETIN, Federal Magistrate Judges Association, Spring 2010

Pretrial Release and Supervision of Sex Crime Defendants, Ninth Circuit Magistrate Judges Pretrial & Misdemeanor Sentencing Institute, San Diego, California, November 5, 2008; republished by THE BULLETIN, Federal Magistrate Judges Association, May 2009

Navigating the Intersection of the Speedy Trial Act and the Medical Competency Statutes, Ninth Circuit Magistrate Judges Pretrial & Misdemeanor Sentencing Institute, San Diego, California, November 5, 2008; republished, THE BULLETIN, Federal Magistrate Judges Association, March 2009

Standards of Review and Burden of Proof Outline, United States Court of Appeals for the Ninth Circuit, published online (internal) May 2008

Surviving E-discovery: Rules and Realities, ABTL Report, Vol. XV, No. 1, Association of Business Trial Lawyers, San Diego Chapter, March 2008

What's Up With Dues? THE BULLETIN, Federal Magistrate Judges Association, June, 2007 (a financial status report on the Association regarding dues)

Sex, Lies & Magistrate Judges: Common Misconceptions in the Federal Judiciary, FEDERAL LAWYER, Vol. 54, No. 5, Federal Bar Association, June 2007

Settling Cases in Federal Court: A Summary of Issues, Seminar Syllabus, Ninth Circuit Judicial Conference, New Judge Orientation, Panel Discussion on Substantive Issues Effecting Settlement, San Francisco, California. May 4, 2007; updated and republished as syllabus for Panel on "Rules of the Road in ENE's," Federal Bar Association, Fifth Annual Judith N. Keep Civil Practice Seminar, San Diego, California, September 24, 2009

2006 To Bring High Tech Changes to Rule 41, THE BULLETIN, Vol. 32, No. 1, Federal Magistrate Judges Association, June 2006

Dealing with Electronically Stored Information: Preservation, Production, Privilege, FEDERAL LAWYER, Vol. 53, No. 4, Federal Bar Association, May 2006

What is it About the Meet and Confer Process That You Don't Understand? (Resolving Discovery Disputes in the Southern District of California),

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San Diego Chapter Newsletter, Federal Bar Association, Summer 2005

A Victim's Right to Notice and to be Heard, The Justice for All Act of 2004, THE BULLETIN, Vol. 31, No. 2, Federal Magistrate Judges Association, June 2005

The Federalization of Class Actions Cases, co-authored with the Hon. Jan M. Adler, ABTL Report, Vol. XII, No. 2, Association of Business Trial Lawyers, San Diego Chapter, May 2005

Sneak and Peek Warrants Under the USA Patriot Act, THE BULLETIN, Vol. 30, No. 1, Federal Magistrate Judges Association, Nov. 2003

Class Action Rules Poised for Change, San Diego Chapter Newsletter, Federal Bar Association, Fall 2003

When Can You Keep a Secret? Protective Orders and Sealed Documents in Federal Court, San Diego Chapter Newsletter, Federal Bar Association, Summer, 2003

A Guide to Initial Criminal Proceedings Under the Amended Federal Rules of Criminal Procedure, San Diego Chapter News Letter, Federal Bar Association Summer 2002; republished in THE BULLETIN, Vol. 29, No. 2, Federal Magistrate Judges Association, March 2003

Operations Manual for the Central Violations Bureau Docket, Bench book, Honorable Louisa S. Porter, United States Magistrate Judge (1994) (after its production in 1994, I took over responsibility for its continued editing, reorganization and republication of updates. I have produced revisions in 1998, 2000, 2002 and 2003)

Bench Book on Settlement of Claims Involving Minor's and Incompetents, August 1999 (this Bench Book was published for the use of the judges of the U.S. District Court for the Southern District of California. The most recent edition is November 2006)

Protective Orders and Sealed Documents in Federal Court, The Federal Bar Association San Diego Chapter, Program Syllabus, Oct. 2002

Expanded Contempt Authority for Magistrate Judges, San Diego Chapter Newsletter, Federal Bar Association, Fall 2001

Disclosure and Discovery under the Federal Rules of Civil Procedure, Federal Bar Association Seminar Syllabus, Oct. 2001; current edition is January, 2010

The Appropriate Remedy for Rule 5 Violations, THE BULLETIN, Vol. 27, No. 3, Federal Magistrate Judges Association, June 2001

Trial Before Magistrate Judge - A Sometimes Overlooked Resource, Trial Bar News, Vol. 24, No. 4, April 2001 (republication)

Recurring Issues At Detention Hearings, THE BULLETIN, Vol. 27, No. 1. Federal Magistrate Judges Association, Nov. 2000

The Impact of the Y2K Discovery Amendments on the Southern District of California, San Diego County Bar Association, Association of Business Trial Lawyers and Federal Bar Association Seminar Syllabus, September 2000

Consent Jurisdiction on Specific Issues, Ninth Circuit Magistrate Judges' Executive Board/Liaison Committee Newsletter, Summer 1995.

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Enforcement of Settlement in Federal Court, DICTA, Vol. XLII, No.2, Feb. 1995
Trial Before Magistrate Judge - A Sometimes Overlooked Resource, DICTA, Vol. XLI, No. 5, May 1994
Presidents Column, San Diego County Bar Association Bar Briefs Newsletter, Jan. and Feb. 1992
President's Page, San Diego County Bar Association DICTA, Vol. XXXVIIII, Nos. 1-12, inclusive, 1992
U.S. Court of Appeals says Finders Keepers--Not! LOS ANGELES DAILY JOURNAL, practitioner's column, October 29, 1992; republished in THE SAN DIEGO COMMERCE, October 30, 1992; THE SAN FRANCISCO DAILY JOURNAL, November 9, 1992; THE WASHINGTON JOURNAL, November 9, 1992
Celebrate Our Law, Our Rights and Our Courts, SAN DIEGO DAILY TRANSCRIPT, May 1, 1992
The Rights of Injured Workers, Metal Trades People, 1991 Edition
Deposition of the Rehabilitation Specialist, California Trial Lawyers Association, 29th Annual Convention Program Syllabus, Nov. 1990
Gross Income As The Basis Of Economic Loss In Personal Injury Cases, TRIAL BAR NEWS, Vol. XI, No. 6, July 1988
President's Column, TRIAL BAR NEWS, Vol. X, Nos. 1-10, inclusive, 1987
Round Table Review, TRIAL BAR NEWS, April, May, August, September, October, November, 1983; January, February, 1984.
Maritime Personal Injury, TRIAL BAR NEWS, Vol. IV, No. 4, April 1981

The list of writings above includes all those that I was able to locate after diligent review of my records and online searches. Still, there may be other publications I have not 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.

I have served as an officer and on committees of many bar associations during the last two decades. I have not retained nor have I been able to recreate a list of all reports produced by these organizations. All of the business, discussion and reports are contained in the meeting minutes of these associations, where they are archived. All of these associations have been identified in this questionnaire and contact information has been provided. The list below includes reports, memoranda, and policy statements that I personally prepared or contributed to that I have been able to identify and have copies to provide.

President's Message, Federal Magistrate Judges Website, Posted January to July, 2009

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Program Announcement as Chair of the Magistrate Judges Executive Board on Ninth Circuit Website, Oct. 28, 2008
Letter to the Federal Magistrate Judges Membership, Oct. 23, 2008
Letter to the Federal Magistrate Judges Membership, March 16, 2009

From 2003 to 2009 I was on the Criminal Rules Advisory Committee. I Chaired the Subcommittees on Technology, Preliminary Procedures, Rule 41 and Search Warrants for Electronically Stored Information. I also served on almost every other subcommittee since I was the only magistrate judge on the Committee.

I have a few, but not all, of the memos I personally approved and I have supplied copies of those I possess. I also offered suggestions and revisions in the preparation of many memos and reports of the Committee which are part of the official records of Criminal Rules Advisory Committee. I could not reconstruct, nor do I have copies of, the many memos or reports where I offered suggested language or revision. The official records are maintained at the Rules Support Office of the AOUSC at the address below. These records are also available on the Judiciary website, www.uscourts.gov under the Federal Rules of Procedure tab and in the files of the Administrative Office of the United States Courts at Thurgood Marshall Federal Judiciary Building, One Columbus Circle, Washington, D.C. 20002-8003 in the Rules Support Office, Fourth Floor. What I have retained in my records, I provide as follows:

Memorandum from the Subcommittee on Technology to the Criminal Rules Advisory Committee, Feb. 23, 2009
Memorandum: Proposed Rule 41 Amendments: searches for electronic stored information, March 12, 2007
Memorandum on Possible Amendments to Rules 32.1 and 46 - Follow up, Feb. 16, 2007
Memorandum: The Next Step, Oct. 18, 2006
Memorandum: Possible Amendments to Rule 32.1 and 46, Oct. 5, 2006
Criminal Rules Sub-Committee Telephone Conference Agenda, Feb. 3, 2004

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 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

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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.

Very few of my speeches or talks were recorded or transcribed. I usually speak from an article that I wrote without other notes or I transform my notes into an article after the talk and dispose of the notes. I have listed and supplied all of these articles in response to Question 12a. In recent years, I have used PowerPoint slides as outlines. These PowerPoint slides are referenced below and copies are supplied. A number of my talks were as part of a panel where no notes or PowerPoint slides were used and the discussion comprised an ad hoc give and take with other panelists or in response to audience questions. I have searched and contacted others involved in the various programs and have obtained the PowerPoint presentations not otherwise in my records. The lists and materials provided are as complete as I can make them, but I will continue to search and supplement this questionnaire should I discover anything else. Educational programs make up the bulk of all my speeches and talks. These are listed in detail below by group and date. If a tape exists, it is noted and supplied. Typically, the programs do not tape because the expense outweighs the after-market demand for the program.

Association of Business Trial Lawyers, 1050 Rosecrans Street, Suite B, San Diego, California 92106
- Panelist, "Navigating E-Discovery Disputes in the Southern District of California," San Diego, California (June 19, 2009)
- Panelist, "E: Discovery," Napa, California (Oct 7, 2007)
- Civil Practice Before Magistrate Judges (June 7, 1999)
- Panelist, "The Inside View of Practice Before the Federal Magistrates," "Consent Trials by Magistrate Judge," San Diego, California (Oct. 17, 1994)

California Trial Lawyers Association, now Consumer Attorneys of California
- 770 L St, Ste 1200 Sacramento, California 95814
- 29th Annual Convention, Case Winning Deposition Strategies, "Rehabilitation Specialists" (Nov. 9, 1990)
- Moderator, "A Day In Court" (Jan. 24, 1987)
- A Day In Court, "Discovery in Civil Cases" (March 3, 1984)

California Western School of Law, 350 Cedar Street, San Diego, California 92101
- Guest Lecturer, Pre Trial Practice Course, "Motion Practice and Discovery Disputes," San Diego, California (Nov. 5, 2009)
- Transition to Practice Program, "Courthouse Policy-Filing and Procedural Practice" San Diego, California (Sept. 30, 2009)
- Guest Lecturer, Pre Trial Practice Class, "Motion Practice, Briefing and Oral Argument," San Diego, California (Jan. 5, 2009)

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Transition to Practice Program, "Courthouse Policy- Filing and Procedural Practice" San Diego, California (Oct. 7, 2008)

Federal Bar Association c/o Edward G. Fates, Allen Matkins et al LLP, 501 W. Broadway, 15th Floor, San Diego, California, 92101
Fifth Annual Judith N. Keep Civil Practice Seminar Program Chair and Panel Moderator, "Riding Down Rule 56" San Diego, California (Sept. 24 2009) PowerPoint attached.
Criminal Pretrial Issues Panel, Program Chair and Speaker, Magistrate Judge Criminal Jurisdiction," San Diego, California (Oct. 7, 2008)
Fourth Annual Judith N. Keep Civil Practice Seminar, Program Chair and Panelist, "Discovery: Selected Issues Concerning the Attorney Client Privilege," San Diego, California (Sept. 18, 2008) PowerPoint attached.
Third Annual Judith N. Keep Civil Practice Seminar, Program Chair and Moderator of Panel, "Experts: Can't Live With Them, Can't Live Without Them!" San Diego, California (Sept. 27 2007)
Second Annual Judith N. Keep Civil Practice Seminar, Program Chair and Moderator of Panel, "CAFA- The Evolving Jurisprudence." San Diego, California (September 29, 2006)
The Judith N. Keep Federal Civil Practice Seminar, "Handling Discovery Disputes," San Diego, California (Sept. 23, 2005)
"Civil Settlements, Tips From Magistrate Judges," San Diego, California (Nov. 4 2004)
Magistrate Judges Criminal Law Forum, "Magistrate Judge Jurisdiction and Title," San Diego, California (April 28, 2004)
"Changes in Class Action Practice Under Rule 23: What You Need to Know," San Diego, California (Nov. 13, 2003) PowerPoint attached.
"Keys to the 2002 Amendments of the Federal Rules of Criminal Procedure," San Diego, California (Jan. 22, 2003)
"When Can You Keep a Secret? Developments in Protective Order Practice in Federal and State Courts," San Diego, California (Oct. 30, 2002)
U.S. Magistrate Judges Forum On Policy, Procedure and Recent Developments, "Pending Changes To The Federal Rules of Criminal Procedure" (March 14, 2002)
"Disclosure and Discovery Under New Rule 26: What Every Practitioner Should Know," San Diego, California (Oct. 25, 2001)

Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Cir NE, Washington DC 20002-8003
Workshop for United States Magistrate Judges, "Criminal Law Issues: Proposed Changes to Rule 41 on Searches for Electronically Stored Information," Seattle, Washington (July 10, 2008) PowerPoint attached.

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Workshop for United States Magistrate Judges, "Criminal Law Issues: Proposed Changes to Rule 41 on Searches for Electronically Stored Information," Memphis, Tennessee (April 6, 2008) PowerPoint attached.
Workshop for United States Magistrate Judges, "Immigration Issues," Orlando, Florida (July 6, 2005)
Workshop for United States Magistrate Judges, "Discovery and Rule 26," Minneapolis, Minnesota (June 12, 2002)
Workshop for United States Magistrate Judges, "Discovery and Rule 26," San Diego, California (April 8, 2002)
Workshop for United States Magistrate Judges, "Recent Amendments to Rule 26," San Diego, California (July 23, 2001)
Workshop for United States Magistrate Judges, Special Bond and Detention Issues. Border Court Issues," Albuquerque, New Mexico (Sept. 19, 2000)
Workshop for United States Magistrate Judges, "Border Court Issues," Portland, Oregon (July 27, 2000)

Ninth Circuit Conference, James R. Browning U.S. Courthouse, 95 Seventh Street, San Francisco, CA 94103
Ninth Circuit Pro Se Conference, "New Pro Se Attorney Allotment Formula," San Diego, California (Sept. 10, 2009) PowerPoint attached.
Ninth Circuit Judicial Conference, Magistrate Judge Conference, Annual Meeting, "New Time Computation Rules," Monterey, California (July 20, 2009) PowerPoint Attached.
Ninth Circuit Magistrate Judges Pretrial & Misdemeanor Sentencing Institute, Program Chair, Moderator and Speaker, "The Psychology and Supervision of the Sex Offender," San Diego, California (Nov. 5-7, 2008). PowerPoint attached.
Ninth Circuit Judicial Conference, Magistrate Judges Education Committee, Moderator of Panel Discussion, "Lei'ing Down the Law on eDiscovery," Honolulu, Hawaii (July 16, 2007). PowerPoint attached.
Ninth Circuit Judicial Conference, New Judge Orientation, Moderator of Panel Discussion on Substantive Issues Effecting Settlement, San Francisco, California (May 4, 2007)
Ninth Circuit Magistrate Judge Executive Board, "Sex, Lies and Magistrate Judges," Huntington Beach, California (July 13, 2006). PowerPoint attached.

San Diego County Bar Association, 2333 Seventh Avenue, San Diego, California 92101
Labor and Employment Law Section Program on Electronically Stored Information (ESI), "Preservation and Production Under the New Rules," San Diego, California (Nov. 15, 2006)

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PowerPoint attached.

San Diego County Bar Association and West Publishing, "Advice From the Experts: Successful Strategies for Winning Commercial Cases in Federal Courts," San Diego, California (April 20, 2002)

"Impact of Amendments to Discovery and Disclosure Rules on the Southern District of California" (Sept. 20, 2000) (This program was videotaped but I have been unable to obtain a copy.)

Bridging the Gap, "Practice in Federal Court," San Diego, California (Dec. 18, 2003)

Bridging the Gap, "Practice in Federal Court," San Diego, California (June 23, 1999)

San Diego County Bar Association Task Force on Diversity, "Eliminating Bias in the Legal Profession" San Diego, California (Jan. 25, 1996)

Bridging The Gap, "Personal Injury Practice," San Diego, California (Dec. 14 1989)

Bridging The Gap, "Personal Injury Practice" San Diego, California (June 9, 1989)

Bridging The Gap, "Personal Injury Practice," San Diego, California (Dec. 14, 1988)

Bridging The Gap, "Personal Injury Practice" San Diego, California (Dec. 16, 1987)

Bridging The Gap, "Personal Injury Practice," San Diego, California (June 19, 1987)

San Diego County Bar Association, Worker's Compensation Section, "Maritime - Seaman's Status and Claim," San Diego, California (Oct. 8, 1985)

San Diego Trial Lawyers Association, now the Consumer Attorneys of San Diego
3633 Camino Del Rio South, Suite 100, San Diego, California 92108

Class Action Symposium, "Early Management of Class Action Cases in Federal Court," and Panelist, "Class Certification, What Works, What Doesn't," San Diego, California (Oct. 24, 2009). Power Point attached.

Co-Chairman and Speaker, Presenting and Proving the Chiropractic Case, "The Plaintiff's Case," San Diego, California (Feb. 7, 1991)

Peoples Law School, Lecturer, "Personal Injury Law" (May 1, 1989)

Peoples Law School, Lecturer, "Personal Injury Law" (Nov. 1, 1988)

Proof of Economic Loss After Prop. 51, "Retroactivity of Prop. 51; Case Law Precedents for Economic and Non Economic Losses" San Diego, California (Sept. 20, 1986)

Medical Proof and Evidence, "Demonstrative Evidence," San Diego, California (Feb. 22, 1986) (the tape is produced)

Moderator, "Soft Tissue Injuries, Initial Work Up To Advanced Studies," San Diego, California (May 11, 1985)

Lawyers Roundtable, "Demonstrative Evidence," San Diego, California (Jan. 18, 1984)

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Lawyers Roundtable, "Motions in Limine," San Diego, California (Oct. 19, 1983)
Potpourri of Current Trial Law, "Railroad Liability," San Diego, California (Sept. 24, 1983)

State Bar of California, 180 Howard Street, San Francisco, California 94105
State Bar of California, Association of Business Trial Lawyers of San Diego and Federal Bar Association, "The Federalization of Class Actions: The Class Action Fairness Act," San Diego, California (June 16, 2005). PowerPoint attached.
Employment Law Litigation Section, "Mediating Class Action Claims in Federal Court," San Diego, California (Oct. 11, 2003)
Litigation Section of the State Bar of California and the Association of Business Trial Lawyers of San Diego Bench/Bar Brown Bag Luncheon, "Surviving E-Discovery: A Discussion of the Rules and Realities of Federal Discovery," San Diego, California (Jan. 24, 2008). PowerPoint attached.

Thomas Jefferson School of Law, 2121 San Diego Avenue, San Diego, California 92110-2986
Guest Lecturer, Civil Procedure Class on "Case Management and Discovery" San Diego, California (2006)
Guest Lecturer, Civil Procedure Class on "Case Management and Discovery" San Diego, California (2007)
Guest Lecturer, Civil Procedure Class on "Case Management and Discovery" San Diego, California (2010)

University of California San Diego, 9500 Gilman Dr., La Jolla, CA 92093
Guest Lecturer, Legal Nurse Consulting Class, Testifying As An Expert Witness," San Diego, California (June 9, 1995)

University of San Diego School of Law, 5998 Alcalá Park, San Diego, California, 92110
Guest Lecturer, International Criminal Law Class, "International Extradition", San Diego, California (March 1998)
Guest Lecturer, Trial Practice Class, "Closing Argument," San Diego, California (1999)

U.S. District Court and Federal Defenders, 940 Front Street, San Diego, California 92101 and 225 Broadway San Diego, CA 92101-5030
1999 Criminal Justice Act Seminar, "Criminal Defense Before Magistrate Judges; Bail issues, felony pleas and juvenile proceedings," San Diego, California (June 15, 1999)
1996 Criminal Justice Act Seminar, "Magistrates' Perspective, Setting Bail, Detention Hearing Procedures and Sentencing Policies,"

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San Diego, California (June 11, 1996)
1995 Criminal Justice Act Seminar, "Setting Bail in the Southern District of California," San Diego, California (June 13, 1995)
1994 Criminal Justice Act Seminar, "Federal Magistrates Perspective, Detention Hearings, and Sentencing Options," San Diego, California (June 7, 1994)

United States District Court, 940 Front Street, San Diego, California 92101
United States District Court, Southern District Conference, "Y2K Amendments To The Federal Rules," San Diego, California (March 9, 2000)
United States District Court, Southern District Conference, "Protective Orders and Settlement Secrecy Issues," San Diego, California (March 21, 2003)
United States District Court, Southern District Conference, "New Class Action Rules," San Diego, California (May 6, 2005). PowerPoint attached.
United States District Court, Southern District of California, Naturalization Proceeding Welcoming Remarks July 2, 2009; March 19, 2008; April 13, 2006; September 17, 2004; September 27, 2003; September 17, 2002; June 6, 2001; June 29, 2000; May 11, 2000; August 25, 1999; June 26, 1997; March 14, 1997; November 22, 1996; September 6, 1996; May 17, 1996; January 12, 1996; September 7, 1995; June 2, 1995; March 3, 1995; October 7, 1994; September 23, 1994 and July 22, 1994. Attached are copies of three versions of my speech.

Other Educational Lectures/Seminars
ALI-ABA Telephonic Seminar, 4025 Chestnut Street Philadelphia, PA 19104
"New Federal Time Computation Rules," San Diego, California (Nov. 19, 2009) (Rebroadcast Jan. 27, 2010)
Legal-Tech West120 Broadway, 5th Floor, New York, NY 10271
Panelist, "May it Please the Court...Defending a Search and Production Protocol-A Trial Technology Experience," Los Angeles, California (June 25, 2009)
San Diego Intellectual Property Law Association, Magistrate Judge Panel
c/o Jessica S. Mitchell, 858-792-3446, jessicamitchell@sandiegoiplaw.com
Discussion on Intellectual Property Issues, "Dealing with Local Rules, Settlement & ESI," San Diego, California (Feb. 26, 2009)
Legal Reprographics, Inc., 110 West C Street San Diego, California 92101-3909
Panel, "A Day in the Life of an e-Discovery Case," San Diego, California (May 15, 2007)
The Sedona Conference, 5150 N. 16th St., Suite A-215 Phoenix, AZ 85016
WG1 Fifth Annual Meeting, "Judges Roundtable:

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The New Rules, State and Federal Coordination and The Sedona Principles," San Diego, California (Nov. 3, 2006)

American Bar Association, Committee on Corporate Counsel, Litigation CLE 321 N. Clark Street, Chicago, Il 60610
Seminar Panelist, "Preservation Practices - The Real Challenge for In-House Counsel;" "Proposed Federal Rules for E:Discovery: What Should We Expect?" San Diego, California (Feb. 16, 2006)

American Inns of Court - Louis M. Welsh Chapter, c/o President, Hon. Janis L. Sammartino, United States District Court, Southern District of California, 940 Front Street, San Diego, California 92101
"The New Class Action Fairness Act," San Diego, California (Sept. 15 2005)

San Diego Legal Secretaries Association, c/o Michelle D. Tice (858) 523-6260, SDLSAprez@gmail.com
Membership Meeting, "Federal Rules and Procedures," San Diego, California (Feb. 24, 2003)

Office of Legal Education, Executive Office for United States Attorneys, c/o United States Attorneys Office, Southern District of California, 92101.
Dispute Resolution/Enhanced Negotiation Seminar, "Early Neutral Evaluation Conferences and Settlement Conferences" (March 10, 1998)

Western State University, College of Law, Now Thomas Jefferson School of Law, 2121 San Diego Avenue, San Diego, CA 92110-2986
Practice in Federal Court, "Initial Proceedings in Civil and Criminal Cases" (Oct. 21, 1994)

County Industrial Medical Group, "Handling Worker's Claims" (Nov. 2, 1987)
This organization has been out of business since approximately 1990. When it was in operation it was located at 2918 Fifth Avenue, San Diego, California 92103

In addition, I have given non-educational speeches or presentations which were recorded and I am providing digital files with this questionnaire, as follow:

"Installation Speech" as new President of the San Diego Trial Lawyers Association, San Diego California (Jan. 22, 1987)

Acceptance speech in receiving an Outstanding Trial Lawyer Award from the San Diego Trial Lawyers Association, San Diego, California (June 25, 1992)

"Outgoing Speech" as President of the San Diego Trial Lawyers Association, San Diego, California (Jan. 14, 1988)

I also presided over dinner meetings of the San Diego Trial Lawyers Association on 2/26, 3/19, 6/25, 11/2 and 12/2/1987. I acted as the equivalent of a Master of Ceremonies.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these

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interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have been interviewed or quoted on a variety of occasions by the newsprint media in connection with articles they have published. I have searched my files, the Internet, and online databases to assemble as complete a list of these interviews as possible. I have listed by publication and supplied clips for all such interviews I could identify, though there may be others I was unable to find.

CALIFORNIA WESTERN NEWS,
"Battaglia Elected Bar President", Fall-Winter 1991-1992,
CORONADO JOURNAL,
"Demonstration at NASNI shows drinking, driving don't mix," May 7, 1992,
LOS ANGELES DAILY JOURNAL,
"San Diego First On Fast Track For Civil Cases," September 7, 1987;
"With Start of 1988, Attorneys Resolve To Speed Up Trials," December 30, 1987;
"Can Do Attitude Served Magistrate Judge Well Throughout His Career" April 2, 1997;
"Judges, Lawyers Aid Veterans' Program," July 16, 1992;
"Among His Peers" April 10, 1997;
"Grounded in the Law," July 8, 1997;
"Early Calling," July 14, 2009.
LOS ANGELES TIMES,
"Mediation Proves Its Case at Superior Court," March 12, 1991;
SAN DIEGO BACK COUNTRY TRADER,
"Making a case for the *real* people's court," December 10, 1991
SAN DIEGO COMMERCE,
"SDVLP making a comeback," November 24, 1992
SAN DIEGO DAILY TRANSCRIPT
"Fisherman Settles: Got $1 Million," July 11, 1983;
"Arguelles Seen As Hard Working, Low Key, Moderate," February 25, 1987;
"The Whole Court: Convictions Will Stand More Often," March 2, 1987;
"Lewis To Leave Bench And Join Latham Watkins," March 13, 1987;
"Bailey Sets Sights On Legal 'Top Gun' School," March 23, 1987;
"County Bar Directors OK $886,000 Budget For 1991," 1990;
"County Bar Votes To Favor Prop. 115 On June's Ballot," May 3, 1990;
"Law Briefs," Unknown date in 1991-92;
"Bar Fence-Sits On Phone Toll Plan For Court," Summer 1991;
"The Local Scene," July 15, 1991;
"Battaglia Still Enjoys His Baseball Days," July 17, 1991;
"What is Research On Attorney's Worth?" March 11, 1992;
"County Bar, Rutter Group To Part Ways," March 18, 1992;
"County Bar Focuses On Women Lawyers," March 25, 1992;

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"Law Briefs," May 1992;
"Law Briefs," May 13, 1992;
"Law Briefs," May 22, 1992;
"Law Briefs," September 23, 1992;
"Local Scene," September 24, 1992;
"Law Briefs," October 7, 1992;
"Attorney Learns He's Not Dealing With An Attorney," November 6, 1992;
"Anthony Battaglia Takes To The Bench For Retiring McCue," November 16, 1993;
"Local Scene-Dicta Magazine," June 3, 1996;

SAN DIEGO LOG,
"Million-dollar Award Given To Fisherman," July 15, 1983;

SAN DIEGO UNION TRIBUNE,
"Fisherman Settles For $1 Million," Morning Edition, July 2, 1983;
"Fisherman settles suit for million," Evening Edition, July 2, 1983
"Law school here seeks program on court skills," May 15, 1987;
"They soared to profession's heights, overcame sexism," May 26, 1992;
"New citizens beam with pride," September 18, 2004.

THE DAILY CALIFORNIAN,
"True-blue American," September 8, 1995.

I have been interviewed or have spoke on television four times that I recall. I have video of two of programs:

Administrative Office of the United States Courts Program "In Camera", a panel discussion the 40th anniversary of the Magistrate Judges System. October 2008. I spoke as President of the Federal Magistrate Judges Association. A video copy is supplied.

KPBS San Diego Public Television Program, "Crisis in the Courts" 1992 panel discussion on the state of the legal profession. I spoke as President of the San Diego County Bar Association. A video copy is supplied.

I do not have a tape of my 1992 appearance on the "Roger Hedgecock Television Show," on Station KNSD in San Diego. This was a panel discussion on the legal profession. KNSD was owned by Gillet Communications at the time. It went into bankruptcy in 1992, has sold several times and is now the NBC affiliate in San Diego operating as Channel 7/39 located at 225 Broadway, San Diego, CA, 92101.

I also spoke at a program titled "The Justice System: What's in it for Me?" on April 28, 1992. It was televised by Cox Cable Channel 4, San Diego. I do not have a copy of the video. I do have a copy of the program brochure and a copy of that is provided. Cox Cable Channel 4 San Diego is owned and operated by Cox Communications, located at 5159 Federal Blvd, San Diego, CA 92105.

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

On November 15, 1993, I was appointed a United States Magistrate Judge of the United States District Court for the Southern District of California for an eight-year term. I was reappointed to that office for a second eight-year term on November 15, 2001, and reappointed for a third eight-year term November 15, 2009. The Court has jurisdiction over federal criminal offenses and federal civil claims.

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

I have tried 23 cases to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	30%
bench trials:	70%
civil proceedings:	95%
criminal proceedings:	5%

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

See attached list of opinions and orders.

b. 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) Sesi v. Signal Landmark aka Coronado Landmark, et al., U.S. District Ct., So. Dist. of Cal., Case No. 91cv1057 B. This was an action for injunctive relief and damages related to the dumping of hazardous waste on a significant number of acres in Otay Mesa. Federal and state claims were alleged. Prior to assignment of the case to me, plaintiff had settled with Signal Landmark and the City of Coronado and the funds were placed in a Court supervised account. I assumed supervision of the court fund and continue to monitor the parties' efforts to clean up the property. I actively managed the case with regard to the remaining claims of plaintiffs against Signal Landmark, the City of Coronado, and 17 independent truckers who were involved with the placement of various substances on the premises allegedly leading to the hazardous contamination. Through years of negotiation, including coverage issues with defendants' insurers, these cases were ultimately settled. This case also generated two other lawsuits, Sesi v. Prudential

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and Maryland Casualty v. Sesi related to coverage disputes, and mortgage interests in the properties and in the settlement funds deposited with the Court. These matters were also resolved by court-supervised settlements. There are no particular orders or judgments that reflect the significance of this case. The case is significant because of the volume of issues, parties and related litigation that was settled without expensive litigation or extended trial and motion proceedings. In fact, I still oversee the cleanup of the toxic waste efforts and periodically approve payment requests for ground water monitoring and site up keep under continuing jurisdiction agreed to by the parties. These requests are paid through funds held in trust by the district court.

Plaintiffs' counsel: Richard Opper, 225 Broadway, Suite 1900, San Diego, California 92101, (619) 231-5858; Charles Hoge, 350 10th Avenue, San Diego, CA 92101, (619) 231-8666; Donald McGrath, 3368 Governor Drive, Suite 223 F, San Diego, CA 92122, (619) 990-7788.

Defense counsel: Barry Sandals, deceased; Steven T. Erb, 11440 West Bernardo Court, Suite 204, San Diego, CA 92127-1643, (858) 487-2728; R. Michael Jordan, 1320 Columbia Street, Suite 200, San Diego, CA 92101,(858) 626-2770; William L. Fischbeck, 5464 Grossmont Center Drive, Third Floor, La Mesa, CA 91942-3035, (619) 464-1200; W. Patrick Grimm, 550 West C Street, Suite 1100, San Diego, CA 92101-3532, (619) 231-8802.

(2) Sena v. General Dynamics Corporation, U.S. District Ct., So. Dist. of Cal., Case No. 91cv0965 B. This was a class action claim filed under the Federal Fair Labor Standards Act and the California and Arizona Labor Codes by and on behalf of salaried employees of General Dynamics who alleged that they were not paid overtime but were docked for absences of less than one day in violation of the law. The class involved a potential 18,000 members. Eleven hundred were eventually joined and the claims administered and settled. In addition to management and oversight of the process of the case and settlement, I was referred the issue of plaintiffs' counsel's attorney's fees by District Judge Rudi Brewster and issued a Report and Recommendation with regard to the appropriate fees for plaintiff's counsel in the case. The Report and Recommendation was accepted by the district judge on the case and became the order of the court. A copy is provided.

Plaintiffs' counsel: Robert D. Rose, 501 West Broadway, Suite 1900, San Diego, California 92101, (619) 338-6500.

Defense counsel: Jack Halgren, 333 South Grand Avenue, Los Angeles, California 90071-3197, (310) 276-5988.

(3) Stothers v. Ace Parking Management, Inc. U.S. District Ct., So. Dist. of Cal., Case No. 95cv1552 J. This was a class action under the Americans with Disabilities Act filed on behalf of disabled members of the San Diego community

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against Ace Parking. The action related to numerous violations on the over 100 parking lots managed by Ace Parking and preventing access to the premises to disabled members of the community. Setting early and intensive settlement conferences, a settlement was reached on behalf of the class to remediate the alleged violations and compensate the community for the alleged denial of access. I monitored compliance of the remediation over a three year schedule. There are no particular orders or judgments that reflect the significance of this case.

Plaintiffs' counsel: Richard M. Valdez, 402 West Broadway, Suite 1700, San Diego, California 92101, (619) 235-5655.

Defense counsel: John R. Wertz, 945 Fourth Avenue, San Diego, California 92101, (619) 233-1888.

(4) Covert v. Uniroyal Goodrich Tire Company, U.S. District Ct., So. Dist. Of Cal., Case No. 90cv0551 S. This was a products liability action based upon the claimed defect of a Uniroyal tire alleged to have injured plaintiff. The case was settled after extensive settlement discussions and significant discovery. The discovery issues with regard to confidential and proprietary information related to product manufacture, product testing, and lawsuit history were all handled through a series of discovery conferences minimizing motion time and delay. There are no particular orders or judgments that reflect the significance of this case.

Plaintiff's counsel: Michael Goldstein, 120 Birmingham Drive, Suite 200, Cardiff, California 92007, (760) 436-1801.

Defense counsel: Hon. William McCurine, U.S. Magistrate Judge, 940 Front Street, Room 1185, San Diego, California 92101, (619) 557-6624.

(5) In the Matter of the Extradition of Emilio Valdez Mainero, 950 F. Supp. 290 (S.D. Cal. 1996); and, In the Matter of the Extradition of Emilio Valdez Mainero 990 F. Supp. 1202 (S.D. Cal. 1997). This was an extradition proceeding against two alleged members of the Arrellano-Felix Drug Cartel. The Republic of Mexico sought extradition of Mr. Valdez, as well as Mr. Hodoyan, for a variety of crimes under the laws of Mexico. The case raised significant issues with regard to bail, extradition proceedings, the procedure with regard to extradition proceedings, and the issue of a humanitarian exception to extradition. The first reported decision (cited above) dealt with the applicability of bail in these proceedings; and, the second decision (cited above) dealt with general extradition issues. I denied the extraditees bail in these cases and certified them for extradition to Mexico.

Plaintiff's counsel: Hon. Gonzalo Curiel, San Diego Superior Court, (619) 450-7706, San Diego County Superior Court, Family Law Court, 1555 Sixth Avenue, San Diego, California 92101.

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Defense counsel: Michael Pancer, (619) 885-3734, 105 W. F Street, Fourth Floor, San Diego, California 92101.

(6) United States v. Savchenko, 201 F.R.D. 503 (S.D. Cal. 2001). This case concerned the seizure of a Belizean fishing vessel, the "Svesda Maru" on international waters. A search of the vessel led to the discovery of approximately 12 metric tons of cocaine. Ten crewmen on the vessel were detained and transported to San Diego, California, and prosecuted for violation of laws of the United States. I handled the initial arraignment and detention hearings, including motions with regard to the jurisdiction of the United States to prosecute this case and challenges based on the delay in transporting the defendants from the high seas to the court in Southern California. I ruled that the time associated with travel from the high seas to court was not unreasonable and denied defendants' motion to dismiss. The decision was not appealed. After the initial proceedings, the United States District Judge referred issues of discovery to me for handling. The issues were related to maintaining the vessel cargo during the litigation and, in significant part, the discovery of expert materials and government sensitive documents. I issued these discovery rulings orally from the bench.

Plaintiff's counsel: Hon. William Gallo, (619) 557-6384, 940 Front Street, Room 1101, San Diego, California 92101; Karen Moore (619) 557-5104, 880 Front Street, Room 6294, San Diego, California 92101.

Defense counsel: Jeremy D. Warren, (619) 234-4433, 550 West C Street, Suite 1900, San Diego, California 92101; Ben Coleman, (619) 794-0420, 1350 Columbia Street, Suite 600, San Diego, CA 92101; Mark S. Windsor, (619) 699-5915, 964 Fifth Avenue, Suite 214, San Diego, California 92101; Mary Frances Prevost, (619) 260-8132, 3115 Fourth Avenue, San Diego, California 92103; Russell S. Babcock, (619) 531-0887, 1400 Sixth Avenue, Suite 210B, San Diego, California 92101; Michael Crowley, (619) 238-5700, 110 West C Street, Suite 2100, San Diego, California 92101; Charles Guthrie, (619) 233-8044, 444 West C Street, Suite 140, San Diego, California 92101-3596; Robert Carriedo, (619) 232-0900, 105 West F Street, Suite 203, San Diego, California 92101-6036; David H Bartick, (619) 231-8075, 105 West F Street, Suite 306, San Diego, California 92101-6036; and Elmer Joseph Cox, (619) 233-0290, 1140 Union Street, Suite 213, San Diego, California 92101.

(7) Johnson v. Nelson, 142 F. Supp. 2d 1215 (S.D. Cal. 2001). This was a Habeas Petition referred for my handling by the district judge. My Report and Recommendation was adopted by District Judge Whelan. The case was significant as it raised issues of first impression under the California Sexually Violent Predator (SVP) Act, California Welfare and Institutions Code §6600, *et seq.* I ruled that the state court determination that petitioner committed "substantial sexual conduct" was not unreasonable, that the commencement of

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civil commitment proceedings while petitioner was in custody was not unreasonable, and that petitioners procedural due process rights were not violated.

Plaintiff was pro se.

Defense counsel: Janelle Boustany, 10235 Gumbark Place, San Diego, California 92131. Listed by the California State Bar as an inactive member since Jan. 17, 2009 with no phone number available.

(8) Perez v. City of Escondido, 165 F. Supp. 2d 1111 (S.D. Cal. 2001). This was an action by a minor who was shot by the police, his minor sister, and his mother against the City of Escondido. In the handling of this case, an issue arose with regard to the federal court's jurisdiction to grant relief from the California Tort Claims Act requirement for the timely submission of a claim. I ruled that federal court had jurisdiction to grant relief within the State statutory framework as "a court of competent jurisdiction."

Plaintiff's counsel: Carl M Lewis, (619) 232-0160, 1551 Fourth Avenue, Suite 303, San Diego, California 92101; Leon J Saad, (619) 230-8529, 1551 Fourth Avenue, Suite 303, San Diego, California 92101.

Defense counsel: Mark A. Waggoner, Office of the City Attorney, (760) 741-4608, Civic Center Plaza, 201 North Broadway, Escondido, California 92025-2798.

(9) Salmo v. U.S. Dep't of Agriculture, 226 F.Supp.2d 1234, 2002 WL 31322545, (S.D. Cal. 2002). This was a case of first impression with regard to jurisdiction of the court to review the decision of the Food Nutrition Service of the United States Department of Agriculture, disqualifying the plaintiff from participating in the Federal Food Stamp Program. I ruled the court lacked jurisdiction to review a decision of the United States Department of Agriculture.

Plaintiff's counsel: Alexander W Tucker, (619) 231-2177, 402 W Broadway 27th Fl San Diego, California 92101.

Defense counsel: Cindy M. Cipriani, Assistant U.S. Attorney, (619) 557-7390, 880 Front Street, Room 6293, San Diego, California 92101.

(10) Thompson v United States of America, U.S. Dist. Ct., So. District of Cal., Case No. 03cv2541 J (AJB). This was the first of approximately fifty cases filed against the United States for damages associated with the "Pines Fire" near Julian, California. On July 2002, a military helicopter struck a power line in Banner Canyon causing a fire to erupt. The fire burned thousands of acres of land, numerous houses and personal effects of the neighboring land owners. Through numerous settlement-conferences, the case was settled. Significantly, the court issued a mediator's recommendation on the legal basis for damages of the various

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items lost, including real property, forest land, and personal items of all types. This guided the parties to settlement. The legal analysis in the mediator's recommendation served as a base line in the remaining cases. The remaining cases were divided among me and two colleagues. All of the Pines Fire cases settled before trial, the last one before me in early 2009.

Plaintiff's counsel: Robert G. Steiner, (619) 236-1414, 600 West Broadway, Ste 2600, San Diego, California 92101.

Defense counsel: Thomas Reeve, Jr., Assistant U.S. Attorney, (619) 557-5662, 880 Front St, Room 6253, San Diego, California 92101.

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

(1) In the Matter of the Extradition of Emilio Valdez Mainero, 990 F. Supp. 1202 (S.D. Cal. 1997).

Plaintiff's counsel: Hon. Gonzalo Curiel, San Diego Superior Court, (619) 450-7706, San Diego County Superior Court, Family Law Court, 1555 Sixth Avenue, San Diego, California 92101.

Defense counsel: Michael Pancer, (619) 885-3734, 105 W. F Street, Fourth Floor, San Diego, California 92101.

(2) United States v. Savchenko, 201 F.R.D. 503 (S.D. Cal. 2001).

Plaintiff's counsel: Hon. William Gallo, (619) 557-6384, 940 Front Street, Room 1101, San Diego, California 92101; Karen Moore (619) 557-5104, 880 Front Street, Room 6294, San Diego, California 92101.

Defense counsel: Jeremy D. Warren, (619) 234-4433, 550 West C Street, Suite 1900, San Diego, California 92101; Ben Coleman, (619) 234-8467, Federal Defenders, 225 Broadway, Suite 900, San Diego, California 92101; Mark S. Windsor, (619) 699- 5915, 964 Fifth Avenue, Suite 214, San Diego, California 92101; Mary Frances Prevost, (619) 260-8132, 3115 Fourth Avenue, San Diego, California 92103; Russell S. Babcock, (619) 531-0887, 1400 Sixth Avenue, Suite 210B, San Diego, California 92101; Michael Crowley, (619) 238-5700, 110 West C Street, Suite 2100, San Diego, California 92101; Charles Guthrie, (619) 233-8044, 444 West C Street, Suite 140, San Diego, California 92101-3596; Robert Carriedo (619) 232-0900, 105 West F Street, Suite 203, San Diego, California 92101-6036; David H. Bartick, (619) 231-8075, 105 West F Street, Suite 306, San Diego, California 92101-6036; and Elmer Joseph Cox, (619) 233-0290, 1140 Union Street, Suite 213, San Diego, California 92101.

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(3) Johnson v. Nelson, 142 F. Supp. 2d 1215 (S.D. Cal 2001).

Plaintiff was pro se.

Defense counsel: Janelle Boustany, 10235 Gumbark Place, San Diego, 92131. She is listed by the California State Bar as an inactive member since 01/17/2009. No phone number available.

(4) Perez v. City of Escondido, 165 F. Supp. 2d 1111 (S.D. Cal. 2001).

Plaintiff's counsel: Carl M Lewis, (619) 232-0160, 1551 Fourth Avenue, Suite 303, San Diego, California 92101; Leon J. Saad, (619) 230-8529, 1551 Fourth Avenue, Suite 303. San Diego, California, 92101.

Defense counsel: Mark A. Waggoner, Office of the City Attorney, (760) 741-4608, Civic Center Plaza, 201 North Broadway, Escondido, California 92025-2798.

(5) Salmo v. U.S. Department of Agriculture, 226 F.Supp.2d 1234 (S.D. Cal. 2002).

Plaintiff's counsel: Alexander W Tucker, (619) 231-2177, 501 Broadway, Suite 1660, San Diego, California 92101.

Defense counsel: Cindy M. Cipriani, 619) 557-7390, 880 Front Street, Room 6293, San Diego, California 92101.

(6) Lovell v. Poway 847 F. Supp. 780 (S.D. Cal. 1994) *aff'd*: 79 F.3d 1510, *superseded rev'd*: 90 F.3d 367 (9th Cir. 1996).

Plaintiff's counsel: Elizabeth Schulman, 1551 Fourth Avenue, Suite 50 San Diego, CA 92101-3153, (619)238-0303.

Defense counsel: Christopher Welsh, 401 West "A" Street, 15th Floor, San Diego, CA 92101, (619) 232-3122.

(7) National Union Ins. v. Liberty Mutual Ins, 885 F. Supp. 202 (S.D. Cal. 1994).

Plaintiff's counsel: James R. Rogers, 125 South Highway 101 Suite 101, Solana Beach, CA 92075, (858)792-9900.

Defense counsel: Mary Beth Sipos, Musick, Peeler and Garrett, 652 Kenneth Hahn Hall of Administration, 500 West Temple Street, Suite 3400, Los Angeles, CA 90012-3193, (213)621-9800.

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(8) Medical Imaging Ctr. v. Lichtenstein, 1996 WL 156926 (1996), Fed. Sec. L. Rep., p. 99, 025.

Plaintiff's counsel: James William Baker, Latham and Watkins, 701 B Street, Suite 2100, San Diego, CA 92101-8197 (619) 236-1234.

Defense counsel: Donald G. Rez, Sullivan Hill Lewin, Rez and Engel, 550 West C Street, Suite 1500, San Diego, CA 92101-3540, (619) 233-4100.

(9) Robert Powers, et al v. Eichen, 961 F. Supp. 233 (S.D. Cal. 1997).

Plaintiff's counsel: Hon. Jan M. Adler, U.S. District Court, 940 Front Street, San Diego, CA 92101 (619) 557-5585.

Defense Counsel: William E Grauer, Cooley Godward Kronish, 4401 Eastgate Mall, San Diego, CA 92121-9109, (858) 550-6000.

(10) Galarza v. United States, 179 F.R.D. 291 (S.D. Cal. 1998).

Plaintiff's counsel: Michael A. Feldman, 2398 San Diego, Suite B, San Diego, CA 92110-2834 (619)297-5811.

Defense counsel: Stephan Poliakoff, U.S. Attorney's Office Southern District of California, Civil Division, 880 Front Street, Suite 6253, San Diego, CA 92101; (619) 557-5662.

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

I know of no cases in which certiorari was requested or granted.

e. 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.

(1) Lovell v. Poway Unified School Dist., 847 F. Supp. 780 (S.D. Cal. 1994) *aff'd*: 79 F.3d 1510, *superseded rev'd*: 90 F.3d 367 (9th Cir. 1996). Lovell, a high school student, allegedly threatened a school guidance counselor that she was going to shoot her if she didn't get changes made to her schedule. The school suspended Lovell for her statement, and she brought suit against the school district. Lovell alleged free speech and due process violations under the U.S. Constitution and a state statute preserving a student's right of free speech on campus. There were contested versions of the exact statement. About three hours later, the counselor mentioned the incident to the Assistant Principal, who initiated disciplinary action.

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The case was tried on stipulated issues, and while the evidence was unclear as to the exact nature of the words used, I found that neither version met the "threat" which is excluded under Ninth Circuit authority from First Amendment protection. I also found the school had provided Lovell her due process rights. Initially, the Ninth Circuit affirmed on March 29, 1996. On July 18, 1996, the Court of Appeal withdrew its initial opinion and, following a "de novo review of the facts," found the speech unprotected.

(2) Springfield v. United States, 873 F. Supp. 1403 (S.D. Cal. 1994) *rev'd*: 88 F.3d 750 (9th Cir. 1996). This case involved the starting date for the statute of limitations on the government's right to assess taxes. Resolving the disputed evidence at trial in favour of the government, I found the assessment timely and denied petitioners motion for judgment. I also denied petitioners claim that he was entitled to a "safe harbor" under the assessments based on a good faith. On appeal, the government counsel "conceded" for the first time that petitioner's evidence was more persuasive on the good faith issue. The Court of Appeal implicitly affirmed my finding on the statute of limitation but reversed on the safe haven treatment in light of the changed position on the evidence.

The following are Reports and Recommendations rejected in part by a U.S. District Judge or accepted in part in Habeas Corpus Petitions filed by state prisoners contending U.S. Constitutional violations in their state court convictions or Section 1983 civil rights claims challenging conditions of confinement on constitutional grounds.

(3) Mungia v. Frias, 2009 U.S. Dist. LEXIS 88528 (S.D. Cal., Sept. 24, 2009). I recommended that defendants Motion to Dismiss be granted in this Section 1983 action against a large number of defendants. On review, the recommendation to dismiss was granted on all but the two defendants who failed to join the motion. The district judge's order clarified the scope of the dismissal.

(4) Williams v. Walker (1), 2008 WL 691722, S.D. Cal., January 25, 2008. Petitioner, a state prisoner filed a Petition for a writ of habeas corpus regarding his conviction for twelve counts of robbery with a personal firearm allegation on each count being found true. The Petition presented five claims, four of which were previously presented to the California Supreme Courts and exhausted and one unexhausted. The Respondent filed a motion to dismiss claiming the petition was time barred and was a mixed petition of exhausted (Claims 1,2,3,5) and unexhausted (Claim 4) warranting dismissal.

Petitioner responded with an opposition, a motion to amend the Petition and a motion to stay and hold the federal petition in abeyance while he exhausted the unexhausted claim, and three new claims pending in state court.

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I recommended that the Motion to Stay be denied for a lack of a showing of good cause for not exhausting Claim 4 and three other sentencing claims earlier. I recommended that the Motion to Amend be denied, the Respondents Motion to Dismiss the claims as time barred be denied, and the Motion to Dismiss the Mixed Petition be granted. Both parties objected.

(5) Williams v Walker (2), 2008 WL 691721, S.D. Cal., March 12, 2008. In addressing the parties objection and the Report and Recommendation, the District Judge Adopted in part and declined to adopt in part the findings and recommendation in 2008 WL 691722, S.D. Cal., January 25, 2008.

The district judge adopted my findings that the Petition was not barred by the Statute of Limitations. The district judge declined to follow my recommendation to stay the federal petition based on a reply mailed before my recommendation but received and docketed after. The reply supplied the requisite good cause to warrant the stay. In light of the stay, the district judge denied the Motion to Amend as moot and the Motion to Dismiss the mixed petition.

(6) Williams v. Walker (3), 2009 WL 4040068, S.D. Cal., February 05, 2009. The stay was lifted and Petitioner filed an amended petition asserting eight claims. Respondent answered, Petitioner replied (called a "traverse") and the matter was considered on the complete record. Williams claimed that (1) his trial was unfair because evidence of the separate offenses was cross-admissible; (2) he was not provided adequate notice of the factual basis for the state's allegation that his 1978 conviction was a prior strike under California's three strikes law; (3) the sentencing court improperly used dismissed gun allegations from his 1974 and 1978 convictions to treat the convictions as prior strikes; (4) the sentencing court erroneously imposed sentences for three prior strikes, twice; (5) he received ineffective assistance of appellate counsel; (6) there was insufficient evidence to find a 1996 for felony qualified as a prior strike; (7) there was insufficient evidence to find a prior conviction involved great bodily injury or use of a deadly weapon constituting a prior strike; and (8) his right to be free from double jeopardy was violated when his prior convictions were used to sentence him under California's Three Strikes Law.

I recommended the Petition be denied finding that the Petition was timely, that Claims 1 through 3 failed on their merits and Claims 4 through 8 were procedurally defaulted. Petitioner filed objections.

(7) Williams v. Walker (4), 2009 WL 4040091, S.D. Cal., November 18, 2009. In reviewing the recommendations and Petitioner's objections, the district judge accepted the timeliness recommendation, rejected as to procedural default on Claims 4 through 8 and accepted as to lack of merit on Claims 1 through 3. The district judge disagreed with the adequate and independent finding on the state procedural rules, concluding that the petitioner was able to show that the procedural rules were not consistently applied. The district judge then reviewed

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petitioners claims 4 through 8 for merit, found them meritless and ordered the Petition dismissed. The findings of the district judge are now on appeal.

(8) Almaraz v. Tilton, 2007 WL 4754817, S.D. Cal., December 13, 2007. I recommended denial of the habeas petition in total. The district judge agreed, but made minor corrections on the date calculations in denying the petition.

(9) Rayford v. Giurbino, 2008 WL 5758795, S.D. Cal., October 17, 2008. I recommended granting respondents motion to dismiss a Section 1983 complaint for failure to exhaust administrative remedies. With his objections, Petitioner filed a motion for leave to amend. A late-served defendant filed an additional motion to dismiss. The district judge found that there were new facts revealed after the recommendation through the motion to amend and the additional motion to dismiss that changed the outcome. So, he granted the motion to dismiss and the motion for leave to amend.

(10) Moore v. Ollison, 2008 WL 1766926, S.D. Cal., April 15, 2008. I recommended that the petition be denied. Judgment was entered by the district judge. Petitioner sought relief from judgment stating he never received the recommendation. The district judge granted and agreed to review objections. The district judge accepted the recommendations in full and overruled all objections and the judgment was again entered.

(11) Romero v. Ryan, 2007 WL 2993030, S.D. Cal., August 27, 2007. I recommended the denial of this habeas petitions. The district judge agreed in all respects and accepted the recommendation, however noted that the reference to petitioners "failure to instruct" claims should have been characterized as "whether Petitioner had submitted sufficient evidence to support his theory of the defense."

(12) Delander v. Hubbard, 2008 WL 2622857, S.D. Cal., February 14, 2008. I recommended that a motion to dismiss plaintiff's habeas petition be granted upon a finding that the Petition was time barred. The district judge disagreed with my finding that petitioner was not entitled to equitable tolling and denied the motion to dismiss. On full review, the petition was denied on the merits.

(13) Marella v. Terhune, 562 F. 3d 983 (9th Cir. 2009). Marella appealed a district judge's dismissal of his civil rights action for failure to exhaust administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. §1997e(a). Marella was stabbed in prison and spent two days in the hospital and was then placed in administrative segregation, for his protection, during the 15 days available to file an administrative claim. Marella admitted his claim was filed untimely, but asserted he did not have the forms or the ability to file within the required time. The district judge adopted my report and recommendation in this regard. These rulings were based on the U.S. Supreme Court Case of Woodford v. Ngo, 126 S. Ct. 2378 (2006) wherein the Ninth Circuit was reversed where it construed the State's exhaustion of remedies regulations to provide an

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exception where the prisoner was unable to file. The Court of Appeal reversed and remanded the case for further development of the record on whether Marella had access to the necessary forms and an ability to file within the 15 day period. This matter is proceeding at this time. A copy of the Report and Recommendation and the District Judge's order adopting it are provided.

(14) Villalobos v Hernandez, U.S. District Ct., So. Dist. of Cal., Case No. 09cv363 L (AJB), February 11, 2010. I recommended that defendant's motion to dismiss the Habeas Petition be granted finding the petition time barred under 28 U.S.C. § 2244(d). Petitioner sought "equitable tolling" of various time periods due to prison lockdowns and his alleged inability to read or write English and secure the assistance of legal materials in Spanish or a translator's assistance. I found petitioner competent in reading and writing English based on the record as a whole, and that did not find that the petitioner had shown he had made diligent efforts to secure legal materials in Spanish or a translator's assistance. The district judge disagreed stating that these conclusions were not "unequivocally supported by the record." The district judge remanded the matter back to me for an evidentiary hearing. That hearing is set for July 23, 2010. Copies of the Report and Recommendation and the Remand order are provided as attachments.

f. 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 estimate that 85-90% of my decisions are not formally published. I have not submitted a decision for publication since approximately 2005. Many decisions granting or denying continuances or dealing with discovery matters are issued weekly, along with other more substantive rulings. Every decision or order I write is filed. Historically this was manually and recently it is electronically. The case files are and will be available to the public electronically for those in the database. Older paper files which have closed are stored at a federal records retention center. Westlaw, Lexis and others make a variety of orders and decisions available electronically and publish some in official reports.

g. 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.

All of the opinions addressing habeas corpus or Section 1983 civil rights claims address significant constitutional issues. All are available on Westlaw.

Chadwick v. San Diego Police Dept, 2010 WL 883839, S.D. Cal., March 8, 2010
Threats v. Cate, 2010 WL 816146, S.D. Cal., March 3, 2010
Scalf v. Salazar, 2010 WL 744363, S.D. Cal., February 10, 2010
Harris v. Martel, 2009 WL 5909117, S.D. Cal., November 6, 2009
Mathis v. Uribe, 2009 WL 3398791, S.D. Cal., October 20, 2009
Munguia v. Frias, 2009 U.S. Dist. LEXIS 72420, S.D. Cal., August 12, 2009

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Marella v. Terhune, 562 F. 3d 983 (9th Cir. 2009)
Bjorstrom v. Gonzalez, 2009 WL 1228484, S.D. Cal., May 05, 2009
Pineda v. Garcia, 2009 WL 1228491, S.D. Cal., May 04, 2009
Barno v. Hernandez, 2009 WL 734145, S.D. Cal., March 17, 2009
Sullivan v. Cate, 2009 WL 536602, S.D. Cal., March 02, 2009
Williams v. Walker, 2009 WL 4040091, S.D. Cal., November 18, 2009
Williams v. Walker, 2009 WL 4040068, S.D. Cal., February 05, 2009
Almaraz v. Tilton, 2009 WL 249780, S.D. Cal., January 30, 2009
Munguia v. Frias, 2009 U.S. Dist. LEXIS 88538, S.D. Cal., January 27, 2009
Castillo v. Small, 2009 WL 188888, S.D. Cal., January 23, 2009
Thorns v. Ryan, 2009 WL 230035, S.D. Cal., January 23, 2009
Romero v. Ryan, 2009 WL 113773, S.D. Cal., January 05, 2009
Turner v. Tilton, 2008 WL 5273526, S.D. Cal., December 18, 2008
Rayford v. Giurbino, 2008 WL 4997607, S.D. Cal., November 24, 2008
Rayford v. Giurbino, 2008 WL 5758795, S.D. Cal., October 17, 2008
Navarro v. Bach, 2008 WL 4492606, S.D. Cal., September 29, 2008
Munguia v. Frias, 2008 WL 4370272, S.D. Cal., September 25, 2008
Xayasomoloth v. Dexter, 2008 WL 5875534, S.D. Cal., August 22, 2008
Moore v. Ollison, 2008 WL 1766926, S.D. Cal., April 15, 2008
McElroy v. Castro, 2008 WL 2025286, S.D. Cal., April 04, 2008
Navarro v. Bach, 2008 WL 753959, S.D. Cal., March 19, 2008
Mabry v. Scribner, 2008 WL 782572, S.D. Cal., March 19, 2008
Orange v. Tilton, 2008 WL 734255, S.D. Cal., March 18, 2008
Hayes v. Wong, 2008 WL 564637, S.D. Cal., February 29, 2008
Delander v. Hubbard, 2008 WL 2622857, S.D. Cal., February 14, 2008
Campbell v. Hernandez, 2008 WL 398859, S.D. Cal., February 11, 2008
Degadillo v. Adams, 2008 WL 331396, S.D. Cal., February 05, 2008
Williams v Walker (2), 2008 WL 691721, S.D. Cal., March 12, 2008
Williams v. Walker, 2008 WL 691722, S.D. Cal., January 25, 2008
McElroy v. Castro, 2008 WL 110983, S.D. Cal., January 10, 2008
Munguia v. Frias, 2008 WL 80993, S.D. Cal., January 08, 2008
Romero v. Ryan, 2007 WL 4984060, S.D. Cal., December 21, 2007
Bratton v. Hernandez, 2007 WL 4885858, S.D. Cal., December 21, 2007
Almaraz v. Tilton, 2007 WL 4754817, S.D. Cal., December 13, 2007
Snipes v. Tilton, 2007 WL 3023471, S.D. Cal., October 15, 2007
Tanner v. Kramer, 2007 WL 2853930, S.D. Cal., September 26, 2007
Romero v. Ryan, 2007 WL 2993030, S.D. Cal., August 27, 2007
Thorns v. Ryan, 2007 WL 2262862, S.D. Cal., August 06, 2007
Rosales v. Horel, 2007 WL 1852186, S.D. Cal., June 26, 2007
Behrazfar v. U.S. Dept. of Homeland Sec., 2007 WL 1381609, S.D. Cal., May 07, 2007
Miani v. Ollison, 2007 WL 1975606, S.D. Cal., March 12, 2007
Jackson v. Ollison, 2007 WL 433188, S.D. Cal., January 23, 2007
Townes v. Paule, 407 F.Supp.2d 1210, 2005 WL 3591981, S.D. Cal., December 13, 2005

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Johnson v. Nelson, 142 F. Supp.2d 1215, 2001 WL 418719, S.D. Cal., April 10, 2001
Nelson v. Silverman, 888 F. Supp. 1041, 1995 WL 349046, 76 A.F.T.R.2d 95-5567, S.D. Cal., June 06, 1995
Lovell v. Poway Unified School Dist., 847 F. Supp. 780 (S.D. Cal. 1994) *aff'd*: 79 F.3d 1510, *superseded rev'd*: 90 F.3d 367 (9th Cir. 1996).

h. 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;

In compliance with the Code of Conduct for United States Judges, my Court has installed an automated conflicts system, which I check daily through automatic alerts that are sent to me by email. I enter all attorneys with whom any conflicts exist as well as companies in which I hold stock or mutual fund companies for which I have mutual funds. The attorneys entered are those with whom I have personal friendships or with whom I have past practice affiliations. I also enter the names of attorneys who sit on any reappointment merit panels when I am under consideration and any judicial selection committees when I apply for potential appointment. I have recused in a number of cases where one of the attorneys, companies or listed individuals is involved in a case I am assigned. I do not keep records of those instances.

My computerized list is reviewed periodically for updates and changes. I also follow the Code of Conduct for United States Judges when I otherwise discover any situation where recusal is required or where any apparent appearance of impropriety could be suggested.

I have no record or memory of any person requesting that I recuse in any case I have been assigned.

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

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

I was appointed by the San Diego County Board of Supervisors to the San Diego County Law Library Board of Trustees 1992 to 1993 and the Law Library Justice Foundation Trustees 1992 to 1993. The two positions were intimately connected. I was Vice President of the Law Library Board in 1993.

I have not held other 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.

Except by voter registration, I have not been a member or held any office of a 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;

I have not served as a clerk to a judge.

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

1980-1981
Anthony J. Battaglia Attorney at Law
1200 Third Avenue, Suite 1200
San Diego, California 92101
Attorney and Sole Proprietor

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1981-1991
Anthony J. Battaglia, A Professional Corporation
2550 Fifth Avenue, Suite 629
San Diego, California 92103
Attorney

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.

1972-1974
Law Offices of Marinos & Styn
111 Elm Street, Suite 400
San Diego, California 92101
Law Clerk

1974- 1980
Law Offices of John Marin
304 Kalmia Street
San Diego, California 92101
Attorney

1991-1993
Battaglia, Fitzpatrick & Battaglia, A partnership of Professional Corporations
2550 Fifth Avenue
San Diego, California 92103
Attorney and 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.

During my practice I served as a mediator/arbitrator in various capacities. These are summarized below.

San Diego Superior Court Arbitration Panel, 1980 to 1993. I handled over 125 arbitrations referred by the Superior Court and based upon my selection by the counsel for the parties in those actions. Cases were typically automobile accident, premises liability and products liability matters. Hearings were typically one half to one full day in duration.

San Diego Superior Court Pro Tem Panel 1987 to 1993. Assigned two trials that were settled before trial commenced. I was assigned numerous settlement conferences on this panel.

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Panelist San Diego Superior Court 3 Judge Settlement Panel Programs, 1979 to 1993. Heard numerous settlement conferences, (four or five per day) serving one to two days per year as requested by the San Diego Superior Court.

San Diego Superior Court, North County Branch Trial Calendar Settlement Panel Program, Plaintiffs Attorney Coordinator, Panelist, 1987.

San Diego County Bar Association, Attorney Client Fee Arbitration Panelist, 1982 to 1984. As a member of the arbitration panel, I was assigned two to three arbitrations per year. The arbitrations involved disputes between attorney's and their clients over fees. Proceedings involved a single arbitrator for small cases, and a three arbitrator panel for large cases. I served both in the role of the single arbitrator, and a panelist, including presiding arbitrator in these proceedings.

I also served as a private arbitrator in uninsured motorist and malpractice cases. Only six could be called significant legal/factual disputes, which were as follows:

(1) Baker v. Sadick, 162 C.A. 3d 618, 208 Cal. Rptr. 676 (1985). I served as the neutral and presiding arbitrator in this action by a patient against a doctor for negligence in the performance of a breast reduction mammoplasty. The decision of the arbitrators was for damages of approximately $800,000.00 of which $300,000.00 were punitive damages. The case is noteworthy and was taken up on appeal on the issue as to whether or not arbitrators can award punitive damages in this type of proceeding.

(2) Winsett v. Kaiser (1986). I served as an arbitrator appointed by the plaintiff with regard to this malpractice case against Kaiser Foundation Hospitals for negligence in the delivery and care and treatment of a newborn. As a result of the alleged malpractice the child sustained severe mental retardation and disability. The case involved rulings on the applicability of various sections of the Medical Insurance Recovery Compensation Act to the contract proceeding and issues concerning claims for the emotional distress by the parents under various theories. Damages were awarded in the approximate amount of one million dollars either in current cash contributions or the provision of future medical care and/or cash trust funds for those purposes.

(3) Smith v. Tan (1988). This arbitration was between doctors to set apportionment and contribution to the settlement of a malpractice claim for failure to diagnose prostate cancer. I served in the role of neutral and presiding arbitrator.

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(4) Ochoa v. Kaiser (1989). This was an arbitration concerning the failure to properly treat a wound to the plaintiff's right lower extremity. I was appointed as an arbitrator by the plaintiff. Damages were awarded for the lost wages and the general damages associated with the subject injury.

(5) Armstrong v. State Farm (1989). This was a binding arbitration of an uninsured motorist case arising out of an automobile accident. The issues involved causation and liability as the underlying liability for the subject collision was not in dispute.

(6) Taormina v. State Farm (1991). This was a binding arbitration of an uninsured motorist claim concerning issues of causation, injury and damage. Liability for the underlying automobile accident was not in dispute.

b. Describe:

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

My practice was fairly constant over the years. From 1974 to 1980 I handled a high concentration of maritime personal injury cases under the Jones Act, The Death on the High Seas Act and general maritime law. I also handled some products liability and general tort cases.

From 1980 to 1993, my practice had less emphasis on maritime injury cases and more on products liability and third party negligence cases. I was recognized as a specialist in admiralty matters, and granted Proctor in Admiralty status in 1993 by the Maritime Law Association of the United States.

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

My clients were very diverse ranging from injured "blue collar" worker's, many of whom were Mexican, Portuguese, Asian and South American immigrants involved in the maritime industry or construction trades. Some were local union members. Other clients were doctors, dentists and judges.

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.

Throughout my private practice, I appeared in court frequently.

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i. Indicate the percentage of your practice in:

1. federal courts: 35%
2. state courts of record: 60%
3. other courts:
4. administrative agencies: 5%

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.

As an attorney, I tried 23 trials to verdict overall. These included 16 civil jury trials, 10 as lead counsel and 6 as co-counsel. There were 3 civil bench trials as lead counsel, 3 criminal jury trials as lead counsel and 1 criminal bench trial as lead counsel.

I also handled more than 24 Administrative trials with the Department of Labor, the United States Coast Guard and the Social Security Administration representing disabled workers or licensed seamen.

i. What percentage of these trials were:

1. jury: 86%
2. non-jury: 14%

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

While I am a member of the bar of the Supreme Court of the United States, I did not practice before the court as an attorney.

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;

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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) Santos v. Anchor Fishing Co., Ltd., (1983) U.S. District Ct., So. Dist. of Cal., Case No. 82cv1302. Hon. Earl B. Gilliam (*deceased*). I represented the plaintiff. This was an action for compensation for personal injuries by the crewman of a fishing vessel against his employer. In addition to compensatory claims, plaintiff claimed punitive damages from defendants for the failure to provide medical care and temporary disability as required by maritime law. The trial resulted in the first punitive damage award by a jury in a maritime case in the Southern District of California for the failure to pay medical benefits.

Opposing Counsel: Walter Klein, 9601 Wilshire Blvd., Suite 700, Beverly Hills, California 90210-5211.

(2) Ferreira v. Jorge Fishing Co. (1984) U.S. District Ct., So. Dist. of Cal., Case No. 82cv0069. Settled at Settlement Conference before Hon. J. Edward Harris (Ret). This was a case by a crewman of a fishing vessel against his employer and surrounded three unrelated accidents causing various injuries. I represented the plaintiff. Following multiple settlement conferences this case resulted in the first structured settlement in excess of one million dollars for a maritime case in San Diego County.

Opposing Counsel: Joseph Bryans, 350 South Magnolia Avenue, El Cajon, California 92020, (619) 441-1122; Ron House, 4355 Ruffin Road, Suite 205, San Diego, California 92123, (858) 576-2947.

(3) Heater v. SDG&E (1984), San Diego Superior Court Case No. 462131. Settled at a Settlement Conference before Hon. Ben Hamrick (*deceased*). This was a case for personal injuries centered around responsibility for a sawed off parking lot station which extended above ground level by ¼" to 3/8"and caused plaintiff to trip and fall. The case involved a significant issue as to ownership and/or responsibility as it related to utility and street easements. The case was settled at a three-judge settlement panel presided over by Judge Ben Hamrick for a structured settlement to pay guaranteed benefits of $500,000 to the plaintiff, a 55-year old woman, with a broken hip. I represented the plaintiff.

Opposing Counsel: Paul Jurkoic, 7079 Rickrose Terrace, Carlsbad, California 92009, (760) 930-0562; Alejandro Matuk, 401 West A Street, Suite 2350, San Diego, California 92101, (619) 238-1800; Sidney A. Stutz, 401 West A Street, 15th Floor, San Diego, California 92101, (619) 232-3122.

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(4) Leal v. Liberty King, Inc., (1986) U.S. District Ct., So. Dist. of Cal., Case No. 83cv2630. Hon. Edward I. Infante. This was an action by crewman of a fishing vessel against his employer for injuries sustained in two separate occurrences. Prior to trial, the defendant's insurance carrier had gone bankrupt. Plaintiff proceeded to a stipulated judgment of $300,000 and sought collection of the judgment against Starkist Corporation through whom the failed insurance coverage had been placed. Starkist satisfied the judgment prior to the filing of a separate action. I represented the plaintiff.

Opposing Counsel: Walter Klein, 9601 Wilshire Blvd., Suite 700, Beverly Hills, California 90210-5211, (310) 550-4595.

(5) Avila v. Elizabeth C.J. Inc., (1985), U.S. District Ct., So. Dist. of Cal., Case No. 83cv1446 Judge, Hon. Leland C. Nielsen, (*deceased*). This was an action for wrongful death under the Death on the High Seas Act by heirs of crewman aboard a commercial fishing vessel. At commencement of trial, defendant filed for bankruptcy relief in that they had no primary liability coverage with regard to the claim. After obtaining a relief of stay from the bankruptcy court, and bringing the matter to a second trial, defendant defaulted and plaintiff proved a $750,000 judgment for the plaintiff's pecuniary losses for the death of their decedent. The case was then pursued against Excess Insurance Underwriters at Lloyds of London as Avila v. Jennings, et al., San Diego Superior Court Case No. 570647, resulting in a recovery for plaintiff. I represented the plaintiff.

Defense counsel in the insurance case was Lawrence W. Bradley, Jr., Pillsbury Winthrop LLC, 725 S. Figueroa St., #2800, Los Angeles, CA 90017-5443, (213) 488-7256.

Opposing Counsel: William Kammer, 401 B Street, Suite 1200, San Diego, California 92101, (619) 231-4755; Robert Ayling, 4365 Executive Drive, Suite 1600, San Diego, California 92121, (858) 677-1425.

(6) Wood v. Kearny Mesa Toyota, et al., (1987), San Diego Superior Court, Case No. 501264. Settled at Settlement Conference before Judge, Hon. G. Dennis Adams (Ret). This was a products liability case against the manufacturers of a Toyota Pick-Up Truck modified with the use of a "Lift Kit" at the time of original sale. Plaintiff's vehicle rolled on the freeway after a multiple vehicle collision. I took the case over after it was under way for several years. Through multiple settlement conferences with Judge Adams, the entire matter was brought to a settlement. The case was unique in that its conclusion resulted in multiple hearings before the court with regard to the application of Proposition 51 retroactively as ultimate settlement was the result of partial settlements with each defendant. Proposition 51 had just gained passage at the time that this case was in a settlement posture. I represented the plaintiff.

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Opposing Counsel: Dennis Atchley, 2550 Roosevelt Street, Suite 205, Carlsbad, California 92008, (760) 720-9612; Daniel White, 550 West C Street, Suite 950, San Diego, California 92101, (619) 239-0300; James Chodzko, 933 Summer Holly Lane, Encinitas, California 92024, (760) 436-8241.

(7) Medeiros v. SCA Sanitation Services (1980), San Diego Superior Court, Case No. 539340. Settled first day of trial before Judge, Hon. Alpha Montgomery (*deceased*). This was a products liability case for personal injuries against the manufacturer and operator of an industrial trash truck. A portion of the truck lift system failed which in operation causing a piece of steel to detach from the vehicle and strike plaintiff. Injuries included a herniated lumbar disc. Settlement was $205,000 in addition to workers compensation benefits. I represented the plaintiff.

Opposing Counsel: Janet Sobel, P.O. Box 261114, San Diego, California 92196, (858) 578-5577; Hon. Kevin Enright, San Diego Superior Court, 220 West Broadway, San Diego, California 92101.

(8) Jaehn v. Sierra Pacific, et al. (1990), San Diego Superior Court, Case No. 602826. Settled at Settlement Conference before Judge, Hon. Alice Sullivan (Retired), 11512 El Camino Real, Suite 370, San Diego, California 92130, (858) 792-1330. This was an action for personal injuries sustained by an office worker when she slipped on the lobby floor (terrazzo tile) of her place of work. The case was brought against the building owner, the janitor, and the cleaning supply company on negligence and products liability theories. Injuries included a herniated lumbar disc. The case settled for $302,500.00. I represented the plaintiff.

Opposing Counsel: Lori Kanda, West Coast Mortgage 7847 Dunbrook Rd #H, San Diego, California 92126-6305 (858) 693-8980; Dan Grozkrueger, (619) 237-9956, 501 West Broadway, 15th Floor, San Diego, California 92101; Randy Pearlman, address unknown, no longer listed with the State Bar of California.

(9) Kulick v. Hawthorne Rent it Service and Calavar Corp. (1991), San Diego Superior Court, Case No. 61405 before Judge, Hon. Harrison R. Hollywood (*deceased*). This was a products liability action brought by a thirty-three year old electrician who was injured when the self propelled aerial man lift that he was driving failed in normal operation. With the failure, the vehicle rolled down a slope and threw the plaintiff from the operator's platform. The plaintiff suffered a lumbar sprain and a bulging lumbo-sacral disc injury. The jury verdict was for $300,000. I represented the plaintiff.

Opposing Counsel: Luther Horton 225 Broadway, Suite 1400, San Diego, California 92101, (619) 232-1183; Gary Davis, 1320 Columbia Street, Suite 200, San Diego, California 92101, (619) 544-8300.

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(10) Ober v. Get Smart Scaffold, et al. (1991) San Diego Superior Court, Case No. N46403 before Judge, Hon. Irma Gonzales, 940 Front Street, Room 4194, San Diego, California 92101, (619) 557-7107. This was a products liability action brought by a sprinkler fitter who suffered a severe right lower leg injury, including multiple fractures, as a result of being pinned between a self propelled scissor lift and a wall. The vehicle had an unexpected and unintended forward acceleration. The allegation was that the vehicle was defectively designed and the acceleration controls were not properly guarded. The jury returned a defense verdict in this case. I represented the plaintiff.

Opposing Counsel: Warren Dean, 2301 Dupont Drive, Suite 350, Irvine, California 92612, (949) 655-0360.

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

As a litigator, my most significant cases as an attorney are listed in response to Question 17, above.

In 1992 as the President of the San Diego County Bar Association I was a member of a delegation of California Local Bar Presidents who traveled to the State Capitol to meet with the Governor's Chief of Staff regarding support for the veto of legislation limiting State Trial Court Judge's retirement benefits. The meeting lasted thirty minutes and no follow up meeting occurred. The legislation was vetoed.

In 1987, I made courtesy calls on legislators in Sacramento, California, on one day as a member of the Board of Directors of the California Trial Lawyers.

Other than these two instances, I have not performed 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.

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

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customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am a beneficiary of the Battaglia & Battaglia A.P.C. Profit Sharing Plan. Contributions made by the firm to the plan through November 14, 1993, are invested in the plan and will be payable to me at retirement. The assets of the plan are invested in mutual funds (listed on the Net Worth Statement and in the Financial Disclosure Report attached to this questionnaire).

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

No plans, but as appropriate under the Code of Conduct for United States Judges, I hope to continue to speak on occasion at legal education programs including the Annual Judith N. Keep Civil Practice program.

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.

With 16 years already spent on the same court I have very few conflicts with counsel. My wife is a practicing lawyer with occasional matters in the federal court. She is on my automated recusal list. I would recuse on any case she was involved in without exception. I also recuse myself on cases involving lawyers who I practiced with and those who took over cases from my practice when I was appointed in 1993.

I strictly follow the recusal statutes and the guidance of the Code of Conduct for United States Judges, a practice I would continue if confirmed.

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

I have consistently followed the federal recusal statutes and the Code of Conduct for United States Judges. I will continue to do so if confirmed. My Court has installed an automated conflicts checking system, which I check daily through automatic alerts that are sent to me by email. I enter all attorneys with whom any conflicts exist as well as companies in which I hold stock or mutual fund companies for which I have mutual funds. The attorneys entered are those with whom I have personal friendships or past practice affiliations with. II also enter the names of attorney's who sit on any reappointment merit panels when I am under consideration and any judicial selection committees when I apply for potential appointment. The list is reviewed periodically for updates and changes.

Where there is any potential for conflict with a party or counsel, I recuse myself.

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 served on organizations that sponsor free legal service for those in need. These include the San Diego County Bar Association, The San Diego Volunteer Lawyer Program, The Lawyer Referral and Information Service of the San Diego County Bar and the Attorney Referral Service of the San Diego Trial Lawyers. In serving on the oversight boards, I spent hundreds of hours considering and managing programs that provided free or low cost representation, including the Volunteer Lawyers Veteran's Stand Down and Domestic Violence Clinics, the Modest Means Panel, and two referral services which offered free initial consultations to the public on an ongoing basis. These organizations also participated annually in the Law Day programs of free legal services, and provided pro bono services of lawyers as settlement judges and a "People's Law School" to educate the public on their rights.

My specific service is as follows:

San Diego County Bar Association since 1974, Board of Directors 1989 to 1992, President 1992, Vice President 1991, Treasurer 1990.

San Diego Volunteer Lawyers Program, Board of Directors 1989-1992; Executive Committee 1989 to 1991.

Lawyer Referral and Information Service Committee 1990 to 1992

Attorney Referral Service of the San Diego Trial Lawyers, Chairman 1982 to 1985

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I also served on the Board of Trustees of Say No To Drugs, Inc., a nonprofit education and information organization aimed at children and young adults. As a volunteer to the Board, I handled the incorporation process and secured the tax exempt status as well as annually providing corporate minutes and documents from the early 1980's until 1993, all pro bono.

I served on the Executive Committee, Red Boudreau Memorial Benefit Dinner for the St. Vincent De Paul Center for the Homeless 1987. Organization sponsors annual fund raiser for center for the homeless. Original focus was to raise funds for construction of the center. The focus is now the ongoing maintenance and operation of the center.

I served as a member of the Access to Health Care Commission, a non-profit organization sponsored by the San Diego County Medical Society, in the years 1991 and 1992. The mission of the organization was to provide resources for health care for indigent individuals. My role on the committee was as a representative of the legal profession as President of the San Diego County Bar Association.

I served as an officer and chair of the Trial Lawyers Foundation, a non-profit organization that provided benefits for victims of crime not otherwise compensated through private or public means. I was chairman of the foundation in 1987 and 1988 and served as a continuing member of the board and secretary in 1989 and 1990.

26. **Selection Process**:

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

I applied through the Office of United States Senator Boxer by submitting a completed questionnaire, provided on her official website, in March 2009. The application was forwarded to the Senator's selection commission in my jurisdiction. The Chair of the Commission contacted me in August 2009 to set up an interview. I provided the Chair an update to my submission. The interview with the Commission took place on September 10, 2009.

The Department of Justice contacted me on February 14, 2010 advising me that it had received my candidacy. Thereafter, I have had a number of conversations with Department of Justice officials regarding the required pre-nomination forms. On March 15, 2010, I interviewed in Washington, D.C., with Department of

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Justice and White House personnel. 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.

There have not been any discussions in these regards.

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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
BATTAGLIA, ANTHONY J.	SOUTHERN DISTRICT OF CALIFORNIA	05/20/2010
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 5/20/2010 ☐ 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.**	
United States District Court 940 Front Street, Room 1145 San Diego, CA 92101-8927	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 (Pension & Profit Sharing Plan Trust)
2.	Trustee	Trust 2 (has no reportable assets)
3.	Trustee	Trust 3
4.	Director, Immediate Past President	Federal Magistrate Judges Association
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 7	Name of Person Reporting	Date of Report
	BATTAGLIA, ANTHONY J.	05/20/2010

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.	2009-2010	self employed, Attorney
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 BATTAGLIA, ANTHONY J.	Date of Report 05/20/2010

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.	Sallie Mae	Student Loan	J
2.	Citibank	Student Loan	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
BATTAGLIA, ANTHONY J.	05/20/2010

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 mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. American Century Balanced Fund	B	Dividend	K	T	Exempt				
2. Trust 1 (Pension and Profit Sharing Plan Trust)	E	Dividend	O	T					
3. - T. Rowe Price Equity Inc Fund (Pension Plan)									
4. - T.Rowe Price Prime Fund (Pension Fund)									
5. - Vanguard GNMA Fund (Pension Fund)									
6. - Vanguard High Yield Fund (Pension Fund)									
7. - Vanguard Star Fund (Profit Sharing Plan)									
8. - Vanguard Prime Fund (Profit Sharing)									
9. - T. Rowe Price High Yield Fund (Profit Sharing)									
10. - Vanguard GNMA Fund (Profit Sharing)									
11. - T. Rowe Price Spectrum Growth Fund (Profit Sharing)									
12. - Hennessy/Tamarack/ Babson Value Fund (Pension Fund)									
13. - Vanguard Index 500 Fund (Profit Sharing Plan)									
14. - Vanguard Health Care Fund (Profit Sharing)									
15. - Artisan Mid Cap Fund (Profit Sharing Plan)									
16. Law Office Close Corp. Stock		None	J	W					
17. Proctor & Gamble 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 5 of 7	Name of Person Reporting BATTAGLIA, ANTHONY J.	Date of Report 05/20/2010

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 mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. T.Rowe Price Equity Inc. Fund	A	Dividend	J	T					
19. Fidelity Equity Inc. Fund	B	Dividend	J	T					
20. Vanguard Money Market	A	Dividend	J	T					
21. Trust 3	C	Dividend	L	T					
22. - T. Rowe Price Equity Income Fund (Trust #3)									
23. Sempra Energy Common Stock	A	Dividend	J	T					
24. IRA A	D	Dividend	M	T					
25. - Vanguard Inflation Protected Securities Fund									
26. - Vanguard GNMA Fund									
27. IRA B	C	Dividend	M	T					
28. - Vanguard 500 Index Fund									
29. - Vanguard Midcap Fund									
30. - Vanguard Total Bond Fund									
31. - Vanguard Small Cap Fund									
32. - Vanguard International Fund									

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 BATTAGLIA, ANTHONY J.	Date of Report 05/20/2010

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

Part 1: Trust #2 is solely comprised of a non reportable asset, a personal residence.

Part 3 A: Non reportable, non investment income was earned during the reported period for service as United States Magistrate Judge.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting BATTAGLIA, ANTHONY J.	Date of Report 05/20/2010

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 Anthony Battaglia

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		4	000	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		1	100	Notes payable to banks-unsecured			
Listed securities-see schedule	1	293	749	Notes payable to relatives			
Unlisted securities--Met Life Trust Shares			500	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		620	000
Real estate owned-personal residence		980	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		20	000	Education Loans for Children		50	806
Cash value-life insurance		22	500				
Other assets itemize:							
Home Furniture/Furnishings		100	000				
Clothing/jewelry/personal items		50	000				
				Total liabilities		670	806
				Net Worth	1	801	043
Total Assets	2	471	849	Total liabilities and net worth	2	471	849
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		9	000	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	
Callon Petroleum Stock	$ 320
Proctor & Gamble Stock	5,428
Sempra Energy Stock	1,525
Southwest Gas Stock	983
Toys-R-Us Stock	40
Artisan Funds	9,912
Henessey Funds	46,936
T. Rowe Price Funds (A)	202,150
Vanguard Funds (A)	353,817
Vanguard Funds (B)	105,138
Vanguard Funds (C)	136,763
Thrift Savings Plan	369,667
T. Rowe Price Funds (B)	13,872
T. Rowe Price Funds (C)	47,198
Total Listed Securities	$ 1,293,749

Real Estate Mortgages Payable	
Personal residence (First Mortgage)	$ 135,000
Personal residence (Second Mortgage)	$ 485,000
Total Mortgages Payable	$ 620,000

AFFIDAVIT

I, **ANTHONY JOSEPH BATTAGLIA,** do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/18/10
(DATE)

(NAME)

OFFICIAL SEAL
JOSEPH T. JANZEN
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1834990
SAN DIEGO COUNTY
MY COMM. EXP. FEB. 5, 2013

Joseph T. Janzen, Notary Public
(NOTARY)

(Subscribed + sworn to before me this 18th of May 2010 by Anthony Joseph Battaglia.)

STATEMENT OF EDWARD J. DAVILA, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge DAVILA. Thank you. Thank you, Mr. Chairman. And I would also like to thank the President for my nomination. I feel humbled and privileged to be here to discuss issues with the Chairman and the Ranking Member. And thank Chairman Leahy for arranging this hearing for all of us here this afternoon.

I do have family members here that I'd like to introduce. But I'd also like to thank my home State Senator, Senator Boxer, for her nominating me to the President; and, my other State Senator Feinstein, for her continued support.

I would like to introduce my wonderful wife, Mary Greenwood, who is present.

Senator FRANKEN. Welcome.

Judge DAVILA. And our fantastic 13-year-old daughter, Chela, who is also present. She's missing a few days of her rigorous middle school to be here on this wonderful educational experience, and she'll return shortly.

Our dear family friend, Mary Maben, is also here. She works in San Jose and in Washington, DC, and I'm happy to have her here to support me, as well.

Senator FRANKEN. Welcome.

Judge DAVILA. Thank you. There are others who are not here, and, Senator, if I may for just a moment, tell you I was very privileged to be raised in a matriarchal family; a single mother, and there were three other women who were of great significance in my life—my grandmother, who has passed away now, and my Aunt Trini, is 90-years-young, and, of course, my mother. They could not be here. Their health situation precludes them from being here, but all three of those people, I've learned so much from them and all there of them continue to be with me here and I'm happy to have their support in spirit, if it not in flesh.

I should also recognize and thank my two sisters, Celia and Linda, who I believe are watching the Webcast, as well. And, of course, I need to thank my wonderful court staff, Maggie and Mary Lou, who I am convinced are the best in the business. No disrespect to my colleagues and their staff. But I'm grateful for all their support.

Thank you very much.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Edward John Davila

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

   United States District Judge for the Northern District of California

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: Superior Court of California
   County of Santa Clara
   191 North First Street
   San Jose, California 95113

   Residence: Menlo Park, California

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

   1952; Palo Alto, California

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 to 1979, University of California, Hastings College of the Law; J.D., 1979
   1974 to 1976, California State University, San Diego; B.A., 1976
   1970 to 1973, Foothill College; no degree received

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

2001 to present
Superior Court of California, County of Santa Clara
191 North First Street
San Jose, California 95113
Judge

1988 to 2001
Davila & Polverino, Attorneys at Law
2 North Second Street, Suite 295
San Jose, California 95113
Partner

1979 to 1988
Santa Clara County Office of the Public Defender
120 West Mission Street
San Jose, California 95110
Deputy Public Defender (1981-1988)
Legal Aide (1979-1981)

1976 to 1979
Santa Clara County Office of Pretrial Services
70 West Hedding Street
San Jose, California 95110
Pretrial Release Specialist

Other Affiliations (uncompensated)

2005 to present
Trinity School
2650 Sand Hill Road
Menlo Park, California 94028
Chair of the Board of Trustees (2009-present)
Trustee (2005-2009)

1986 to 2001
Santa Clara County Bar Association
31 North Second Street, Fourth Floor
San Jose, California 95113
President (1998)
Trustee (1986-1997)

1991 to 1994
Saint Andrews Residence For Boys
811 Sherman Oaks Drive
San Jose, California 95128
Board Member

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1986 to 1988
Legal Aid Society of Santa Clara County
480 North First Street
San Jose, California 95113
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 registered for the Selective Service when I turned 18.

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

Santa Clara County Bar Association, Justice Byrl R. Salsman Award (for contributions to the legal community), 2006
State Bar of California Board of Legal Specialization, Outstanding Service, 2004
Hastings Latino Alumni Association, Ralph Santiago Abascal Alumnus of the Year, 2003
Santa Clara County Bar Association, Unsung Heroes Award for Leadership, 2003
California State Legislative Assembly, Access to Justice, Certificate of Recognition, 2003
Santa Clara County Bar Association and Pro Bono Project, Award for Outstanding Contributions to Pro Bono Services, 1999
State Bar of California Certificate of Appreciation, 1990
State Bar of California Certificate of Appreciation, 1989
State Bar of California Board of Governors Commendation, 1987
State Bar of California Certificate of Appreciation, 1986
Santa Clara County Bar Association Law Related Education Recognition, 1986, 1985
Council for Legal Education Opportunity (CLEO), Fellow, 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.

Judicial Associations
California Judges Association
Criminal Law and Procedure Committee (2003-2007)
California Latino Judges Association
Santa Clara County Superior Court
Supervising Facility Judge (2010)
Mentor Judge (2010)
Instructor in Bench Conduct & Demeanor for Temporary Judges (2009-present)
Amicus, Community Outreach and Planning, Criminal Courts, Family Courts,

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Information Technology, Juvenile Justice, Legislative Executive Branch Outreach, Media Relations, Seminar/Speakers, Supervising Judges, and Mentor Judge Committees (various dates)

Santa Clara County Juvenile Justice Systems Collaborative
Disproportionate Minority Confinement Workgroup Judicial Representative (2003-2004)

Bar Associations

Santa Clara County Bar Association
President (1998)
President-Elect (1997)
Barristers Club President (1989)
Trustee (1986-1994, 1996)
Chair Legal Services Committee (1999)
Chair State Bar Conference of Delegates Executive Committee (1996)
Chair Minority Access Committee (1993)
Chair Judiciary Committee (1989)
Executive, Long Range/Strategic Planning, Finance, Fair Election Practices Commission, Minority Support Network, Judiciary, Minority Access, Gender Fairness, and Lawyer Referral Service Committees (various dates)

State Bar of California
Criminal Law Section, Conference of Delegates Calendar Coordinating Committee, Conference of Delegates Santa Clara County Representative, Ethnic Minority Relations Committee (various dates)

La Raza Lawyers Association Santa Clara County
President (1986, 1996)

Hispanic National Bar Association
Co-Chair Judiciary Subcommittee Northern California Region (1995)

California Public Defenders Association

California Attorneys for Criminal Justice

10. **Bar and Court Admission**:

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

State Bar of California, 1981

There has been no lapse in membership from the date I was admitted to the bar to the date I was appointed as judge of the Superior Court of Santa Clara County. Under California law, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office.

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

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in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1981
United States District Court for the Eastern District of California, 1996
United States District Court for the Northern District of California, 1981
Supreme Court of California, 1981

There has been no lapse in membership from the date I was admitted to the Bar to the date I was appointed as judge of the Superior Court of Santa Clara County. Under California law, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office.

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.

Dates of membership are to the best of my recollection as I have few records documenting specific years of affiliation.

Castilleja School, Parents Diversity Advisory Committee (2009-present)
Automobile Association of America (2008-present)
Morgan Sports Car Club of Northern California (2008-present)
Stanford Creek Neighborhood Association (2006-present)
Volvo Club of America (2005-present)
Golden Gate National Parks Conservancy (2008)
San Diego State University Alumni Association (approximately 2007-2008)
KQED Channel Nine Public Television (various years from 1997-2007)
BMW Car Club of America (1990-2007)
American Youth Soccer Organization (2002-2007)
Coach (2002-2004, 2006-2007)
Buick Club of America (various years, 1992-2005)
Ladera Oaks Swim Club (2003-2006)
San Jose Discovery Museum (approximately 1999-2002)
San Francisco Zoological Society (various years from 1997-2002)
Silver Creek High School Legal Academy (1999)
Menalto Homeowners Association (1992-1996)
San Jose Symphony Hispanic Advisory Committee (1992)
Albert L. Schultz Community Center (approximately 1990-1993)
San Jose Institute of Contemporary Art (approximately 1991)
Northern California Golf Association (approximately 1991-1995)

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Lawyer/Judges Golf Association (approximately 1991-1993)
San Jose Downtown Merchants Association (1989-1991)

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

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 wrote the following articles as a column published by the local legal newspaper during my tenure as the Santa Clara County Bar President in 1998:

1998: Continuing the Tradition of Excellence, SAN FRANCISCO DAILY JOURNAL, January 13, 1998.
Celebrating the Diversity of the Legal Profession, SAN FRANCISCO DAILY JOURNAL, February 10, 1998.
Bridging the Gap Program Excellent for New Admittees, SAN FRANCISCO DAILY JOURNAL, March 10, 1998.
County's Drug Treatment Court Exceeds Expectations, SAN FRANCISCO DAILY JOURNAL, April 1998.
Need is Critical for ABA's Death Penalty Project, SAN FRANCISCO DAILY JOURNAL, May 12, 1998.
Mid-Year Musings, SAN FRANCISCO DAILY JOURNAL, June 9, 1998.
It's Summertime – and SCCBA Remains Active, SAN FRANCISCO DAILY JOURNAL, July 14, 1998.
Let's View Unification as Chance to Work Together, SAN FRANCISCO DAILY JOURNAL, August 11, 1998.
SCCBA's Code of Professionalism Is Alive, Well, SAN FRANCISCO DAILY JOURNAL, September 8, 1998.
November's a Good Time to Give Thanks, SAN FRANCISCO DAILY JOURNAL, November 10, 1998.

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Thanks So Much To All of You, SAN FRANCISCO DAILY JOURNAL, December 15, 1998.

The list of writings above includes those that I was able to locate after a diligent review of my records. It is possible that there are other writings to which I no longer have access or for which I did not retain records.

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 May 2004, I was appointed by the California State Bar Board of Governors to a committee tasked with revising guidelines for indigent defense services delivery systems. The report issued by the committee, "The State Bar of California Guidelines on Indigent Defense Services Delivery Systems (2006)," is supplied.

In 1992, Mayor Susan Hammer of San Jose, California and the San Jose City Council appointed me to a commission to advise the City on whether it should create the position of independent police auditor in response to citizen complaints regarding the local police department. We submitted findings and recommendations to the City Council, and we were reconvened in 1995 to review the effectiveness of the auditor. I do not have a copy of any written reports the commission issued. The entity address is: City of San Jose Citizens Advisory Commission re: Independent Police Auditor, Office of the Mayor, San Jose City Hall, 200 East Santa Clara Street, 18th Floor, San Jose, CA 95113.

I have not identified other reports, memoranda or policy statements that I prepared or contributed in the preparation of, but I have been a member of several bar associations and committees such that there may be additional reports I do not recall and of which I have not been able to find any record.

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 identified.

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

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recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list of speeches includes those I was able to locate after a diligent search. Because all the listed speeches consisted of informal remarks, I do not have a transcript, recording, or notes from which I spoke. In a few instances indicated below, I have been able to locate a press report or other materials about the speech or talk. It is possible that there are additional occasions on which I made informal remarks, but no longer have any record or memory of the occasion.

Santa Clara County Bar Association, judges panel on state judicial appointment process (Sept. 24, 2009; San Jose, CA)
East Palo Alto Youth Court, judicial remarks to disadvantaged students and parents (August 20, 2009; East Palo Alto, CA); press report supplied
Cañada College Paralegal Class, legal ethics lecture (2008; Redwood City, CA)
Santa Clara County Bar Association, family law CLE panel (November 30, 2007; San Jose, CA)
Community Liaison and Leadership Academy of Santa Clara County Superior Court, judges panel explaining criminal procedure to community leaders (January 27, 2005; October 18, 2007; San Jose, CA); press release supplied
Sunnyvale Judicial Town Hall Meeting, judges' panel explaining how the court system operates (February 10, 2005; Sunnyvale, CA); press report supplied
Stanford University Center for Psychiatry and the Law, remarks and panel discussion "Where Culture, Law and Medicine Converge: Minorities and Forensic Psychiatry" (November 3, 2003; Stanford, CA)
League of Women Voters of Mountain View/Los Altos, overview of juvenile justice system (2003; Mountain View, CA)
Fresh Lifelines for Youth (a non-profit serving juvenile wards), graduation remarks (2003, 2004; San Jose, CA)
Santa Clara County Juvenile Probation Department, remarks regarding the juvenile justice system to incarcerated youth (May 2003; San Jose, CA)
Santa Clara County Bar Association, CLE program on elimination of bias in the legal profession (January 24, 2003; Santa Clara, CA)
Traffic Safe Communities Network in Santa Clara County, DUI in the schools program (December 11, 2002; Santa Clara, CA); press reports supplied
Traffic Safe Communities Network in Santa Clara County, DUI in the schools program (October 16, 2002; San Jose, CA); press report attached
Santa Clara County Public Defender, CLE presentation on post-plea sentencing issues (January 31, 2001; San Jose, CA)
Santa Clara County Bar Association, moderator of CLE panel on hate crimes legal issues (September 23, 1999; Santa Clara, CA)

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United States District Court for the Northern District of California, remarks at the investiture of the Honorable Jeremy Fogel (1998; San Jose, CA)
Santa Clara County Superior Court, remarks at the investiture of the Honorable Richard Loftus (1998; Santa Clara, CA)
Santa Clara County Superior Court, remarks at the investiture of the Honorable Jerome Nadler (1993; San Jose, CA)

In addition, I frequently spoke on an informal basis to legal and community organizations regarding the importance of the Bar, the legal profession and professional standards of ethics in my capacity as President of the Santa Clara County Bar Association in 1998.

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.

Teens Decide Sentencing at E. Palo Alto Youth Court, PALO ALTO DAILY NEWS, August 22, 2009.
A Surprising Reward, THE RECORDER, January 24, 2006.
Law and Learning, SAN JOSE MERCURY NEWS, October 17, 2002.
Trial Has Rapt Audience – Students, SAN FRANCISCO CHRONICLE, October 17, 2002.
Hometown Judge Connects Well, Attorneys Say, SAN FRANCISCO DAILY JOURNAL, July 10, 2002.
Mountain View Native Headed for Bench, MOUNTAIN VIEW VOICE, August 24, 2001.
PeopleSoft Reported to be Making Acquisitions, SAN JOSE MERCURY NEWS, August 14, 2001.
Two Tapped for Santa Clara Bench, Appointments Win Praise From Latino Lawyers' Organization, THE RECORDER, August 9, 2001.
Davis Adds Two Latinos to County Superior Court After Criticism for a Lack of Diversity in His Appointments, The Governor Selected a Former County Bar President and a Court Commissioner to Serve on the Bench, SAN JOSE MERCURY NEWS, August 9, 2001.
Apple Settles with "Worker Bee," CNET NEWS, August 7, 2001.
Tenants Pay $1,100 A Month At Site of City's First Slumlord "House Arrest" Judge Orders Landlord to Live in Her Decrepit S.J. Apartments, SAN JOSE MERCURY NEWS, September 27, 2000.
2 Accused of Stealing Trade Secrets . . ., SAN JOSE MERCURY NEWS, June 17, 2000.

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Teacher in Court on Sex Charges, SAN JOSE MERCURY NEWS, May 12, 2000.
Santa Clara Attorneys Vie for Davis' Eye, THE RECORDER, April 25, 2000.
Teen Driver Sentenced in Crash, SAN JOSE MERCURY NEWS, October 23, 1999.
School May Build Courtroom Silver Creek High: Judge's Bench, Jury Box are Considered for First Legal Magnet Program, SAN JOSE MERCURY NEWS, November 23, 1998.
Judge Holds Prosecutor in Contempt . . ., SAN JOSE MERCURY NEWS, May 13, 1998.
Trucker Sentenced in Bicyclist's Death, Judge Imposes Maximum 1-Year Term in 1996 Crash, SAN JOSE MERCURY NEWS, September 18, 1999.
Panel Names Aguilar Its Unsung Hero Ex-Judge: Committee of County Bar Honors 'Trailblazer for Minority Attorneys,' SAN JOSE MERCURY NEWS, October 6, 1996.
Newly Elected SCCBA President Vows to Enhance View of System, SAN JOSE POST-RECORD, October 23, 1996.
Agnews Attendant Pleads No Contest to Molestation, SAN JOSE MERCURY NEWS, October 6, 1993.
For S.J. Boxer, Winning a Fight May Mean Losing A Lawsuit, Bus Driver Hit by Fraud, Theft Charges, SAN JOSE MERCURY NEWS, June 11, 1993.
No-Contest Plea in Embezzlement Case, SAN JOSE MERCURY NEWS, March 19, 1993.
County Bar Picks Towery for ABA Representative, SAN JOSE POST-RECORD, June 29, 1990.
Volunteer of the Month, Edward J. Davila, THE RECORDER, February 13, 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.

On August 8, 2001, I was appointed by Governor Gray Davis to the Superior Court of the State of California, County of Santa Clara. I was re-elected without opposition in each of 2002 and 2008. My current term of office expires December 31, 2014. This is a state trial court of general jurisdiction.

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

I have presided over at least 50 cases to verdict or judgment following a jury or bench trial. According to a search of clerk records by court information technology staff, I have been assigned in excess of 10,000 cases at various stages of adjudication in my eight years on the bench that have resulted in final judgment under California law but did not proceed to trial.

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i. Of these, approximately what percent were:

jury trials:	70%
bench trials:	30%
civil proceedings:	30%
criminal proceedings:	70%

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

As a state trial court judge, I have not written any published opinions. The vast majority of my rulings and orders are delivered orally on the record in the courtroom, or sometimes in a brief minute order. In cases requiring more legal or factual analysis, I have issued unpublished written statements of decision or written orders, and these are listed below:

In re Marriage of Chiang/Chaing, No. 1-01-FL-102004, slip op. (Cal. Super. Ct. Feb. 26, 2010).
In re Marriage of Hubbard, No. 1-92-FL-027-173, slip op. (Cal Super. Ct. Jan. 12, 2010).
In re Marriage of Mundenmaney, No. 1-07-FL-142802, slip op. (Cal. Super. Ct. Feb. 19, 2010).
In re Marriage of Grant/D'Angelo, No. 1-01-FL-097783, slip op. (Cal. Super. Ct. Dec. 22, 2009).
In re Marriage of Leonard, No. 1-05-FL-129424, slip op. (Cal. Super. Ct. Dec. 16, 2009).
In re Marriage of Shao/Wang, No. 1-05-FL-126882, slip op. (Cal. Super. Ct. Nov. 25, 2009).
In re Marriage of Staples, No. 6-09-FL-002086, slip op. (Cal. Super. Ct. Nov. 10, 2009).
In re Marriage of Rao, No. 6-09-FL-001611, slip op. (Cal. Super. Ct. Sept. 23, 2009).
In re Marriage of Doshi, No. 2-06-FL-000118, slip op. (Cal. Super. Ct. Aug. 27, 2009).
In re Marriage of Goldberg, No. 1-08-FL-147452, slip op. (Cal. Super. Ct. Aug. 27, 2009).
In re Marriage of Vardi/Eliahu, No. 1-03-FL-116729, slip op. (Cal. Super. Ct. Aug. 25, 2009).
In re Marriage of Wood/Feng-Wood, No. 1-04-FL-120135, slip op. (Cal. Super. Ct. July 10, 2009).
In re Marriage of McCabe, No. 1-06-FL-134609, slip op. (Cal. Super. Ct. July 2, 2009).
In re Marriage of Milesi, No. 6-08-FL-001205, slip op. (Cal. Super. Ct. May 15, 2009).

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In re Marriage of Leon, No. 1-06-FL-135278, slip op. (Cal. Super. Ct. May 8, 2009).
In re Marriage of McIntosh, No. 6-08-FL-000247, slip op. (Cal. Super. Ct. May 4, 2009).
In re Marriage of Youngs, No. 6-08-FL-001062, slip op. (Cal. Super. Ct. May 1, 2009).
In re Marriage of Nabavi/Namvar, No. 1-06-CP-015295, slip op. (Cal. Super. Ct. April 30, 2009).
In re Marriage of Villarreal/Berrube, No. 1-04-FL-122790, slip op. (Cal. Super. Ct. April 9, 2009).
In re Marriage of Westerman, No. 1-02-FL-109220, slip op. (Cal. Super. Ct. March 13, 2009).
In re Marriage of Collier, No. 1-98-FL-075784, slip op. (Cal. Super. Ct. March 6, 2009).
In re Marriage of Smith, No. 1-07-FL-142562, slip op. (Cal. Super. Ct. Jan. 16, 2009).
In re Marriage of Jones/Steinberger, No. 1-97-FL-068921, slip op. (Cal. Super. Ct. Jan. 12, 2009).
In re Marriage of Rodgin, No. 1-05-FL-127786, slip op. (Cal. Super. Ct. Oct. 20, 2008).
In re Marriage of Karsh/Rubin, No. 1-06-FL-131154, slip op. (Cal. Super. Ct. Oct. 14, 2008).
In re Stover/Bruntz, No. 1-02-CP-010958, slip op. (Cal. Super. Ct. July 31, 2008).
In re Marriage of Gillilan, No. 1-05-FL-127894, slip op. (Cal. Super. Ct. May 30, 2008).
In re Marriage of Roberts, No. 1-07-FL-139263, slip op. (Cal. Super. Ct. April 30, 2008).
In re Marriage of Acosta, No. 1-06-FL-130999, slip op., (Cal. Super. Ct. April 8, 2008).
In re Marriage of Hogan, No. 1-05-FL-127368, slip op. (Cal. Super. Ct. Feb. 26, 2008).
In re Marriage of Crawford/Conn, No. 1-95-FL-046289, slip op. (Cal. Super. Ct. Jan. 24, 2008).
In re Marriage of Herrera, No. 1-06-FL-136584, slip op. (Cal. Super. Ct. Dec. 3, 2007).
In re Marriage of Woodie, No. 1-94-FL-036723, slip op. (Cal. Super. Ct. May 25, 2007).
Responsible Metal Fab., Inc v. Marin et. al., Nos. 1-06-CV-067516, 1-03-FL-115057, slip op. (Cal. Super. Ct. March 13, 2007).

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).

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1. *People v. Ayala*, Nos. CC589323, CC590481 (Cal. Super. Ct. 2005); 66 Cal. Rptr. 3d 228 (Cal. Ct. App. 2007).

The criminal defendants were charged with conspiracy to present a fraudulent insurance claim by asserting that they had discovered a severed finger in a bowl of chili in a Wendy's restaurant. Both defendants plead guilty. Following extensive briefing and argument from all parties, I sentenced each defendant to aggravated terms in prison. The defendants argued that the line employees and general managers were not direct victims of the crime and were therefore not entitled to restitution. I rejected this argument and ordered the defendants to pay restitution in the amount of approximately $170,000 to the employees whose employment was impacted by the diminution of business at the restaurant following the national publicity that ensued. (A copy of the judgment in this case is not attached because I do not have one available.)

Prosecutor:	Deputy District Attorney David Boyd Santa Clara County Office of the District Attorney 70 West Hedding Street San Jose, CA 95110 (408) 299-7400
Defense Counsel:	Charles Kramer, Esq. 1010 West Taylor Street San Jose, CA 95126 (408) 286-5700

2. *People v. Peebles*, No. CC590615 (Cal. Super. Ct. 2005).

I found the defendants guilty of 43 counts of insurance fraud following a court trial based on a married couple's conspiracy to defraud state workers compensation and private insurance companies. Losses exceeded $1 million. I ruled on the admissibility of in excess of 200 documentary exhibits, ruled extensively to admit impeachment evidence, and considered the legality of the scope of a search of computer records.

Prosecutor:	Deputy District Attorney Janice Doi Santa Clara County Office of the District Attorney 70 West Hedding Street San Jose, CA 95110 (408) 299-7400
Defense Counsel:	James Blackman, Esq. 2479 East Bayshore Road #703 Palo Alto, CA 94303 (650) 843-1000

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Nancy Powell, Esq.
310 Bryant Street
Palo Alto, CA 94301
(650) 324-2526

3. *People v. Zeledon*, No. CC595164 (Cal. Super. Ct. 2005).
Defendant was charged with aggravated sexual assault of a child under the age of 14. The prosecutor sought to admit evidence tending to prove a propensity to commit sex acts on children by demonstrating that the defendant, who was Salvadorean by birth, had married his wife when she was a teen in El Salvador. I declined to admit the evidence, rejecting the relevance of the marriage as evidence of propensity to commit illegal sex acts with a minor. I also ruled that defense counsel waived any applicable privilege by providing an unredacted psychological report to the prosecutor. I sentenced the defendant to 38 years to life in state prison in compliance with California sentencing laws. (A copy of the judgment in this case is not attached because the court file has been archived.)

Prosecutor: Deputy District Attorney Troy Benson
Santa Clara County Office of the District Attorney
70 West Hedding Street
San Jose, CA 95110
(408) 299-7400

Defense Counsel: Richard Pointer, Esq.
2007 West Hedding Street, Suite 100
San Jose, CA 95128
(408) 246-5500

4. *In re Marriage of Crawford/Conn*, No. 1-95-FL-046289 (Cal. Super. Ct. 2008).
This complex child support case involved issues of modification of support, retroactivity, 401(k) contributions, reimbursement claims and various claimed deductions upon which I ruled in a court trial.

Petitioner's Counsel: James F. Clark, Esq.
1550 The Alameda, Suite 330
San Jose, CA 95126
(408) 287-2030

Respondent's Counsel: Nedda Ledgerwood, Esq.
438 South Murphy Avenue
Sunnyvale, CA 94086
(408) 730-0333

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5. *Responsible Metal Fab., Inc., v. Martin*, No. 1-06-CV-067516, 1-03-FL-115057 (Cal. Super. Ct. 2007).
This was a family law case joined with a civil action. Husband and wife were community property owners of 49% of a business. The corporation refused to comply with court marriage dissolution orders, claiming a right of first refusal. Husband filed a Strategic Litigation Against Public Policy (anti-SLAPP) complaint against wife's cross claim of intentional interference with her prospective economic advantage. I denied the husband's motion to strike wife's complaint, finding that she did have a valid cause of action.

Plaintiff's Counsel:	Christopher Ashworth, Esq. Silicon Valley Law Group 25 Metro Drive, Sixth Floor San Jose, CA 95110 (408) 573-5700
Defense Counsel:	Jeffrey Snyder, Esq. Thoits, Love, Hershberg & McLean 2 Palo Alto Square #500 Palo Alto, CA 94306 (650) 327-4200

6. *People v. Jenks*, No. CC511858 (Cal. Super. Ct. 2006).
Defendant was convicted of two counts of felony molestation following a jury trial. Defendant victimized a relative and threatened her to obtain her silence. I sentenced him to 14 years in state prison.

Prosecutor:	Deputy District Attorney Bud Porter Santa Clara County Office of the District Attorney 70 West Hedding Street San Jose, CA 95110 (408) 299-7400
Defense Counsel:	Steven Pogue, Esq. 2150 Trade Zone Boulevard #102 San Jose, CA 95131 (408) 258-3250

7. *People v. Goins*, No. CC595165 (Cal. Super. Ct. 2007).
Defendant was charged and convicted of multiple counts of robbery of an inhabited dwelling and one count of possession of a firearm. Jury trial issues included admissibility of evidence of prior conduct as well as evidence of a subsequent drive-by shooting of the victim's residence. I sentenced the defendant to 28 years in state prison after denying a discretionary motion to strike prior convictions under California's Three Strikes law.

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Prosecutor:	Deputy District Attorney Victor Chen Santa Clara County Office of the District Attorney 70 West Hedding Street San Jose, CA 95110 (408) 299-7400
Defense Counsel:	Michael Hingle, Esq. P.O. Box 788 San Jose, CA 95106 (408) 286-4998

8. *In re Brian L., a Minor*, No. J124781 (Cal. Super. Ct. 2003).
A minor admitted vandalism and unauthorized entry of a dwelling. In addition to the minor's vandalism, damage to the residence occurred when the minor left the dwelling open and other youth entered the premises, raising the issue of whether the minor was responsible for damages caused by others. I ordered restitution for all losses, finding that the minor's actions directly contributed to the loss incurred by the victim. (A copy of the judgment in this case is not attached because the document is a confidential juvenile court record.)

Prosecutor:	Deputy District Attorney Michelle LaForce Santa Clara County Office of the District Attorney 70 West Hedding Street San Jose, CA 95110 (408) 299-7400
Defense Counsel:	Stephanie Rickard, Esq. 1625 The Alameda, Number 801 San Jose, CA 95126 (408) 289-1001

9. *People v. Warzek*, No. CC587812 (Cal. Super. Ct. 2007).
I presided over this jury trial in which the defendant was convicted of aggravated sexual assault on a child under the age of 14, lewd act by force or fear, and possession of child pornography. I admitted evidence of defendant's possession of child pornography, as well as the wife's statements to a civil attorney, over defense objection. I sentenced the defendant to 30 years to life in prison.

Prosecutor:	Deputy District Attorney Kim Connors Santa Clara County Office of the District Attorney 70 West Hedding Street San Jose, CA 95110 (408) 299-7400

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Defense Counsel: James Blackman, Esq.
2479 East Bayshore Road #703
Palo Alto, CA 94303
(650) 843-1000

10. *People v. Garelick*, No. CC592183 (Cal. Super. Ct. 2006).
Defendant was charged with attempted lewd and lascivious acts with a child as well as possession of child pornography. He agreed to meet with an undercover police officer posing as a minor on the internet. I admitted into evidence images recovered from his computer hard drive over defense objection. The defense also challenged recent changes to the jury instruction related to reasonable doubt. At the conclusion of a jury trial, the jury convicted the defendant of all charges. (A copy of the judgment in this case is not attached because the court file has been archived.)

Prosecutor: Deputy District Attorney Steven Moore
Santa Cruz District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060
(831) 768-6500

Defense Counsel: Wesley Schroeder, Esq.
181 Devine Street
San Jose, CA 95110
(408) 277-0377

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.

As a state trial court judge, I have not written any published opinions. The vast majority of my rulings and orders are delivered orally on the record in the courtroom, or sometimes in a brief minute order. In cases requiring more legal or factual analysis, I have issued unpublished written statements of decision or written orders. The ten most significant such cases are listed below.

1. *In re Marriage of Chiang*, No. 1-01-FL-102004, slip op. (Cal. Super. Ct. Feb. 26, 2010).

Petitioner's Counsel: Lynn Yates-Carter
111 West Saint John Street, Suite 300
San Jose, CA 95113
(408) 294-9544

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Respondent's Counsel: Stuart Fishman
111 West Saint John Street, Suite 420
San Jose, CA 95113
(408) 293-9998

2. *In re Marriage of Shao/Wang*, No. 1-05-FL-126882, slip op. (Cal. Super. Ct. Nov. 25, 2009).

Petitioner's Counsel: Linda Shao (pro se)
10430 South De Anza Boulevard, Suite 195
Cupertino, CA 95014
(408) 873-3888

Respondent's Counsel: David Sussman
95 South Market Street, Suite 410
San Jose, CA 95113
(408) 298-4000

3. *In re Marriage of Staples*, No. 6-09-FL-002086, slip op. (Cal. Super. Ct. Nov. 10, 2009).

Petitioner's Counsel: Lynne Snyder
101 Church Street #7
Los Gatos, CA 95030
(4080 354-5590

Respondent's Counsel: Caralisa Hughes
510 North Third Street
San Jose, CA 95112
(408) 289-8400

4. *In re Marriage of Wood/Feng-Wood*, No. 1-04-FL-120135, slip op. (Cal. Super. Ct. July 10, 2009).

Petitioner's Counsel: Michael Santoro
P.O. Box 41250
San Jose, CA 95160
(408) 423-8100

Respondent's Counsel: Susan Chung
111 North Market Street, Suite 990
San Jose, CA 95113
(408) 298-9898

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Minor's Counsel: Gemma Reyes
111 West Saint John Street, Suite 1130
San Jose, CA 95113
(408) 292-9896

5. *In re Marriage of McCabe*, No. 1-06-FL-134609, slip op. (Cal. Super. Ct. July 2, 2009).

Petitioner's Counsel: Rebekah Frye
2600 El Camino Real, Suite 506
Palo Alto, CA 94306
(650) 565-8972

Respondent's Counsel: Lisa Dugoni
901 Mariner's Island Boulevard #375
San Mateo, CA 94044
(650) 356-1180

6. *In re Marriage of Westerman*, No. 1-02-FL-109220, slip op. (Cal. Super. Ct. March 13, 2009).

Petitioner's Counsel: Wendy Lun
1754 Technology Drive, Suite 133
San Jose, CA 95110
(408) 903-9799

Respondent's Counsel: Matthew Pachkowski
455 North Whisman Road, Suite 200
Mountain View, CA 94043
(650) 961-8886

7. *In re Marriage of Karsh/Rubin*, No. 1-06-FL-131154, slip op. (Cal. Super. Ct. Oct. 14, 2008).

Petitioner's Counsel: Karen Brandon
3 Honeysuckle Lane
San Carlos, CA 94070
(650) 593-4016

Respondent's Counsel: Hugh Thomson
95 South Market Street, Suite 410
San Jose, CA 95113
(408) 298-4000

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8. *In re Marriage of Hogan*, No. 1-05-FL-127368, slip op. (Cal. Super. Ct. Feb. 26, 2008).

Petitioner's Counsel: Thomas Bloom
405 Alberto Way, Suite 2
Los Gatos, CA 95032
(408) 358-4923

Respondent was pro se.

9. *In re Marriage of Crawford/Conn*, No. 1-95-FL-046289, slip op. (Cal. Super. Ct. Jan. 24, 2008).

Petitioner's Counsel: James Clark
1550 The Alameda, Suite 330
San Jose, CA 95126
(408) 287-2030

Respondent's Counsel: Nedda Ledgerwood
438 South Murphy Avenue
Sunnyvale, CA 94086
(408) 730-0333

10. *Responsible Metal Fab., Inc. v. Martin, et. al.*, Nos. 1-06-CV-067516, 1-03-FL-115057, slip op. (Cal. Super. Ct. March 13, 2007).

Plaintiff's Counsel: Christopher Ashworth
Silicon Valley Law Group
25 Metro Drive, Suite 600
San Jose, CA 95110
(408) 573-5700

Defense Counsel: Jeffrey Snyder
Thoits, Love, Hershberg & McLean
2 Palo Alto Square #500
Palo Alto, CA 94306
(650) 327-4200

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

None, to the best of my knowledge.

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

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

1. *People v. Zeledon*, No. CC595164 (Cal. Super. Ct. 2005), *rev'd in part*, No. H030760 (Cal. Ct. App. 2009).
Defense counsel hired a psychologist to evaluate the defendant and testify as an expert witness. During discovery, defense counsel provided a copy of the psychological report to the prosecutor without redacting the defendant's statements. The Court of Appeal agreed with my ruling that defense counsel's disclosure of the unredacted report constituted a waiver of the psychotherapist patient privilege and that the report was therefore used appropriately in trial. However, the Court reversed the judgment as to two counts because it found that defense counsel provided ineffective assistance of counsel.

2. *People v. Ayala and Plascencia*, Nos. CC589323, CC590481 (Cal. Super. Ct. 2005), *rev'd in part*, 66 Cal. Rptr. 3d 228 (Cal. Ct. App. 2007) & No. H029862 (Cal. Ct. App. 2006).
In this insurance fraud case, the defendants falsely asserted that they had discovered a severed finger in a bowl of chili in a Wendy's restaurant. I sentenced the defendants to the aggravated term in prison and ordered restitution to Wendy's employee victims. The restitution award was affirmed, but the prison term was reversed and remanded in light of a Supreme Court case decided after the imposition of sentence: *Cunningham v. California*, 549 U.S. 270 (2007).

3. *People v. Patlan*, No. CC091842 (Cal. Super. Ct. 2000), *rev'd in part*, No. H029723 (Cal. Ct. App. 2006).
Following the defendant's guilty plea to forcible assault with great bodily injury for the benefit of a criminal street gang, I imposed a state prison sentence of nine years. The Court of Appeal affirmed, but modified the judgment to eliminate the restitution fine I imposed and to increase custody credits by 18 days.

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 state trial court judge, none of my decisions are published. Unpublished statements of decision or orders are publicly accessible in the Santa Clara County Superior Court case files that are maintained in the Court Clerk's Office.

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 written any significant opinions on federal or state constitutional issues.

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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.

I recognize that public confidence in the courts is maintained only by stringent adherence to conflict of interest principles. If there is any actual conflict or the appearance of a conflict of interest, I recuse myself from a case. I review the parties and counsel in each case to ensure I do not have a close relationship to any of the parties, witnesses, or counsel that would interfere with my neutrality or compromise the appearance of justice.

My wife is now the Public Defender of Santa Clara County and her deputies litigate criminal cases in the Santa Clara County Superior Court. While I could hear criminal cases that involve solely private counsel, I requested and received a judicial assignment outside of the criminal division during her tenure.

I recused myself *sua sponte* in one matter because I had represented a party while in private practice:

In re Marriage of LaBarber/Coury, No. 609-FL-001847 (Cal. Super. Ct. July 2, 2009).

California Code of Civil Procedure section 170.1 provides a process by which parties can seek to recuse a judge for cause. The party must file a written motion stating the grounds for the recusal. The judge must respond within 10 days in

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writing or be recused for cause. The validity of the challenge is determined by a judge from outside of the county. Two motions pursuant to Code of Civil Procedure 170.1 have been filed since I was appointed in 2001:

In re Marriage of Lee/Hu, No. 104-FL-117903 (Cal. Super. Ct. July 24, 2007) (motion withdrawn by moving party).

In re Marriage of Linda Shao/Wang, No. 105-FL-126882 (Cal. Super. Ct. November 13, 2007) (motion denied on the merits).

California Code of Civil Procedure section 170.6 allows each party in a case to exercise one preemptory challenge to any sitting judge without need to show cause. These motions are fairly routine in the Superior Court. It is possible that such challenges have been filed against me and granted automatically without my knowledge. Those of which I am aware are listed below:

In re Marash and Whitman, No. 105-FL-128865 (Cal. Super. Ct. December 11, 2008).

In re Dieck, No. 608-FL-001330 (Cal. Super. Ct. December 3, 2008).

In re Marriage of Gikkas, No. 608-FL-000336 (Cal. Super. Ct. April 1, 2008).

In re Marriage of Sun/Chen, No. 106-FL-130942 (Cal. Super. Ct. February 6, 2008).

In re Marriage of Sheildahl, No. 107-FL-143447 (Cal. Super. Ct. November 30, 2007).

In re Marriage of Arredondo/ Cornick, No. 105-FL-128297 (Cal. Super. Ct. April 25, 2007).

In re Marriage of Panfil, No. 105-FL-126526 (Cal. Super. Ct. February 14, 2007).

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

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

I was appointed by the Menlo Park City Council to the Menlo Park Housing Commission in 2000. I resigned from the Commission upon my appointment to the Santa Clara County Superior Court in 2001.

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

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the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1999, I was listed as one of the "Silicon Valley Friends of Gray Davis" and was on the host committee for a November 16, 1999, reception to raise funds for Gray Davis' gubernatorial campaign.

In 1993, I attended several meetings in support of the campaign to elect Rene Navarro to the Superior Court of Santa Clara County.

In 1992, I served as Treasurer for the campaign to elect Jerome Nadler to the Superior Court of Santa Clara County.

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 law school.

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.

1979 to 1988
Santa Clara County Office of the Public Defender
120 West Mission Street
San Jose, California 95110
Deputy Public Defender (1981-1988)
Legal Aide (1979-1981)

1988 to 2001
Davila & Polverino
2 North Second Street, Suite 295
San Jose, CA 95113
Partner

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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.

While I was a lawyer, I was a neutral in two civil lawsuits, once as a mediator and once as a special master:

Broadnax v. Paramount Corporation, No. CV1-95-751468 (Cal. Super. Ct. 1995). Plaintiff alleged that injuries sustained in an assault by a theme park security guard resulted directly from the negligent training and retention of Paramount employees. Following legal briefing, I mediated the case.

City of San Jose, Gindrich v. Alvarez, et al., No. 1-96-CV-759667 (Cal. Super. Ct. 1996). The City of San Jose, joined by an apartment complex, sued neighboring apartment complex owners for municipal code housing violations. Plaintiffs asserted that slum conditions impacted property values and contributed to neighborhood deterioration. The Court appointed me as a special master and referee. I conducted mediations that produced a permanent injunction and a settlement of the lawsuit. To determine compliance with the injunction, I visited the apartment complex regularly.

b. Describe:

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

I began my career with the Santa Clara County Office of the Public Defender. From 1981 to 1988, I defended indigent criminal defendants in misdemeanor and felony cases in state court. From 1988 to 2001, I was in private law practice representing clients in criminal cases in state and federal courts in a wide range of matters ranging from crimes against the person to crimes involving financial interests. In August 2001, I was appointed as a Superior Court judge and have served as a judge since that date.

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

As a Deputy Public Defender, I represented indigent criminal defendants. In private practice, I was a criminal defense practitioner, and my clients were individuals, corporations and businesses from all sectors of the community.

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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.

Until I was appointed as a judge, my entire law practice consisted of litigation. As a Deputy Public Defender, I appeared in court daily to conduct pretrial conferences, motions, trials and sentencing hearings. As a private practitioner, I appeared in court many times weekly for motions, hearings and trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 5%
   2. state courts of record: 90%
   3. other courts: 3%
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 1%
   2. criminal proceedings: 99%

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 approximately 45 cases as sole counsel.

i. What percentage of these trials were:
   1. jury: 99%
   2. non-jury: 1%

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;

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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. Chang*, No. CR-00-20203-01-JF (N.D. Cal.); Hon. Jeremy Fogel.
I represented the defendant with my law partner (in 2001). Defendant was charged with theft of trade secrets, a vibrant area of federal prosecution in Silicon Valley. Defendant and his former business partner separated their business interests, and the defendant took the business client list. The central issue in the case was whether the client list data base developed in the course of the business constituted a trade secret.

Opposing Counsel: Assistant United States Attorney Ross Nadel
229 Castilian Way
San Mateo, CA 94402
(415) 627-7676

Co-counsel: Sam J. Polverino, Esq.
2 North Second Street, Suite 295
San Jose, CA 95113
(408) 295-3330

2. *People v. Nisby*, No. E9703924 (Cal. Super. Ct.); Hon. William Clark and Hon. Joyce Allegro.
I represented the defendant (in 1999). Defendant was a gravel truck driver who collided with a recreational bicyclist while driving down a winding road from a remote area quarry site. The accident was fatal and my client was charged with vehicular manslaughter on a theory of gross negligence. I challenged the forensic and accident reconstruction evidence with defense expert testimony demonstrating that the bicyclist likely weaved into the truck's path while the truck was legally passing him at the time of the accident, and that the defendant had no knowledge of the collision due to the size of the truck. The jury deadlocked after the first trial. A second jury trial resulted in a conviction (later reversed on appeal).

Opposing Counsel: Deputy District Attorney Tim McInerny
Santa Clara County Office of the District Attorney
70 West Hedding Street
San Jose, CA 95110
(408) 299-7400

3. *People v. Brunner*, No. 203402 (Cal. Super. Ct.); Hon. C. Randall Schneider.
I represented the defendant (in 1998). Defendant was an attorney charged with conspiracy to unlawfully access the computer network of a law firm. The case was prosecuted by the District Attorney's Public Integrity Unit. My client and her codefendant were alleged to have accessed confidential information during a pending

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civil lawsuit from opposing counsel's computer data base. After reviewing the forensic investigation of codefendant's computer, I successfully persuaded the government that my client could not have accessed the network. The charges were dismissed. The codefendant was convicted.

Opposing Counsel:
Frank Berry, Esq.
P.O. Box 391626
Mountain View, CA 94039
(831) 588-2519

Codefendant's Counsel:
John L. Williams
111 North Market Street, Suite 300
San Jose, CA 951153
(408) 332-5832

4. *People v. Balderas*, Nos. 177816 & 179178 (Cal. Super. Ct.); Hon. Daniel Creed. In this multiple-defendant homicide case, I represented the defendant (from 1994-1996). Defendant was charged in 1994 with a murder that had occurred fourteen years earlier, in 1980. I litigated pretrial motions contesting the ability of the government to conduct a conditional examination of a codefendant turned state's witness. I also asserted that the delay from the time of the homicide to the filing of charges was unjustifiable and constituted a violation of my client's right to speedy trial. The Court found that the 14 year delay was presumptively prejudicial and dismissed the charges. Subsequently the District Attorney re-filed the case, and I did not represent him in this subsequent action.

Opposing Counsel:
Deputy District Attorney David Howe
Santa Clara County Office of the District Attorney
70 West Hedding Street
San Jose, CA 95110
(408) 299-7400

Codefendants' Counsel:

Richard Pointer, Esq.
Suite 100
2007 West Hedding Street
San Jose, CA 95128
(408) 246-5500

Adrienne Dell, Esq.
5267 Elrose Avenue
San Jose, CA 95124
(408) 266-4198

Patrick Kelly, Esq.
1550 The Alameda #308
San Jose, CA 95126
(408) 294-9733

Michael L. Chastaine
101 Parkshore Drive #100
Folsom, CA 95630
(916) 932-7150

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5. *People v. Tran*, No. 167494 (Cal. Super. Ct.); Hon. John Herlihy.
I represented the defendant (in 1993). Defendant was charged with possession and sale of stolen microchips in a "sting" operation that was prosecuted by the District Attorney's "high tech" unit. After extensive cross examination of witnesses, I demonstrated that my client, while present at the scene, was not cognizant of the stolen nature of the microchips. The Court granted my motion for directed verdict and the case was dismissed against my client.

Opposing Counsel:	Frank Berry, Esq. P.O. Box 391626 Mountain View, CA 94039 (831) 588-2519
Codefendant's Counsel:	Jerome Mullin, Esq. 95 South Market Street #300 San Jose, CA 95113 (408) 252-9937

6. *People v. Aguirre*, Nos. C9265971 & 155750 (Cal. Super. Ct.);
Hon. William Martin and Hon. Douglas Southard.
I represented the defendant (in 1992). Defendant was one of several persons accused of a murder committed in the course of a drug robbery. Following a preliminary hearing, the case was dismissed prior to the attachment of jeopardy when I demonstrated the lack of evidence in the case. The state nonetheless re-filed. I prevailed in persuading the magistrate at the probable cause/preliminary hearing that evidence of my client's involvement in the murder was insufficient to commit him to Superior Court for trial. The court granted my motion to dismiss the charges.

Opposing Counsel:	Edward Fernandez, Esq. 1631 Willow Street #100 San Jose, CA 95125 (408) 264-9822

Codefendants' Counsel:

James Leininger, Esq. 66 First Street Gilroy, CA 95020 (408) 847-5158	Deputy Public Defender Melinda Hall 120 West Mission Street San Jose, CA 95110 (408) 299-7700

7. *People v. Shih*, No. 162272 (Cal. Super. Ct.);
Hon. Diane Northway.
I represented defendant the defendant (in 1993). Defendant, a Taiwanese national who imported and exported microchips, was accused by the District Attorney "high tech" unit of attempting to purchase $3,000,000 of stolen microchips from undercover agents with United States Customs. I argued that the evidence was tainted by issues

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of entrapment, identification problems, and the questionable value of the merchandise. The government dismissed the felony charges. The defendant pleaded guilty to a misdemeanor.

Opposing Counsel:

Frank Berry, Esq.
P.O. Box 391626
Mountain View, CA 94039
(831) 588-2519

Codefendants' Counsel:

Frank M. Mangan
Federal Defenders of San Diego
225 Broadway, Suite 900
San Diego, CA 92101
(619) 234-8467

Stuart Kirchick, Esq.
2131 The Alameda, C1
San Jose, CA 95126
(408) 291-0123

8. *People v. Carrillo*, No. 153076 (Cal. Super. Ct.);
Hon. Thomas Hastings.
I represented the defendant (in 1992). Defendant was accused of conspiring with a group to murder the man who had molested him as a child. Although the defendant had a strong motive to kill the decedent, I directed extensive investigation and conducted cross examination at the probable cause hearing which established irrefutably that my client had nothing to do with the murder and was factually innocent. The prosecution dismissed the charges.

Opposing Counsel:

Rod Braughton, Esq.
15155 Monterey Road, #7
Morgan Hill, CA 95037
(408) 778-4506

Codefendants' Counsel:

Dan Burland
Alternate Public Defender San Diego
110 West C Street, #1100
San Diego, CA 92101
(619) 446-2900

Tim Fukai
Alternate Defender Office
701 Miller Street
San Jose, CA 95110
(408) 299-7200

9. *People v. Coker (Garden City)*, No. C9011011 (Cal. Super. Ct.);
Hon. Jerome Brock.
My law partner and I represented 16 employees of a City of San Jose card club (from 1990-1992). The employees each were charged with numerous minor offenses which, though seemingly trivial, would have precluded them from working in the gaming industry on conviction. I filed a motion alleging that the government was selectively prosecuting these individuals in an effort to leverage criminal allegations

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brought against the card club corporation. The court dismissed the majority of the charges against my clients, who plead guilty to the remaining offenses.

Opposing Counsel: The Honorable Carol Overton
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113
(408) 882-2700

Co-counsel: Sam J. Polverino, Esq.
2 North Second Street, Suite 295
San Jose, CA 95113
(408) 295-3330

10. *People v. Karis*, No. 223933; (Cal. Super. Ct.);
Hon. Mark Forcum.
I represented the defendant (in 1991). Defendant was a general contractor alleged to have contributed negligently to the death of an employee due to labor code violations on the work site. The decedent was killed when he fell on unprotected rebar. I tried this case before a jury, arguing that my client should not be convicted because he was not negligent and should not be held to a standard of strict liability in the criminal court system for a tragic accident. My client was acquitted by the jury of all charges.

Opposing Counsel: Joanne Mahone, Esq.
Parente & Christopher
639 Front Street, Second Floor
San Francisco, CA 94111
(415) 364-3660

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 attorney with the Public Defender's Office and as a private practitioner, I maintained a vigorous litigation practice, but emphasized the effective presentation of facts and law that sometimes caused the government to decline to file charges or negotiate cases without trial. Over the course of my career, I have engaged in a wide variety of service activities that have demystified the justice system for the public. For example, I have conducted trials on site in high schools to educate students both about the impact of driving while intoxicated on their lives and about the trial process. I have invited younger students and their parents into my courtroom for mock trials to promote participation in the legal system. Through longstanding leadership efforts in the Bar, I

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have mentored and encouraged new generations of lawyers to practice with the highest degree of ethics and integrity, and have promoted the legal profession as a career to people of all backgrounds.

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.

I have taught sessions at the Stanford Law School Trial Advocacy Workshop on closing arguments, cross examination, and evidence (1994-1996, 2001). I have taught sessions at the University of San Francisco School of Law Intensive Advocacy Program on closing arguments, cross examination, and evidence (1994-1996, 1999). I have taught sessions at the University of Santa Clara School of Law Trial Advocacy Program on trial techniques (1990, 1994, 1995). I have lectured at the Leadership for Lawyers class at the University of Santa Clara School of Law (2006).

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 will receive payments, upon retirement, from the California Judicial Retirement System.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

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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 the Public Defender of Santa Clara County. Because the Public Defender Office practices in the jurisdiction of the trial courts of the state of California, a matter involving my spouse or the Public Defender Office would be rare. Should such a matter arise, I would recuse myself unless it did not present a conflict or the appearance of a conflict.

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

    If confirmed, I will handle all matters involving actual or potential conflicts of interest by following the Code of Conduct for United States Judges and the federal recusal statutes. I recognize that public confidence in the courts is maintained only by stringent adherence to these principles.

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 practice, service to the disadvantaged and underrepresented has been a major part of my contribution as a lawyer. I served on the Santa Clara County Legal Aid Society Board to promote civil legal services to the disadvantaged. On behalf of the Santa Clara County Bar Association, I encouraged participation and leadership training for minority bar members. I participated in bar sponsored food drives for the needy.

    When I established my law partnership in 1988, I regularly provided pro bono representation to employees and volunteers of nonprofit organizations who were cited for breaches of local or state ordinances at the request of organization leaders. I represented students from local colleges and universities who were unable to afford counsel in criminal matters at the request of college administrators and faculty.

    Since my appointment to the Bench, and to promote the court's community outreach program, I regularly invite elementary school students from low income schools to conduct mock trials in my courtroom. I have presided over a youth court to educate at-risk youth regarding the criminal justice system. I participate in a court-sponsored reading program in identified, low-performing school districts.

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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 Barbara Boxer has established a bipartisan Judicial Advisory Committee for screening, interviewing and recommending candidates for the United States District Court in the Northern District of California. In October 2009, I submitted an application to Senator Boxer's committee. On November 11, 2009, the committee interviewed me.

Since January 26, 2010, I have been in contact with pre-nomination officials at the Department of Justice regarding nomination paperwork and have had periodic conversations with them regarding that paperwork and the process. On March 3, 2010, I interviewed in Washington, D.C., with attorneys from the Department of Justice and the Office of White House Counsel. 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.

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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
Davila, Edward J.	U.S. District Court, Northern District, California	05/05/2010
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	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.**	
191 North First Street San Jose, CA 95113	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. Chair, Board of Trustees	Trinity School
2. Member, Parents Diversity Advosory Committee	Castilleja School
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	California Judge's Retirement System II, pension upon retirement
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting	Date of Report
	Davila, Edward J.	05/05/2010

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	State of California, salary	$54,188.32
2. 2010	County of Santa Clara, salary	$3,954.51
3. 2009	State of California, salary	$154,322.30
4. 2009	County of Santa Clara, salary	$11,074.32
5. 2008	State of California, salary	$156,838.36
6. 2008	County of Santa Clara, salary	$10,664.16
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	County of Santa Clara, salary
2. 2009	County of Santa Clara, 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 9	Name of Person Reporting Davila, Edward J.	Date of Report 05/05/2010

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Davila, Edward J.	Date of Report 05/05/2010

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. Bank of America	Credit Card	K
2. Chase Bank	Mortgage on Second Property #1, Sunnyvale CA	M
3. private school	tuition	K
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 5 of 9

Name of Person Reporting	Date of Report
Davila, Edward J.	05/05/2010

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 Accounts		None	J	T	Exempt				
2. Santa Clara County Federal Credit Union Accounts	A	Int./Div.	K	T					
3. Chase Bank Account		None	J	T					
4. Judges Retirement System II Account	E	Interest	N	T					
5. CalPERS Retirement Account	E	Interest	O	T					
6. Investment Property, Sunnyvale, CA		None	O	W					
7. Utah Educational Savings Plan 529	A	Dividend	J	T					
8. ICMA - RC 457 Deferred Compensation Plan									
9. - Am Funds Growth Fund of America Mutual Fund	D	Dividend	M	T					
10. IRA Account #1		None	M	T					
11. - Pershing Govt Account Money Fund									
12. - AMCAP Fund Class A Mutual Fund									
13. - American High Income Trust Class A Mutual Fund									
14. - The Bond Fund of America Class A Mutual Fund									
15. - Capital Income Builder Fund Class A Mutual Fund									
16. - Capital World Bond Fund Class A Mutual Fund									
17. - Capital World Growth & Income Fund Class A Mutual 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 6 of 9

Name of Person Reporting	Date of Report
Davila, Edward J.	05/05/2010

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. - Fundamental Investors Class A Mutual Fund									
19. - ING Index Plus Large-Cap Fund Class A Mutual Fund									
20. - The Income Fund of America Class A Mutual Fund									
21. - The Investment Company of America Class A Mutual Fund									
22. - New Perspective Fund Class A Mutual Fund									
23. Brokerage Account #2									
24. - Franklin Dynatech Fund Class A Mutual Fund	A	Int./Div.	J	T					
25. Brokerage Account #3									
26. - Federated Govt Reserves Money Market Fund		None	J	T					
27. - Baron Growth Fund Mutual Fund		None	J	T					
28. - Dodge & Cox Stock Fund Mutual Fund		None	J	T					
29. IRA Account #4	A	Int./Div.	K	T					
30. - Western Asset Money Market Fund Class A									
31.									
32.									
33.									
34.									

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 9

Name of Person Reporting	Date of Report
Davila, Edward J.	05/05/2010

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.									
36.									
37.									
38.									
39.									
40.									
41.									
42.									

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 9	Name of Person Reporting Davila, Edward J.	Date of Report 05/05/2010

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

Edward J. Davila
Financial Disclosure Report
Reporting Period: 01/01/2009 - 04/30/2010
Additional Information

Part I Positions:

As Chair of the Board of Trustees of Trinity School, I have no control over the school's investment assets.

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Davila, Edward J.	Date of Report 05/05/2010

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

66817.218

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		14	000	Notes payable to banks-secured		384	206
U.S. Government securities-add schedule				Notes payable to banks-unsecured		20	000
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others – auto loan		25	000
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		703	022
Real estate owned-add schedule	2	200	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		88	000				
Cash value-life insurance							
Other assets itemize: Brokerage Accounts		10	133				
PERS Retirement Accounts		880	802				
IRA Accounts		211	529				
Utah College Fund		12	154	Total liabilities	1	132	228
457 Deferred Compensation Account		101	790	Net Worth	2	386	180
Total Assets	3	518	408	Total liabilities and net worth	3	518	408
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

Real Estate Owned	
Personal residence	$ 1,600,000
Second Property	600,000
Total Real Estate Owned	2,200,000
Real Estate Mortgages Payable	
Personal residence	$ 548,609
Second Property	154,413
Total Real Estate Mortgages Payable	703,022

AFFIDAVIT

I, **EDWARD JOHN DAVILA**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/18/10
(DATE)

(NAME)

(NOTARY)

HENRY SHEPHERD
COMM. # 1724517
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
COMM. EXPIRES FEB. 10, 2011

State of California County of
Santa Clara
Subscribed and sworn to (or affirmed)
before me on this 18 day of MAY, 2010, by
Edward J. Davila,
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature Henry Shepherd
(Seal)

Senator FRANKEN. Thank you, Judge. And for all the women that you have mentioned watching on the Webcast, welcome. Hi, welcome to you, too.

Judge Saldaña, thank you for being with us. Congratulations. And please feel free to introduce any members of your family or staff or friends who are here today.

STATEMENT OF DIANA SALDAÑA, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Judge SALDAÑA. Thank you, Senator. I want to start off by thanking President Obama for the nomination. It is truly an honor to be here today with you and with Ranking Member Sessions.

I want to thank Senator Cornyn and Senator Hutchison for their very kind words and their introduction to me. I want to thank them for establishing a bipartisan Committee in the State of Texas to review applications, and for their support throughout this process. I also want to thank Congressmen Henry Cuellar, my home Congressman from Laredo, Texas.

I am here because of the support of family and friends. I would like to recognize individuals who are here with me today and, also, some who were not able to travel with me to Washington, DC.

I want to start off by introducing my husband, Robert Arredondo, who stood up earlier today when Senator Cornyn was introducing me. He is a proud member, as he indicated, of the Laredo Police Department and a wonderful husband. He and I just became the proud parents of two boys, Thomas and Luke, who are seated next door. They are ages 4 and 5, and we were worried that they would not be able to sit through the hearing. So they are next door with my niece, Adriana Perez, who is here and volunteered to watch them for us.

My mother, Blanca Hernandez Rodriguez, is here with me. As Senator Cornyn indicated earlier, she is my inspiration. She taught me to be a very hard worker and really gave me the opportunity to dream of being here someday. She worked very hard for all of her six children. All six received high school diplomas and four of them college degrees. I am fortunate that two of my sisters were able to be here today, my sister, Rose Pearson, and her son, Daniel Kenneth Pearson, Jr., and then my sister, Blanca Saldaña. Her daughter, Adriana, is the one who is watching our two boys right now.

I have two other sisters who were not able to be here with me today, Linda Garcia, who was like a second mother to me. She's older than I am, but she is like a second mother to me. And she's an accountant and was not able to get away from work, unfortunately. But I know that she is here with me in spirit. And her children, Samantha and Brandon, and her husband, Martin.

My other sister, Beatrice Saldaña, was not able to be with me either, but I know that she's watching the Webcast. And my brother, Rudy Saldaña, and his sons, Joseph, Emanuel, Abraham and Jeremiah. I have 11 nieces and nephews, so I have to make sure I introduce all of them. And Elijah.

Senator FRANKEN. I am not sure we have time.

[Laughter.]

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Judge SALDAÑA. And Elijah Pearson, who was not able to be here with me. My mother-in-law, Laura Arredondo; my sister-in-law, Linda Arredondo——

Senator FRANKEN. Welcome.

Judge SALDAÑA.—traveled from Laredo and from Austin to be here. My college roommates, Ronnie, Veronica Ruiz, and Lila Michele Garza, Sarah Martinez traveled here.

Senator FRANKEN. Welcome.

Judge SALDAÑA. My only other college roommate, who was not able to be here, is Christy Isom (ph), but I know that she is watching with her kindergarten class in Austin, Texas.

My wonderful staff in Laredo, Margie, Irene and Yamil, all of the staff at the Federal courthouse in Laredo, Texas, my colleagues at the Federal courthouse, Judge Alvarez, Judge Hacker, Judge Garcia.

And I would like to conclude by thanking Judge Kazen, who is my mentor. I clerked for him when I graduated from law school and I, if confirmed, will succeed him. He has been an inspiration to me. He has a tremendous work ethic. For over 20 years, he served the Laredo division as the only Federal district judge in Laredo, with an overwhelming criminal docket, on the border. And I want to thank him for all of his support, and his beautiful wife, Barbara Kazen, as well.

And I welcome any questions from the Committee. Thank you.

[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).

   Diana Saldaña

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

   United States District Judge for the Southern District of Texas

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

   United States District Court for the Southern District of Texas
   United States Federal Courthouse
   1300 Victoria Street, Suite 2317
   Laredo, Texas 78040

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

   1971; Carrizo Springs, 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.

   1995 – 1997, The University of Texas School of Law; J.D., 1997

   1994 – 1995, Hamline University School of Law; No Degree Obtained (credits transferred to the University of Texas School of Law)

   1989 – 1994, The University of Texas at Austin; B.A. in Government, 1994; B.A. in History, 1993

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.

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2006 – Present
United States District Court for the Southern District of Texas
United States Federal Courthouse
1300 Victoria Street, Suite 2317
Laredo, Texas 78040
United States Magistrate Judge

2001 – 2006
United States Attorney's Office for the Southern District of Texas
1100 Matamoros Street, Suite 200
Laredo, Texas 78040
Assistant United States Attorney

2000 – 2001
Beirne, Maynard & Parsons, L.L.P.
1300 Post Oak Boulevard, Suite 2500
Houston, Texas 77056
Associate

1998 – 1999
United States Department of Justice,
Civil Rights Division, Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney

1998
United States Department of Agriculture
Office of the General Counsel, Civil Rights Division
1400 Independence Avenue S.W., Room 2029-S
Washington, D.C. 20250
Staff Attorney

1997 – 1998
United States District Court for the Southern District of Texas
United States Federal Courthouse
1300 Victoria Street, Suite 3232 (current address)
Laredo, Texas 78040
Law Clerk to Chief Judge George P. Kazen

1997
Juvenile Justice Clinic, The University of Texas School of Law
100 North IH-35
Austin, Texas 78705
Student Attorney (uncompensated)

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1997
The University of Texas School of Law
727 East Dean Keeton Street
Austin, Texas 78705
Research Assistant to Professor Gerald Torres (uncompensated)

1996
Justice Rose Spector, Texas Supreme Court
201 West 14th Street
Austin, Texas 78701
Intern (uncompensated)

1996
Jones, Day, Reavis and Pogue
901 Lakeside Avenue
Cleveland, Ohio 44114
Summer Associate

1996
Baker and Botts, L.L.P.
2001 Ross Avenue, Suite 700
Dallas, Texas 75201
Summer Associate

1995
Migrant Legal Services
118 Broadway, Suite 305
Fargo, North Dakota 58102
Summer Law Clerk

1994 – 1995
Professor Michael V. Scherschligt, Hamline University School of Law
1536 Hewitt Avenue
St. Paul, Minnesota 55104
Research Assistant

1994
Mike Roesch, Farmer
2530 170th Avenue
Ada, Minnesota 56510
Migrant Farm Worker

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.

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I have not served in the military and 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.

Texas A&M International University, Criminal Justice Internship Program,
Certificates of Appreciation, 2007, 2008, 2009
State of Texas House of Representatives Resolution, H.R. No. 2240, 2007
U.S. Immigration & Customs Enforcement, Certificate of Appreciation, 2006
U.S. Attorney's Office, Southern District of Texas, Laredo Division:
Service Award, 2004
Sisyphus Award, 2003, 2005
On the Spot Award, 2003
Special Achievement for Sustained Superior Performance, 2003, 2005
U.S. Border Patrol, Laredo Sector, Certificate of Appreciation, 2001
The University of Texas School of Law:
Ronald D. Krist Endowed Presidential Scholarship Recipient, 1996
Mexican-American Legal Defense and Educational Fund Scholarship Recipient, 1995

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

United States District Court for the Southern District of Texas
MJSTAR Committee (2008 – Present)
Federal Magistrate Judges Association (2006 – Present)
National Hispanic Prosecutors Association (2005)
Region III President
Webb County Bar Association (2001 – present)
Vice-President (2005)
Webb County Women's Bar Association (2001 – Present)
Houston Bar Association Adopt-A-School Committee (2001)
National Hispanic Bar Association (1995 – Present)
Austin Hispanic Bar Association (1995 – 1997)

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.

Texas, 1997

There have been no lapses in membership.

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

Supreme Court of the United States, 2003
United States Court of Appeals for the Fifth Circuit, 2000
United States District Court for the Southern District of Texas, 1998
Supreme Court of Texas, 1997

There have been no lapses in membership.

11. **Memberships**:

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

The University of Texas School of Law Diversity Weekend Planning Committee (2006 and 2009)
Texas Exes, Laredo Chapter (2005 – Present)
Home Owners Association, La Villita Del Lago, Laredo, Texas
President (2005 – 2006)
Voz de Niños (Childrens' Voice), Court Appointed Special Advocates, Laredo, Texas (2007)
Steering Committee, Member (2007)
Red Mass Committee, Laredo, Texas (2001 – Present)
Alexandria City Public Schools Volunteer Program (1998 – 1999)

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

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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 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 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 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.

I searched my files and calendars as well as publicly-available Internet sources to create a response to this question as comprehensive as possible, but there may be others I have been unable to recall or identify.

On the following dates I presided over Naturalization Ceremonies and either offered congratulatory remarks or introduced guest speakers who offered congratulatory remarks: January 22, 2010; September 11, 2009; May 8, 2009; February 27, 2009; December 5, 2008; October 24, 2008; August 22, 2008; August 8, 2008; May 23, 2008; February 8, 2008; June 22, 2007; March 9, 2007; September 2006; and June 23, 2006. I have no transcript or notes.

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December 9, 2009 – Keynote Speaker, United High School National Honor Society Induction Ceremony, Laredo, Texas. The speech was congratulatory in nature and intended to encourage a group of high school students to stay focused as they enter college. Notes supplied.

September 30, 2009 – Speaker, National Hispanic Heritage Celebration, Laredo, Texas. The speech was on the strides made by the Hispanic community to date, the need for involvement in the Hispanic community, and the importance of encouraging students to complete high school and receive a college education. I have no transcript or notes.

September 24, 2009 – Speaker, Lyndon B. Johnson High School, AP Government Class, Laredo, Texas. The speech encouraged students to complete high school and attend college. I also discussed my experiences growing up as a migrant farm worker and my current occupation as a judge. I have no transcript or notes.

April 25, 2009 – Speaker, Texas A&M International University End of the Year Banquet, College Assistance Migrant Program & High School Equivalency Program, Laredo, Texas. The speech was congratulatory in nature to a group of college students who had successfully completed their first year of college through the college assistance migrant program. I also discussed my experiences growing up as a migrant farm worker and my current occupation as a judge. I have no transcript or notes.

December 10, 2008 – Speaker, United South High School Career Day, Laredo, Texas. I spoke about my experiences growing up as a migrant farm worker and my current occupation as a judge. I have no transcript or notes.

July 31, 2008 – Keynote Speaker, Leadership Laredo, Laredo, Texas. I spoke about my experiences growing up as a migrant farm worker and encouraging members to be active in their community. I have no transcript or notes.

May 30, 2008 – Commencement Speaker, Carrizo Springs High School Graduation Ceremony, Carrizo Springs, Texas. A copy is supplied.

May 9, 2008 – Host, United States Border Patrol New Officers Courthouse Visit, Laredo, Texas. I hosted a group of recently graduated border patrol agents as observers in my courtroom. I explained the magistrate court process at the end of the court session. I have no transcript or notes.

May 8, 2008 – Host, Texas A&M International University Student Courthouse Visit, Laredo, Texas. I hosted a group of college students as observers in my courtroom and I explained the magistrate court process at the end of the court session. I have no transcript or notes.

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February 9, 2008 – Host, Youth Leadership Laredo Courthouse Visit, Laredo, Texas. I hosted a group of college students as observers in my courtroom and I explained the magistrate court process at the end of the court session. I have no transcript or notes.

February 7, 2008 – Speaker and Panelist, 2008 Civil & Criminal Federal Practice Seminar, Laredo, Texas, sponsored by the Federal Bar Association and the Laredo-Webb County Bar Association. A copy of the outline and power-point presentation on "CJA issues and Billing in Court-Appointed cases" is supplied.

January 22, 2008 – Host, Cub Scouts "Do Your Best" Visit to Courthouse, Laredo, Texas. I hosted a group of cub scouts in my courtroom and talked to them about making good choices. I have no transcript or notes.

December 20, 2007 – Graduation Speaker, Reasoning and Rehabilitation Program, U.S. Probation Office, Laredo, Texas. I congratulated the graduates of the program and spoke to them about my experiences growing up as a migrant farm worker. I have no transcript or notes.

December 5, 2007 – Speaker, United South High School Career Day, Laredo, Texas. I spoke about experiences growing up as a migrant farm worker and my current occupation as a judge. I have no transcript or notes.

October 31, 2007 – Support Group Speaker, Casa De Misericordia, Lamar Bruni Vergara Education Center, Laredo, Texas. I spoke to a group of women about combating domestic violence. I have no transcript or notes.

October 24, 2007 – Support Group Speaker, Casa De Misericordia, Lamar Bruni Vergara Education Center, Laredo, Texas. I spoke to a group of women about combating domestic violence. I have no transcript or notes.

September 6, 2007 – Keynote Speaker, Casa De Misericordia Conference on Domestic Violence, Laredo, Texas. I spoke about combating domestic violence and my experiences growing up in an abusive home. Notes supplied. The speech was the subject of a news article, Jason Buch, *Judge shares emotional family tale*, LAREDO MORNING TIMES, Oct. 5, 2007, which is supplied.

July 31, 2007 – Luncheon Speaker, Human Trafficking Conference, Laredo, Texas. I spoke to the participants of the conference regarding my experiences growing up as a migrant farm worker. I have no transcript or notes.

July 19, 2007 – Press Conference Speaker, Voz De Niños, Laredo, Texas. The outline for my remarks is supplied. The speech was the subject of a newspaper article, Christina Rosales, *Advocacy program making a comeback*, LAREDO MORNING TIMES, July 20, 2007 and a press release, also supplied.

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June 13, 2007 – Graduation Speaker, Reasoning and Rehabilitation Program, U.S. Probation Office, Laredo, Texas. I congratulated the graduates of the program and spoke to them about my experiences growing up as a migrant farm worker. I have no transcript or notes.

June 9, 2007 – Keynote Speaker, Youth Leadership Laredo, Laredo, Texas. A copy is supplied. The speech was the subject of a newspaper article, Mike Hall, *Youth Leadership Laredo: Vision continues as its second class is larger than the first*, LAREDO MORNING TIMES, July 2, 2007, at 8, also supplied.

April 30, 2007 – Master of Ceremonies, *Dia de los Ninos* (Day of the Children), Texas Migrant Council, Inc., Laredo, Texas. I introduced the special guests and participated in the ribbon cutting for the event. I have no transcript or notes.

April 13, 2007 – Host, J.W. Nixon and Dr. Leo Cigarroa High School Criminal Justice High School Students Courthouse Visit, Laredo, Texas. I hosted a group of criminal justice high school students as observers in my courtroom, and I explained the legal proceedings to them. I have no transcript or notes. The event was the subject of a letter to the editor of the Laredo Morning Times, Ricardo H. Alvarez & Nora Villarreal, Letter to the Editor, *Teachers thank judges for helping students*, LAREDO MORNING TIMES, Apr. 13, 2007, which is supplied.

March 29, 2007 – Keynote Speaker, Texas A&M International University, College of Arts and Sciences Conference, Laredo, Texas. A copy is supplied.

March 9, 2007 – Keynote Speaker, "Fairness," United Day Middle School, Laredo, Texas. A copy of my outline is supplied.

September 8, 2006 – Keynote Speaker, Kick-Off Dinner, Youth Leadership Laredo, Texas A&M International University, Laredo, Texas. A copy of my outline is supplied.

June 9, 2006 – Keynote Speaker, Investiture Ceremony of Diana Saldaña as a United States Magistrate Judge, Laredo, Texas. A copy of the speech is supplied.

May 15, 2006 – Keynote Speaker, Kiwanis Club Law Enforcement of the Year Awards Banquet, Laredo, Texas. A copy is supplied. The speech was the subject of a newspaper article, *Saldaña guest speaker at Kiwanis event*, LAREDO MORNING TIMES, May 14, 2006, also supplied.

March 27, 2006 – Speaker, Swearing-In Ceremony of Diana Saldaña as a United States Magistrate Judge, Laredo, Texas. I have no transcript or notes. The event was the subject of a newspaper article, Clay Reddick, *Saldaña is new magistrate judge*, LAREDO MORNING TIMES, Mar. 28, 2006, at 3A, which is supplied.

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April 27, 2005 – Speaker, Law and Society undergraduate class, Texas A&M International University, Laredo, Texas. I spoke to the class about my work as an Assistant United States Attorney. I have no transcript or notes.

1998 – Panelist, Law School Admission Council's Education Conference, *Reaffirming the Value of Diversity*, Phoenix, Arizona. Notes supplied.

1998 – Panelist, "Secrets to Success–For Women Only," Texas A&M International University, Laredo, Texas. I was a panelist and spoke about my experiences in law school and as a judicial law clerk. I have no transcript or notes.

1998 – Introductory Remarks, Texas Hispanic Journal of Law and Policy Panel Discussion, Constructing Reality After Hopwood. The remarks are at 4 TEX. HISP. J.L. & POL'Y 45 (Spring 1998), which 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 searched my files as well as publicly-available Internet sources to create a response to this question as comprehensive as possible, but there may be others I have been unable to recall or identify.

Spike Gillespie, *A Dream Made Real*, *UT LAW Magazine*, Winter 2009, at 72-73.

John Council, *The Big 30: U.S. District Judge George P. Kazen Takes Senior Status and Reflects On His Beloved Laredo*, TEXAS LAWYER, June 1, 2009.

Jesse Bogan, *Federal Judge logs 25 years in busy Laredo position*, SAN ANTONIO EXPRESS NEWS, June 28, 2008.

James Pinkerton, *Illegal Immigration Crackdown*, HOUSTON CHRONICLE, Nov. 20, 2007, at A1.

Cinematic Biographical Interview, Univision, Laredo, Texas, *Nuestro Orgullo* (Our Pride), May 2, 2007.

Meg Guerra, *U.S. Magistrate Judge Diana Saldaña–a work ethic forged in the migrant fields of Minnesota and North Dakota*, *LAREDOS*, Oct. 2006, at 50-52.

Jeorge Zarazua, *Singer Hinojosa handed probation in drug case*, SAN ANTONIO EXPRESS NEWS, Feb. 13, 2003.

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Cinematic Biographical Interview, UT Law School Foundation 50th Anniversary Celebration, *The Gift of Excellence*, Castleview Productions, Austin, Texas, 2002.

Cinematic Biographical Interview, Law School Admission Council, *Believe and Achieve: Latinos in Law*, Edge Productions, New York, New York, 2000 (available at http://www.lsac.org/VideoStreams/Believe_Main.asp).

A. Phillips Brooks, *Success stories like Diana Saldana have colleges reconsidering admission tests*, FORT WORTH STAR-TELEGRAM, Jan. 7, 1998.

A. Phillips Brooks, *Texas Colleges Looking Past Test Scores*, AUSTIN-AMERICAN STATESMAN, Oct. 26, 1997, at A1.

Martin Walker, *This Week: God Bless (White) America*, THE GUARDIAN (LONDON), May 17, 1997.

Ellis Cose, *The Color Bind*, NEWSWEEK, May 12, 1997.

Kevin Ley, *Campus Panel Discusses Racism in Admissions*, Daily Texan, 1996 (I do not have the exact date).

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 March 27, 2006, I was appointed a United States Magistrate Judge by the United States District Court for the Southern District of Texas.

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

In approximately thirty cases, I have issued Reports and Recommendations on dispositive motions referred to me by District Judge George P. Kazen.

I also preside over a misdemeanor and petty offense docket. I have presided over the plea and sentencing of approximately 17,000 Class B misdemeanor cases, the penalty for which is up to six months' imprisonment. I have presided, by consent of the parties, over the plea and sentencing of 12 Class A misdemeanor cases, the penalty for which is up to one-year's imprisonment. I have presided over felony guilty pleas in approximately 3,500 cases. In each of those cases, I issued a Report and Recommendation to the district judge for acceptance of the guilty plea. In each case, the district judge adopted my Report and Recommendation.

i. Of these, approximately what percent were:

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jury trials:	0%
bench trials:	0%
civil proceedings:	1%
criminal proceedings:	99%

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. *Eliserio, et al. v. Floydada Housing Auth.*, No. 5:05-cv-4 (CM/ECF) (S.D. Tex.); 455 F.Supp.2d 648 (S.D. Tex. 2006); 2008 WL 901493 (S.D. Tex. Mar. 31, 2008).

Plaintiffs were migrant farm workers who brought an action under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) against Floydada Housing Authority, a municipal operator of a farm labor housing facility. In part, Plaintiffs claimed that Floydada's farm labor housing failed to meet federal and state safety and health standards, in violation of 29 U.S.C. § 1823(a). Floydada moved to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), arguing, in part, that it was not a "person" subject to suit for purposes of the AWPA because of its governmental status. The motion was referred to me for a recommended ruling. I recommended denial of Defendant's motion to dismiss. District Judge George P. Kazen adopted my Report and Recommendation.

Plaintiffs also sued the United States Department of Agriculture under the Administrative Procedure Act (APA), 5 U.S.C. § 701, alleging that USDA, Defendant Floydada's financial supporter, made funding and housing enforcement decisions adverse to Plaintiffs because of Plaintiffs' race and national origin. USDA moved to dismiss, arguing, in part, that Plaintiffs lacked standing to bring suit under the APA. On referral, I recommended granting USDA's motion in part, concluding that Plaintiffs had failed to establish standing under Article III's case or controversy requirement as to claims related to loan approval and discrimination. District Judge George P. Kazen adopted my Report and Recommendation. The parties ultimately reached a resolution of the case.

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Plaintiffs' counsel:	Robert W. Doggett Texas Rural Legal Aid, Inc. 4920 North IH-35 Austin, TX 78751 (512) 374-2725
Defendants' counsel:	Jean-Michel Voltaire U.S. Department of Justice 20 Massachusetts Avenue N.W. Washington, D.C. 20530 (202) 616-8211

2. *Holstine v. DaimlerChrysler Corp.*, No. 5:06-cv-53 (CM/ECF) (S.D. Tex.); 2007 WL 4611914 (S.D. Tex. Dec. 12, 2007).

   After a motor-vehicle accident, Plaintiff filed a products liability action against DaimlerChrysler alleging negligence and strict liability causes of action against the manufacturer and seller of Holstine's car. After a lapse of the deadline for amendment of pleadings, Plaintiffs moved to amend their complaint and add several non-diverse defendants, whose joinder would destroy diversity of parties and the Court's jurisdiction. I denied Plaintiffs' motion pursuant to Federal Rule of Civil Procedure 16(b)(4) and 28 U.S.C. § 1447(e). The parties ultimately reached a resolution of the case.

Plaintiffs' counsel:	Josh William Hopkins Sico, White, *et al.* 802 North Carancahua, Suite 900 Corpus Christi, TX 78470 (361) 653-3300
Defendant's counsel:	Martha Cigarroa de Llano Person, Whitworth, *et al.* 602 East Calton Road. Laredo, TX 78042 (956) 727-4441

3. *United States v. Ramon Campos-Pena*, No. 5:06-cr-1466, Doc. 18 (CM/ECF) (S.D. Tex. Jan. 30, 2007)

   Defendant Campos-Pena was charged, in part, of possessing with intent to distribute a quantity of less than 50 kilograms of marijuana. Campos-Pena moved to suppress the narcotics, which were discovered by Border Patrol agents at a fixed checkpoint. He argued that the agents did not have reasonable suspicion to detain him after establishing that he was a legal resident alien. He also challenged the legality of the search of his vehicle. I presided over the hearing on the motion to suppress. Because I concluded that agents had reasonable suspicion to detain

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Campos-Pena, I issued a Report and Recommendation recommending denial of the motion to suppress. District Judge George P. Kazen adopted my Report and Recommendation.

Assistant U.S. Attorney:	Graciela Rodriguez-Lindberg Office of the U.S. Attorney 1100 Matamoros Street Laredo, TX 78040 (956) 723-6523
Defendant's counsel:	Joe G. Jacinto Raul Martinez Office of the Federal Public Defender 1501 Matamoros Street Laredo, TX 78040 (956) 753-5313

4. *Martinez, et al. v. Gutierrez, et al.*, No. 5:05-cv-206, Doc. 18 (CM/ECF) (S.D. Tex. Sept. 5, 2006).

Plaintiffs were thirteen migrant farm workers from Texas who filed a complaint under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), and also raising state law claims for breach of contract, fraud, and negligent representation, alleging that Defendants provided false and misleading information regarding the terms and conditions of employment and failed to meet minimum safety and health standards in housing. I recommended that the district judge deny a defendant migrant-worker recruiter's motion to dismiss for lack of personal jurisdiction and improper venue, finding that defendant's contacts with Laredo, Texas were sufficient to support personal jurisdiction. District Judge Kazen adopted my Report and Recommendation. This case was eventually resolved by the parties.

Plaintiffs' counsel:	Guadalupe Canales, Texas Rural Legal Aid, Inc. 1719 Matamoros Laredo, TX 78042 (956)727-5191
Defendants' counsel:	H. Fred Cook Wilson, Cribbs, *et al.* 2500 Fannin Houston, TX 77002 (713) 222-9000

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5. *Luna v. Astrue*, No. 5:06-cv-61, Doc. 30 (CM/ECF) (S.D. Tex. Feb. 29, 2008).

Plaintiff appealed to the District Court the determination of an Administrative Law Judge that he was not entitled to receive Title XVI supplemental security income benefits. I issued a Report and Recommendation that the case be reversed and remanded to the Commissioner of the Social Security Administration for further proceedings because of an unresolved conflict in the record between the vocational expert's testimony regarding the identified jobs that would accommodate plaintiff's residual functional capacity and the DOT description of the jobs. District Judge George P. Kazen adopted my Report and Recommendation and remanded the case back to the Commissioner.

Plaintiff's counsel:	Douglas E. Dilley 635 South Presa San Antonio, TX 78210 (210) 225-0111
Defendant's counsel:	Kerry J. Simpson Social Security Administration 1301 Young Street, Suite 430 Dallas, TX 75202 (214) 767-5582

6. *Garza, Jr. v. Laredo Indep. School Dist.*, No. 5:04-cv-137, Doc. 58 (CM/ECF) (S.D. Tex. Feb. 23, 2007).

A teacher who was employed by Laredo Independent School District filed a complaint until Title VII alleging that LISD discriminated against him on the basis of his national origin and then retaliated against him because he complained to the school board about the discriminatory treatment. I concluded that because plaintiff had failed to exhaust his administrative remedies on some of his Title VII claims, the Court lacked jurisdiction to entertain these claims. I recommended partial dismissal, and District Judge Micaela Alvarez adopted my Report and Recommendation.

Plaintiff's counsel:	Gregorio Garza, Jr. *(Pro se)*
Defendant's counsel:	John A. Kazen Kazen, Meurer, *et al.* 211 Calle Del Norte, Suite 100 Laredo, TX 78041 (956) 712-1600

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7. *Palacios v. Quarterman*, No. 5:06-cv-151, Doc. 26 (CM/ECF) (S.D. Tex. July 2, 2008).

Petitioner, who was serving a 55-year prison sentence for murder upon a jury verdict of guilty, sought habeas corpus relief from state custody pursuant to Section 2254. Petitioner made several claims, including: that the state prosecution withheld and lost or destroyed material evidence that was favorable to him; that the trial court's evidentiary rulings denied him the right to present a defense and to confront a state witness with impeachment evidence; and that defense counsel provided ineffective assistance at the trial and on appeal. I recommended that Petitioner's claims be dismissed, including Petitioner's ineffective assistance of counsel claims, which was based on his trial counsel's questioning of a co-defendant that opened the door to prejudicial testimony that Petitioner attempted to kill an eyewitness to the murder. I concluded that even if counsel's performance was deficient in this respect, its effect was not prejudicial to Petitioner, given the strength of the evidence against him. District Judge George P. Kazen adopted my Report and Recommendation that the Court grant Respondent's motion for summary judgment and dismiss the Section 2254 habeas petition. On June 24, 2010, the Fifth Circuit Court of Appeals affirmed the denial of habeas relief.

Plaintiff's counsel: *Pro se*

Defendant's counsel: Sallie Christian-Carnal
Office of the Attorney General
Post Litigation Division
Capital Station
P. O. Box 12548
Austin, TX 78711
(512) 936-1400

8. *United States v. Hovey*, No. 5:07-cr-656, Doc. 41 (CM/ECF) (S.D. Tex. Jan. 11, 2008).

Defendant Hovey was charged with possession with intent to distribute a quantity in excess of 1,000 kilograms of marijuana. The narcotics were discovered by officers in Hovey's tanker truck. Hovey moved to suppress the marijuana as evidence, arguing that a DPS officer had seized and searched the tanker truck without probable cause in violation of the Fourth Amendment. I presided over the motion to suppress hearing and issued a Report and Recommendation where I upheld the stop and the inspection based upon the regulatory exception to the warrant requirement enunciated by the Supreme Court in *New York v. Burger*, 107 S.Ct. 2636 (1987), and extended by the Fifth Circuit to Texas commercial motor vehicle stops in *United States v. Fort*, 248 F.3d 475 (5th Cir. 2001). District Judge George P. Kazen adopted my Report and Recommendation.

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Assistant U.S. Attorney:	Robert Searls Johnson Office of the U.S. Attorney 919 Milam Houston, TX 77002 (713) 567-9706
Defendant's counsel:	Oscar Alvarez 600 South 11th Street McAllen, TX 78501 (956) 686-6330

9. *United States v. Rodriguez*, No. 5:07-cr-154-3 (CM/ECF) (S.D. Tex.).

In May 2007, I took the plea of defendant Rodriguez, a resident alien who pled guilty to one count of conspiracy under 18 U.S.C. § 1203 for the kidnapping-for-ransom of two U.S. nationals. The involved a complicated factual scenario, and Rodriguez had a difficult time admitting to the underlying facts so I had to go over the facts in great detail so that there would be no confusion as to what the defendant was admitting as part of the plea. After a long factual colloquy, I accepted the plea and issued a Report and Recommendation. District Judge George P. Kazen adopted my Report and Recommendation that he accept Rodriguez's guilty plea. She was eventually sentenced to 168 months imprisonment and ordered to make restitution of over $25,000 to the victims.

Assistant U.S. Attorney:	Diana Ming Hsuen Song Office of the U.S. Attorney P.O. Box 1179 Laredo, TX 78042 (956) 723-6523
Defendant's counsel:	Adriana Benavides-Maddox 1015 Scott Street Laredo, TX 78040 (956) 791-3003

10. *United States v. Garcia*, No. 5:07-cr-452-6 (CM/ECF) (S.D. Tex.).

In January 2008, I took the plea of defendant Garcia, who pled guilty to a count of conspiracy under 18 U.S.C. § 1201 for the kidnapping-for-ransom and transport in foreign commerce of an undocumented immigrant from El Salvador. Garcia also pled guilty to brandishing or discharging a firearm during a crime of violence, 18 U.S.C. § 924. This case was unique because the victim was held in custody as a material witness. I met with the victim on various occasions and discussed his security concerns. I then coordinated with the U.S. Marshal Service and the Assistant United States Attorney to ensure that the victim's safety was a priority. I also appointed an attorney to represent the victim. Eventually, the victim was

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taken out of custody and placed in a safe house. District Judge George P. Kazen adopted my Report and Recommendation that he accept Garcia's guilty plea. Garcia was eventually sentenced to 130 months' imprisonment, to be served consecutively to a mandatory minimum of 10 years.

Assistant U.S. Attorney:	Graciela Rodriguez Lindberg Office of the U.S. Attorney P.O. Box 1179 Laredo, TX 78042 (956) 721-4960
Defendant's counsel:	Fausto Sosa 101 East Hillside Road, Suite 11C Laredo, TX 78041 (956) 727-4477

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. *Eliserio, et al. v. Floydada Housing Auth.*, 455 F.Supp.2d 648 (S.D. Tex. 2006).

Plaintiffs' counsel:	Robert W. Doggett Texas Rural Legal Aid, Inc. 4920 North IH-35 Austin, TX 78751 (512) 374-2725
Defendants' counsel:	Jean-Michel Voltaire U.S. Department of Justice 20 Massachusetts Avenue N.W. Washington, D.C. 20530 (202) 616-8211

2. *Eliserio, et al. v. Floydada Housing Auth.*, 2008 WL 901493 (S.D. Tex. Mar. 31, 2008).

Plaintiffs' counsel:	Robert W. Doggett Texas Rural Legal Aid, Inc. 4920 North IH-35 Austin, TX 78751 (512) 374-2725

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Defendants' counsel: Jean-Michel Voltaire
U.S. Department of Justice
20 Massachusetts Avenue N.W.
Washington, D.C. 20530
(202) 616-8211

3. *Holstine v. DaimlerChrysler Corp.*, 2007 WL 4611914 (S.D. Tex. Dec. 12, 2007).

Plaintiffs' counsel: Josh William Hopkins
Sico, White, *et al.*
802 North Carancahua, Suite 900
Corpus Christi, TX 78470
(361) 653-3300

Defendant's counsel: Martha Cigarroa de Llano
Person, Whitworth, *et al.*
602 East Calton Road.
Laredo, TX 78042
(956) 727-4441

4. *United States v. Ramon Campos-Pena*, No. 5:06-cr-1466, Doc. 18 (CM/ECF) (S.D. Tex. Jan. 30, 2007)

Assistant U.S. Attorney: Graciela Rodriguez-Lindberg
Office of the U.S. Attorney
1100 Matamoros Street
Laredo, TX 78040
(956) 723-6523

Defendant's counsel: Joe G. Jacinto
Raul Martinez
Office of the Federal Public Defender
1501 Matamoros Street
Laredo, TX 78040
(956) 753-5313

5. *United States v. Cervantes*, No. 5:09-cr-281, Doc. 30 (CM/ECF) (S.D. Tex. Oct. 26, 2009).

Assistant U.S. Attorney: Robert F. Ramirez
Office of the U.S. Attorney
P.O. Box 1179
Laredo, TX 78042
(956) 723-6523

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Defendant's counsel: Oscar A Vela , Jr.
1800 Victoria Street
Laredo, TX 78040
(956) 725-9714

6. *United States v. Gutierrez*, No. 5:08-cr-1976-2, Doc. 57 (CM/ECF) (S.D. Tex. Mar. 16, 2009).

Assistant U.S. Attorney: Robert F. Ramirez
Office of the U.S. Attorney
P.O. Box 1179
Laredo, TX 78042
(956) 723-6523

Defendant's counsel: David Almaraz
1802 Houston Street
Laredo, TX 78040
(956) 727-3828

7. *Compean, et al. v. County of Webb, et al.*, No. 5:06-cv-168, Doc. 69 (CM/ECF) (S.D. Tex. July 22, 2008).

Plaintiffs' counsel: Octavio Salinas, II
213 West Village Boulevard, Suite 6
Laredo, TX 78041
(956) 727-4942

Defendants' counsel: Eric Magee
Allison, Bass, *et al.*
402 West 12th Street
Austin, TX 78701
(512) 482-0701

8. *Woodson v. Bickham, et al.*, No. 5:06-cv-100, Doc. 66 (CM/ECF) (S.D. Tex. Dec. 20, 2007).

Plaintiff's counsel: *Pro se*

Defendant's counsel: Maurice Lawrence Wells
Office of the Attorney General
300 West 15th, 7th Floor
Austin, TX 78701
(512) 463-2080

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9. *United States v. Zambrano*, No. 5:07-cr-48, Doc. 29 (CM/ECF) (S.D. Tex. April 25, 2007).

Assistant U.S. Attorney:	Robert F. Ramirez Office of the U.S. Attorney P.O. Box 1179 Laredo, TX 78042 (956) 723-6523
Defendant's counsel:	Christina Flores 1308 San Agustin Laredo, TX 78040 (956) 728-7474.

10. *Martinez, et al. v. Gutierrez, et al.*, No. 5:05-cv-206, Doc. 18 (CM/ECF) (S.D. Tex. Sept. 5, 2006).

Plaintiffs' counsel:	Guadalupe Canales, Texas Rural Legal Aid, Inc. 1719 Matamoros Laredo, TX 78042 (956)727-5191
Defendants' counsel:	H. Fred Cook Wilson, Cribbs, *et al.* 2500 Fannin Houston, TX 77002 (713) 222-9000

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

To the best of my knowledge, certiorari has not been requested or granted in any of my cases.

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

I have not had a case that was overturned or affirmed with significant criticism by an appellate court. There have been two opinions where the district court did not accept my recommendation.

1. *Montes v. Webb County, et al.*, No. 5:05-cv-76, Doc. 51 (CM/ECF) (S.D. Tex. Mar. 3, 2008). I recommended granting Defendants' motion for

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summary judgment, relying on the Fifth Circuit's interpretation of Supreme Court precedent holding that the First Amendment does not insulate speech of a public employee who speaks in his official capacity. Before the district court reviewed my opinion, the Fifth Circuit clarified its interpretation, which resulted in District Judge George P. Kazen not adopting my Report and Recommendation.

2. *United States v. Miguel Guadalupe Cervantes*, No. 5:09-cr-281, Doc. 30 (CM/ECF) (S.D. Tex. Oct. 26, 2009). I recommended denying Defendant's motion to suppress but District Judge George P. Kazen did not adopt my Report and Recommendation. Judge Kazen held that the officer had not developed reasonable suspicion at the point where Defendant had been seized and this constitutional violation tainted Defendant's consent to search his suitcase.

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, I issue orders on non-dispositive matters, including a significant number of discovery motions. In consent cases, I draft orders on dispositive motions and issue Reports and Recommendations on all dispositive matters referred to me. The motions vary in complexity. I issue hundreds of such orders annually. Very few of these orders are published. On many occasions, my opinions and orders are unpublished, although all such orders are docketed in the court's Case Management Electronic Case Filing System (CM/ECF), making them available to the public.

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.

McCarty v. Quarterman, 2008 WL 4372703 (S.D. Tex. Sep. 19, 2008), *aff'd*, 2010 WL 1752037 (5th Cir. Apr. 30, 2010).
Eliserio, et al. v. Floydada Housing Auth., 2008 WL 901493 (S.D. Tex. Mar. 31, 2008).
Rodriguez v. Quarterman, 2008 WL 717735 (S.D. Tex. Mar. 17, 2008).
United States v. Soto, No. 5:09-cr-1476-2, Doc. 51 (CM/ECF) (S.D. Tex. Oct. 26, 2009).
United States v. Cervantes, No. 5:09-cr-281, Doc. 30 (CM/ECF) (S.D. Tex. Oct. 26, 2009).
United States v. Martinez, No. 5:09-cr-699, Doc. 27 (CM/ECF) (S.D. Tex. July 13, 2009).
United States v. Hinojosa, No. 5:08-cr-2057, Doc. 30 (CM/ECF) (S.D. Tex. May 18, 2009).
United States v. Gutierrez, No. 5:08-cr-1976-2, Doc. 57 (CM/ECF) (S.D. Tex. Mar. 16, 2009).

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United States v. Garcia, No. 5:08-cr-17, Doc. 25 (CM/ECF) (S.D. Tex. July 8, 2008).
United States v. Campos, No. 5:97-cr-262-9, Doc. 395 (CM/ECF) (S.D. Tex. July 3, 2008).
Palacios v. Quarterman, No. 5:06-cv-151, Doc. 26 (CM/ECF) (S.D. Tex. July 2, 2008) (report and recommendation adopted by presiding judge), *aff'd*, 5th Cir. June 24, 2010.
United States v. Santiago, No. 5:06-cr-1657, Doc. 27 (CM/ECF) (S.D. Tex. Mar. 27, 2007).
Montes v. Webb County, et al., No. 5:05-cv-76, Doc. 51 (CM/ECF) (S.D. Tex. Mar. 3, 2008).
United States v. Hovey, No. 5:07-cr-656, Doc. 41 (CM/ECF) (S.D. Tex. Jan. 11, 2008).
Woodson v. Bickham, et al., No. 5:06-cv-100, Doc. 66 (CM/ECF) (S.D. Tex. Dec. 20, 2007).
United States v. Gomez-Gonzalez, No. 5:07-cr-493, Doc. 77 (CM/ECF) (S.D. Tex. Sept. 26, 2007).
United States v. Dovalina, Jr., No. 5:06-cr-1267, Doc. 52 (CM/ECF) (S.D. Tex. May 25, 2007).
United States v. Borrego-Ramos, No. 5:07-cr-218, Doc. 23 (CM/ECF) (S.D. Tex. May 23, 2007).
United States v. Zambrano, No. 5:07-cr-48, Doc. 29 (CM/ECF) (S.D. Tex. Apr. 25, 2007) (report and recommendation adopted by presiding judge), *aff'd* 325 Fed.Appx. 369, 2009 WL 1209149 (5th Cir. May 5, 2009).
Montes v. Webb County, et al., No. L-05-cv-76, Doc. 33 (CM/ECF) (S.D. Tex. Feb. 16, 2007).
United States v. Campos-Pena, No. 5:06-cr-1466, Doc. 18 (CM/ECF) (S.D. Tex. Jan. 30, 2007).
United States v. Juan Gabriel Molina, No. 5:06-cr-1156, Doc. 18 (CM/ECF) (S.D. Tex. Oct. 2, 2006).
Martinez v. Gutierrez, No. 5:05-cv-206, Doc. 18 (CM/ECF) (S.D. Tex. Sept. 5, 2006).
United States v. Jorge Meza, No. 5:06-cr-689, Doc. 38 (CM/ECF) (S.D. Tex. Aug. 7, 2006).

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

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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 follow the federal recusal statutes and the Code of Conduct for United States Judges. I maintain a standing recusal list of individuals and entities which requires my recusal consistent with these authorities, such as close friends and law firms that I have retained to handle personal and business matters. I also review the parties and counsel in each case to ensure I do not have a close relationship to any of the parties, identified witnesses, or counsel that would interfere with my neutrality or compromise the appearance of justice. In addition, the Southern District of Texas has a program in place through which a judge discloses any interest(s) in a company, organization, etc. If that entity is entered as a party in the computer program, an alert is sent to the judge of the potential conflict. I do not have an interest in any company and/or organization that presently requires recusal or disqualification.

In *United States v. Alanis*, Case No. 5:05-cr-1640-S, the defendant filed a motion to recuse and to vacate a detention order on the basis that, as an Assistant United States Attorney, I had handled the initial appearance of a co-defendant. I was not aware at the time of the detention hearing that I had previously made a court appearance representing the United States Attorney's Office in the case against Alanis' co-defendant. Alanis was not a named defendant in the case when I was employed at the United States Attorney's office. Regardless, because of the potential appearance of impropriety, I granted the motion, vacated my detention order, and recused myself from the case.

Upon determining that I was a federal prosecutor involved in the following cases, I recused from these matters:

United States v. Ruano, 5:04-cr-2399
United States v. Miranda, et al., 5:06-cr-1430
United States v. Gonzales, et al., 5:07-cr-535
United States v. Contreras, et al., 5:07-cr-378
United States v. Gutierrez-Cantu, 5:08-cr-1189

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I also have recused myself *sua sponte* in the following cases:

Grajeda v. City of Laredo, et al., 5:09-cv-111. I recused myself because my husband is a named party.

Mariscal v. City of Laredo, et al., 5:09-cv-91. I recused myself because the lawsuit is against my husband's employer, the City of Laredo Police Department.

Benavides v. Klein, 5:09-cv-00003. I recused myself because my husband was the responding police officer in this case involving a vehicular accident.

United States v. Aleman, 5:08-cr-557. I recused myself because the Defendant is married to my first cousin.

United States v. Saldana, et al., 5:10-cr-00005. I recused myself because the Defendant is my first cousin.

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

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

I have not held public offices 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 never held any office in any political party or held a position or played a role in any 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;

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I served as a law clerk to the Honorable George P. Kazen, Chief Judge, United States District Court for the Southern District of Texas, Laredo Division, from 1997 to 1998.

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.

1998
United States Department of Agriculture
Office of the General Counsel, Civil Rights Division
1400 Independence Avenue S.W., Room 2029-S
Washington, D.C. 20250
Staff Attorney

1998 – 1999
United States Department of Justice
Civil Rights Division, Employment Litigation Section
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530
Trial Attorney

2000 – 2001
Beirne, Maynard & Parsons, L.L.P.
1300 Post Oak Boulevard, Suite 2500
Houston, Texas 77056
Associate

2001 – 2006
United States Attorney's Office, Southern District of Texas
1100 Matamoros Street, Suite 200
Laredo, Texas 78040
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 did not serve as a mediator or arbitrator prior to taking the bench as a Magistrate Judge. As a Magistrate Judge, I have served as a mediator in only one case. This was in *Hogquist v. Greyhound Lines, Inc.*, No. 5:05-cv-162 (S.D. Tex.), a Title VII suit filed by a *pro se* litigant against his

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employer. Plaintiff alleged that he was terminated, in part, in retaliation for his involvement in protected workers' union activities. The case was successfully resolved at mediation.

b. Describe:

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

I began my legal career as a law clerk to U.S. District Judge George P. Kazen from August 1997 to August 1998, during which I worked primarily on civil matters. From August 1998 to December 1998, I worked as a staff attorney for the United States Department of Agriculture (USDA) representing USDA agencies in various forms of employment disputes. From December 1998 to December 1999, I worked as a trial attorney for the Department of Justice investigating and prosecuting employment discrimination cases against state and local government employers. From January 2000 to May 2001, I worked at Beirne, Maynard & Parsons, L.L.P, where I primarily handled defense in personal injury, toxic tort, employment, and complex commercial matters. In May 2001, I returned to Laredo and served as an Assistant United States Attorney from May 2001 to March 2006. I handled criminal matters.

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

At the USDA and the Department of Justice, I represented the United States. At Beirne, Maynard & Parsons, L.L.P, I represented small businesses, financial institutions, and corporations.

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 law practice was 100% litigation. From August 1998 to May 2001 when I became an Assistant United States Attorney, I was in court infrequently. When I served as an Assistant United States Attorney, I was in court on a daily basis.

i. Indicate the percentage of your practice in:

1. federal courts: 100%
2. state courts of record: 0%
3. other courts: 0%
4. administrative agencies: 0%

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ii. Indicate the percentage of your practice in:
1. civil proceedings: 10%
2. criminal proceedings: 90%

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

As a federal prosecutor, I tried 18 criminal cases to verdict. I was sole counsel in nine of those cases, and I was chief counsel in six of those cases. As chief counsel, I worked with and trained my co-counsel.

i. What percentage of these trials were:
1. jury: 83%
2. non-jury: 17%

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

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 vs. Jimenez,et al.*, No. 5:03-cr-1593, United States District Court, Southern District of Texas, Laredo Division, Hon. George P. Kazen; September 2003 – February 2006. I represented the United States in this case involving a long-term investigation into a group responsible for the transportation of marijuana and cocaine to Dallas, Texas. I began assisting the Drug Enforcement Administration (DEA) with the investigation and development of this case in 2001. I presented the case to the grand jury in 2003 after a seizure of 804 pounds of cocaine at a ranch near Laredo,

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Texas. The grand jury indicted nine individuals with a drug conspiracy as a result of this investigation. The total amount of narcotics seized attributable to this group was over 11,000 pounds of marijuana and over 900 pounds of cocaine. One defendant requested a jury trial and was ultimately convicted. The remaining defendants pleaded guilty.

Defense counsel:

Octavio Salinas, II (representing Jimenez)
213 West Village Boulevard, Suite 6
Laredo, TX 78041
(956) 727-4942

Guillermo Garcia (representing A. Castaneda)
1810 San Bernardo Avenue
Laredo, TX 78040
(956) 728-0777

Gustavo Acevedo (representing Campbell)
1701 Freemont Street
Laredo, TX 78043
(956) 726-4228

Jeffrey Czar (representing E. Castaneda)
1000 Washington Street, Suite 4
Laredo, TX 78040
(956) 791-9211

Oscar O. Pena (representing De La Cruz)
1720 Matamoros
Laredo, TX 78040
(956) 722-5167

2. *United States vs. Martinez, et al.*, No. 5:04-cr-2529, United States District Court, Southern District of Texas, Laredo Division, Hon. Micaela Alvarez; November 2004 – August 2006. I represented the United States in this case involving a long-term investigation into a group responsible for the transportation of cocaine and methamphetamine to Dallas, Texas. I presented the case to the grand jury with charges against three defendants, including the confidential source. They each pleaded guilty.

Defense counsel:

John Samuel Paul
Office of the Federal Public Defender
1501 Matamoros Street
Laredo, TX 78040
(956) 753-5313

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(956) 727-4942

Tony Figueroa
1319 Convent
Laredo, TX 78040
(956) 724-2889

3. *United States vs. Gutierrez*, No. 5:04-cr-1546, United States District Court, Southern District of Texas, Laredo Division, Hon. George P. Kazen; August 2004 – April 2005. I represented the United States in this case where the defendant was arrested at the IH-35 Checkpoint after agents found cocaine in the vehicle she was driving. I dismissed the indictment in this case after Gutierrez pleaded guilty to the charges, but before sentencing, after determining that the investigating agent did not disclose to the defense the use of an informant. Upon learning of the informant and the non-disclosure, I disclosed the information to the defense and the court and dismissed the indictment.

Defense counsel: Raul Martinez
1501 Matamoros Street
Laredo, TX 78040
(956) 753-5313

4. *United States v. Cain, et al.*, No. 5:03-cr-667, United States District Court, Southern District of Texas, Laredo Division, Hon. Keith P. Ellison; March 2003 – January 2004. I represented the United States in this multi-defendant case where agents seized approximately 8,800 pounds of marijuana at a warehouse in Laredo, Texas. One defendant requested a jury trial and was convicted. The remaining defendants pleaded guilty.

Defense counsel: Isidro R. Alaniz (representing Cain)
1419 Santa Maria Avenue
P.O. Box 521
Laredo, TX 78042
(956) 795-1699

Luis Correa (representing Montemayor-Flores)
4718 Camino Dorado
San Antonio, TX 78233
(210) 590-1544

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David Almaraz (representing Valle-Navarro)
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(956) 725-3639

Olivero Canales (representing Munoz-Luna)
1102 Scott Street, Suite 4B
Laredo, TX 78040
(956) 723-5092

Jeffrey Czar (representing Perez-Villegas)
1000 Washington, Suite 4
Laredo, TX 78040
(956) 791-9211

5. *United States v. Chavez*, No. 5:03-cr-848, United States District Court, Southern District of Texas, Laredo Division, Hon. Jay Zainey; April 2003 - September 2003. I represented the United States in this case where the defendant was arrested at the Laredo port of entry driving a vehicle with methamphetamine concealed in the battery. At trial, the defense claimed that the defendant was mentally disabled. The case resulted in a verdict of not guilty.

Co-counsel:

Gracie Rodriguez-Lindberg
Office of the U.S. Attorney
1100 Matamoros, Suite 200
Laredo, TX 78040
(956) 723-6523

Defense counsel:

Arturo Villarreal
1501 Matamoros Street
Laredo, TX 78040
(956) 753-5313

David Castillo
1501 Matamoros Street
Laredo, TX 78040
(956) 753-5313

6. *United States v. Davalos*, No. 5:01-cr-533, United States District Court, Southern District of Texas, Laredo Division, Hon. Keith P. Ellison; May 2001 – November 2001. I represented the United States in this case that involved the seizure of marijuana found inside of a trailer driven by Davalos at the IH-35 Checkpoint. Davalos claimed no knowledge of the narcotics concealed in the trailer, claiming that his co-defendant was culpable. Both defendants requested a jury trial, which resulted in an acquittal for Davalos and a dismissal of the charges as to his co-defendant.

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Co-counsel: Jim Noble
110 North College, Suite 700
Tyler, TX
(903) 590-1400

Defense counsel: Jose Luis Ramos
107 North Garza
Rio Grande City, TX 78582
(956) 487-3597

Jeffrey Czar
1000 Washington, Suite 4
Laredo, TX 78040
(956) 791-9211

7. *Wade Travis Vest v. Reliant Energy HL&P, f/k/a Houston Lighting & Power Company,* Cause No. 99-28561, 165th Judicial District Court of Harris County, Texas, Hon. Elizabeth Ray; June 1999 – November 2000. I represented Reliant Energy HL&P f/k/a Houston Lighting & Power and Joseph W. Frey. This case involved a personal injury claim against Reliant Energy by a welder. I handled discovery and settlement negotiations. A settlement was reached.

Co-counsel: Jay Brown
1300 Post Oak Boulevard, Suite 2500
Houston, TX 77056
(713) 623-0887

Plaintiff's counsel: Jana O. Salinger
Olivier & Mundy, L.L.P.
1414 West Clay Street
Houston, TX 77019
(713) 751-1818

8. *United States v. Garcia*, No. 5:01-cr-918, United States District Court, Southern District of Texas, Laredo Division, Hon. George P. Kazen; August 2001 – November 2002. I represented the United States in the prosecution of a father and son who were arrested for drug possession after a search warrant was executed at the Hamilton Parking Garage in Laredo, Texas. Both defendants ultimately pleaded guilty after several suppression hearings.

Defense counsel: Eustorgio Perez
1102 Scott Street
Laredo, TX 78040
(956) 723-2943

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Tony Figueroa
1319 Convent
Laredo, TX 78040
(956) 724-2889

9. *United States v. Vasquez*, No. 5:02-cr-1354, United States District Court, Southern District of Texas, Laredo Division, Hon. Keith P. Ellison; October 2002 – April 2005. I represented the United States in this case where the defendant pleaded guilty to interstate transportation of a stolen vehicle. Before the defendant was sentenced, he attempted to escape from custody and severely assaulted a county jailer. Judge Ellison sentenced the defendant to 120 months, the statutory maximum penalty.

Defense counsel: Arturo Villarreal
1501 Matamoros Street
Laredo, TX 78040
(956) 753-5313

Jason Davis
Reid & Davis, LLP
4301 West Bank Drive, Suite B-230
Austin, TX 78746
(512) 647- 6100

10. *United States v. Hinojosa*, No. 5:02-cr-1215, United States District Court, Southern District of Texas, Laredo Division, Hon. George P. Kazen; August 2002 – February 2003. I represented the United States in this case where the defendant and her boyfriend were arrested at the Laredo port of entry attempting to import Rohypnol from Nuevo Laredo, Tamaulipas, Mexico into the United States. Hinojosa is a folk singer with a national recording contract, and the case received media attention. The defendants pleaded guilty.

Defense counsel: Monica Z. Notzon
1015 Scott Street
Laredo, TX 78040
(956) 791-3003

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 performed any lobbying activities on behalf of any client or organization.

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With respect to litigation that did not progress to trial, most of the matters I handled, both as a civil litigator and Assistant United States Attorney, settled before trial. Extensive pretrial work, however, was involved. While serving as a trial attorney with the Department of Justice, I was responsible for enforcing Title VII of the Civil Rights Act against state and local government employers. I reviewed cases referred from the Equal Employment Opportunity Commission for possible participation by the DOJ on behalf of the complaining parties, individuals who did not otherwise have the means to retain legal representation. I participated in several "pattern or practice" discrimination investigations, which involved the interviewing of the complainants and responding state or local government employers. With the Department of Agriculture, I acted as defense counsel for various USDA agencies being sued by their employees for alleged discrimination. More specifically, I defended the Farm Service Administration in a lawsuit filed by African-Americans alleging failure to promote based on race. I also reviewed all compensatory damage awards issued by the Office of Civil Rights.

While in law school, one of the most significant legal activities that I pursued was working as a law clerk at Migrant Legal Services in and around Fargo, North Dakota. As a law clerk with that agency, I was able to serve the migrant community. The work was significant to me because of my background as a migrant farm worker.

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 law school or college courses. However, in April 2005, I taught at a Criminal Paralegal Seminar at the National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina 29201. My presentation focused on Immigration Related Offenses.

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.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My husband is an officer with the Laredo Police Department. I would recuse myself in any case involving him. In cases involving the City of Laredo or Laredo Police Department but not otherwise involving my husband, I will follow the Code of Conduct and federal recusal statutes.

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

       If I am confirmed, I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult the applicable statutes and the Code and, if necessary, would seek advice from the Code of Conduct Committee of the Judicial Conference. In cases of uncertainty, I would err on the side of disqualification or recusal.

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 law clerk from 1997 to 1998, I assisted a local church and the local homeless shelter in feeding the hungry and with activities for school-aged children. I also served as a panelist and speaker in 1998 at the Law School Admission Council's annual conference regarding the importance of diversity in higher education. Based on that event, the Law

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School Admission Council produced *Believe and Achieve: Latinos in Law* (available at http://www.lsac.org/VideoStreams/Believe_Main.asp).

From 1998 to 1999, I participated in a program with the Alexandria Public School system in Alexandria, Virginia where I tutored a Spanish-speaking student once a week. From 2000 to 2001, while in private practice, I volunteered with the Houston Bar Association's Adopt-A-School program. While an AUSA from 2001 to 2006, I volunteered for food drives and the Operation Weed and Seed adopt-a-student program.

As a Magistrate Judge, I have remained active in community activities consistent with the judicial canons. Since 2006, I have frequently given speeches to youth groups and students about becoming responsible leaders, graduating from high school, and attending college. On one occasion, I hosted the students in my courtroom and also sponsored a moot court competition in my courtroom. In 2007, I was the keynote speaker at the *Casa de Misericiordia*, Battered Women's Shelter annual conference. I have also met with the shelter's battered women during their group session and the children of the battered women during their group session. In 2009, I organized and chaperoned a field trip for the children of the battered women to view a Metropolitan Opera telecast of Puccini's *Madame Butterfly*. Most recently, in December 2009, through the Webb County Women's Bar Association, I assisted in organizing a gift drive for abused and neglected children.

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 November 5, 2008, I submitted a judicial questionnaire to United States Senators John Cornyn and Kay Bailey Hutchison in response to a press release announcing that they were accepting applications to fill a judicial vacancy in Laredo, Texas. On November 6, 2008, I forwarded a copy of the judicial questionnaire to United States Representative Henry Cuellar and expressed my interest in the judicial vacancy. I was contacted by the chair of Congressman Cuellar's judicial selection committee and was interviewed on April 16, 2009. I met with the members of the Texas Congressional Delegation on April 22, 2009, and with the chiefs of staff of Senators John Cornyn and Kay Bailey Hutchison on April 20, 2009. The meetings occurred in Washington, D.C. On November 30, 2009, I interviewed with Senators Cornyn and Hutchinson's Judicial Selection

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Committee in San Antonio, Texas. On January 26, 2010, I interviewed with Senators Cornyn and Hutchison in Washington, D.C.

Since March 2010, I have been in contact with pre-nomination officials at the Department of Justice. On April 29, 2010, I had an interview at the Department with attorneys from the Department of Justice and the White House Counsel's Office. The President submitted by nomination to the Senate on July 14, 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.

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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
Saldana, Diana	U.S. District Court Southern District of Texas	07/14/2010
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 Judge - Nominee	☑ Nomination, Date 07/14/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 07/01/2010
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 1300 Victoria, Ste. 2317 Laredo, TX 78040	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. Steering Committee Member	Voz de Ninos, Texas CASA non-profit children advocacy organization
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 Saldana, Diana	Date of Report 07/14/2010

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.			
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.	2010	City of Laredo, Texas - Salary
2.	2009	City of Laredo, Texas - 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 6	Name of Person Reporting Saldana, Diana	Date of Report 07/14/2010

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. U.S. Department of Education	student loan	K
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Saldana, Diana	07/14/2010

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. 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. City of Laredo 401(k) (no control)	A	Interest	J	T	Exempt				
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
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 - $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		

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FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Saldana, Diana	Date of Report 07/14/2010

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

III.A. Non-investment non-reportable income earned during reportable period for service as a United States Magistrate Judge.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Saldana, Diana	Date of Report 07/14/2010

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

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		5	887	Notes payable to banks-secured		61	546
U.S. Government securities				Notes payable to banks-unsecured		42	653
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	898
Due from relatives and friends			900	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -primary residence		218	316
Real estate owned-primary residence		235	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		65	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan Account		134	449				
Texas Municipal Retirement Account		10	036				
				Total liabilities (excluding contingent)		333	413
				Net Worth		117	859
Total Assets		451	272	Total liabilities and net worth		451	272
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		10	199	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							

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AFFIDAVIT

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

July 13, 2010
(DATE)

(NAME)

(NOTARY)

Margarita Ibarra
Notary Public, State of Texas
My Commission Expires:
March 9, 2011

Senator FRANKEN. Thank you. I want to just welcome everyone, all these family members and significant folks who came here today. This must be a very proud moment for all of you. Congratulations.

Well, why do I not start the questioning here? I will start with Judge Davila. Before you became a judge in 2001, you stated that you would need to leave the role of an advocate behind and become an objective listener.

Can you tell us the difference that you see between being a judge and being an advocate and how you took on that transition?

Judge DAVILA. Thank you, Mr. Chairman. Yes. And it is a transition that I'm certain all my colleagues here have had to make from their practices, from their days as a lawyer, where we represented a cause, a client, and argued cases in front of judges. And in those situations, we were not unbiased. We were very biased, because we were, of course, pursuing the goal of our client's best interest. And I did that for 20 years as a lawyer.

Of course, making the transition to the bench, one leaves that behind, as I indicated, and you no longer are an advocate. You become a neutral and impartial fact-finder and you must make decisions accordingly.

Senator FRANKEN. Thank you, Judge.

Senator Whitehouse, my colleague from Rhode Island, has just stepped in and was a Federal attorney—is that right?

Senator WHITEHOUSE. Correct.

Senator FRANKEN. With P.K. Holmes—or United States attorney.

Senator SESSIONS. The United States attorney.

Senator WHITEHOUSE. The United States attorney. Let me thank the Chairman and the Ranking Member for letting me interrupt the proceedings just for a second on a small point of personal privilege.

I had the great pleasure of serving with P.K. Holmes as United States attorney, me for the District of Rhode Island, him for the District of, if I recall, Arkansas, during the Clinton Administration, and I am delighted to see that he is now a candidate for judicial office.

I wanted to extend him my best wishes for a swift and uneventful confirmation.

Mr. HOLMES. Thank you, Senator.

Senator WHITEHOUSE. Welcome. Welcome to all the candidates, but in particular, thank you and best wishes to you, Candidate Holmes, Nominee Holmes.

Mr. HOLMES. Many thanks for your kind remarks.

Senator FRANKEN. Well, that is the greatest wish that any member of this panel can give you. So congratulations, former U.S. attorney.

Let me go to Judge Saldaña. I will say that the introduction you were given by both Senators was very eloquent, and you do have a truly remarkable background. I congratulate your mother.

You have overcome more, I would submit, than most of your future colleagues on the Federal bench. How has that shaped you and how do you think that has shaped your judging, if it has at all?

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Judge SALDAÑA. Thank you, Senator. Growing up as a farm worker, traveling throughout the country, I was able to see what different persons experienced from different backgrounds. Actually, going to the great State of Minnesota and meeting the people there and lots of people who are watching, I think, on the Webcast from Minnesota who I still keep in touch with, it really gave me a wide breadth of experience, I believe, and has made me a well rounded person.

And it really drove—not drove, but it helped to create my very strong work ethic. And because I serve on a border court, that is something that will serve me very well.

Senator FRANKEN. Well, thank you. I just want to make the point that I think that experience and a broad breadth of experience is a good thing. And that does not necessarily mean that you become biased in one way or the other, but it just means that you bring an understanding of how your rulings affect all kinds of people.

Would that be a correct statement?

Judge SALDAÑA. Yes, it is, Senator. Thank you.

Senator FRANKEN. Thank you so much.

Judge Battaglia, I see that you have helped manage the Volunteer Lawyers Domestic Violence Clinic. I am going to a Sheila Wellstone Institute event tonight, and she was a champion in this field.

What is your role in this program, in the Volunteer Lawyers Domestic Violence Clinic, and how has your volunteer work influenced your career?

Judge BATTAGLIA. Thank you, Senator, for that question. I was a board member for the San Diego Volunteer Lawyer Project in the early 1990s, helping manage or govern the organization, implement programs, including the domestic violence program and others, to ensure that members of the public that needed assistance had lawyers available to confront the needs that they were dealing with in the tragic circumstances particularly in domestic violence that people were caught up in.

So the role was to make sure the organization worked soundly, fairly, and lawyers were available for people in need.

Senator FRANKEN. Thank you.

Judge BATTAGLIA. As far as shaping my views, my concern about access to justice has always been very strong and I believe firmly in the system, and it was just a supplement to that deep feeling.

Senator FRANKEN. Thank you. Thank you for working in that field.

Mr. Holmes, since my colleague recommended you so highly, I am going to give you a pass.

Mr. HOLMES. Thank you, Senator.

Senator FRANKEN. And my time is up anyway. So I will go to the Ranking Member.

Senator Sessions.

Senator SESSIONS. Thank you. We do not want to pass over the U.S. attorney too lightly. But I did have a call from a friend who served for many administrations in the Department of Justice and also served for quite a while as director of the executive office of United States attorneys. So he knew United States attorneys all over the country, and I think was a former U.S. attorney and pros-

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ecutor himself. And he said you were topnotch. So I think that is a good compliment, and appreciate the comments of our colleagues who are high on your appointment.

Mr. Holmes, with regard to the sentencing guidelines, the Supreme Court has weakened the authority of those guidelines somewhat. How have you felt the guidelines have worked in terms of attempting to have uniformity of sentencing, as a Federal prosecutor? And to what degree do you believe that as a judge, you will seek to be consistent with the guidelines in your sentencing?

Mr. HOLMES. Thank you, Senator Sessions, for the question. Of course, during my tenure as U.S. attorney, the guidelines were mandatory, and, since the *Booker* decision, they're advisory.

I think there's a presumption that the sentencing guidelines are reasonable. I believe that they should be followed, and my experience in the field of criminal defense has been that they have been followed. And I would continue to use the sentencing guidelines, because they do avoid disparity in sentencing, and I, if I'm fortunate to be confirmed as district court judge, would follow those.

Senator SESSIONS. Thank you.

Judge Saldaña, you were a Federal prosecutor for a number of years and a United States magistrate judge, I guess 5 or 6 years as a Federal prosecutor and, since 2006, a magistrate judge in Federal court.

What would you say about the guidelines and how you would see them?

Judge SALDAÑA. Thank you, Senator. I recognize and understand the importance of the sentencing guidelines and why they were implemented, the importance of uniformity in sentencing throughout the country. And I also recognize the state of the law and that they are presumptively reasonable.

And so I would look to the sentencing guidelines when I am determining the appropriate sentence for a person who is standing before me, if confirmed as a United States district judge.

Senator SESSIONS. Thank you. I think that would be good advice as meant? Judge Battaglia, you are a magistrate judge. You have worked with them, also. What would be your comment?

Judge BATTAGLIA. My comment, Senator—and thank you for asking me—is that there is a presumption of reasonableness for the guidelines. I have utilized those in misdemeanor sentencing, Class A misdemeanors, where the guidelines are applicable.

As the Supreme Court has directed us, I consider those first off and use those, give them great deference, because they have regularized sentencing. Despite the change in the law, I think they still give us a great pattern to follow for consistency in sentencing everyone fairly.

Senator SESSIONS. I could not agree more.

Judge Davila, I think you will find that to be true, although you may not have had a lot of direct experience with them. I think that is the right thing. Otherwise, we go back to, well, it depends on which judge you have. You are in one courtroom and you get hammered; in another courtroom, you get probation for the very same offense, and it becomes pretty indefensible really to explain to family or victims why one person got one sentence and one person got another.

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That is what led to the passage. Senator Kennedy, Senator Thurmond, Senator Biden, Senator Hatch all worked on that and passed those guidelines. I do not think the Supreme Court was precisely correct in their ruling, but we are stuck with it. So that is where we are.

I do believe that justice in America will suffer if judges move away from following the guidelines, which represent, I think, the studied opinion of judges and other experts in sentencing.

Judge Battaglia, you had a situation with a student who allegedly said to a counselor, "If you do not give me this schedule change, I'm going to shoot you." The student apparently said "I'm so angry, I could just shoot somebody," closed quote.

You were reversed eventually, on that case, although upheld initially, for saying the school did not have the authority to suspend the student.

Would you, briefly, we just have a moment, share your thoughts about that? And do you feel like you properly respected the burdens that fall on school administrators, the principal, to make sure that teachers are not threatened or harassed in a classroom?

Judge BATTAGLIA. Thank you, Senator, for that question. That was one of my early cases and one that I am happy to talk about.

At the time, the evidence was in dispute about the precise nature of the statement, and I found that under either characterization, it was protected speech, under the ninth circuit authority existing at the time. I followed the law, the precedent that was in place, the precedent of the ninth circuit, based upon United States Supreme Court precedent.

And I faithfully adhered to the precedent, found the facts to be, irrespective of which statement, the necessary concern of an imminent threat was absent. So the speech was protected.

The ninth circuit initially affirmed me and then, on reconsideration, several months later, decided to go a different way, which would be the province of the appellate court to overrule the district court decision I made. So yes.

Senator SESSIONS. Are you thinking free speech? Well, what would be your evaluation as to which would be the correct ruling, the first one or did they reverse their prior authority when they ruled against you? And do you suggest that the phrase, "If you don't give me this schedule change, I'm going to shoot you," that under existing case law, was such that a school cannot discipline a student for it?

Judge BATTAGLIA. At the time of the decision, it was. It is no longer. My decision was overruled. The appellate court, the ninth circuit, changed its prior precedent in overruling my decision.

The development of case law since has made it clear that that would not be protected speech and that there was a serious threat, and the courts, I think, would approach that.

Were I to have that case again today, the outcome would be different. If I were to look back and criticize my opinion, it would be probably that I should have found that the statement asserted by the school district was the correct one. Since the plaintiff had the burden of proof and failed to make it, it was, in effect, a dead heat.

But either way, if this case were happening today, the ruling would be totally different from the district court level.

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Senator SESSIONS. Well, I will just tell all of you, I think the American people and I have the view that schools have got to be given some latitude in running the school and maintaining order. And you cannot make a Federal case out of every suspension over some hot kid who runs their mouth, it would strike me.

But I think there has been some authority in the past that could well have led you to follow that authority, and I do not dispute it.

Judge BATTAGLIA. And I don't disagree with you.

Senator SESSIONS. But if so, it was not very good authority and I am glad the court has moved away from it.

Judge BATTAGLIA. Right. And as you know, Senator, we are bound by precedent at the district court level. A magistrate judge, as I was in this case, it's not our role to invoke policy, to make law, but we are bound by the applicable authority and follow that, notwithstanding how we might feel personally. That is our job. But thank you for asking.

Senator SESSIONS. Well, I do not think the Constitution ever would have—normally, it would not have been interpreted in that fashion, and the ninth circuit has rendered some opinions that I certainly would not support.

Judge Davila, you were active in La Raza, which is a group that I understand emphasizes and affirms the Hispanic ethnic heritage, and that is fine, and you said a few things that I think are OK, but close for a judge.

You said you hope to see increasing diversity of experiences, ideas, race, ethnicity and culture on the bench, and I think that is fine, and we do not leave our life experiences behind, do we? We bring those to the bench, I suppose, and that's what's good about a diverse bench.

You go on to be quoted in this piece, saying, "Justices will be better able to relate to the experiences of those that come before them." I think that is a careful, pretty careful statement.

Some have gone beyond that and suggested that if you have a person of my ethnic, religious, racial background on the bench, they are more likely to rule for me than if not.

Do you not think that the oath that a judge takes that they must be impartial, they should not be a respector of persons, and do equal justice to the poor and the rich sets up an ideal vision of a judge who, no matter what their ethnicity is, that they will give everybody before them a fair shake, no matter what the party's ethnicity is?

Judge DAVILA. Well, thank you, Senator. And I appreciate your eloquence and I agree with your statement. Justice is blind. There is only one rule of law, and that article that you reference was an article from our local town newspaper, I believe, upon my appointment. And I think the title of that, as I recall, was local—it might have been "Local Boy." I just don't remember now. But it was "Local Attorney Moves to the Bench."

Senator SESSIONS. And you do not vouch for the perfect accuracy of the quotes. Is that what you are suggesting, that it was not your word, it was what the newspaper said you said?

Judge DAVILA. Well, no, sir, Senator. What I'm saying is I agree with your statement. There is one rule of law, Senator, and we do

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bring our backgrounds to our employments, our careers, our jobs, and those backgrounds serve us well as a judge.

I can tell you, Senator, my background has helped me to develop a character that has assisted me in establishing a courtroom that affords dignity to victims, to witnesses, to litigants, all litigants who come in my courtroom, and I'm proud of that.

I should tell you, Senator, that when it comes, however, to making a decision on a case, the background that was referenced perhaps, that is separate and apart, because as judges, we make our decisions without bias, impartially, and we look at the law, including precedent, and apply it to the facts. And we, therefore, continue the system of justice that is blind, as I've indicated.

Senator SESSIONS. And your commitment is to provide that equal justice to each and every party before you, regardless of their ethnicity, race, education, or religion.

Judge DAVILA. It is. And if I am fortunate enough to be confirmed, I would do that, Senator.

Senator SESSIONS. I think that is the ideal of American justice, I really do, and why people come here from all over the world, because they feel like that no matter who they are, if they own some property, nobody can come and take it from them; they cannot be incarcerated without the proper rules applying, they get a fair day in court, and that applies across the board.

And the whole strength of the American system is to find the truth and to apply it fairly to the parties before you. Some, I think, get to believing there is no truth and that it is just a matter of perspective, but I think that is contrary to the ideal of the American legal system.

Thank you very much. Judge Saldaña, you made a comment back when you were in law school that indicated a very strong belief in affirmative action and that because—and you say, quote, "It offends me that an Anglo can take my seat, because the admissions Committee is unwilling to consider my background."

To what extent do you think objective criteria for deciding admissions to universities is legitimate and to what extent do you think they should look beyond that to provide preferences or, inevitably, adversities to people of different ethnic backgrounds?

Judge SALDAÑA. Thank you, Senator, for that question. I was representing the Hispanic Law Students Association at the time that I made that statement and it was after a ruling by the firth circuit, I believe.

The Supreme Court has spoken on affirmative action and has held that race is a factor that can be considered, but it must be rationally based. And if I am confirmed, I can assure you, Senator, that I will apply the existing law in that area and apply it to the facts of the cases before me.

Senator SESSIONS. The Supreme Court expressed a very clear view that in America, preferences should not be provided to one ethnic group or racial group over another, basically, except under certain circumstances. Would you agree with that?

Judge SALDAÑA. Yes, I do, Senator.

Senator SESSIONS. And that strict scrutiny should be applied, which means a very careful review of any situation in which we

give one ethnic group or racial group or religious group an advantage over another.

Judge SALDAÑA. Yes, Senator, and that is what I would follow. That is the state of the law. It is very clear, and I will follow that, if confirmed.

Senator SESSIONS. Thank you. Well, I appreciate the opportunity to have this hearing, Mr. Chairman, to ask these questions. Follow-up questions will be submitted to you. Your backgrounds have been evaluated. The FBI has done backgrounds. The White House has done backgrounds. Your Senators who support your nomination have checked you out.

And those are all good things, because you are asking to be given a lifetime appointment, launched forth from the Federal bench without an opportunity to be second-guessed pretty much, except at the appellate court.

So it is an important office you are seeking. We try to do our duty, and I appreciate the comments that you have given us today.

Senator FRANKEN. Thank you. I would like to thank my friend, the Ranking Member. And, yes, these are lifetime appointments. So that is why I let you go for as long as you wanted.

[Laughter.]

Senator FRANKEN. And the Ranking Member is correct. The hearing record will be held open and it will be held open for a week.

In closing, I just want to thank the Ranking Member and I want to thank each of you for your testimony today and for all of your public service. You are all very impressive in your life stories and your accomplishments.

I just want to say something, because the Ranking Member started to get on this, sort of the theme, we talked about your experience as a migrant worker, as the daughter of a migrant worker, and your statements for La Raza.

I think that every American and every person intuitively knows that a judge brings his or her experience to the court. I do not think anyone can doubt that. And Oliver Wendell Holmes, I believe, said—it was he who said something to the effect of that the law is experience, and I do not think there is any contradiction between that and the ability of judges to use their experience in a way that is consistent with exercising the rule of law.

So I value the diversity that people of different backgrounds, as the Senator said, is what makes our country different, as the people from all over the world come, and I think it is valuable to have people from all over the world sit as judges on our courts. We have a Holmes, a Battaglia, Davila and Saldaña.

So we will hold the record open for 1 week for submission of questions for the nominees and other materials.

This hearing is now adjourned.

[Whereupon, at 3:30 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record.]

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QUESTIONS AND ANSWERS

Responses of Anthony J. Battaglia
Nominee to be United States District Judge for the Southern District of California
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: No, I believe that the Constitution should be applied as written and as interpreted 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: No, I believe that the Constitution should be applied as written and as interpreted 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: No, empathy has no role in arriving at just decisions and outcomes.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: The Supreme Court has held that Congress has broad power to regulate under the Commerce Clause. But the Court has said in *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), that the power is not unlimited. I would follow the law as stated by the Supreme Court in deciding whether any particular transaction is subject to the Commerce Clause.

6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

   Response: The Supreme Court has recently clarified the scope of the Second Amendment in *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), and *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), and recognized that some limitations apply. The

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Supreme Court did not identify a complete list of all limitations, and issues of limitations are being litigated around the country.

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: In *Heller* and *McDonald*, the Supreme Court 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 now being litigated. If confirmed I would follow applicable precedent in determining the legality of any such restrictions.

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 am bound by the Supreme Court's rulings and I would apply Supreme Court case law.

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: No, I believe that the Constitution should be applied as written and as interpreted by the Supreme Court.

b. How would you determine what the evolving standards of decency are?

Response: I would apply the analysis established by Supreme Court case law.

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: In that the Supreme Court has held that the death penalty is Constitutional, a U.S. District Judge would be precluded from making such a finding.

d. What factors do you believe would be relevant to the judge's analysis?

Response: In that the Supreme Court has held that the death penalty is Constitutional, no factors could cause a U.S. District Judge to rule or make such a finding.

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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.

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 not 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.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

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Responses of Anthony J. Battaglia
Nominee to be United States District Judge for the Southern District of California
to the Written Questions of Senator Jeff Sessions

1. **In your questionnaire, you reported that, since 1974, you have been a member of the Association of Trial Lawyers of America, which recently changed its name to the American Association for Justice. The American Association for Justice takes some controversial positions, among them its vocal criticism of arbitration clauses in contracts. On its website, it claims that "[a]rbitration providers are biased decision makers, organized to serve corporations. Since only businesses are repeat users of an arbitrator, there is a disincentive for an arbitrator to rule in favor of a consumer if he expects further retentions."**

   a. **Do you agree with that statement?**

      Response: I am not familiar with the statement, however, I do not agree with it. My Court regularly utilizes arbitrations and mediations as alternative dispute resolution proceedings to manage civil cases. I was a regular member of this association from 1977 until November 1993. I have been a nonvoting "Judicial Member" of this organization since November 1993. I do not follow what positions the organization takes. I have retained this type of membership to have access to the scholarly articles on civil trial practice and procedure in *Trial Magazine*. I also receive and read *For The Defense*, which declares itself as "The magazine for defense, insurance and corporate counsel." That publication is made available without the need for any form of membership.

   b. **If confirmed, you will be required to hear cases dealing with the arbitration clauses of contracts. In ruling on such cases, would your analysis be influenced by the idea that "Arbitration providers are biased decision makers, organized to serve corporations"?**

      Response: No, I would rule solely on the evidence and the law.

   c. **On June 21st of this year, the AAJ put out a press release on the Supreme Court's decision late last term in *Rent-a-Center, West, Inc. v. Jackson*. In that case, the Supreme Court held that, in order for the courts to let people out of their agreements to have all disputes, including disputes over the validity of their arbitration agreement, settled by arbitration, they must show that they willingly entered into that agreement. In the press release, AAJ President Anthony Terricone said:**

      "The Supreme Court today gave corporations yet another free pass to submit employees and consumers to abusive forced arbitration proceedings. Corporations now have nearly unchecked authority to write, enforce and judge the fairness of their own forced arbitration clauses. The fox is guarding the hen house – at the expense of citizens' access to the civil justice system."

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Do you agree with Mr. Terricone's characterization of the *Rent-a-Center* case?

Response: No, I do not agree, and I would not be influenced by that view. I would apply the laws stated by the Supreme Court.

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?

Response: No.

i. If so, under what circumstances?

Response: None.

ii. Please identify any cases in which you have done so.

Response: I have not done so.

iii. 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. I rule solely on the evidence and the law, without consideration of my values, beliefs or desires.

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: I have not done so.

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.

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Response: None. I rule solely on the evidence and the law, without consideration of my values, beliefs or desires.

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 death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: No. The Supreme Court has held that the death penalty is an acceptable form of punishment, and I faithfully follow the law in this regard.

4. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes. The Supreme Court has held that the death penalty is an acceptable form of punishment, and I faithfully follow the law in this regard.

5. **What is your view of the role of a judge?**

Response: The role of a judge is to decide each case fairly, impartially, and based solely on the evidence and the law.

6. **Please describe with particularity the process by which these questions were answered.**

Response: I drafted my responses. I then finalized them after discussing my draft with representatives of the Department of Justice.

7. **Do these answers reflect your true and personal views?**

Response: Yes.

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Responses of Edward J. Davila
Nominee to be United States District Judge for the Northern District of California
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 fixed unless amended.

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 Justice Brennan's statement regarding constitutional interpretation. If confirmed as a district judge, I would look to the text of the Constitution and follow Supreme Court of the United States and circuit appellate precedent in analyzing any constitutional question that comes before me.

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 fact situation, a district court judge should be guided by the plain language of the text of the Constitution, binding precedent of the Supreme Court of the United States and relevant appellate decisions, and as necessary, the record of the legislative history reflecting the intent of the law at issue. The incorporation of evolving social views is within the purview of the legislative branch.

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: The Supreme Court of the United States has ruled that the scope of the Commerce Clause, while broad, is not unlimited. The Supreme Court in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), has identified three categories of activity which are covered by the Commerce Clause. These are activities involving the channels of interstate commerce; instrumentalities of, or persons or things, in interstate commerce; and activities having a substantial relationship to interstate commerce. In determining whether a particular transaction involving the

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exchange of money is subject to the Commerce Clause I would analyze the transaction under the framework established by these and other appellate precedents.

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 of the United States held that an individual's right to possess a firearm in the home for self defense is protected by the Second Amendment. In the subsequent case of *McDonald v. City of Chicago, Illinois*, 130 S. Ct. 3020 (2010), the Supreme Court stated that the *Heller* holding "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. The Court did not specify other additional limitations.

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 mentioned in my previous answer, the Supreme Court, in *Heller* and *McDonald*, recognized some but not all limitations on individual gun ownership. The interpretation of other restrictions on gun possession and ownership will be the subject of future litigation. If confirmed as a district court judge I will carefully follow Supreme Court and appellate court precedent should a Second Amendment case come 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: As the majority opinion, Justice Kennedy's ruling and analysis in *Roper* is binding precedent. If confirmed as a district 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 judge, I would follow the precedent established by the Supreme Court of the United States as required by the doctrine of stare decisis. In deciding any case regarding the Eighth Amendment, I would adhere to the framework outlined in Supreme Court of the United States and appellate decisions in which the Court has analyzed what constitutes "cruel and unusual punishment," including *Roper v. Simmons*, 543 U.S. 551 (2005).

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b. How would you determine what the evolving standards of decency are?

Response: If confirmed as a district judge I would follow the analysis of Supreme Court precedent 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 has ruled that the death penalty is not per se unconstitutional, and therefore a district judge could not so rule.

d. What factors do you believe would be relevant to the judge's analysis?

Response: As I do not believe a judge could find the death penalty unconstitutional in all cases, I do not believe that a judge should 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 would not be proper for a judge to rely on foreign or international law to determine the meaning of the Constitution unless the Supreme Court of the United States or appellate courts direct it.

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 when interpreting the Constitution if directed by Supreme Court of the United States or appellate 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 circumstance where that would be appropriate.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless the Supreme Court of the United States or appellate courts direct otherwise.

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Responses of Edward J. Davila
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Jeff Sessions

1. **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?**

   Response: No. Judges should make decisions based solely on the law and facts of each case.

   i. **If so, under what circumstances?**

   Response: Under no circumstances should judges base their decisions on a desired outcome.

   ii. **Please identify any cases in which you have done so.**

   Response: I have not done so.

   iii. **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: There are 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: Under no circumstances should a judge consider his or her own values or policy preferences in determining what the law means.

   ii. **Please identify any cases in which you have done so.**

   Response: I have not done so.

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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: In my nine years on the bench, I have consistently made my rulings based solely on the law and the facts presented. I cannot recall any case where I set aside my personal values or policy preferences in making a decision.

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.

2. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: The Supreme Court of the United States has held that the death penalty is not per se cruel and unusual except in certain specific circumstances. If confirmed as a district court judge I would follow the binding precedent of the Supreme Court of the United States and appellate court decisions pursuant to the doctrine of stare decisis.

3. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Congress has legislated that defendants convicted of certain federal crimes are eligible for punishment by the death penalty. The Supreme Court has held that the death penalty does not per se violate the Eighth Amendment. Should I be confirmed as a district court judge I would follow the law regarding the imposition of the death penalty as dictated by statute, and by the binding precedent of the Supreme Court of the United States.

4. **What is your view of the role of a judge?**

Response: The role of a judge is to apply the law to the facts of a case fairly, with careful consideration and impartiality. In addition to rendering decisions in a fair and neutral manner, a judge should ensure that all parties, witnesses and victims are treated with respect and dignity under the law.

5. **Please describe with particularity the process by which these questions were answered.**

Response: I received written questions on October 6, 2010. I completed draft answers to the questions. I consulted with the Justice Department Office of Legal Policy regarding

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my answers. I then returned my answers to the Justice Department Office of Legal Policy and asked that they be forwarded to the Committee.

6. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of James E. Graves, Jr.
Nominee to be United States Circuit Judge for the Fifth 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.

2. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

   Response: I would look to the principles of constitutional interpretation which are set forth in U.S. Supreme Court precedent.

3. **As a judge, what approach do you take when interpreting a statute? Please describe your analysis process.**

   Response: I would look first to the plain meaning of the statute. Where it is clear and unambiguous, there is no need for further interpretation. If it is unclear, then I would apply the rules of statutory construction as set forth by the U.S. Supreme Court.

4. **Do you believe judges should look to the original intent of those who wrote the Constitution when determining the meaning of words and phrases?**

   Response: I believe judges should look to U.S. Supreme Court precedent when determining the meaning of words and phrases.

   a. **Should they be limited to only looking to the text and the original intent of the founders? If not, why?**

      Response: No. See preceding response.

5. **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.

6. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

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Response: I do not agree with the premise that there are, "evolving understandings of the Constitution."

7. **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.

8. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: The most recent U.S. Supreme Court decisions on the Second Amendment are *District of Columbia v. Heller*, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and *McDonald v. Chicago*, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). These cases did not specify what limitations remain on the individual Second Amendment right. I would look to U.S. Supreme Court precedent in my analysis of any Second Amendment issue.

   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 regards limitations on the individual Second Amendment right, I would examine the U.S. Supreme Court precedent in *Heller* and *McDonald* and any subsequent cases which may emanate from the Fifth Circuit Court of Appeals.

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Responses of James E. Graves, Jr.
Nominee to be United States Circuit Judge for the Fifth Circuit
to the Written Questions of Senator Jeff Sessions

1. **At the hearing on your nomination, one of my colleagues asked you whether you would "just simply go by the text of the law" when interpreting statutes, or whether, instead, you would "go into the record that was made while the law was debated and passed." In response, you said "I think on first approach, you look at the statute and try and determine what the language of the statute says, and that's the first place to look in determining what the statute means. Hopefully, it says what it means and it means what it says." In the course of your answer, you discussed the dearth of legislative history for Mississippi statutes, but noted that "with the United States Congress, there could be some more extensive records, history regarding legislative intent."**

   a. **Given the greater availability of legislative history in the federal system, do you think it is proper for federal judges to look to legislative history when construing an otherwise unambiguous statute?**

      Response: No.

   b. **Would it ever be proper for a court to determine that the meaning of a seemingly unambiguous statute is ambiguous based on the legislative history of that statute?**

      Response: No.

   c. **To what extent do you think a court should look to legislative history when a statute is ambiguous on its face?**

      Response: To the extent that it is available, it is appropriate to look to legislative history to see if it clarifies the ambiguity in any way.

2. **At your hearing, I asked you a number of questions about why you joined Justice Diaz's dissent in *Doss v. State*, NO. 2007-CA-00429-SCT, 2008 Miss. LEXIS 608 (Miss. Dec. 11, 2008), wherein he argued the death penalty violated the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution. At one point during our discussion, you said that "when [you] read what he wrote, [you] viewed it as his plea for a dialogue on the efficacy of the death penalty."**

   a. **Do you believe that the courts are a proper forum for "a dialogue on the efficacy of the death penalty"? Please explain your answer.**

      Response: No.

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b. I understand that the opinion cited above was withdrawn and a subsequent opinion, *Doss v. State*, 19 So. 3d 690 (2009), was substituted in its place. Have you ever discussed either of these opinions with anyone other than your colleagues and staff at the Mississippi Supreme Court? If so, please describe with whom and in what context.

Response: In preparation for the Senate Judiciary Committee hearing, I discussed ***Doss v. State*** with staff members of the Department of Justice and White House Counsel's office.

3. At your hearing, you stated that you have had the opportunity to vote on at least a dozen death penalty cases while serving on the Mississippi Supreme Court.

a. Please provide a list of these cases, and, to the extent available, copies of those opinions.

Response: At my hearing I stated that among the numerous death penalty cases I have heard, I voted to affirm both a conviction and sentence to death in at least a dozen of them. These are those cases:

Moffett v. State, --- So. 3d ----, 2010 WL 3704988 (Miss. 2010).
Gillett v. State, --- So. 3d ----, 2010 WL 2609432 (Miss. 2010).
Loden v. State, --- So. 3d ----, 2010 WL 1507600 (Miss. 2010).
King v. State, 23 So. 3d 1067 (Miss. 2009).
Chamberlin v. State, 989 So. 2d 320 (Miss. 2008).
Havard v. State, 988 So. 2d 322 (Miss. 2008), and 928 So. 2d 771 (Miss. 2006).
Turner v. State, 953 So. 2d 1063 (Miss. 2007).
Brown v. State, 948 So. 2d 405 (Miss. 2006), and 890 So. 2d 901 (Miss. 2004).
Bennett v. State, 933 So. 2d 930 (Miss. 2006).
Spicer v. State, 921 So. 2d 292 (Miss. 2006).
Underwood v. State, 919 So. 2d 931 (Miss. 2005), and 37 So. 3d 10 (Miss. 2010).
Jordan v. State, 918 So. 2d 636 (Miss. 2005), and 912 So. 2d 800 (Miss. 2005).
Walker v. State, 913 So. 2d 198 (Miss. 2005).
Knox v. State, 901 So. 2d 1257 (Miss. 2005).
Grayson v. State, 879 So. 2d 1008 (Miss. 2004).
Burns v. State, 879 So. 2d 1000 (Miss. 2004).
Brawner v. State, 872 So. 2d 1 (Miss. 2004).
Dycus v. State, 875 So. 2d 140 (Miss. 2004), *vacated*, 544 U.S. 901, 125 S. Ct. 1589, 161 L. Ed. 2d 271 (2005).
Lynch v. State, 877 So. 2d 1254 (Miss. 2004).
Stevens v. State, 867 So. 2d 219 (Miss. 2003).
Woodward v. State, 843 So. 2d 1 (Miss. 2003).
Simmons v. State, 805 So. 2d 452 (Miss. 2001).

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b. To the extent possible, please provide a list of any death penalty cases you presided over during your time as a Circuit Court judge on the Hinds County Circuit Court, and, to the extent available, copies of those opinions.

Response: I presided over one death penalty case. The jury determined that the defendant should receive a life sentence. The appellate citation is ***Robert Lindsey, Jr., v. State***, 754 So. 2d 506 (Miss. 2000).

4. In a speech you delivered several times in 2005 and 2006, which was also published in the *Mississippi College Law Review* under the title "The Constitution and Judicial Independence," you stated that "[a] judicial activist is any judge who makes a decision with which a very vocal group, large or small, disagrees."

a. Is it still your view that there is no such thing as judicial activism?

Response: It was never my view that there is no such thing as judicial activism.

b. Some have characterized the current Supreme Court as "activist." Given your stated view that "[a] judicial activist is any judge who makes a decision with which a very vocal group, large or small, disagrees," do you disagree with that characterization?

Response: Yes.

5. In an October 21, 2004 interview with the *Jackson Free Press*, you said that you entered the legal profession because you "saw the law as an opportunity to effect change, make policy and influence the law."

a. Of course I understand that you were not a judge when you said that. Having been a judge, do you still see the law that way?

Response: Yes, I still see the legal profession that way, but not the role of a judge. Lawyers serve in the legislative and executive branches of government where they should seek to effect change, make policy and influence the law. That is not the role of a judge.

b. Do you believe it could ever be acceptable for a judge to view that law as "an opportunity to effect change, make policy and influence the law"?

Response: No.

6. During your time on the Mississippi Supreme Court, you have heard several cases concerning the First Amendment rights of state judges. In *Mississippi Comm'n on Judicial Performance v. Wilkerson*, 876 So. 2d 1006 (2004), the Mississippi Supreme Court held that the First Amendment prohibited a judge from being punished for writing a letter to a newspaper expressing his view that homosexuality was a mental disorder. You joined a dissent that argued "when the judge in today's case stated

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that certain individuals in our society were sick and that they all needed to be indiscriminately placed in mental institutions, he crossed over the line!" Several years later, in *Mississippi Comm'n on Judicial Performance v. Boland*, 975 So. 2d 882 (2008), a majority of the court held a judge could be constitutionally punished for making the statement "all you African-Americans can go to hell" at a drug court conference. You concurred in that opinion. One year later, in *Mississippi Comm'n on Judicial Performance v. Osbourne*, 11 So. 3d 107 (2009), a majority of the court held that a sitting judge could be disciplined for making a campaign speech in which he stated that "[w]hite folks don't praise you unless you're a damn fool. Unless they think they can use you. If you have your own mind and know what you're doing, they don't want you around." You joined a dissent in that case, arguing that the First Amendment prohibited discipline of the judge for that statement. Please explain why you distinguished *Boland* from *Osbourne*.

Response: Judge Osborne was a candidate for judicial election and his speech was clearly protected under ***Republican Party of Minnesota v. White***, 536 U.S. 765, 794, 122 S. Ct. 2528, 153 L.Ed.2d 694 (2002). Neither Judge Boland nor Judge Wilkerson was a candidate for judicial election at the time their remarks were made.

7. **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?**

      Response: No.

      i. **If so, under what circumstances?**

         Response: Not applicable.

      ii. **Please identify any cases in which you have done so.**

         Response: Not applicable.

      iii. **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: Not applicable.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

      Response: No.

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i. If so, under what circumstances?

Response: Not applicable.

ii. Please identify any cases in which you have done so.

Response: Not applicable.

iii. 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: Not applicable.

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.

8. What is your view of the role of a judge?

Response: The role of a judge is to interpret and apply the law fairly and impartially.

9. Please describe with particularity the process by which these questions were answered.

Response: I drafted answers to these questions. I discussed some of my answers with a staff member of the U.S. Department of Justice. I prepared final answers to these questions.

10. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Paul Kinloch Holmes, III
Nominee to be United States District Judge for the Western District of Arkansas
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 believe that the Constitution should be interpreted from text of the document, and that the interpretation should follow rules of construction and interpretation as determined by the Supreme Court of the United States or the court of appeals for the circuit in which the judge sits.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: No.

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 believe a district judge's decision should be based on the facts and the applicable law, and not on an empathetic or sympathetic standard.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: The Supreme Court of the United States has determined that Congress has broad authority to regulate under the Commerce Clause of the Constitution, and I would follow the decisions of the Supreme Court of the United States in determining the scope of that authority.

6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

   Response: The Supreme Court of the United States has held that there is an individual right to bear arms with certain limitations, and I will follow the law as determined by the Supreme Court of the United States in regard to those limitations.

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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 scope of those limitations continues to be litigated. I will follow the precedent of the Supreme Court of the United States.

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 opinion in *Roper v. Simmons*, 543 U.S. 551 (2005) is the law of the land, and I would follow the precedent of the Supreme Court of the United States should I have the occasion to handle a capital murder case.

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 decisions of the Supreme Court of the United States in determining what punishment constitutes cruel and unusual punishment under the Constitution.

b. How would you determine what the evolving standards of decency are?

Response: I would not determine "evolving standards of decency" as I would be bound to follow the law as decided by the Supreme Court of the United States and the Court of Appeals for the Eighth 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. I do not think a district judge can make such a finding as a district judge would be bound to follow the precedent of the Supreme Court of the United States.

d. What factors do you believe would be relevant to the judge's analysis?

Response: A district court judge would look to those factors as determined by the Supreme Court of the United States.

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?

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Response: No. I would only consider foreign law if directed by the Supreme Court of the United States or the Court of Appeals for the Eighth 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: None. I do not think a judge should consider foreign law to interpret 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.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

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Responses of Paul Kinloch Holmes, III
Nominee to be United States District Judge for the Western District of Arkansas
to the Written Questions of Senator Jeff Sessions

1. **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?**

      Response: No.

      i. **If so, under what circumstances?**

         Response: I do not believe a judge should decide a case on a desired outcome.

      ii. **Please identify any cases in which you have done so.**

         Response: None. I have not served as a judge.

      iii. **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: If I am confirmed as a district judge, I will decide cases based on the facts and the applicable law, and not on a desired outcome.

   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: I do not believe a judge should determine the meaning of the law based on personal values or policy preferences.

      ii. **Please identify any cases in which you have 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 values or policy preferences and rule based solely on the law.**

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Response: If I am confirmed as a district judge, I will follow the law as determined by the Supreme Court of the United States and the Court of Appeals for the Eighth Circuit.

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.

2. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: No. The Supreme Court of the United States has ruled that the death penalty does not constitute cruel and unusual punishment, and I would follow that precedent as a district judge.

3. **Do you believe that the death penalty is an acceptable form of punishment? Please explain your answer.**

Response: Yes. The Supreme Court of the United States has ruled that the death penalty is an acceptable form of punishment except in certain cases, and I would follow the precedent of the Supreme Court of the United States if I am confirmed as a district judge.

4. **What is your view of the role of a judge?**

Response: I believe that a district judge should determine the applicable law in a case based on the decisions of the Supreme Court of the United States and the court of appeals for the circuit in which the judge sits, and apply that law to the facts of a case as determined by the jury or by the court in a non-jury trial. A district judge should maintain confidence in the judicial system by conducting all proceedings with fairness and impartiality as to all parties.

5. **Please describe with particularity the process by which these questions were answered.**

Response: I prepared my responses to the questions then forwarded my responses to the Office of Legal Policy of the Department of Justice.

6. **Do these answers reflect your true and personal views?**

Response: Yes.

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Responses of Diana Saldaña
Nominee to be United States District Judge for Southern District of Texas
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 am not familiar with this statement by Justice Brennan or the context in which it was made. If confirmed as a district judge, I would consider the text of the Constitution, the intent of the framers, and the precedent as established by the Supreme Court and the appeals courts 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 believe a district judge is guided by the text of the Constitution, the intent of the framers, and binding precedent from the 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. 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: 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). 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: The Supreme Court has left open the question of what limitations on the Second Amendment right remain except for those expressly identified.

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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: If confirmed as a district judge, I would follow the Supreme Court's holding and analysis in Roper in combination with other applicable Supreme Court and Fifth 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: If confirmed as a district judge, I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and the Court of Appeals for the Fifth Circuit.

b. How would you determine what the evolving standards of decency are?

Response: If confirmed as a district judge, I would follow the law regarding imposition of the death penalty as directed by statute and binding precedent from the Supreme Court and the Court of Appeals for the Fifth 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. The Supreme Court has foreclosed any contention that the death penalty is unconstitutional in all cases. If confirmed as a district judge, I would follow that precedent.

d. What factors do you believe would be relevant to the judge's analysis?

Response: The relevant factors are those articulated by the Supreme Court and the Court of Appeals for the Fifth Circuit.

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?

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Response: No, unless the Supreme Court or the Court of Appeals for the Fifth Circuit directs 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. I would only look to foreign law if the precedent of the Supreme Court or the Court of Appeals for the Fifth Circuit required me to do so.

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 the Supreme Court or the Court of Appeals for the Fifth 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, unless directed to do so at some point in the future by the Supreme Court or the Court of Appeals for the Fifth Circuit.

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Responses of Diana Saldaña
Nominee to be United States District Judge for Southern District of Texas
to the Written Questions of Senator Jeff Sessions

1. **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?**

   Response: No. I believe that judges should base their decisions solely on the law and facts presented.

   i. **If so, under what circumstances?**

   Response: None.

   ii. **Please identify any cases in which you have done so.**

   Response: None.

   iii. **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. As a Magistrate Judge, I have ruled according to the law and facts of each case.

   b. **Do you believe a judge should consider his or her own values or policy preferences in determining what the law means?**

   Response: I do not believe that a judge should consider her or her own values or policy preferences in determining what the law means.

   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.**

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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.

2. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution? Please explain your answer.**

Response: No. The Supreme Court has ruled 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, 125 S. Ct. 1183 (2005) (for defendants who committed crimes before the age of 18), Atkins v. Virginia, 536 U.S. 304 (2002) (for defendants determined to be mentally retarded) and Kennedy v. Louisiana, 128 S. Ct. 2641 (2008) (cases involving non-homicide felonies).

3. **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 judge, I would follow the law regarding imposition of the death penalty, as directed by statute and in binding precedent from the Supreme Court and the United States Court of Appeals for the Fifth Circuit.

4. **What is your view of the role of a judge?**

Response: The role of a judge is to apply the law to the facts.

5. **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. I thereafter finalized my responses and forwarded these to the Justice Department for transmission to the Committee.

6. **Do these answers reflect your true and personal views?**

Response: Yes.

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SUBMISSIONS FOR THE RECORD

U.S. Senator Barbara Boxer

Statement for the Record for Senate Judiciary Committee Confirmation Hearing of Anthony Battaglia to the U.S. District Court for the Southern District of California, and Edward Davila to the U.S. District Court for the Northern District of California

September 29, 2010

It is my honor to support the nominations of Judge Anthony Battaglia and Judge Edward Davila, who are appearing today before the Judiciary Committee.

I want to welcome them and their families, who are with us on this important day.

I had the privilege of recommending Judge Battaglia and Judge Davila to President Obama to serve on the Northern and Southern District Courts. Both are very respected in their legal communities, and will make excellent additions to the bench.

First, let me tell you about Judge Anthony Battaglia.

Judge Battaglia was born and raised in San Diego. He is a graduate of the United States International University (now Alliant International University) and California Western School of Law in San Diego.

He has practiced law for 35 years in San Diego. For his first 19 years of practice, Judge Battaglia was a private practitioner, with a strong record as a litigator.

For the past 16 years, Judge Battaglia has served with distinction as a Magistrate Judge on the Southern District.

He has a reputation as a "judge's judge" – hard working, thoughtful and fair. Local lawyers praise him for being well-prepared for hearings and trials, and diligent in moving cases

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forward. He has presided over 22 trials that have gone to verdict during his tenure on the bench.

Equally important is Judge Battaglia's dedication to service outside of the courtroom. He is a past president of the National Federal Magistrate Judges Association, and has twice been selected by Chief Justices of the Supreme Court to serve on a national advisory committee that reviews criminal court rules.

In short, Judge Battaglia career stands as a testament to his dedication and devotion to the law and the legal community of San Diego – both inside and outside of the courtroom.

Judge Battaglia relayed the following story to my staff that I would like to share. Judge Battaglia said that, when he was in high school, he took a class trip to tour the San Diego Superior Court building. He said he was "awestruck" by the solemnity and dignity of the proceedings and the judges he saw on that tour. He aspired, one day, to become a judge.

Today, Judge Battaglia takes time out of his busy schedule to lead tours of the federal courthouse in San Diego. He said that he hopes that maybe – just maybe – he can give something back by inspiring a child the way he was inspired.

Judge Davila brings an impressive background of service in both public service and private practice.

Judge Davila was born in Palo Alto, one of three children born to a single mother. It is from his mother, Dora, that he learned two important qualities that have served him well in his legal career – hard work, and determination. I would like to extend my personal congratulations to Dora, who could not be in attendance today. As a mother, I know the immense pride you must feel for your son and his extraordinary accomplishments.

Judge Davila is a graduate of the California State University at San Diego, and the University of California's Hastings College of Law in San Francisco.

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He has practiced law for 28 years. He spent his first seven years as a Santa Clara County Public Defender before moving into the private sector as a co-owner of a small firm specializing in criminal defense. During his time as a defense counsel, Judge Davila earned the respect of prosecutors and law enforcement officials with whom he interacted, and received awards from the State Bar of California. He also served as president of the Santa Clara Bar Association in 1998.

For the past eight years, Judge Davila has served on the Santa Clara County Superior Court, where he has drawn praise from fellow judges and lawyers for his hard work, integrity and fairness. In a recent survey by the Santa Clara County Bar Association, Judge Davila's performance was rated excellent or very good by more than 80 percent of participants with respect to his work ethic, knowledge of the law and procedure, integrity, dispute resolution and judicial temperament.

He has also received awards and recognition for his judicial performance from the Santa Clara Bar Association and the California State Assembly.

I close by congratulating Judge Battaglia, Judge Davila and their families on this momentous day, and I urge my colleagues in the Senate to move swiftly to confirm these nominees to the federal bench. Thank you.

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Statement of U.S. Senator Dianne Feinstein
September 29, 2010

Statement on the Nomination of Judge Edward Davila
to be U.S. District Judge for the Northern District of California

Mr. Chairman, I regret that I am unable to attend today's hearing. I am very pleased, however, to submit this statement regarding the nomination of Santa Clara County Superior Court Judge Edward Davila to sit on the U.S. District Court for the Northern District of California.

Let me begin by saying that Judge Davila's confirmation would add critically important diversity to the U.S. District Court for the Northern District. If confirmed, he would be the only Latino District Judge in this District, which covers more than 15 counties and 7.3 million people and has a jurisdiction that stretches from Eureka to San Jose, and from the Monterrey Bay nearly to Sacramento County. So this is a significant nomination and one that I am proud to support.

A Wealth of Experience – As a Lawyer and a Judge

Judge Davila brings a wealth of relevant experience to the Court – as a lawyer, and as a judge.

For over nine years, he has served our State as a Superior Court Judge for Santa Clara County.

He was appointed by Governor Gray Davis in 2001 and has, in the intervening nine years, presided over a wide array of matters, from criminal cases to civil disputes, from custody matters to juvenile justice proceedings.

He has handled more than 10,000 cases at various stages of litigation and has seen more than 50 cases from trial to verdict or judgment.

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This is valuable experience that would serve him well as a U.S. District Judge.

Judge Davila is also a seasoned lawyer, with 22 years of litigation experience under his belt.

From 1988 to 2001, he ran his own firm, Davila & Polverino, where he represented individuals and businesses in primarily criminal proceedings.

From 1979 to 1988, he served as a Deputy Public Defender, providing legal defense services to indigent individuals with the Santa Clara County Office of the Public Defender.

Judge Davila is a graduate of the University of California, Hastings College of the Law and California State University at San Diego.

Accolades for Service to the Community

In addition to his purely professional experience, Judge Davila also has a record of giving back to his community.

- He is a former President of both the Santa Clara County Bar Association and the Santa Clara County La Raza Lawyers Association.
- He has taught trial advocacy classes as a visiting professor at Stanford Law School, Santa Clara University School of law, and the University Of San Francisco School Of Law.
- He has served as a Board Member for the Legal Aid Society of Santa Clara County.
- And he has made a longstanding tradition out of inviting classes of students into his courtroom to educate them on the criminal justice system and use mock trials to inspire in them a love of the law.

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For his continued contributions, the Santa Clara County Bar Association has awarded Judge Davila the Award for Outstanding Contributions for Pro Bono Services, the Unsung Heroes Award for Leadership, and the Justice Byrl R. Salsman Award; the State Bar of California Board of Legal Specialization has honored him with an Outstanding Service Award; and the California State Assembly has awarded him a Certificate of Recognition for his work on the State's Access to Justice Program, which supports public-private partnering to expand access to justice.

Judge Davila has accomplished a great deal in his career. I congratulate him on his nomination and urge my colleagues to move this nomination forward to confirmation in a timely manner.

Thank you, Mr. Chairman.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
September 29, 2010

Today we welcome to the Committee five of President Obama's highly qualified nominees to fill some of the many vacancies on the Federal bench. I thank Senator Franken for chairing this hearing today, and I note that this hearing is of particular importance. Four of the five nominees we consider today are nominated to fill seats that the Administrative Office of the U.S. Courts classifies as judicial emergencies.

As vacancies on our Federal courts continue to skyrocket, so, too, do judicial emergencies. The number of judicial emergencies has more than doubled so far this Congress. The number now stands at an astounding 48. Behind each of those 48 seats is a Federal court handicapped in its ability to offer Americans their day in court, a court that simply has too many cases and too few judges.

Several recent newspaper articles have discussed the source of the judicial vacancy crisis we now face. This crisis was created by the Republican strategy of slow-walking the Senate's consideration of noncontroversial nominees. These include many nominees who, when they finally get a vote after waiting months and months and months, are confirmed unanimously. These include nominees who have the strong support of Republican home state Senators, yet still require cloture votes to proceed. These include district court nominations, which are traditionally considered without delay and have never been targeted for obstruction by Democrats or Republicans when supported by their home State Senators.

I hope that in light of the growing judicial vacancy crisis, the full Senate will proceed without delay to consider the nominees before us today, as well as the many still pending on the Senate's Executive Calendar. Senator Sessions's cooperation has led us to make consistent progress in Committee, holding confirmation hearings and reporting nominations promptly to the Senate floor. I thank Senator Sessions for his cooperation and that of his staff in working with us to continue to consider nominations in a timely manner. Regrettably, once those nominations get to the Senate floor, they are stalled by the Senate Republican leadership.

This obstruction serves no good purpose, and is wrong. I have called for it to end, but they persist in their practice. It seems many Senate Republicans have returned to the strategy they used during the Clinton administration of blocking the nominations of a Democratic President, again leading to skyrocketing vacancies. By refusing to proceed on President Clinton's nominations while judicial vacancies skyrocketed, Senate Republicans allowed vacancies to rise to more than 110 by the end of the Clinton administration. By allowing only 41 of President Obama's Federal circuit and district court nominees to be confirmed so far this Congress, judicial vacancies are again over 100.

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By this date in President Bush's second year in office, a Democratic majority in the Senate had confirmed 78 of his Federal circuit and district court nominations. A total of 100 nominations were confirmed by the end of that year, 17 of them to fill circuit court vacancies. In stark contrast, we have confirmed just 11 circuit court nominations and 30 district court nominations this Congress. Last year, the Senate was allowed to confirm only 12 Federal circuit and district court judges. 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.

Justice Anthony Kennedy—a Justice nominated by a Republican President—spoke last month at a Ninth Circuit conference about the cost of skyrocketing judicial vacancies. 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.

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 two years in office. It has taken three times as long to consider his district court nominations, nominations that are almost never controversial. We must do better with the nominees before us today, particularly because, as I mentioned earlier, four of them are nominated to fill vacancies classified as judicial emergencies. Of course, each of these nominees has the support of his or her home state Senators, and each is highly qualified.

Justice James E. Graves, Jr., has been nominated to fill an emergency vacancy on the Fifth Circuit. Justice Graves has served on the Mississippi state courts since 1991, sitting for 10 years on the Hinds County Circuit Court and, since 2001, on the Mississippi Supreme Court, where he is now a Presiding Justice. Justice Graves began his legal career as a staff attorney at Central Mississippi Legal Services, and he has also served in the Office of the Mississippi Attorney General and in the Mississippi Department of Human Services, where he was the director of the Child Support Enforcement division. Justice Graves earned his B.A. from Millsaps College, and he received his M.P.A. and his J.D. from Syracuse University. He is currently the only African American on the Mississippi Supreme Court and, if confirmed, he will become only the second African American ever to serve on the Fifth Circuit.

Paul K. Holmes is nominated to fill one of two emergency vacancies on the Western District of Arkansas. He served for eight years as the U.S. Attorney for that district, and he has more than two decades of experience as a lawyer in private practice in Fort Smith, Arkansas, where he specializes in commercial litigation and white-collar criminal matters. Mr. Holmes earned his B.A. from Westminster College and his J.D. from the University of Arkansas School of Law.

Judge Anthony Joseph Battaglia has served for the last seventeen years as a Federal Magistrate Judge for the Southern District of California, where he is now nominated to be a District Judge. Prior to taking the bench, Judge Battaglia worked for nearly two decades as a lawyer in private practice, specializing in personal injury, products liability, and maritime law. A former president of the Federal Magistrate Judges Association and of the San Diego County Bar Association, he

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earned his B.A. from U.S. International University and his J.D. from California Western School of Law.

President Obama has nominated Judge Edward J. Davila to fill an emergency vacancy on the Northern District of California. Judge Davila currently serves as a judge of the Superior Court of California, a position he has held since 2001. Prior to becoming a judge, he worked for more than a decade as a lawyer in private practice, and he also was a deputy public defender in the Santa Clara County Public Defender's office. Judge Davila earned his B.A. from the California State University at San Diego, and he received his J.D. from the University of California's Hastings College of Law.

Judge Diana Saldaña is nominated to fill an emergency vacancy on the Southern District of Texas, the court she has served as a Federal Magistrate Judge for four years. Previously, she was an Assistant U.S. Attorney, and she has also worked as a lawyer in private practice and as a trial attorney in Civil Rights Division of the U.S. Department of Justice. Judge Saldaña earned two B.A. degrees and her J.D. from the University of Texas, after which she served as a law clerk to then-Chief Judge George P. Kazen, whose seat she will fill if confirmed.

I welcome the nominees and their families to the Committee today.

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NOMINATIONS OF MAX O. COGBURN, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA; MARCO A. HERNANDEZ, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON; MICHAEL H. SIMON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON; STEVE JONES, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA; MICHELE M. LEONHART, NOMINEE TO BE ADMINISTRATOR OF DRUG ENFORCEMENT, DEPARTMENT OF JUSTICE; PATTI B. SARIS, NOMINEE TO BE A MEMBER AND CHAIR OF THE UNITED STATES SENTENCING COMMISSION; AND, STACIA A. HYLTON, NOMINEE TO BE THE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE

WEDNESDAY, NOVEMBER 17, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., Room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Kohl, Feinstein, Whitehouse, Klobuchar, Franken, and Sessions.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. The hearing will come to order. And I welcome everyone here. Our Ranking Member, Senator Sessions, is on his way, but I've been given clearance to get underway while he makes his way over here.

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The order of proceeding is that I will make a brief opening statement, followed by that of Ranking Member Sessions. And if anybody else cares to make an opening statement, we will do that, and then we will turn to the Senators who would like to make introductions of the nominees from their States, and we will take that in order of seniority. Then we will have two panels. The first will be the four nominees to the district courts and the second will be the three nominees to the executive agencies. Each nominee will have the chance at that time to introduce any guests they may have with them, family members. And I welcome all of you here today.

The seven nominations that we will consider are Max Cogburn, nominated to the United States District Court for the Western District of North Carolina; Judge Marco Hernandez and Michael Simon, nominated to the U.S. District Court for the District of Oregon; Judge Steve Jones, nominated to the U.S. District Court for the Northern District of Georgia; Michele Leonhart, nominated to be Administrator of Drug Enforcement at the Department of Justice; Judge Patti Saris has been nominated to be a member and chair of the U.S. Sentencing Commission; and, Stacia Hylton has been nominated to be the Director of the United States Marshals Service.

We welcome each of these nominees and their families and their friends here to the U.S. Senate.

We have a full slate and a busy floor schedule this morning. So in the interest of efficiency, we will get straight to the order of business.

In the absence of Senator Sessions, why do I not turn to Senator Feinstein for any opening statement she might care to make?

PRESENTATION OF MICHELE M. LEONHART, NOMINEE TO BE ADMINSTRATOR OF THE DRUG ENFORCEMENT, DEPARTMENT OF JUSTICE BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. The only statement I wanted to make is one on behalf of Michele Leonhart. Would it be appropriate for me to do it at this time?

Senator WHITEHOUSE. Of course.

Senator FEINSTEIN. Thank you very much. I am very pleased to introduce her. She has been nominated to serve as Administrator of the DEA. She has had a very distinguished career with that organization, which includes several critical roles in my home State of California.

In 1997, she became the first woman to head a DEA Field Division when she was named Special Agent in Charge for San Francisco. She managed DEA operations in San Francisco until September 1998, when she became Special Agent in Charge of the Los Angeles Field Division, one of DEA's largest. She continued in that position until March of 2004, when she was confirmed as Deputy Administrator.

She and her family continue to maintain a residence in California, and we are very proud to call her one of our own.

Ms. Leonhart has served as the Acting Administrator for the DEA since November of 2007, for 3 years. She was unanimously confirmed by the Senate to be Deputy Administrator in 2004.

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So the members of this Committee are already familiar with her outstanding qualifications and excellent work in enforcing the Nation's controlled substances laws, but I would like to briefly just highlight some of her accomplishments.

Under her leadership, DEA has reached record-breaking levels of extraditions, drug and asset seizures, and revenue denied to drug trafficking organizations. She realigned resources to expand DEA's foreign presence to combat emerging threats and enhanced intelligence-sharing with foreign countries, to include Mexico and Colombia.

She implemented a plan to deploy the first team of DEA agents to conduct counter-narcotics operations in Afghanistan post-9/11, leading to the investigation and prosecution of Afghan drug lords.

Under her leadership as Acting Administrator, the DEA recently completed one of its most successful joint international drug operations in history, Operation Xcellerator. This 21-month effort, terminating in February of 2009, dealt a severe blow to the violent Sinaloa Cartel in Mexico, resulting in more than 750 arrests and $59 million seized.

She has worked with law enforcement, community and school leaders. She has educated children, parents and teachers about drug prevention. She explained the importance of these efforts at the 18th annual Drug Abuse Resistance Education Conference, when she said, "Every child you get through to is one less member of a dealer's customer base."

Over the years, she has received numerous honors for her achievements, including awards for meritorious service from both Presidents Clinton and Bush.

There are, and will continue to be, serious challenges confronting the DEA, as violent drug trafficking organizations and gangs continue to threaten not just our Nation, but countries around the world. And the DEA needs a leader who has the talent, experience, and commitment to fight these ruthless criminals.

With her nearly 30 years of dedicated service and longstanding record of success, Acting Administrator Leonhart will continue to provide strong leadership as the DEA fulfills its vital mission.

I urge my colleagues to support her nomination. Thank you very much, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Feinstein.

Our wonderful Ranking Member has arrived. I do not know if you would care to make an opening statement of any kind at this time.

Senator SESSIONS. I think it is great to have these Senators here and would be delighted to hear from them before I make any comments.

Thank you all for coming and expressing your views on these important nominations.

Senator WHITEHOUSE. Let me then turn to the last member present from the Committee, Senator Franken, who may have a word or two about somebody perhaps from White Bear Lake.

PRESENTATION OF MICHELE M. LEONHART, NOMINEE TO BE ADMINISTRATOR OF DRUG ENFORCEMENT, DEPARTMENT OF JUSTICE BY HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator FRANKEN. Well, actually, Michele Leonhart is from White Bear, but I will make it quick, because Senator Feinstein covered her terrific career. But I do want to make that Minnesota connection, thank you.

We have a number of remarkable individuals here today, and each of you should be very proud of your work and your achievement, and congratulations on your nominations.

I would like to talk about two nominees here today. First is Michele Leonhart, who President Obama has nominated to be Administrator of the Drug Enforcement Administration, a position, as Senator Feinstein said, she has exercised in an acting capacity since November 2007.

Ms. Leonhart grew up in White Bear Lake, Minnesota. As the Chairman said, her first posting at the DEA was in Minneapolis, where she was the first woman to serve as a special agent. She has served for 30 years at the DEA.

Ms. Leonhart may have moved from Minnesota and I heard Senator Feinstein claim her as their own, as well, which I resented. But Minnesota has not forgotten Michele. In fact, every time a representative from the Minnesota Police and Peace Officers Association visits my office, the first thing they say is, "When are you going to confirm Michele Leonhart," and my answer is, "Hopefully, very, very soon," and I am happy to see you here.

Mr. Chairman, let me also say hello to Judge Saris. I have known Judge Saris and her husband, Arthur, for a long time. And aside from being a brilliant jurist and a dear friend, Judge Saris has one distinction that no one else on this panel has. Her wonderful daughter, Celia Segal, worked for me as a staff assistant in my office, and Celia is an absolute gem.

Everyone in our office loved her and our staff and our constituents—and I actually chose her to give a tour of the Senate to Garrison Keillor when he was visiting town a few months later, and he remarked on how wonderful she was.

So thank you so much, Judge Saris, for your daughter, and it is good to see you.

Senator WHITEHOUSE. Senator Klobuchar.

PRESENTATION OF MICHELE M. LEONHART, NOMINEE TO BE ADMINISTRATOR OF DRUG ENFORCEMENT, DEPARTMENT OF JUSTICE BY HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you.

So, Ms. Leonhart, you get not one, not two, but three Senators introducing you. So I suppose it is like how many Senators do you need to screw in a light bulb or something.

But I am just honored to be here to be one of the many voices supporting you to lead the Drug Enforcement Administration.

As was mentioned, Michele grew up in White Bear Lake, Minnesota and attended Bemidji State University in Bemidji, Min-

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nesota. And when you look at her career, it is full of firsts. She graduated first in her class from the Baltimore Police Academy in 1978; first in her class at the DEA Training Academy in 1981; first female agent ever to serve in the DEA's Minneapolis field office; and, in 1997, she became the first woman to head a DEA field division when she was appointed as special agent in charge in San Francisco.

In fact, the only time the word "second" is used regarding Michele Leonhart is in this context. If confirmed by the Senate, she will become the second woman ever to serve as administrator of the DEA.

We are very excited about this nomination. I was in law enforcement in Minnesota for 8 years as the county attorney for Minnesota's largest county, and I have repeatedly heard from my friends in law enforcement many compliments about Michele's work; that she has an absolutely tireless work ethic that inspires everyone around her; that she embodies the principle of leading by example; that she works across jurisdictional lines, Federal, State and local, and I think we all know crooks do not care about those jurisdictional lines and the people that we are supposed to protect do not care who enforces the law, whether it is local, State or Federal. They just want us to get the job done. And that she also has earned the respect and the trust of all the people that she has worked with at different levels of law enforcement.

So I am very proud to support her nomination and believe that she is the right woman, the right Minnesotan, the right person for the job.

Thank you.

Senator WHITEHOUSE. As I indicated earlier, we will now go by order of seniority of the Senators who are here with nominees to introduce, and we will lead with Senator Ron Wyden of Oregon, who has not one, but two nominees before us.

Senator Wyden.

PRESENTATION OF MARCO A. HERNANDEZ, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON AND MICHAEL H. SIMON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON BY HON. RON WYDEN, A U.S. SENATOR FROM THE STATE OF OREGON

Senator WYDEN. Thank you very much, Mr. Chairman. And let me spare you the filibuster. I would ask unanimous consent to make my prepared remarks a part of the record.

Senator WHITEHOUSE. Without objection.

Senator WYDEN. Thank you very much, Mr. Chairman. This is a great thrill to be here to nominate two exceptional individuals, Judge Marco Hernandez and Michael Simon, to serve as U.S. district court judges for the district of Oregon.

I have known both of them for many years and it is wonderful to be here to introduce them.

I would also like to be able to introduce the family members and honored guests that are here with both nominees.

Judge Hernandez is joined by his wife, Mary Beth; daughter, Alicia; son, Daniel; and, his parents, Frank and Rosa Hernandez.

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Oregon's Chief Judge Paul De Muniz and his wife, Mary, are also here.

Mr. Simon is joined by his wife, Oregon State Senator Suzanne Bonamici, and his daughter, Sara. Michael's son, Andrew, who was also an intern in my office, is overseas, but I can tell you, your hearing is being streamed live on the Internet, and I am sure it is not the only household where that is being done.

A couple of comments about both of the individuals, because they are both exceptional people. With respect to Judge Hernandez, Marco Hernandez, Chairman Whitehouse, what is striking is I urged two Presidents of different political parties to nominate Judge Hernandez, because he is such an exceptional individual.

Without going through all of this, when my friend, Gordon Smith, led the nomination process, Judge Hernandez was nominated for the district court by George Bush, and I supported that recommendation vigorously. Unfortunately, the 110th Congress was unable to act on his nomination.

So in the 111th Congress, I recommended Judge Hernandez once more, this time with the strong support of Senator Merkley. So we are very pleased that President Obama has chosen Judge Hernandez to be nominated for the bench.

Now, it is not exactly hard to decipher why leaders of both political parties are such strong supporters of Judge Hernandez, because his life is essentially a billboard for the American dream. It is an exceptional story. At age 17, he moved to Oregon by himself. He had to support himself.

He took a job as a dishwasher, found his way to a better job as a janitor, and eventually became a teacher's aide. At that point, he began taking night classes at a local community college, with the dream of one day being able to go to a 4-year school.

Finally, he was able to enroll at Western Oregon State College and quickly showed his ability to excel there. He earned the Dewey award as the outstanding male student in his class.

He has a demonstrated commitment to public service. He worked at Oregon Legal Services, representing farm workers, and he was a deputy district attorney.

What I like especially about him is his interest, and there is sure going to be a premium on this in the years ahead, at looking for creative solutions. He pioneered an innovative domestic violence program to aggressively pursue offenders and created a new program for those with mental illness.

So Judge Hernandez, an individual with resounding support from both sides of the aisle, additionally, has the support of a broad range of legal organizations, and I give him my strongest possible support as one of the two judges that Oregon Senators would like to see on the bench.

With respect to our other outstanding nominee, Michael Simon, he, too, has a diverse and distinguished record of public service. He has been a litigator, a professor, and a judge pro tem, just to scratch the surface.

He graduated summa cum laude from UCLA and then graduated from Harvard Law School, as well. He has been a trial judge and a special U.S. assistant attorney. Throughout his work in both the

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public and private sectors, he has stepped up to be a volunteer with many legal and civic groups.

There is virtually no organization in our State, Mr. Chairman, that does not seek out the services of Michael Simon. When you see materials for various groups to sign up for civic causes, Michael's name is invariably one of them, because he has such an extensive participation in local nonprofit organizations.

He is a pillar of the community, an exemplary member of the bar, and outstanding nominee for the Federal bench.

Finally, these two Federal judicial vacancies must be filled promptly. And one of the seats, the seat has been open for 656 days, Mr. Chairman and colleagues, and is classified as a judicial emergency.

We all understand that justice delayed is justice denied, and the people of my home State deserve a full Federal bench.

So I am very pleased, Mr. Chairman, to be able to present these two extraordinary lawyers for confirmation to the bench.

I am going to be in and out, as there is a hearing in the Senate Finance Committee on Health Care, and suffice it to say, Senator Merkley has my proxy this morning, because he and I share the view, as I did with Senator Smith, on Judge Hernandez, that these are exceptional individuals.

We are grateful for your time and your consideration this morning.

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

Senator WHITEHOUSE. Thank you, Senator Wyden. It is important to the Committee to hear the views of our colleagues who know these candidates so well. And with respect to Senators who depart after their remarks, it is actually our expectation that Senators will depart after their remarks, knowing how busy everybody is around here.

So, Senator Wyden, thank you.

Senator Chambliss, welcome.

PRESENTATION OF STEVE JONES, 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, Senator Whitehouse, Senator Sessions, members of the Committee. I appreciate very much the opportunity to come visit with you this morning and to introduce an outstanding Georgian, Superior Court Judge Steve C. Jones, who has been nominated to serve as United States District Court Judge for the Northern District of Georgia.

I would, first of all, like to ask unanimous consent that a letter from my colleague, Senator Isakson, be entered into the record.

Senator WHITEHOUSE. Without objection.

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

Senator CHAMBLISS. This letter is, obviously, in strong support of Judge Jones. And Johnny could not be here, as he has, just like Ron, a Commerce Committee meeting that he is obligated to attend.

Steve Jones is a native of Athens, Georgia, where he has lived, worked, demonstrated his commitment to the community, and offered his time and leadership to various organizations.

Like Senator Isakson and myself, he is a graduate of the University of Georgia, both undergrad and law school; and, like Johnny and me, he is not particularly happy with our football season. So I would appreciate questions today about that when he comes before you. But we all know we will be back.

Judge Jones began his legal career as an assistant district attorney before becoming a municipal judge in Athens. Since 1995, he has served on the bench as a superior court judge of the Western Judicial Circuit, which covers Clark County and Oconee County.

In this capacity, Judge Jones has presided over both civil and criminal cases. He has also supervised the circuit's felony drug court for 6 years.

Judge Jones' list of honors and awards are truly too numerous to mention here. They are a testament to the high esteem in which his peers and his neighbors now hold him. But I do want to mention a very few of them.

They include the Georgia State Bar's Distinguished Judicial Service Award; the Georgia Legal Services Program's Georgia Justice Builder Award; the University of Georgia Presidents Fulfilling the Dream Award; the Boy Scouts of America's Distinguished Citizen Award; the Chief Justice Robert Benham Award for Community Service Beyond Official Work; and, the Julian Bond Humanitarian Award.

In addition to his various legal memberships, Judge Jones serves on the board of directors of the University of Georgia Alumni Association, the Athens Area Community Foundation, Hope Haven and Bread for Life, and is a member of the National Football Foundation College Hall of Fame, the A. Philip Randolph Institute, and the Athens Rotary Club.

Steve is married to his lovely wife, Lillian, and I will let him introduce his family that is here with him this morning.

In addition to juggling his legal and community duties, he is a deacon at Ebenezer Baptist Church West in Athens.

I have had the privilege of introducing any number of individuals to this distinguished Committee over the years and whether it was during the Bush administration or now during the Obama administration, I have had Democrats and Republicans who have complemented President Bush's nominees, but I will have to say I have never had any more support shown in a bipartisan way for the nomination of Judge Steve Jones.

He is that well respected by all political party members in our State. They know him well. They know he has served his community well on the bench as a superior court judge, and he is going to make an outstanding Federal district judge.

So I am very pleased, Mr. Chairman, to be here today to put in nomination and recommendation the nomination of Judge Steve Jones.

Thank you very much.

Senator WHITEHOUSE. Thank you, Senator Chambliss. We appreciate very much your being here and we know that your and Senator Isakson's support of this nominee will be very helpful to mov-

ing him rapidly through the process and into the office that he seeks. Thank you.

Next, Senator Richard Burr.

PRESENTATION OF MAX O. COGBURN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA BY HON. RICHARD BURR, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BURR. Senator Whitehouse, Senator Sessions, members of the Committee, it is an honor to be asked to be here to introduce one of our nominees, Max Cogburn, of Asheville, North Carolina.

Married, two children, a daughter who has followed in his legal footsteps and has been admitted to the bar in North Carolina, and I am sure Max will have an opportunity to introduce any family members that he has brought with him today.

President Obama has nominated Max to the Federal bench in North Carolina's western district. He is an excellent choice and I believe will be a great addition to the court.

Max is a longtime resident of Buncombe County and his family roots in the western North Carolina mountains run very deep. While his family's history in western North Carolina is impressive, Max has not rested on that history.

He was admitted to the bar in 1976 and has made a name for himself, with a strong record in his legal career and in public service; an assistant U.S. attorney; a chief assistant U.S. attorney; magistrate judge; and, currently, a partner at Cogburn & Brazil.

During his 12 years as a Federal prosecutor, he was also the lead attorney on the Organized Crime and Drug Enforcement Task Force. As an assistant U.S. attorney, he was responsible for prosecuting murder cases, drug trafficking, voter fraud, among other Federal crimes.

His service in the U.S. attorney's office brought with it a host of honors and awards for his service from the U.S. Marshals Service, the Park Service, and the FBI, among others.

He has a law degree from Samford and did his undergraduate work at UNC-Chapel Hill. Typically, for me, UNC-Chapel Hill would be a disqualifier, but given that I have now had two children graduate from Chapel Hill, it is now perceived as an asset for any nominee.

Despite coming down from the mountains for school, the mountains have always been home for Max Cogburn and it is clear that they mean a great deal to him and to his family. I believe he brings with him a perspective that will serve the court and western North Carolina extremely well.

In addition to his legal career, which certainly qualifies him for the bench in its own rights, for 4 years, he served as president of the Cogburn's other family businesses, a dude ranch outside of Asheville, North Carolina; time spent others how to herd cattle and shoot straight has got to be a useful tool.

Another selling point at the ranch, if I have read the sales pitch correctly, just one television, something that many of us would welcome the opportunity after coming off of campaign, to limit people to the number of TVs they have, it might make it a little bit easier.

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Mr. Chairman, out of all the qualifications that Max Cogburn brings to this nomination, let me say this. He is a good man and we need good individuals to serve on our bench.

I highly recommend to the Committee that we move as expeditiously this nominee as we can.

I thank the chair.

Senator WHITEHOUSE. Thank you, Senator Burr.

Your colleague, Senator Hagan.

PRESENTATION OF MAX O. COGBURN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA BY HON. KAY HAGAN, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator HAGAN. Thank you, Mr. Chairman and Ranking Member Sessions.

I, too, join my colleague, Senator Burr, in welcoming Judge Cogburn, and thank him for being here today. As you can see, this is a bipartisan recommendation. It is extremely important to me that North Carolina have highly capable representation on the Federal courts.

Judge Cogburn is exactly the type of legal mind that we need as a judge on North Carolina's western district court.

Mr. Chairman, I appreciate you holding this confirmation hearing today. It is my hope that hearings like these will allow the Senate to move exceptional nominees along faster and confirm them in a more timely manner.

I recommend Judge Cogburn because of his distinguished record as a jurist and attorney in both the public and private sectors. After earning degrees from Samford University Cumberland School of Law, and UNC–Chapel Hill, he entered private practice. Judge Cogburn has worked in private practice on and off since 1976, handling criminal felonies, misdemeanors, civil torts, domestic cases, and corporate work.

Judge Cogburn also served as an assistant United States attorney from 1980 to 1992, where he prosecuted murder cases on the Cherokee Indian Reservation. He also prosecuted drug trafficking, voter fraud, and a wide variety of Federal crimes.

During his time with the U.S. attorney's office, Judge Cogburn served as the lead attorney on the Organized Crime and Drug Task Force, as well as the chief assistant U.S. attorney. And from 1995 to 2004, Judge Cogburn served as a magistrate judge on the United States District Court for the Western District of North Carolina.

As a magistrate judge, he ruled on cases involving sexual harassment, racial discrimination in employment, fraud, age discrimination, products liability, and medical malpractice.

Judge Cogburn is a good steward of the law. He received the American Bar Association's highest rating of well qualified. He has the skills and the expertise that this position requires, and I am thrilled to be here today to discuss Judge Cogburn's outstanding qualifications to serve on the district court for the Western District of North Carolina.

Judge Cogburn brings decades of legal and judicial experience to the bench, and I am confident that Judge Cogburn will serve on the bench with distinction. He comes today with his wife, Fran,

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and his daughter, Casey, who is practicing law in Huntsville, Alabama. His mother, Mrs. Cogburn, of Asheville, North Carolina, also is joining him today.

I want to thank the Judiciary Committee for holding this hearing, and thank you, Mr. Chairman.

Senator WHITEHOUSE. Well, we thank both of you, Senator Burr and Senator Hagan, for coming here to support your nominees.

As I said, it is extremely important when the two Senators from the home State who know these candidates firsthand express their strong support.

I think when that support is bipartisan, as it is in your case, it highlights once again the institutional value in this body of deferring to and giving great weight to the recommendations of the home State Senators when they are in accord as to the district judge nominee who is appropriate for their State.

So thank you very much for being here.

We turn to our final presenter, Senator Jeff Merkley of Oregon.

PRESENTATION OF MARCO A. HERNANDEZ, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON AND MICHAEL H. SIMON, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON BY HON. JEFF MERKLEY, A U.S. SENATOR FROM THE STATE OF OREGON

Senator MERKLEY. Thank you very much, Mr. Chairman, Ranking Member Sessions, and Senator Franken. It is a pleasure for me to join Senator Wyden in introducing Oregon's two nominees for the district court.

It is terrific that their families were able to join them and that our own Oregon Chief Justice Paul De Muniz and his wife, Mary, were able to come, as well.

Judge Marco Hernandez has served Oregon's legal community with great distinction in a variety of roles, from representing underserved communities as a Legal Aid attorney to his experience as a deputy district attorney to his 15 years as a State court judge.

He has devoted his life to a fair and just legal system, and his diverse experience will serve him very well in the capacity as a district judge.

Judge Hernandez is imminently qualified for this nomination and would be a terrific addition to the bench.

Turning to Michael Simon, whether it be his extensive pro bono legal work or his substantial involvement in civic organizations, like the Classroom Law Project, Michael has made his mark as an outstanding citizen of the Oregon legal community.

He is respected as a top lawyer in commercial litigation, appellate law, and constitutional law, and is respected well outside his northwest roots and is imminently qualified to set the standard for what it means to be a good judge.

The U.S. District Court of Oregon has had a reputation as a place—as a well run and even-handed court led by outstanding professional jurists. Both of these nominees exemplify the spirit of public service and excellence, have been the hallmark of the Oregon bar, and will add to the Oregon judicial legacy.

Thank you so much for scheduling this hearing and expediting consideration of these nominees as we seek to fill these positions

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so that, indeed, the system can function on behalf of better justice for our citizens.

Thank you.

Senator WHITEHOUSE. Thank you, Senator Merkley. We very much appreciate your and Senator Wyden's expressions of support for these two nominees, and, certainly, as busy as everybody is right now in the Senate, the fact that both of you are here is significant. We appreciate it immensely.

We will now take about a 2-minute break while the table is reset and the four judicial nominees come forward and take their places.

[Recess.]

Senator WHITEHOUSE. The way that we will proceed is that our Ranking Member will give his statement. He was very courteous in deferring to the other Senators who had other business to get their statements into the record. So we will turn to him, and we will then introduce the nominees and give them each a chance to introduced any guests or family or friends who are here with them.

Then at the conclusions of all those introductions, there will be a period of questioning for the entire panel, with each Senator to have 5 minutes for the panel.

So without further ado, Ranking Member Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. And I would like to thank all the people who have worked to move these nominations forward, and congratulate the nominees on receiving the nomination of the President of the United States to a very August and important position of Federal judge.

I understand this will be the last nomination hearing for the 111th Congress and with today's hearing, the Committee has held hearings for 110 nominees, including two nominees to the Supreme Court, which was a pretty good spectacle and effort. A lot of effort and work had to go into that. Eighty nominees to the Federal circuit and district courts, and 28 nominees to positions within the executive branch, a pretty big and significant number.

I would just note, about the nomination, most of you, I believe, have been nominated in July. Judge Hernandez was nominated by President Bush in July of 2008 and did not clear before the Congress recessed, and that is the reason we have a 600-day vacancy rate, really, I guess, in his nomination.

So I am glad that you are back and I appreciate President Obama re-nominating you. I think that was a nice gesture and it is one that maybe will be positive for all of us here.

The nominees, of course, have been nominated for a lifetime appointment. This hearing is the only opportunity we have to help our Senate to develop the information necessary to advise and consent on a nomination.

It seems to me that we do have divergent views in the Committee and in the Senate on the philosophy and approach to judging. Judicial activism is something most all of us, I think, believe is not a healthy thing for a judge to display, but we disagree sometimes what activism is.

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I think it is when a judge fails to adhere to the rule of law or fails to recognize the Constitution as the supreme law of the land, and, instead, substitutes his or her own views or policy preferences in place of the law. I could say even empathy or politics or ideology could interfere with the ability of a judge to be the dispassionate and neutral arbiter that I believe they should be.

Those are some of the things that have been discussed at some length in this process of nominations, but it is not unimportant. It is a big deal, because a judge who is not bound by the law is really not adjudicating. It is something else akin to politics or advocacy or something else.

As you take this lifetime appointment, I have had some of my Federal judge friends that say you give up your constitutional rights. Well, in some ways, you do give up things that you would be free to do in the private sector you cannot do as a Federal judge.

Also, I would say to you that you give up the advocacy role and become the arbiter, and a fair arbiter is what you are paid to do and I hope and pray that you will all be able to do that.

We have on the second panel a number of nominees for the important administrator for the Drug Enforcement Administration, director of the Marshals Service, another very important office, and the chair of the Sentencing Commission, another very important nomination.

All of these nominees have had their records reviewed in depth by staff and Senators, and I will have some questions as we go forward. You might think, out of all my life, why do you not find the one thing you want to complain about. Well, I think it is an opportunity to ask that.

Obviously, the good things are there and have been part of the record or you would not have been nominated.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Sessions.

Now, I will turn to the nominees. We are delighted to have Max Cogburn with us, currently a partner at Cogburn & Brazil. He has a distinguished career of service as a United States magistrate judge.

For those of us who practiced in Federal court, we know how important and valuable that experience is for a nominee. You are before a panel that is chaired and ranked by two former United States attorneys.

Senator Sessions and I have both had the opportunity to witness firsthand the dedication and the competence and the esprit de corps and the determination to produce justice that AUSAs bring and we are particularly pleased that not only were you an AUSA, but you were also, what I would call in my office, the first assistant; I gather, in your office, it was appropriate to call it the chief assistant, and that you led the OCDETF task force, which requires you not only to be an excellent prosecutor, but, also, quite a good diplomat and negotiator among all of the elements of the Federal Government.

I am particularly pleased, as a New Englander, to see that you were born in New England. We welcome you for any opening statement or introductions you would care to make.

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STATEMENT OF MAX O. COGBURN, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Mr. COGBURN. Thank you very much, Senator. If I might, first, just thank Senator Hagan and Senator Burr for the generous remarks that they made. I am very, very much honored that they took the time out of their busy schedules to come here and introduce me.

I, first, would like to thank President Obama for his confidence in me by nominating me to the Federal bench; Senator Leahy for allowing me to come to this Committee meeting; and, Senator Sessions, for the same reason.

Senator Whitehouse, I appreciate you chairing this meeting today. And, Senator Franken, I thank you for coming today and spending time here to consider my nomination.

I would like to introduce some of the members of my family who are here today. I have my mother, Mary Cogburn, who is seated back here, and she is originally from Charleston, South Carolina, and has come here to be with me today.

My wife, Fran Cogburn, who is originally from Decatur, Alabama. I met her when I was in law school there at the Cumberland School of Law at Samford and she was a student at Samford University there in Alabama. And she still has family there. She has three sisters who are living currently in Decatur, Alabama, and another sister who is living in Texas at the present time. The three are living there.

My daughter, Casey Cogburn, who is an attorney currently practicing in Huntsville, Alabama. She also went to the Cumberland School of Law and she is licensed to practice law in both Alabama and North Carolina.

I have other members of my family who could not be here due to other commitments. My son, Tripp Cogburn, is watching this on the Webcast, along with his wife, Stacy, and my 5-year-old grandson, Oliver. So they are watching this on the Webcast.

I have a number of colleagues that I work with that are watching this, as well as extended friends and family both in North Carolina, South Carolina, and Alabama.

Thank you very much.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Max Oliver Cogburn, Jr.

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

   United States District Judge for the Western District of North Carolina

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

   Cogburn & Brazil, P.A.
   77 Central Avenue, Suite E
   Asheville, North Carolina 28801

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

   1951; Cambridge, 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.

   1973-1976, The Samford University Cumberland School of Law; J.D., 1976

   1969-1973, University of North Carolina at Chapel Hill; B.A., 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.

   2006-Present
   Cogburn & Brazil, P.A.
   77 Central Avenue, Suite E
   Asheville, North Carolina 28801
   Partner

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2004-2006
Cogburn, Goosmann, Brazil & Rose, P.A.
77 Central Avenue, Suite H
Asheville, North Carolina 28801
Partner

1995-2004
United States District Court for the Western District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
United States Magistrate Judge

1995
Cogburn, Cogburn, Goosmann & Brazil, P.A.
BB&T Building
Asheville, North Carolina 28801
Partner

1992-1995
Yurko & Cogburn, P.A.
402 West Trade Street, Suite 101
Charlotte, North Carolina 28202
Partner

1980-1992
United States Attorney's Office for the Western District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
Chief Assistant United States Attorney (1986-1988)
Lead Attorney, Organized Crime and Drug Enforcement Task Force
(1982-1986 & 1988-1991)
Assistant United States Attorney (1980-1992)

1976-1980
Roberts, Cogburn & Williams (now Roberts & Stevens, P.A.)
BB&T Building, Suite 1100
One West Pack Square
Asheville, North Carolina 28801
Partner (1979-1980)
Associate (1976-1978)

1975
The Samford University Cumberland School of Law
800 Lakeshore Drive
Birmingham, Alabama 35229
Administrative Assistant

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Summers 1973 & 1974
Ball Corporation
Glass Bottle Manufacturer
Hendersonville Road
Asheville, North Carolina 28803
Summer Maintenance Worker

Other affiliations (uncompensated)

2005-Present
North Carolina Lottery Commission
2100 Yonkers Road
Raleigh, North Carolina 27604
Commissioner

2003-Present
Cogburn Family Properties, LLC
77 Central Avenue, Suite E
Asheville, North Carolina 28801
Member

2002-2010
Rhododendron Brigade of Guards
Post Office Box 15041
Asheville, North Carolina 28813
Protocol Officer

2004-2008
Pisgah View Ranch, Inc.
70 Pisgah View Ranch Road
Candler, North Carolina 28715
President

2002-2008
Biltmore Forest Country Club
31 Stuyvesant Road
Asheville, North Carolina 28803
Board of Governors (2002-2008)
Treasurer (2006-2008)

2003-2006
Ranchland Incorporated
77 Central Avenue, Suite E
Asheville, North Carolina 28801
President

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1994-2000
Carolina Day School
1345 Hendersonville Road
Asheville, North Carolina 28803
Member, 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 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.

   AV Preeminent Peer Rating Martindale-Hubbell (1992-Present)
   U.S. Drug Enforcement Administration, Professional Appreciation Award (1986 & 1992)
   Federal Bureau of Investigation, Professional Appreciation Award (1980-1992)
   U.S. Department of Treasury, Professional Appreciation Award (1980-1990)
   U.S. Customs Service, Professional Appreciation Award (1980-1992)
   U.S. Park Service, Professional Appreciation Award (1980-1992)
   U.S. Forest Service, Professional Appreciation Award (1980-1992)
   U.S. Marshals Service, Professional Appreciation Award (1980-1992)
   U.S. Fish & Wildlife Service, Professional Appreciation Award (1980-1992)
   Dean's Award, The Samford University Cumberland School of Law (1977)

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 Association for Justice
   Fourth Circuit Judicial Conference, Permanent Member
   North Carolina Bar Association
   28th Judicial District Bar (f/k/a/ Buncombe County Bar Association)
   United States District Court for the Western District of North Carolina
   Selection Committee for Clerk (1993-1994)
   Selection Committee for Chief Probation Officer (1994)

10. **Bar and Court Admission**:

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

       North Carolina, 1976

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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 Fourth Circuit, 1980
United States District Court for the Middle District of North Carolina, 1995
United States District Court for the Western District of North Carolina, 1977
Supreme Court of North Carolina, 1976

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.

Biltmore Forest Country Club (1992-Present)
Board of Governors (2002-2008)
Treasurer (2006-2008)
Candler [North Carolina] Jaycees (1977-1979)
Carolina Day School Board of Trustees (1994-2000)
Delta Tau Delta Fraternity, U.N.C. Chapel Hill (1970-Present)
Rams Club (at U.N.C. Chapel Hill) (approximately 2000-Present)
Rhododendron Brigade of Guards (1995-2010)
Protocol Officer (2002-2010)
University of North Carolina at Chapel Hill Alumni Association (Life Member)

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

To the best of my knowledge, no organization listed above currently discriminates, or previously discriminated, on the basis of race, sex, religion, or

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national origin, except as follows. I understand that the Biltmore Forest Country Club and the Rhododendron Brigade of Guards discriminated prior to my becoming a member in 1992 and 1995, respectively. The Biltmore Forest Country Club changed its bylaws in 1991, and the Rhododendron Brigade of Guards changed its bylaws in approximately 1991 or 1992, to reflect non-discrimination policies. Delta Tau Delta Fraternity is an all male fraternity that engages in social service activities.

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.

From approximately 2001 until 2009 (and primarily from 2005 to 2009), I posted occasional comments to the University of North Carolina online athletics forums, *Inside Carolina* (http://mbd.scout.com/mb.aspx?s=78). I did not retain copies of the postings, except for the most recent dated October 30, 2009, which I have supplied. In preparing my response to this questionnaire, I contacted the site webmaster by e-mail and was informed that the site has not retained any of my earlier postings.

I searched my recollection, my files, and various Internet databases and did not identify any published material I have written or edited in addition to my sports forum postings described above. Despite my searches, there may be other items I have been unable to identify, find, or remember.

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.

The list below consists of materials I have identified from my recollection, from my files, and from search of Internet databases. Despite my searches, there may be other items I have been unable to identify, find, or remember.

North Carolina Education Lottery Commission, Annual Reports 2006-2009; Financial Reports 2008-2009; and Popular Annual Financial Report 2008-2009. Copies 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

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interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None that I 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.

The list below consists of speeches or talks I have identified from my recollection, from my files, and from search of Internet databases. Despite my searches, there may be other speeches or talks I have been unable to identify, find, or remember.

Protocol Announcer ("Herald"), Rhododendron Brigade of Guards, Asheville, North Carolina (2002-2009). Script (that I read from but did not prepare) supplied.

In approximately 2006, I spoke to the 28th Judicial District Bar Association about the North Carolina Lottery Commission. I gave informal remarks about the Commission's work (including the use of all proceeds from the Lottery to support North Carolina public schools) and took questions. I have no notes, transcripts or recordings of the event.

"View From the Bench" panel presentations (1995-2004) (approximately), U.S. District Court for the Western District of North Carolina, Asheville, North Carolina (and once in Charlotte, North Carolina). As a Magistrate Judge, I participated once or twice a year in programs for attorneys practicing before our court based on topics of interest to the bar or in the format of question and answer sessions. I have no notes, transcripts or recordings of the events.

"Perspectives from the Bench – A Judge's View of Employment Law Issues," Western North Carolina Human Resources Association, March 10, 2004. I have no notes, transcripts or recordings of the event.

Welcome Remarks to Continuing Legal Education seminars for Federal Public Defenders (1999-2003), Asheville, North Carolina. I presented at these seminars, which were produced by the Middle District of North Carolina Federal Defender's Office, on Federal Sentencing Guidelines and other issues in criminal defense. I have no notes, transcripts or recordings of my remarks,

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Welcome Remarks, Vance Aycock Democratic Fundraiser, Asheville, North Carolina (2004). I have no notes, transcripts or recordings of the event.

I was a participant in the U.S. Sentencing Commission Symposium on Drugs and Violence in America June 1993, Washington, D.C. I did not make formal remarks, but I recall participating in public conversations on sentencing during the Symposium. I have no notes, transcripts or recordings of the event.

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 list below consists of interviews I have identified from my recollection, from my files, and from search of Internet databases. A copy is supplied for each interview. Despite my searches, there may be other interviews I have been unable to identify, find, or remember.

City Hall Bombing, SPARTANBURG HERALD-JOURNAL, Aug. 17, 1983
Drug Dealers' Posh House Goes on Block, THE DISPATCH (DURHAM, N.C.), Dec. 13, 1984
Brunswick Man Held in Drug Case, WILMINGTON MORNING STAR, STAR-NEWS, Aug. 9, 1985
Jury Convicts Jerry Rushing of Assault, CHARLOTTE OBSERVER, Aug. 18, 1988
A Burgeoning Illegal Market for Bear Parts, PHILADELPHIA INQUIRER, Oct. 2, 1988
Jury Seated in PTL Perjury Case, LOS ANGELES TIMES, Apr. 9, 1990
Testimony Begins in PTL Perjury Case, UNITED PRESS INTERNATIONAL, Apr. 9, 1990
Colombian Receives 30 Years for Role in Drug Smuggling, CHARLOTTE OBSERVER, Aug. 20, 1991
Longtime Prosecutor Shifts to the Defense, CHARLOTTE OBSERVER, Sept. 6, 1992
Private Practice-Former Federal Prosecutor Finds Himself on Other Side, Defending Criminal Suspects, ASHEVILLE CITIZEN-TIMES, Sept. 19, 1992
5 Seek Prosecutor Position, Clinton Will Make Final Appointment, CHARLOTTE OBSERVER, Nov. 18, 1992
Outgoing U.S. Attorney Praises Reagan, Helms, CHARLOTTE OBSERVER, Apr. 2, 1993
Young Actor Traces Mountain Journey; TV Movie is Based on Woman's Life, NEW ORLEANS TIMES-PICAYUNE, Jan. 16, 1994
Big Quarter Complex Hits Market; Beauregard House Listed for $2 Million Enters Active; Investor Market, NEW ORLEANS TIMES-PICAYUNE, June 24, 1995
Three-generation Judge Takes Oath of Office, ASHEVILLE CITIZEN-TIMES, Jan. 3, 1996

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Hendricks Both Plead Not Guilty; Car Dealer no Flight Risk, Officials in Court Agree, CHARLOTTE OBSERVER, Dec. 20, 1996
Hendrick Lawyers Win Target Ruling, CHARLOTTE OBSERVER, Apr. 12, 1997
Decision to Target Car Dealer Under Scrutiny, HERALD-SUN (DURHAM, N.C.), Apr. 13, 1997
Open-and-Shut Case Not Closed, CHARLOTTE OBSERVER, Mar. 28, 1999
Bombs Found at Rescue Chief's Home; Transylvania County Official Facing Federal Firearms Charges, ASHEVILLE CITIZEN-TIMES, Sept. 18, 1999
Twomey Pleads Not Guilty to Bomb Charges, ASHEVILLE CITIZEN-TIMES, Sept. 28, 1999
Twomey Will Stay in Custody Until Trial, ASHEVILLE CITIZEN-TIMES, Oct. 14, 1999
Guilty Plea Entered in Bomb Case; Twomey's Attorney Says Explosives Intended as Learning Tool for Lawmen, ASHEVILLE CITIZEN-TIMES, Oct. 27, 1999
Peppertree Owner: Illness Kept Him from Investigating Harassment Claims, ASHEVILLE CITIZEN-TIMES, Nov. 19, 1999
Judge: Police Suit Not Fit for Trial, ASHEVILLE CITIZEN-TIMES, Apr. 27, 2000
Federal Magistrate Finds Police Suit Not Fit for Trial, ASSOCIATED PRESS STATE & LOCAL WIRE, Apr. 27, 2000
Family, Friends Reflect on Life of Prominent Judge, ASHEVILLE CITIZEN-TIMES, Dec. 23, 2002
Marine Veteran Still Sits in Limbo in NC Jail, no Sentence After Two Years, TRIBUNE PAPERS, Feb. 20, 2003
Psychological Evaluation Sought for Woman Accused in Abortion Clinic Shooting, ASHEVILLE CITIZEN-TIMES, Mar. 6, 2003
Judge to Rule on Woman's Dance Moves, ASHEVILLE CITIZEN-TIMES, May 13, 2003
Out There; News and Briefs from Around the Region, Quote of the Day, ASHEVILLE CITIZEN-TIMES, May 13, 2003
Asheville Man Faces Charges of Net Fraud, ASHEVILLE CITIZEN-TIMES, May 16, 2003
Western N.C. Federal Court Judges to Replace Magistrate, ASSOCIATED PRESS STATE & LOCAL WIRE, Jan. 22, 2004
Judge Won't be Reappointed, ASHEVILLE CITIZEN-TIMES, Jan. 22, 2004
Lottery Panel Gets New Voice from WNC, ASHEVILLE CITIZEN-TIMES, Dec. 16, 2005
Powerball to be Part of Lottery, ASHEVILLE CITIZEN-TIMES, Dec. 20, 2005
Deals Make N.C. Lottery Come Closer to Reality, ASHEVILLE CITIZEN-TIMES, Jan. 31, 2006
N.C. Lottery Finally Gets a Logo, LOTTERY POST, Feb. 22, 2006
Get Used to it - You'll See it a Lot in the Coming Years, FOUROBOROS (blog), Mar. 31, 2006
Patent Gives Firm a Claim on Lottery; Scientific Games Could Collect Fee, NEWS & OBSERVER (RALEIGH, N.C.), Apr. 19, 2006
N.C. Lottery Will Pay Scientific Games One Way or the Other, LOTTERY POST, Apr. 19, 2006

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Lottery Looks to Power of New Game; State Hopes Powerball Will Pull Up Sales, ASHEVILLE CITIZEN-TIMES, May 28, 2006
No Broadcast Yet for Powerball Lottery in Western N.C., LOTTERY POST, June 9, 2006
Lottery Likely to Fall Short of Forecast Education Take, NEWS & OBSERVER (RALEIGH, N.C.), June 13, 2006
Upping the Ante; Good Start, but Some Want More From Lottery, ASHEVILLE CITIZEN-TIMES, July 12, 2006
WNC Fights for Bigger Piece of Lottery Pie, ASHEVILLE CITIZEN-TIMES, July 23, 2006
Views on Slope Rules Clash, ASHEVILLE CITIZEN-TIMES, May 18, 2007
Lottery Takes a Chance on Steady Sales, &NEWSOBSERVER.COM, (blog), May 21, 2008
Lottery Commission Foresees Rising Sales; The $1.27 Billion Budget the Panel Adopted for Next Year Anticipates the State Lottery Having its Best Year Yet, NEWS & OBSERVER (RALEIGH, N.C.), May 22, 2008
Probe in Gambling Case Proceeds, ASHEVILLE CITIZEN-TIMES, Oct. 14, 2008
Judge Deals Out Prison Sentence in Corruption Scandal, MOUNTAIN XPRESS, Oct. 15, 2008
Perdue Makes State History, ASHEVILLE CITIZEN-TIMES, Jan. 11, 2009
Judge Declares Noel Indigent, BLUERIDGENOW.COM, June 6, 2009
Former Teacher Gets 11 years, ASHEVILLE CITIZEN-TIMES, July 24, 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.

In December 1995, I was appointed by the U.S. District Court for the Western District of North Carolina to serve an eight-year term as a United States Magistrate Judge. My eight-year term was extended by six months and I held the office through June 2004. The court is a Federal trial court of general jurisdiction.

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

I have presided over approximately 15 cases to verdict.

i. Of these, approximately what percent were:

jury trials:	80%
bench trials:	20%
civil proceedings:	70%
criminal proceedings:	30%

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

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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. Bock v. Peppertree Resorts, LLC, 1:98cv104 (W.D.N.C. 1999). Plaintiffs, two female employees who were fired, alleged on-the-job sexual harassment and retaliation in violation of Title VII. I denied defendant's motion for summary judgment. After trial, the Jury returned a verdict of $35,000. The verdict was not appealed.

   Counsel for Plaintiffs were Matthew C. Billips, Miller, Billips & Ates, P.C., 730 Peachtree Street, Suite 750, Atlanta, Georgia 30308, 404-969-4101; and Paul Louis Bidwell, 29 North Market Street, Suite 700, Asheville, North Carolina 28801, 828-252-0490.

   Principal counsel for Defendants were Sharon Tracey Barrett, now a state district court judge, c/o Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801; 828-232-2760; and Alan Z. Thornburg, now a state superior court judge, c/o Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801, 828-232-2772.

2. Butler v. Fairmont Homes, Inc., 1:98cv130, Butler v. Fairmont Homes, Inc., 1999 WL 33315672 (W.D.N.C.1999); Butler v. Fairmont Homes, Inc., 1999 WL 34969953 (W.D.N.C.1999). Plaintiffs alleged negligence and breach of express and implied warranties in construction of manufactured home purchased by defendants that was destroyed by fire. I ruled that there was sufficient evidence that the breach of both express and implied warranties should allow the case to go to the jury. Jury verdict for defendant.

   Counsel for Plaintiff was John C. Cloninger, Cloninger, Elmore & Searson, PLLC, 366 Merrimon Avenue, Asheville, North Carolina 28801, 828-252-1786.

   Counsel for Defendant were Walter L. Currie, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-252-6600; and Wyatt S. Stevens, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-258-6992.

3. Christopher's Arizona Transp. Servs., Inc. v. Duncan, 1:97cv327 (W.D.N.C. 1999). Plaintiff alleged fraud in defendant's sale of consigned high-end aircraft. Jury verdict for plaintiff for $1,260,212. On cross post-judgment motions, I amended the verdict to $660,212 after finding that the damage

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award, based upon the state common law tort of fraud, lacked sufficient evidence to prove the element of reliance. The plaintiffs appealed my ruling regarding the North Carolina tort of fraud and the Fourth Circuit reversed and remanded this one aspect of the case, finding there was sufficient evidence of reliance to support the jury's verdict on the fraud issue. Christopher's Arizona Transp. Servs., Inc. v. Duncan, 2000 WL 895257 (4th Cir. July 6, 2000).

Counsel for Plaintiffs were Hywell Leonard, Carlton Fields Ward Emmanuel & Lewis, Post Office Box 3239, Tampa, Florida, 33601-3239, 813- 223-7000; and Stephen B. Williamson, Katten Muchin Rosenman LLP, 401 South Tryon Street, Suite 2600, Charlotte, North Carolina 28202, 704-444-2017.

Counsel for Defendants were Mark C. Martin, Patla Straus Robinson & Moore, Post Office Box 7625, Asheville, North Carolina 28802, 828-255-7641; and Sharon Tracey Barrett, now a state district court judge, c/o Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina 28801, 828-232-2760

4. Coleman v. BASF Corp., 1:00cv106 (W.D.N.C. 2001) & Cooper v. BASF Corp., 1:00cv108 (W.D.N.C. 2001). Jury trial, cases consolidated for trial. Plaintiffs alleged age discrimination in violation of the Age Discrimination in Employment Act for termination from employment in a reduction-in-force. Plaintiffs were over 50 years of age and were nearing the maximum retirement age of 55 at the time they were terminated. The jury returned a verdict for the defendant.

   Counsel for Plaintiffs were Reed G. Williams, Elmore, Elmore & Williams, P.A., 17 North Market Street, Asheville, North Carolina 28801, 828-255-0100; Robert Edward Dungan, Dungan & Associates, P.A., One Rankin Avenue, 3rd Floor, Asheville, North Carolina 28801, 828-254-4778; and Theodore Fuller Mitchell; Gray, Layton, Kersh, Solomon, Sigmon, Furr & Smith, PA, Post Office Box 2636, Gastonia, North Carolina 28053, 704-865-4400.

   Counsel for Defendant were Kristofer Karl Strasser, 106 Ramblewood Lane, Greenville, South Carolina 29615, 864-322-9756; and Michael S. Pitts, Nexsen Pruet, LLC, Post Office Drawer 10648, Greenville, South Carolina 29603, 864-370-2211.

5. Edwards v. Etowah Timberlane Condominium Assoc. No.1., 1:01cv85, 2002 WL 1794719 (W.D.N.C. 2002). Plaintiffs alleged that defendant had violated the Fair Housing Act of 1968 by interfering with enjoyment of residence of a family with minor children. I denied the defendant homeowners association's motion for summary judgment. Jury verdict for plaintiffs for $75,000; attorneys fees awarded to plaintiffs for $84,378.

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Counsel for Plaintiffs were Clifford C. Marshall, Jr., Marshall & Roth, PC, Post Office Box 769, Asheville, North Carolina 28802, 828-281-2100; and Philip J. Roth, Marshall & Roth, PC, Post Office Box 769, Asheville, North Carolina 28802, 828-281-2100.

Principal counsel for Defendants were Andrew James Santaniello, Clawson and Staubes, LLC, 756 Tyvola Road, Suite 130, Charlotte, North Carolina 28217, 704-940-9128; Frank J. Contrivo, Jr., 20 North Spruce Street, Asheville, North Carolina 28801, 828-252-3777; and Cynthia S. Grady, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-252-6600.

6. Gilliand v. Eaton Corp., 1:97cv250 (W.D.N.C. 1998). Plaintiff alleged racial discrimination in employment in violation of Title VII of the Civil Rights Act of 1964. Plaintiff was employed at defendant corporation when the decision was reached to close one of the defendant corporation's plants. Some individuals were allowed to transfer to another plant, but plaintiff was terminated. This case was tried before a jury, which returned a verdict for the defendant.

   Counsel for Plaintiff was Geraldine Sumter, Ferguson, Stein, Chambers, Gresham & Sumter, P.A., 741 Kenilworth Avenue, Suite 300, Charlotte, North Carolina 28204, 704-375-8461.

   Counsel for Defendant was Jill S. Cox, Constangy, Brooks & Smith, LLC, 100 North Cherry Street, Suite 300, Winston-Salem, North Carolina 27101, 336-721-1001; and John J. Doyle, Jr., Constangy, Brooks & Smith, LLC, 100 North Cherry Street, Suite 300, Winston-Salem, North Carolina 27101, 336-721-1001.

7. Gooden v. Fishburne Int'l, Inc., 1:97cv360 (W.D.N.C. 1998). Plaintiff brought claims for denial of rights under the Americans with Disabilities Act (ADA). Plaintiff was discharged from her employment at the defendant corporation. She alleged that she had been dismissed because she had become disabled during her employment. Among the issues tried were whether she was a disabled person under the ADA; if so, whether the defendant had failed to accommodate her disability; and whether the firing was a pretext. Following trial, the jury returned a verdict in favor of the defendant.

   Counsel for Plaintiff was Heather Newton, Post Office Box 2866, Asheville, North Carolina 28802, 828-254-7177.

   Counsel for Defendant was Elizabeth E. McConnell, Northup McConnell & Sizemore, PLLC, 123 Biltmore Avenue, Asheville, North Carolina 28801, 828-232-4481.

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8. Wilson v. Bell, 2:99cv239 (W.D.N.C. 2001). Obstetric medical malpractice action concerning failure to diagnose and treat child at birth resulting in permanent injuries, including brain damage. After the jury was impaneled and the evidence had begun, the case was settled.

   Counsel for Plaintiff were Mark Russell Melrose, Melrose, Seago, & Lay P.A., Post Office Box 1011, Sylva, North Carolina 28779, 828-586-3200; and Randal Seago, Melrose, Seago, & Lay P.A., Post Office Box 1011, Sylva, North Carolina 28779, 828-586-3200.

   Counsel for Defendants were Mark Clifford Kurdys, Roberts & Stevens, P.A., Post Office Box 4647, Asheville, North Carolina 28802, 828- 210-6820; and Isaac Noyes Northup, Jr., Northup, McConnell & Sizemore, PLLC, 123 Biltmore Avenue, Asheville, North Carolina 28801, 828-232-4481.

9. Reynolds v. Nortenn, Inc., 4:98cv115 (W.D.N.C. 1999). Plaintiff contended that defendant breached his employment contract when he was terminated. The issues left for trial involved the plaintiff's deferred compensation package and whether or not there was an agreement between plaintiff and defendant as to how that was to be handled (involved tax charges). Case settled after jury impaneled.

   Counsel for Plaintiff were E. Thomison Holman, Adams, Hendon, Carson, Crow, & Saenger, PA, Post Office Box 2714, Asheville, North Carolina 28802, 828-252-7381; and George Ward Hendon, Adams, Hendon, Carson, Crow, & Saenger, PA, Post Office Box 2714, Asheville, North Carolina 28802, 828-252-7381.

   Counsel for Defendant were Kiran H. Mehta, Kennedy, Covington, Lobdell & Hickman, LLP, Hearst Tower, 47th Floor, 214 North Tryon Street, Charlotte, North Carolina 28202, 704-331-7437; Raymond E. Owens, Jr., K&L Gates LLP, 214 North Tryon Street, Hearst Tower 47th Floor, Charlotte, North Carolina 28202, 704-331-7496; and Russell F. Sizemore, K&L Gates LLP, 214 North Tryon Street, Hearst Tower 47th Floor, Charlotte, North Carolina 28202, 704-331-7514.

10. Whisnant v. Dalkon Shield Claimant's Trust, 4:97cv33 (W.D.N.C. 1998). Products liability action stemming from plaintiff's use of Dalkon Shield in 1970s. Damages included lost pregnancies and reproductive harm. Bench verdict for plaintiff for $354,000.

    Counsel for Plaintiff was John Alan Jones, Jones, Martin, Parris & Tessener, 410 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27603, 919-821-0005.

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Counsel for Defendant were Charles Q. Socha, Tilly & Graves, P.C., 3773 Cherry Creek North Drive, Suite 1001, Ptarmigan Place, Denver, Colorado 80209-3830, 303-321-8811; Larissa J. Erkman, Smith Moore LLP, Post Office Box 21927, Greensboro, North Carolina 27420, 336-378-5200; and William L. Young, Smith Moore LLP, Post Office Box 21927, Greensboro, North Carolina 27420, 336-378-5200.

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. Willis v. Town of Marshall, 2003 WL 22231259 (W.D.N.C. 2003), aff'd in part, vacated in part, and remanded, Willis v. Town of Marshall 426 F.3d 251 (4th Cir. 2005).

Counsel for Plaintiff were Jonathan Drew Sasser, Thomas Hamilton Segars, Ellis & Winters, LLP, Post Office Box 33550, Raleigh, North Carolina 27636, 919-865-7010; Marc Christopher Tucker, Smith Moore, LLP, 2800 Two Hannover Square, BB&T Building, Raleigh, North Carolina 27601, 919-755-8713; and Seth H. Jaffe, American Civil Liberties Union of North Carolina Legal Foundation, Post Office Box 28004, Raleigh, North Carolina 27611, 919-834-3466.

Counsel for Defendant were Gene Benton Johnson, Johnson Law Firm, PA, Post Office Box 1288, Arden, North Carolina 28704, 828-650-0913; Larry B. Leake, Leake Scott & Stokes, One West Pack Square, Suite 501, Asheville, North Carolina 28801, 828-253-3661; and Sandra M. King, Russell & King, PA, Post Office Box 7668, Asheville, North Carolina 28802, 828-252-7651.

2. Henderson Amusement, Inc. v. Good, 172 F.Supp. 2d 751 (W.D.N.C., 2001), aff'd, 59 Fed.Appx. 536 (4th Cir. 2003)

Counsel for Plaintiffs was Winford Robinson Deaton, Jr., now deceased.

Counsel for Defendant was Scott Douglas MacLatchie, Womble, Carlyle, Sandridge & Rice, 301 South College Street, Suite 3500, Charlotte, North Carolina 28202-6025, 704-331-4942.

3. Dia-Compe, USA, Inc. v. Team Vision Int'l Corp., 2000 WL 1409867 (W.D.N.C. Aug. 11, 2000)

Counsel for Plaintiff were Gilberto M. Villacorta, Foley & Lardner, LLP, 3000 K Street, N.W., Suite 600, Washington, D.C. 20007-5109, 202-295-4199; Mark L. Hogge, Greenberg Traurig, 2101 L Street, N.W., Suite 1000, Washington, DC 20037, 202-331-3100; and Vincent D. Childress, Wyatt S.

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Stevens, Roberts & Stevens, PA, Post Office Box 7647, Asheville, North Carolina 28802, 828-252-6600.

Counsel for Defendant were Phillip Scott Anderson, Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296; and Philip P. Mann, Mann Law Group, 1420 Fifth Avenue, Suite 2200, Seattle, Washington 98101, 206-274-5100.

4. Cottom v. Town of Seven Devils, 2000 WL 1808990 (W.D.N.C. Aug 1, 2000). See also related decision Cottom v. Town of Seven Devils, 2001 WL 1019410 (W.D.N.C. June 13, 2001), aff'd, 30 Fed.Appx. 230 (4th Cir. 2002)

Counsel for Plaintiff were G. Gray Wilson, Wilson & Coffey, 110 Oakwood Drive, Suite 400, Winston-Salem, North Carolina 27103, 336-631-8866; and S. Ranchor Harris, III, Suite 250, 2150 Country Club Road, Winston-Salem, North Carolina 27104.

Counsel for Defendants were Frank J. Contrivo, Jr., 20 North Spruce Street, Asheville, North Carolina 28801, 828-252-3775; Isaac T. Avery, III, Post Office Box 10174, Raleigh, North Carolina 27605, 919-829-2523; and Reuben F. Young, 103 Hobblebrook Court, Cary, North Carolina 27518.

5. Chairworks Taiwan Ltd. v. Candlertown Chairworks, Inc., 1999 WL 33320961 (W.D.N.C. Mar. 19, 1999)

Counsel for Plaintiff were Eugene V. Handy, Jr., Post Office Box 52, Sparkhill, New York 10976, 201-768-5815; and George Ward Hendon, Adams, Hendon, Carson, Crow & Saenger, PA, Post Office Box 2714, Asheville, North Carolina 28802, 828-252-5018.

Counsel for Defendants were David M. Carter, Carter & Schnedler, Post Office Box 2985, Asheville, North Carolina 28802, 828-252-6225; and W. Perry Fisher, II, Perry Fisher, P.A., 1 North Pack Square, Suite 402, Asheville, North Carolina 28801, 828-505-4300.

6. Guthrie v. Blue Ridge Sav. Bank, 159 F.Supp. 2d 903 (W.D.N.C. 2000), aff'd, 215 F.3d 1318 (4th Cir. 2000) (Table), 2000 WL 665392 (4th Cir. 2000)

Counsel for Plaintiff was Steven Kropelnicki, Jr., Carter & Kropelnicki, 181 Charlotte Street, Asheville, North Carolina 28801, 828-251-1580.

Counsel for Defendant were Kimberly A. Lyda, Post Office Box 1330, Salisbury, North Carolina 28145, 704-633-8250; Mitchell R. Moss (unable to locate); and Robert B. Long, Jr. and William Andrew Parker, Jr., Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296.

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7. Shuler v. Town of Waynesville, 1999 WL 33315654 (W.D.N.C. Mar. 25, 1999)

   Counsel for Plaintiff were Kimberly A. Lyda, Post Office Box 1330, Salisbury, North Carolina 28145, 704-633-8250; Mitchell R. Moss (unable to locate); and Robert B. Long, Jr., Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296.

   Counsel for Defendants was Wyatt S. Stevens, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802, 828-258-6992.

8. Brown v. French, 1996 WL 33170227 (W.D.N.C. Dec. 3, 1996)

   Counsel for Plaintiff were Bruce T. Cunningham, Jr., 225 North Bennett Street, Southern Pines, North Carolina 28387, 910-693-3999; and Henderson Hill, Ferguson, Stein, Chambers, Gresham & Sumter, PA, 741 Kenilworth Avenue, Suite 300, Charlotte, North Carolina 28204, 704-375-8461.

   Counsel for Defendants were Barry Steven McNeill, Special Deputy Attorney General, Post Office Box 629, Raleigh, North Carolina 27602, 919-716-6500; and Joan Herre Erwin, 3244 Grand Oak Lane, New Hill, North Carolina 27562, 919-387-7882.

9. United States v. Colville, 1998 WL 1818928 (W.D.N.C. June 23, 1998)

   Counsel for Plaintiffs was Reid G. Brown, 285 North Main Street, Waynesville, North Carolina 28786, 828-454-6510; and Robert Osley Saunooke, 18620 South West 39th Court, Miramar, Florida 33029, 561-302-5297.

   Counsel for Defendants was W. Scott Jones, Cloninger, Barbour, Searson & Jones, PLLC, 21 Battery Park Avenue, Suite 201, Asheville, North Carolina 28801, 828-252-5555.

10. Scott v. Norfolk Southern Ry. Co., 1:97cv91-C, Dkt. No. 9 (W.D.N.C. 1997)

    Counsel for Plaintiffs was James M. Kimzey, 39 East Main Street, Post Office Box 506, Brevard, North Carolina 28712, 828-883-4200.

    Counsel for Defendant was Richard S. Daniels, Patla Straus Robinson & Moore, Post Office Box 7625, Asheville, North Carolina 28802, 828-255-7641.

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

I am not aware of any cases for which *certiorari* was requested or granted.

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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.

Cherry v. Champion Int'l Corp., 1:97cv145 (W.D.N.C. 1998). Following my grant of summary judgment in favor of Champion International Corporation in an unpublished decision, defendant Champion sought imposition of its costs against plaintiff Cherry, which I denied. My ruling was reversed by the Fourth Circuit. Cherry v. Champion Int'l Corp., 186 F.3d 442 (4th Cir. 1999).

Christopher's Arizona Transp. Service Inc. v. Duncan, 2000 WL 895257 (W.D.N.C. July 6, 2000), rev'd in part and remanded, 217 F.3d 838 (4th Cir. 2002). Following a jury verdict for the plaintiff on all issues, I ruled on a motion NOV that the plaintiff had failed to prove the North Carolina common law tort of fraud by failing to prove the element of reliance, and set aside the jury's verdict as to the fraud claim. On appeal, the Fourth Circuit reversed and reinstated the portion of the verdict I had set aside.

Jones v. Buchanan, 164 F. Supp. 2d 734 (W.D.N.C. 2001), rev'd 325 F.3d 520 (4th Cir. 2003). I granted summary judgment in favor of defendants on an alleged excessive force case. On appeal, the Fourth Circuit reversed, finding that in the light most favorable to the plaintiff it could not be concluded that defendant was entitled to qualified immunity as a matter of law.

District Memorial Hosp. of Southwestern North Carolina, Inc. v. Thompson, 261 F. Supp. 2d 378 (W.D.N.C. 2003), rev'd 364 F.3d 513 (4th Cir. 2004). The Court of Appeals reversed my decision granting summary judgment to the defendant Secretary of Health and Human Services.

Champion Int'l Corp. v. United Paperworks Int'l Union, 1997 U.S. Dist. LEXIS 21938 (W.D.N.C. Dec. 1, 1997), rev'd, 168 F.3d 725 (4th Cir. 1999). I affirmed an arbitration award entered in favor of defendant United Paperworks International Union. On appeal, Champion alleged that the agreement that had been the subject of the arbitration was not the proper one to be considered. On appeal, the Fourth Circuit agreed that the grievance was filed on the wrong agreement and reversed my ruling.

Sloop v. Mem'l Mission Hosp., Inc., 1998 U.S. Dist. LEXIS 16441 (W.D.N.C. Aug. 28, 1998), vacated, 198 F.3d 147 (4th Cir. 1999). Plaintiff brought an action against defendant hospital alleging unlawful termination and retaliation, and I granted summary judgment. On appeal, the Fourth Circuit vacated and dismissed her case based on her failure to exhaust administrative remedies.

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Willis v. Town of Marshall, 2003 WL 22231259 (W.D.N.C. 2003), rev'd, 293 F.Supp. 2d 608 (W.D.N.C. 2003), rev'd, 426 F.3d 251 (4th Cir. 2005). I recommended denial of the defendant town's motions for summary judgment on several constitutional grounds related to the plaintiff's dancing at a city owned venue. The district court declined to adopt my recommendation and granted summary judgment in favor of the town. The Court of Appeals reversed the district court's decision and ruled that plaintiff had a First Amendment claim to be heard. The case was later settled at the trial court level.

Hyatt v. Town of Lake Lure, Case No. 1:02cv94 (W.D.N.C. Oct. 10, 2003). I recommended that summary judgment be granted to plaintiff, the owner of lakeshore property who filed a civil rights action against a town and its officials. My recommendation was not adopted by the district court, which instead granted defendants' motion for summary judgment. Hyatt v. Town of Lake Lure, 314 F.Supp. 2d 562 (W.D.N.C. 2003).

Strawbridge v. Sugar Mt. Resort, Inc., No. 1:02cv92, Dkt. No. 60 (W.D.N.C. Feb. 6, 2004), memorandum and recommendation adopted in part, 2004 U.S. Dist. LEXIS 14561 (W.D.N.C. 2004). In this ski accident case, I recommended summary judgment for the defendants on all issues. Judge Thornburg adopted my recommendation on punitive damages for the corporate defendant, but declined to adopt my recommendations on all other claims.

Barnes v. Bellsouth Corp., 2003 U.S. Dist. LEXIS 16968 (W.D.N.C. Aug. 14, 2003), memorandum and recommendation adopted in part, 2003 U.S. Dist. LEXIS 18766 (W.D.N.C. Oct. 20, 2003). I recommended that plaintiff's motion to settle the administrative record and motion for summary judgment be granted. The district court denied plaintiff's motion to settle the record, but accepted my recommendation for summary judgment in favor of plaintiff.

Rice v. BellSouth Adver. & Publ. Corp., 2002 U.S. Dist. LEXIS 13129 (W.D.N.C. July 18, 2002), memorandum and recommendation adopted in part, 240 F. Supp. 2d 526 (W.D.N.C. 2002). I recommended denial of defendant's motion to dismiss and granting of the motion to transfer to Georgia after a detailed evaluation of factors. The district court affirmed denial of defendant's motion to dismiss, but denied defendant's motion to transfer.

Dove Air, Inc. v. Bennett, 2002 U.S. Dist. LEXIS 14953 (W.D.N.C. July 26, 2002), memorandum and recommendation not adopted, 226 F. Supp. 2d 771 (W.D.N.C. 2002). I recommended that the case be transferred to Nevada based on a forum selection clause in the underlying contract or, in the alternative, that the case be dismissed without prejudice to re-filing in Nevada. The district court refused to transfer and denied defendant's motion to dismiss.

Robinson v. Corrections. Corp. of Am., 2002 U.S. Dist. LEXIS 14943 (W.D.N.C. July 31, 2002), memorandum and recommendation adopted in part, 2002 U.S.

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Dist. LEXIS 23645 (W.D.N.C. Aug. 26, 2002). I recommended the case be remanded to state court for lack of subject matter jurisdiction or, in the alternative, that the case be dismissed for failure to state a claim. The district court accepted the recommendation that the case be dismissed.

Fid. & Guar. Ins. Co. v. Bradley, 2002 U.S. Dist. LEXIS 11814 (W.D.N.C. June 12, 2002), memorandum and recommendation adopted in part, 212 F. Supp. 2d 163 (W.D.N.C. 2002). In a case involving a performance bond, I ruled that a contractor, which was not an enrolled member of the Eastern band of Cherokee Indians, could prosecute its civil action in federal court against the Eastern Band of Cherokee Indians while a dispute was pending before the Tribal Court of the Eastern Band of Cherokee Indians. The district court dismissed without prejudice, ruling that the Tribal Court case must be concluded first.

Arnett v. Leviton Mfg., 2001 U.S. Dist. LEXIS 13174 (W.D.N.C. Aug. 14, 2001), memorandum and recommendation not adopted, 174 F. Supp. 2d 410 (W.D.N.C. 2001). This was a Title VII retaliation and discrimination case, removed by defendant to federal court. I denied plaintiff's motion to remand to state court. The district court acknowledged a split on the issue within the circuit courts, but remanded action to state court.

SuperGuide Corp. v. DirecTV Enters., Inc., 202 F.R.D. 460 (W.D.N.C. 2001), memorandum and recommendation not adopted, 141 F. Supp. 2d 616 (W.D.N.C. 2001). In this patent case, I denied a defense motion to disqualify plaintiff's counsel. The district court overruled my recommendation and disqualified plaintiff's counsel, based on information filed with the district court after my memorandum and recommendation were issued.

Simpson v. Macon County, 2000 U.S. Dist. LEXIS 21297 (W.D.N.C. Mar. 10, 2000), memorandum and recommendation adopted in part, 132 F. Supp. 2d 407 (W.D.N.C. 2001). The defendant removed this case to federal court based on federal question jurisdiction and I recommended that plaintiff's motion to remand be denied. The district court subsequently considered additional materials and granted defendant's motion for summary judgment in part. In its order, the district court also remanded remaining state-based claims to state court.

Wilkerson v. Thrift, 124 F. Supp. 2d 322 (W.D.N.C. 2000), memorandum and recommendation adopted in part, 124 F. Supp. 2d 322 (W.D.N.C. 2000). In this Section 1983 action involving alleged police brutality, I recommended that the court grant some, but not all, of the several Rule 12 motions filed by defendant. The district court adopted some of my recommendations and overruled others.

Ferguson v. Maita, 2000 U.S. Dist. LEXIS 21289 (W.D.N.C. Apr. 26, 2000), memorandum and recommendation adopted in part, 162 F. Supp. 2d 433 (W.D.N.C. 2000). This case involved a dispute between members and a former member of a local law firm that attempted to bring federal action against a

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departing attorney under RICO. I recommended dismissal of the RICO claims, but recommended that the plaintiff's cause of action under the Lanham Act (an intellectual property claim) survive. The district court dismissed both the RICO and the Lanham Act claims.

Simmons v. Justice, 2000 U.S. Dist. LEXIS 19444 (W.D.N.C. Oct. 31, 2000), memorandum and recommendation not adopted, 87 F. Supp. 2d 524 (W.D.N.C. 2000). In this case, involving the alleged use of excessive force by police on a minor child, I recommended that plaintiff's action be dismissed because the statute of limitations had expired. After my recommendation was entered, plaintiff argued for the first time that he had lacked a general guardian at the time his claim accrued. Based on this new contention, the district court denied the motion to dismiss.

Reese v. Meritor Auto., Inc., 2000 U.S. Dist. LEXIS 21254 (W.D.N.C. Feb. 2, 2000), memorandum and recommendation adopted in part, 113 F. Supp.2d 822 (W.D.N.C. 2000). In this Title VII sexual harassment case, I recommended that the corporate defendant's motion for summary judgment be denied, and that the individual defendant's motion for partial summary judgment be allowed. The district court rejected my recommendation in part and granted the corporate defendant's motion for summary judgment.

Petty v. Freightliner Corp., 1999 U.S. Dist. LEXIS 22790 (W.D.N.C. Nov. 24, 1999), memorandum and recommendation adopted not adopted, 113 F. Supp. 2d 808 (W.D.N.C. 2000). Plaintiff contended that defendant violated the Americans With Disabilities Act by failing to provide a reasonable workplace accommodation for plaintiff's alleged disability. I recommended that defendant's motion to dismiss be granted. The district court disagreed and denied defendant's motion.

Wilkerson v. Hester, 1:99cv130 (W.D.N.C. Oct. 15, 1999), memorandum and recommendation adopted in part, 1999 U.S. Dist. LEXIS 21395 (W.D.N.C. Dec. 17, 1999). In this false arrest and excessive force case, I recommended that defendants' motions to dismiss be granted. The district court agreed with dismissal of all but one claim (unlawful seizure) and allowed plaintiff to go forward on that claim, which was later dismissed at summary judgment.

Turnamics, Inc. v. Advanced Envirotech Sys., 1999 U.S. Dist. LEXIS 22829 (W.D.N.C. Apr. 23, 1999), memorandum and recommendation not adopted, 54 F. Supp. 2d 581 (W.D.N.C. 1999). This case was removed to federal court on the basis of diversity jurisdiction. I recommended that a motion to remand the case back to state court be denied, but the district court disagreed and the case was remanded.

Kephart v. Cherokee County, 1999 U.S. Dist. LEXIS 22819 (W.D.N.C. Mar. 17, 1999), memorandum and recommendation adopted in part, 52 F. Supp. 2d 598

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(W.D.N.C. 1999), aff'd in part, rev'd in part, 2000 U.S. App. LEXIS 18924 (4th Cir. 2000). This was a Family Medical Leave Act case in which I recommended that defendant's motion for summary judgment be granted in part. My recommendation would have left both the FMLA claim and several other claims for trial. The district court agreed with most of my recommendation, but only allowed the FMLA claim to go forward.

Stewart v. U.S. Corrections Corp., 1999 U.S. Dist. LEXIS 22834 (W.D.N.C. Mar. 17, 1999), memorandum and recommendation adopted in part, 1999 U.S. Dist. LEXIS 9910 (W.D.N.C. Apr. 21, 1999). In this matter, a prison warden brought claims against his employer under the Fair Labor Standards Act and the Wage and Hour Act, and for breach of contract and tortious interference with contract. I recommended that defendants' motion for summary judgment be allowed only as to the FLSA and WHA claims. The district court granted summary judgment for defendants on all claims except the breach of contract claim, which it dismissed.

Cox v. Indian Head Indus., 2000 U.S. Dist. LEXIS 20118 (W.D.N.C. May 16, 2000), memorandum and recommendation adopted in part, 2000 U.S. Dist. LEXIS 19435 (W.D.N.C. 2000). See also 1999 U.S. Dist. LEXIS 22534 (W.D.N.C. 1999). This case involved allegations of sexual harassment under Title VII. I recommended that defendants' motions for summary judgment be granted in part and denied in part. The district court concurred with most of the recommendation, but disagreed with the recommended disposition of supplemental claims for wrongful discharge asserted under state law.

French v. United States, 2:98CV15 (W.D.N.C. Nov. 30, 1998), memorandum and recommendation adopted in part, 55 F. Supp. 2d 379 (W.D.N.C. 1999). I recommended that both plaintiff's allegation under the Federal Tort Claims Act and her attendant state claims be dismissed with prejudice. The district court dismissed plaintiff's FTCA claim but declined to rule on the state law claims and dismissed them without prejudice.

CM v. Bd. of Pub. Educ., 1:98cv66 (W.D.N.C. Sept. 4, 1998), memorandum and recommendation adopted in part, 1999 U.S. Dist. LEXIS 868 (W.D.N.C. Jan. 4, 1999), aff'd in part, rev'd in part, 241 F.3d 374 (4th Cir. 2001). I recommended that two of plaintiff's claims, under the Individuals with Disabilities in Education Act, go forward and that all other remaining claims be dismissed. The district court concurred with most of the recommendation but dismissed all of plaintiff's claims. The Fourth Circuit subsequently affirmed in part, reversed in part, and remanded the matter back to district court.

EEOC v. Tar Heel Capital, Inc., 1:98cv84 (W.D.N.C. Sept. 28, 1998), memorandum and recommendation not adopted, 1998 U.S. Dist. LEXIS 22268 (W.D.N.C. Dec. 2, 1998). This was a sexual harassment case in which the defendant moved to dismiss a supplemental state law claim alleging retaliatory discharge for opposition to sexual harassment. I recommended that the motion to

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dismiss be allowed, but the district court rejected the recommendation after finding that a cause of action existed under state law. In a subsequent case, McLean v. Patten Cmtys., Inc., 332 F.3d 714, 719 (4th Cir. 2003), the Fourth Circuit recognized that no such private right of action existed under North Carolina law.

Peterson v. Lemler, Holt & Robinson, P.A., 1:97cv357 (W.D.N.C. Sept. 28, 1998), memorandum and recommendation adopted in part, 1998 U.S. Dist. LEXIS 18650 (W.D.N.C. Oct. 9, 1998). I recommended that plaintiff's claims, which related to allegations of discrimination in employment based on her pregnancy, not be dismissed. The district court disagreed and dismissed the claims.

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 United States Magistrate Judge, all of my orders and opinions were entered and accessible to the public through the Court Clerk's Office, including, in the later years of my term, through the Court's CM/ECF system. I did not designate my decisions for publication in any reporter system. A significant minority of the written decisions I issued are available through Westlaw and LexisNexis.

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.

Willis v. Town of Marshall, 2003 WL 22231259 (W.D.N.C. 2003), rev'd, 293 F.Supp. 2d 608 (W.D.N.C. 2003), rev'd, 426 F.3d 251 (4th Cir. 2005)

Cottom v. Town of Seven Devils, 2001 U.S. Dist. Lexis 9098 (W.D.N.C. Apr. 17, 2001) (summary judgment); see related decision Cottom v. Town of Seven Devils, 2001 WL 1019410 (W.D.N.C. June 13, 2001) (decision of Judge Thornburg), aff'd, 30 Fed.Appx. 230 (4th Cir. 2002)

Brown v. French, 1996 WL 33170227 (W.D.N.C. Dec. 3, 1996), aff'd, 147 F.3d 307 (4th Cir. 1998)

Hyatt v. Town of Lake Lure, 314 F.Supp. 2d 562 (W.D.N.C. 2003)

Henderson Amusement, Inc. v. Good, 172 F. Supp. 2d 751 (W.D.N.C. 2001) summary judgment granted by 2001 U.S. Dist. LEXIS 17971 (W.D.N.C., Nov. 2, 2001), aff'd, 59 Fed. Appx. 536 (4th Cir. 2003)

Rice v. Norfolk S. R.R. Co., 2001 U.S. Dist. LEXIS 26193 (W.D.N.C. Aug. 6, 2001)

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Olvera v. Edmundson, 151 F. Supp. 2d 700 (W.D.N.C. 2001)

Merrill v. McClatchy Newspapers, Inc., 1998 U.S. Dist. LEXIS 23267 (W.D.N.C. Oct. 2, 1998)

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.

Our court implemented an automatic recusal system during my term as a magistrate judge. Under that system, I provided the District Court Clerk's office a list of parties and attorneys from whose cases I would recuse myself. Those cases were not assigned to me. My list included former clients, law partners, businesses, and family members.

To the best of my recollection, all of my recusals were *sua sponte,* as follows:

(1) United States v. $13,943.00, 2:93cv236 (W.D.N.C. 1996). I recused myself because I had prosecuted the criminal action underlying the civil forfeiture action.

(2) D'Allesandro v. Westall, 4:95cv70 (W.D.N.C. 1996). I recused myself based on my brother's appearance as counsel in this case.

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(3) Garland v. Paul Revere Life Insur. Co., 1:96cv295 (W.D.N.C. 1997). I recused myself in all Paul Revere Life cases as I had life insurance policies with the company.

(4) Hicks v. Paul Revere Life Insur. Co., 1:97cv329 (W.D.N.C. 1997). I recused myself in all Paul Revere Life cases as I had life insurance policies with the company. After entry of this Order, the Clerk's office automatically recused me in all future Paul Revere Life cases.

(5) United States v. Patterson, 1:97cv120 (W.D.N.C. 1997). Section 2255 action. After a visiting judge referred the case to me, I recused myself upon recognition of the named defendant as a person I had prosecuted.

(6) EEOC v. Shoneys of Biltmore, Inc., 1:96cv293 (W.D.N.C. 1997). Civil rights action. During the Initial Pretrial Conference, I recused myself as I knew socially one of the defendant owners of such local business.

(7) United States v. Bogatov, P6332594 (W.D.N.C. 1996)(Petty offense). I recused myself when defendant employed a former law partner of mine.

(8) Rose v. Lee, 1:00cv20 (W.D.N.C. 2000). Section 2254 death penalty action. I recused myself because one of the investigating agents co-owned several horses with me.

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.

In December 2005, I was appointed by Jim Black, the Speaker of the North Carolina House of Representatives, to the North Carolina Lottery Commission. I was reappointed by Joe Hackney, Speaker of the North Carolina House.

I have not had unsuccessful candidacies for elective office, and I have not had 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.

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North Carolina Democratic Party State Executive Committee
11th Congressional District Democratic Party Delegate
Buncombe County Democratic Party Delegate to County Convention
Member, Buncombe County Democratic Men
Member, Buncombe County Democratic Women

I volunteered for the Obama for America campaign on November 4, 2008.

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 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.

1976-1980
Roberts, Cogburn & Williams (now Roberts & Stevens, P.A.)
BB&T Building, Suite 1100
One West Pack Square
Asheville, North Carolina 28801
Associate (1976-1978)
Partner (1979-1980)

1980-1992
United States Attorney's Office for the Western District of North Carolina
100 Otis Street
Asheville, North Carolina 28801
Assistant United States Attorney (1980-1992)
Lead Attorney, Organized Crime and Drug Enforcement Task Force
(1982-1986 & 1988-1991)
Chief Assistant United States Attorney (1986-1988)

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1992-1995
Yurko & Cogburn, P.A.
402 West Trade Street, Suite 101
Charlotte, North Carolina 28202
Partner

1995
Cogburn, Cogburn, Goosmann & Brazil, P.A.
BB&T Building
Asheville, North Carolina 28801
Partner

2004-2006
Cogburn, Goosmann, Brazil & Rose, P.A.
77 Central Avenue, Suite H
Asheville, North Carolina 28801
Partner

2006-Present
Cogburn & Brazil, P.A.
77 Central Avenue, Suite E
Asheville, North Carolina 28801
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.

Mediation became part of my practice in about 2006 and now, as a certified mediator, I mediate frequently. Last year, in 2009, I mediated approximately 75 cases involving a wide range of state and federal matters. The 10 most significant cases are:

1. Suit brought by plaintiffs alleging damage from run off and erosion down stream from an upscale development. Case settled.

2. Lawsuit over life insurance policy in face amount of $250,000. Defendant insurance company refused to pay on death of insured due to alleged false answers to health questions. Case settled.

3. Plaintiff alleged that defendant's failure to deliver modular home damaged her in the amount of $261,000. Case settled.

4. Plaintiff's executrix alleged plaintiff was injured due to being improperly transported in nursing home van. Case settled.

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5. Suit brought by plaintiff seeking over $230,000 on a construction contract. Case settled.

6. Plaintiffs alleged damage to home from severe weather damage. Defendant questioned the amount of damage. Plaintiffs started the mediation with a $150,000 demand, defendant offered to pay $5,000. Case settled.

7. Plaintiff (an attorney) sued her former employing firm for money allegedly owed to her when she left the defendant firm to join another practice. Case settled.

8. Plaintiffs were injured in an accident with defendants' tractor trailer. At mediation plaintiffs opened with a demand of $1,500,000 while defendants offered $50,000. Case settled.

9. Plaintiff alleged that defects in defendant's weighing equipment had resulted in plaintiff being underpaid for bulk asphalt it was selling. Defendant disputed that the admitted malfunction would have caused an incorrect weight issue. Case settled.

10. Plaintiff alleged fraud and irregularities with defendant's handling of her loan and deed of trust. Case settled.

b. Describe:

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

Between 1976 and 1980, I had a general private practice and handled criminal felonies and misdemeanors, civil torts, domestic cases and some corporate work. From 1980 to 1992, I served as an Assistant United States Attorney. In that position, I prosecuted murder cases on the Cherokee Indian Reservation, and I prosecuted drugs trafficking, voter fraud and a wide variety of other federal crimes. I had extensive appellate experience during this time, as well. I was again a private practitioner from 1992 to 1995. During this period, I primarily handled criminal litigation in the federal and state courts. I also handled some civil cases for those injured in accidents.

I served as a U.S. Magistrate Judge from 1995 to 2004. From 2004 to the present, I have again had a general private practice, one that includes extensive civil litigation for both plaintiffs and defendants, as well as state and federal criminal cases and some corporate work. I also have a growing mediation practice.

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

As a federal prosecutor, I represented the government in criminal prosecutions as well as some civil matters and appeals.

In three periods of private practice, I have been involved in civil litigation and criminal defense. My clients have included individuals and companies.

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 practice has been in litigation. I have appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 18%
   2. state courts of record: 80%
   3. other courts: 1%
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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

I tried between 70 to 100 cases in courts of record as chief counsel. In almost all of these cases I was sole counsel, except for a few where I had co-counsel.

i. What percentage of these trials were:
   1. jury: 95%
   2. non-jury: 5%

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

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

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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. Barnard, 2:83cr95 (W.D.N.C. 1983). Hon. Woodrow W. Jones. I prosecuted two candidates for sheriff of Clay County for buying votes. One candidate went to trial before a jury and was convicted and sentenced to prison. The second candidate entered a plea of guilty and was also sent to prison. Principal opposing counsel were Robert B. Long, Jr., Long, Parker, Warren, Anderson & Payne, P.A., Post Office Box 7216, Asheville, North Carolina 28802, 828-258-2296; and Merinda Swanson Woody, 137 Tusquittee Street Post Office Box 1519, Hayesville, North Carolina 28904, 828-389-0202.

2. United States v. Odom, ST-CR-83-19-01 (W.D.N.C. 1983). Hon. Robert Potter. I prosecuted four defendants charged with mail fraud and conspiracy to cast false and fraudulent absentee ballots during the 1982 general election. The defendants, who had gone to a rest home and voted on behalf of mentally incompetent residents, were all convicted and received sentences ranging from probation to five years in prison. Opposing counsel were John Hall and Larry Moore (both now deceased); William C. Gray, Jr., William C. Gray, Jr., P.A., 105 West Main Street, Post Office Drawer 851, Wilkesboro, North Carolina 28697-2422, 336-838-7500; and the Honorable David B. Sentelle, now the Chief Judge for the United States Court of Appeals for the District of Columbia Circuit, 333 Constitution Avenue, Washington, D.C. 20001, 202-216-7330. The convictions were affirmed on appeal. 736 F.2d 104 (4th Cir. 1984).

3. United States v. Bagguley, 3:85-CR64-02 (W.D.N.C. 1991). Hon. Robert Potter. I prosecuted prisoners, confined in Terre Haute, Indiana, who masterminded a drug trafficking operation that brought heroin from Thailand to North Carolina. The presiding judge and I both received death threats and had armed protection throughout trial. Those who did not plead guilty were convicted and received long prison sentences. Opposing counsel were George V. Laughrun, II, Goodman, Carr, Laughrun, Levine & Murray, P.A., 301 South McDowell Street, Suite 602, Charlotte, North Carolina 28204, 704-372-2770 and Richard M. Koch, County Attorney, 65 Church Street, Post Office Box 707, Concord, North Carolina 28025, 704-920-2100. The convictions were affirmed on appeal. 838 F.2d 468 (4th Cir. 1987).

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4. United States v. Carbarcas, 3:85-CR62-15 (W.D.N.C. 1986). Hon. Robert Potter. I prosecuted a Colombian drug lord from Barranquilla who we were able to extradite during a brief time when Colombia allowed such extraditions. The defendant was convicted of sending huge amounts of marijuana into North Carolina. He received a 30 year sentence. Opposing counsel was James Frank Wyatt, III, 435 East Morehead Street, Charlotte, North Carolina 28202, 704-331-0767. The convictions were affirmed on appeal. 968 F.2d 1212 (4th Cir. 1992).

5. United States v. Rhodes, ST-CR-84-15-2 (W.D.N.C. 1984). Hon. Robert Potter. With colleagues, I prosecuted the first drug dealers in North Carolina convicted of operating a Continuing Criminal Enterprise under 21 U.S.C. Section 848. The prosecution paved the way for numerous other drug prosecutions in the Western District of North Carolina. Defendants Cheek and Rhodes received 75 years and 50 years, respectively. Opposing counsel was V. Edward Jennings, Post Office Box 458, Taylorsville, North Carolina 28681, 828-632-5869. The convictions were affirmed on appeal. 779 F.2d 1019 (4th Cir. 1985).

6. United States v. McHan, 2:90-CR41 (W.D.N.C. 1992). Hon. Richard Voorhees. I prosecuted a respected realtor in Cherokee County, North Carolina, who was bringing drugs out of Belize into Texas and North Carolina. The defendant was convicted of conducting a continuing criminal enterprise; he received 150 months in prison. The convictions were affirmed on appeal. 101 F.3d 1027 (4th Cir. 1996). Opposing counsel was Sean P. Devereux, Devereux & Banzhoff, PLLC, 22 South Pack Square, The Jackson Building, Suite 1100, Asheville, North Carolina 28801, 828-285-9455.

7. United States v. Porter, 3:85-CR62-01 (W.D.N.C. 1985). Hon. Robert Potter. My office convicted Porter, who ran a large drug operation out of Wilkes County, North Carolina, of operating a Continuing Criminal Enterprise under 21 U.S.C. section 848. Other defendants were convicted of various other drug offenses. Porter was sentenced to 75 years without parole on the continuing criminal enterprise. The convictions were affirmed on appeal. 821 F.2d 968 (4th Cir. 1987). Some of the defendants who went to trial were represented by Eben T. Rawls, Rawls, Dickinson & Scheer, PA, Suite 300, 1011 East Morehead Street, Charlotte, North Carolina 28204, 704-376-3200; Harold Bender, Suite 1000, 301 South McDowell Street, Charlotte, North Carolina 28204, 704-333-2169; and Lawrence Hewitt, Guthrie, Davis, Henderson & Staton, PLLC, 719 East Boulevard, Charlotte, North Carolina 28203, 704-372-5600.

8. United States v. Fletcher, 1:90-CR-231 (W.D.N.C. 1991). Hon. Richard Voorhees. I prosecuted a drug dealer under 21 U.S.C. section 848, for operating a large cocaine ring in Asheville, North Carolina. Fletcher and one of his lieutenants received a sentence of 360 months in prison and other co-defendants received lesser but substantial sentences. The convictions were affirmed on appeal. United States v. Fletcher, 993 F.2d 1540 (4th Cir. 1993). Opposing counsel were Sean P. Devereux, Devereux & Banzhoff, PLLC, 22 South Pack Square, The Jackson Building, Suite

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1100, Asheville, North Carolina 28801, 828-285-9455; Stephen P. Lindsey, 90 Eagle Crest Way, Fairview, North Carolina 28739, 828-628-9855; Donald N. Patten, Brown & Patten, 370 North Main Street, Suite 206, Waynesville, North Carolina 28786, 828-452-1454; and John H. Byrd, 175 North Main Street, Rutherfordton, North Carolina 28139,828-286-2443.

9. United States v. Wingate, C-CR-87-19 (W.D.N.C. 1987). Hon. Robert Potter. I prosecuted a Charlotte-based drug trafficking organization involved in cocaine distribution. Thirteen defendants were tried at the same time and all were convicted at various levels in the organization. The convictions were affirmed on appeal. United States v. Wingate, 854 F.2d 1318 (4th Cir. 1988). Opposing counsel were Theo X. Nixon, now a state district court judge, c/o 9600 Courthouse, 832 East 4th Street, Charlotte, North Carolina 28202, 704-686-0100; Prosser D. Carnegie, Post Office Box 2270, Davidson, North Carolina 28036-5270, 704-892-1699; Harold Bender, Suite 1000, 301 South McDowell Street, Charlotte, North Carolina 28204, 704-333-2169; and Kenneth P. Andresen, Andresen & Arronte, PLLC, 2319 Crescent Avenue, Charlotte, North Carolina 28207, 704-377-8881.

10. United States v. Owen, B-CR-90-227-02 (W.D.N.C. 1991). Hon. Richard Voorhees. I prosecuted defendants for crimes stemming from a conspiracy among them and other co-defendants to distribute cocaine. Eight co-defendants entered guilty pleas, and a jury convicted two defendants of conspiracy and several counts of distribution and possession of cocaine and use of a communication facility in the commission of a felony. The convictions were affirmed on appeal. 966 F.2d 1445 (4th Cir. 1992). Opposing counsel were Stanford K. Clontz, One Oak Plaza, Suite 306, Asheville, North Carolina 28801, 828-281-0740; and V. Lamar Gudger, III, Gudger & Gudger, Post Office Box 336, Asheville, North Carolina 28802, 828-252-2227.

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.)

When I graduated from law school in 1976, I entered a general law practice. I represented individuals in civil and criminal matters and some companies in civil matters. In 1980, I became an Assistant United States Attorney in order gain additional trial experience, among other things. As an AUSA, I supervised other Assistant United States Attorneys during my time as Drug Task Force Attorney and Chief Assistant United States Attorney.

In 1992, I left the U.S. Attorney's Office to go into private practice. I primarily represented criminal defendants and plaintiffs in civil matters. During this period of private practice, I was appointed by the United States District for the Western District of

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North Carolina to chair two merit selection panels for the Court, for a Clerk of Court and for a Chief Probation Officer.

In December 1995, I was selected as a United States Magistrate Judge. In addition to assignments from the District Judge, I had a large case load of my own as I was frequently selected by consent to handle the case as the Judge.

In 2004, I returned to private practice where I have a general practice representing individuals in criminal and civil cases in state and federal courts. I also represent a few companies. I also have developed a mediation practice in the last two years mediating at least one case nearly every week. I have been recognized by my peers with an AV Preeminent Rating in Martindale-Hubbell Legal Directory, the highest possible rating.

I have never performed any lobbying activities during the course of my legal career.

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

During my time as an Assistant United States Attorney, I taught at the Attorney General's Advocacy Institute, in Washington, D.C. on at least two occasions. I do not have the dates of these sessions nor do I have any written material from them. The matters that were taught at these sessions were trial skills including how to properly admit evidence, direct and cross examination, and opening and closing statements.

In February 2010, I was asked be an instructor at the National Advocacy Institute in Columbia, South Carolina (NAC). For two days I presided over mock trials for new Assistant United States Attorneys. The mock trial issues involved criminal procedure, evidence, and courtroom decorum.

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 on my prior service as a U.S. Magistrate Judge, I have a current interest in retirement benefits from the U.S. Courts. I understand that if I am confirmed, these benefits would be subsumed under retirement provisions for U.S. District Judges.

I have no deferred income arrangements or future benefits anticipated from my law practice. My present firm has a handful of contingency cases but, if confirmed, I would not expect to retain any interest in them as part of my withdrawal from the firm.

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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.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I have a daughter who is licensed to practice law in both North Carolina and Alabama. If confirmed, I would not handle any case in which she was involved and I would place her on my automatic recusal list.

    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. § 455 and any other relevant statutes, the Code of Conduct for United States Judges, and any applicable policies and procedures of the United States Courts.

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 career I have done free legal work for those who needed it. As an example of a case early in my career, I helped an elderly person get a property deed to

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her home free and clear of any further debt from unscrupulous creditors. In 2007, I spent approximately 30 hours successfully assisting a pro bono client in obtaining joint custody of her son. I also have devoted hundreds of hours of my time providing free legal service on criminal 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 August 2009, I sent a resume to the Merit Selection Committee established by Senator Kay Hagan to screen candidates. I was interviewed by the Committee and thereafter met with Senator Hagan. Shortly after this interview I was informed I was one of three identified finalists for the position.

Since November 2009, I have been in communication with pre-nomination staff in the Department of Justice. On February 3, 2010, I interviewed in Washington, D.C., with attorneys from the Department of Justice and the White House Counsel's Office. My nomination was submitted to the United States Senate on May 27, 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.

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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
Cogburn, Jr., Max O.	North Carolina - Western District	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.**	
77 Central Avenue, Suite E Asheville, NC 28801	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. Commissioner	North Carolina Education Lottery
3. Member	Cogburn & Brazil, P.A.
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 Cogburn, Jr., Max O.	Date of Report 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.	2008	Cogburn & Brazil, P.A. - Salary	$137,601.09
2.	2009	Cogburn & Brazil, P.A. - Salary	$120,500.12
3.	2010	Cogburn & Brazil, P.A. - Salary	$41,346.20
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
	Cogburn, Jr., Max O.	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. First Citizens Bank	Secured loan on family business property (1/4 of amount)	O
2. HomeTrust Bank	Secured loan on office building (1/5 of amount)	O
3. Bank of Asheville	Loan for family businesses	L
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Cogburn, Jr., Max O.	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. Cogburn Family Properties, LLC Buncombe Co, NC- Land Holding	A	Rent	P1	W	Exempt				
2. Ranchland Incorporated, Buncombe County, N.C. - Land Holding	A	Rent	P1	W					
3. Pisgah View Ranch, Inc. - Operating Business		None	M	W					
4. Pisgah Highland Conservancy LLC Buncombe Co NC-Land Holding		None	M	T					
5. Trust 1	A	Distribution	P1	T					
6. MET Life: Whole Life - (No Control)	D	Int./Div.	K	T					
7. Lincoln: Whole Life - (No Control)	A	Int./Div.	J	T					
8. IRA Account	D	Int./Div.	K	T					
9. -Van Kampen Growth Fund (Sole Asset)									
10. Westar Financial Services Corp	A	Int./Div.	J	T					
11. Double Eagle Stock		None	J	T					
12. Franklin Ltd Maturity U.S. Gov Securities (Bonds)	B	Int./Div.	L	T					
13. Paul Revere: Whole Life	C	Int./Div.	L	T					
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 - $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 Cogburn, Jr., Max O.	Date of Report 05/28/2010

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

VII. Investments and Trusts

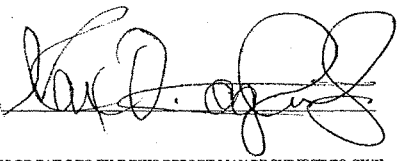
The first three entries in this section refer to two holding companies and an operating business for a contiguous piece of family owned real estate. The property is owned equally by my three sibilings and me. The land is divided into two holding companies, Cogburn Family Properties, LLC and Ranchland Incorporated. The third company, Pisgah View Ranch, Inc. operates a guest ranch on the property. My siblings and I own another separate piece of land, which is held in the Pisgah Highland Conservancy, LLC (see entry 4).

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Cogburn, Jr., Max O.	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 

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 Max Cogburn

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			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities - see schedule		10	762	Notes payable to relatives			
Unlisted securities--add schedule				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				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	348	000
Real estate owned - see schedule	9	100	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	900				
Cash value-life insurance		50	000				
Other assets itemize:							
401(k) Retirement Plan		69	464				
Thrift Savings Plan		203	000				
IRA Account (Van Kampen Fund)		18	000	Total liabilities	1	349	000
				Net Worth	8	188	126
Total Assets	9	537	126	Total liabilities and net worth	9	537	126
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	
Westar Financial Stock	$ 9,782
Double Eagles Holdings Stock	980
Total Listed Securities	10,762
Real Estate Owned	
Family-owned land (25% share)	$ 7,500,000
Office building (20% share)	600,000
Personal residence	1,000,000
Total Real Estate Owned	9,100,000
Real Estate Mortgages Payable	
Family-owned land (25% share)	$ 625,000
Office building (20% share)	500,000
Personal residence	223,000
Total Mortgages Payable	1,348,000

AFFIDAVIT

I, MAX OLIVER COGBURN, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6-3-10
(DATE)

(NAME)

(NOTARY)

GAIL JACKSON
NOTARY
PUBLIC
MECKLENBURG COUNTY

My Commission Expires 27 April 2013

Senator WHITEHOUSE. Thank you, Mr. Cogburn.

We are delighted, also, to be joined by Judge Hernandez. I guess we could call him a repeat offender before this Committee. But we are delighted to have him back and look forward to a more successful trip through confirmation at this time.

Your service on the district court and on the circuit court provides excellent background and qualifications for this position, and your service to Oregon, legal services over the years, shows a keen sense of duty to your community and particularly to those who are less favored than others, and we appreciate that very much.

So welcome, and, please, proceed with any statement or introductions that you would care to make, Judge Hernandez.

STATEMENT OF HON. MARCO A. HERNANDEZ, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON

Judge HERNANDEZ. Thank you very much. I want to thank the Committee for having me, Chairman Whitehouse, Senator Sessions, Senator Franken. Thank you for conducting this hearing and allowing me to appear before you.

I want to thank President Obama, President Bush before, Senators Wyden and Merkley for their kind remarks and support throughout the process, Senator Wyden, in particular, for a process that has now taken years and he has been a supporter of mine throughout all of that time.

There are some people behind me that I would like to introduce to you. My mom and dad are here, Frank and Rosa Hernandez. My wife, Mary Beth is here; my daughter, Alicia; my son, Daniel is here.

Chief Justice De Muniz, from the Oregon Supreme Court, and his wife, Mary, are here and have been longtime supporters.

I appreciate all of their support and that they are having my back and here with me in Washington, DC. And, again, I appreciate the opportunity to be here before you. I welcome your questions.

Thank you.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Marco Antonio Hernandez

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

   United States District Judge for the District of Oregon

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: Washington County Circuit Court
   145 NE Second Avenue
   Hillsboro, Oregon 97124

   [redacted]

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

   1957; Nogales, Arizona

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.

   1983-1986, University of Washington School of Law; J.D., 1986

   1979-1983, Western Oregon State College; B.A. (honors), 1983

   1975-1979, Portland Community College; no degree earned

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.

1995-Present
Washington County Courts
145 NE Second Avenue
Hillsboro, Oregon 97124
Circuit Court Judge (1998-Present)
Presiding Circuit Court Judge (2002-2005)
District Court Judge (1995-1998)

1989-1994
Washington County District Attorney's Office
150 NE Second Avenue
Hillsboro, Oregon 97124
Deputy District Attorney

1986-1989 & 1985
Oregon Legal Services
230 NE Second Avenue
Hillsboro, Oregon 97124
Attorney (1986-1989)
Law Clerk (1985)

1985-1986
Smith Brucker Winn and Ehlert
1939 14th Avenue East
Seattle, Washington 98112
Law Clerk

1984
Law Offices of Dominic Santiago
999 Third Avenue, Suite 3800
Seattle, Washington 98104
Law Clerk

1983
Santiam Cannery (no longer in business)
Salem, Oregon 97301

1983
Oregon State Senate
900 Court Street NE, Room 233
Salem, Oregon 97301
Senate Floor Staff

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Other Affiliations (uncompensated)

2008-Present
Vision Action Network (VAN)
3700 SW Murray Boulevard, Suite 190
Beaverton, Oregon 97005
Director

1993-1995 (approximate)
Oregon Legal Services (now Legal Aid Services of Oregon)
921 SW Washington Street, Suite 516
Portland, Oregon 97205
Director

1987-1989 (approximate)
Washington County Community Action Program
1001 SW Baseline Street
Hillsboro, Oregon 97123
Director

1988 (approximate)
Petra Perez Memorial Senior Center
200 E Baseline Street
Cornelius, Oregon 97113
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 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.

   Delta Kappa Gamma Society Int'l Excellence in Community Service Award 2006
   Delmer Dewey Award Winner for Outstanding Male Student, Class of 1983
   Mexican-American Legal Defense Fund College Scholarship recipient
   National Hispanic College Scholarship recipient

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.

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Gus Solomon Inn of the Court
Hispanic National Bar Association
Oregon Circuit Judges' Association
Oregon Hispanic Bar Association
Oregon Judicial Conference
Oregon Judicial Department
Chief Justice's Executive Committee (2006-2008)
Chief Justice's Budget Reduction Action Committee (2003-2004)
Access to Justice for All Committee (2001-2003)
Member of Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System (1992-1994)
Oregon Minority Bar Association
Oregon State Bar Association
Court Fees Task Force (2010-present)
Washington 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.

Oregon, 1986

There have been no lapses in membership

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

United States District Court for the District of Oregon, 1987
Oregon Supreme Court, 1986

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.

Oregon Court Fees Task Force (2010-Present)
Vision Action Network (VAN)

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Board of Directors (2008-Present)
Resource Counsel (2003-2007) (approximate)
Washington County ConPlan Working Group (2009-2009)
Pacific University School of Psychology Advisory Board (2007-Present)
St. Matthew's School Advisory Committee (2005-2008)
Oregon Legal Services Board of Directors (1993-1995) (approximate)
Washington County Community Action Program
Board of directors (1987-1989) (approximate)
YMCA of Beaverton (2007-2009 & 2003-2005) (approximate)

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 currently discriminates or has discriminated during my membership on the basis of race, sex, religion or national origin. I am not aware of any former discrimination by these organizations. St. Matthew's School, for which I served on the advisory board, gives an admissions preference to applicants of Catholic faith.

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 co-authored (with two fellow presiding judges) a public letter in honor of juror appreciation month. It was printed as "Jurors Thanked for Sacrifices," THE OREGONIAN, May 19, 2005. Copies supplied.

I do not recall other publications, though there may be some I have been unable to remember or 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.

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Report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, 73 Or. L. Rev. 823 (1994) (I was a member of the Task Force). Copies supplied.

I serve as a member of the Washington County ConPlan Working Group, an informal committee that will make recommendations to the Washington County Office of Community Development regarding affordable housing and community development (toward the State's requirement to produce a Consolidated Plan for Federal Housing & Urban Development programs). The Committee's work product is available at http://www.co.washington.or.us/CommunityDevelopment/Planning/2010-2015-consolidated-plan.cfm (last visited June 21, 2010).

I was a member of the Oregon State Bar Court Fees Task Force, which made recommendations in June 2010 to the legislature regarding Court Fees and funding of the State Judicial Department. Copies of the initial report are supplied.

I do not recall other reports, memoranda, or policy statements, though there may be some I have been unable to remember or 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.

On January 28, 2005, I testified before the Oregon Senate Committee on the Judiciary to describe the Oregon Courts' mental health system and funding concerns. Minutes from the meeting are available at http://arcweb.sos.state.or.us/legislative/legislativeminutes/2005/senate/judiciary/sjud0128.htm (last visited June 29, 2010). Copies supplied.

On May 6, 2005, I testified before the Oregon House Committee on Business, Labor, and Consumer Affairs to discuss funding issues in the Oregon Courts. Minutes from the meeting are available at http://arcweb.sos.state.or.us/legislative/legislativeminutes/2005/house/business/hblca0506.htm (last visited June 29, 2010). Copies supplied.

I do not recall other testimony, official statements, or communications relating to matters of public policy or legal interpretation, though there may be some I have been unable to remember or 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

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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.

Our Court implemented a new computer system in approximately 2008 and I did not retain speech notes or calendars from prior to that date. I have sought to list all speeches or talks I have delivered based on searches of my files and of publicly-available information. In particular, my practice has been to participate from time to time in continuing legal education programs, not all of which I have been able to identify for this list.

Presenter, Domestic Violence Resource Council, Hillsboro, Oregon (Mar. 19, 1998). My best recollection is that I spoke about our court's domestic violence deferred sentencing program. I have no notes, transcript, or recording.

Continuing Legal Education Presenter, "Trying Custody Issues," Oregon State Bar (Jan. 30, 1998). Notes supplied.

Citizens Justice Conference 2000, Portland Community College, Portland, Oregon (May 6, 2000). I have no notes, transcript, or recording. The conference is described at http://djcoregon.com/news/2000/05/19/citizens-take-justice-into-own-hands/ (last visited June 29, 2010).

Presenter, New Law Student Retreat, Opportunities in Law in Oregon (Aug. 8, 2002). I talked about my legal career. I have no notes, transcript, or recording.

Continuing Legal Education Presenter, "Learning the Ropes: A Practical Skills and Ethics Workshop for New Admittees and Lawyers Entering Private Practice, Motion Practice" Oregon State Bar Professional Liability Fund (Nov. 7, 2002). Notes supplied.

Continuing Legal Education Presenter, Oregon Law Institute, "Successful Prosecution and Defense of Claims for Attorney Fees" (Apr. 25, 2003). I have no notes, transcript, or recording.

Continuing Legal Education Presenter, Oregon Law Institute, "Establishing and Enhancing Your Trial Techniques: Strategies, Skills and Pitfalls to Avoid" (Oct. 8, 2004). I have no notes, transcript, or recording.

Court Funding Legislative Lunch Presenter, Multnomah County Courthouse (Oct. 28, 2003). I have no notes, transcript, or recording.

Open House Speaker, Hillsboro Legal Aid Office, 230 N.E. 2nd Ave., Suite A, Hillsboro, Oregon 97124 (Oct. 19, 2004). I have no notes, transcript, or recording. I spoke about raising awareness of the role of legal aid in helping

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victims of domestic violence and honoring attorneys and community leaders dealing with the subject. *See* "Oregon Legal Aid Offices to Hold Open Houses," PORTLAND BUSINESS J., Oct. 14, 2004.

Presiding Judge Update, Multnomah County Bar Association (Sept. 22, 2004). I spoke about court operations. I have no notes, transcript, or recording.

Commencement Address, Western Oregon University, 354 N. Monmouth Ave., Monmouth, Oregon 97631 (June 2006). I spoke about my life and important mentors to me. I encouraged graduates to look for opportunities to help others. *See* Andrea Rivera, "Graduations," STATESMAN JOURNAL (Salem, Oregon), June 18, 2006.

Continuing Legal Education Presenter, National Business Institute, "What Civil Judges Want You to Know" (May 2008). Notes supplied.

Speaker, National Association of Mentally Ill (NAMI), Aloha, Oregon (Sept. 8, 2008). I spoke about the mental health court that I run. I have no notes, transcript, or recording.

I spoke by invitation to a non-profit organization in Portland, Oregon, about the law of sex offenses generally (Oct. 3, 2008). I do not recall the name of the organization. I have no notes, transcript, or recording.

Presentation on Legal Careers, Lewis and Clark Law School (Jan. 2009). I have no notes, transcript, or recording.

Panelist, "Oregon Judicial Panel and International Perspectives," Latina Law Society, Lewis & Clark Law School (Feb. 12, 2009). Video is available at http://lawlib.lclark.edu/podcast/?p=649 (last visited June 29, 2010).

Continuing Legal Education Panelist, "Road to the Bench," Oregon Women Lawyers (Apr. 24, 2009). I have no notes, transcript, or recording.

Presenter on Judicial Careers and Search and Seizure Law, Beaverton High School (Apr. 30, 2009). I have no notes, transcript, or recording.

Continuing Legal Education Panelist, "Court Specialization: Fad or Effective Strategy?" Hispanic National Bar Association, Albuquerque, NM (Sept. 3, 2009). I have no notes, transcript, or recording.

Presentation to Trial Advocacy Course (Professor Lisa LeSage), Lewis and Clark Law School (Nov. 2009). I have no notes, transcript, or recording.

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Presentation on Direct Examination (to visiting prosecutors from Mexico), Conference of Western Attorneys General, Portland, OR (Nov. 9, 2009). I have no notes, transcript, or recording.

In addition, I spoke regularly while I was presiding judge of the Washington County Circuit Court from 2002-2005. Early in my term, I made presentations to our staff on a quarterly or more frequent basis. Throughout my term, I spoke with bar associations and staff about the state of the court, procedures and new programs in Washington County. I annually gave a "State of the Court" speech to the Washington County Bar Association.

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 memory, my files, and available Internet databases to assemble the list of interviews below, but there may be others I have been unable to remember of identify. Copies supplied of all clips.

Craig Harris, "Migrant Worker Abuse Discussed At Meeting," THE OREGONIAN, June 24, 1988, at B8.
Linda Campillo, "Financial Questions Raised About Closure," THE OREGONIAN, July 25, 1988, at B5.
George Rede, "Oregon Task Force Begins Search For Bias In Courts," THE OREGONIAN, July 27, 1992, at B3.
"2 Convicted Of Charges From Drive-By Shooting," THE OREGONIAN, July 19, 1993, at B02.
"Grand Jury in Hillsboro Rules that Killing Was Self-Defense," THE OREGONIAN, May 3, 1994, at B3.
"New On The Bench," THE OREGONIAN, Jan. 20, 1995, at B2.
Fiona M. Ortiz, "Robes On Order," THE OREGONIAN, Jan. 20, 1995, at B2.
Fiona Martin, "Coordinator Digs In In Fund-Raising Drive," THE OREGONIAN, Aug. 4, 1994, at B2.
Doug Browning, "New District Court Judge Settling Into Duties," HILLSBORO ARGUS, 1995.
Jeanie Senior, "County's Sole Attorney Under Scrutiny," THE OREGONIAN, Aug. 26, 1997, at B3.
Holly Danks, "Machinery Of Justice Placed In New Hands," THE OREGONIAN, Jan. 24, 2002, at A1.
Holly Danks, "Judge Bonebrake Leaves A Legacy Of Fair Decisions," THE OREGONIAN, Feb. 21, 2002, at A1.
Holly Danks, "Court Staff Suffers Heavy Cuts," THE OREGONIAN, Mar. 19, 2002, at B2.
Holly Danks, "Refiguring Budget Saves Six Jobs In Courthouse," THE OREGONIAN, Apr. 2, 2002, at C1.

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Holly Danks, "Court Reporter's Jobs Hang On Vote," THE OREGONIAN, Apr. 24, 2002, at C3.
Ian Rollins, "Point Of Order: No More Court Layoffs," HILLSBORO ARGUS, Nov. 19, 2002 at A1.
Holly Danks, "Drastic Cuts Due If Court Fall Short," THE OREGONIAN, Dec. 26, 2002, at A1.
Laura Gunderson, "Tax Defeat Means Sizable Cutbacks," THE OREGONIAN, Jan. 29, 2003, at B1.
Patrick Harrington, "Court Closes Shop Until July For Many Crimes," THE OREGONIAN, Feb. 27, 2003, at A1.
Ian Rollins and Doug Browning, "Court Cuts Means Cases Could Take Years to Clear," HILLSBORO ARGUS, Mar. 11, 2003, at A1 and A2.
Patrick Harrington, "County Courts Will Get Back Into Gear," THE OREGONIAN, June 26, 2003, at A1.
Ian Rollins, "County Courts Tackle Backlog Of Cases," HILLSBORO ARGUS, July 8, 2003, at A1 and A6.
Patrick Harrington, "County Court Opens Door To Backlog," THE OREGONIAN, July 9, 2003, at B2.
Ian Rollins, "Courtroom Catch-Up Done, But...," HILLSBORO ARGUS, Aug. 12, 2003, at A1 and A2.
Patrick Harrington, "Courts Clear Case 'Bulge,' Fill Up Jail," THE OREGONIAN, Aug. 18, 2003, at D2.
Emily Tsao, "Witness Intimidated By Text Messages," THE OREGONIAN, Jan. 31, 2004, at E1.
Peter Wong, "Seeking Equality for All," STATESMAN JOURNAL (Salem, Oregon), Sept. 18, 2005.
Peter Wong, "Lost in Translation?" STATESMAN JOURNAL (Salem, Oregon), Sept. 18, 2005.
Melody Finnemore, "Rapidly changing judiciary requires judges to take on more complex roles," OREGON STATE BAR BULLETIN, Dec. 2005.
Holly Danks, "Court's New Leader Brings Rich Background To Bench," THE OREGONIAN, Jan. 21, 2006, at A1.
Holly Danks, "Mental Health Court Helps Ill Offenders To Get Help," THE OREGONIAN, Mar. 15, 2007, at B8.
Holly Danks, "Mental Health Court Offers Help To Nonviolent Offenders," THE OREGONIAN, Mar. 16, 2007, at A15.
Holly Danks, "Juries Raise A Digital Ruckus," THE OREGONIAN, Jan. 21, 2008, at B1.
Holly Danks, "Washington County Mental Health Court Gives Some A Chance To Turn Their Lives Around," THE OREGONIAN, Mar. 28, 2008.
Holly Danks, "Politics Could Sink Local Judge's Federal Nomination," THE OREGONIAN, July 24, 2008, at B1.
Roger Gregory, "News Update", THE OREGONIAN, Feb. 5, 2009.
Radio Interview regarding mental health court, KUFO, Oct. 18, 2009. Audio supplied on CD.

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

In January 1995, Governor Barbara Roberts appointed me to be a Judge of the Washington County District Court. I stood for and won election to a six-year term for that position in May 1996.

In 1998, the Oregon Legislature consolidated District and Circuit Courts and I became a Judge of the Washington County Circuit Court by law. I stood for and won election to further six-year terms in May 2002 and May 2008.

The Washington County Circuit Court is a trial court of general jurisdiction (as was the District Court when I served on it). We preside over the following types of cases: traffic, small claims, landlord/tenant, divorce, juvenile, probate, misdemeanor, felony and all other civil matters.

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

I have presided over 583 trials to verdict or judgment (not including small claims, landlord-tenant, and traffic trials, as well as civil commitment and juvenile matters).

i. Of these, approximately what percent were:

jury trials:	60%
bench trials:	40%
civil proceedings:	4%
criminal proceedings:	96%

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

As a trial judge, I have not issued written opinions.

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

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1. Fountaincourt Homeowners' Assoc. v. Fountaincourt Dev., No. C075333CV (Wash. County Cir. Ct. 2010).

This was a construction defect case. The matter was tried over five weeks. The verdict was for the Plaintiff in the amount of 2.1 million dollars.

There were several lawyers for the plaintiff including Robert O'Halloran, McEwen Gisvold LLP, 1100 SW Sixth Ave., Suite 1600, Portland, OR 97204, Tel (503) 412-3507 & Anthony Rafel, Rafel Law Group PLLC, 1100 SW 6th Ave., Suite 1600, Portland, OR 97204, Tel (503) 808-9960. The defense lawyers were: Robert Scholz, MacMillan, Scholz & Marks P.C., 101 SW Main St., Suite 1000, Portland, OR 97204, Tel (503) 224-0348; Paul Sheely, Smith Freed & Eberhard P.C., 111 SW 5th Ave., Suite 4300, Tel (503) 227-2424; Christopher Drotzmann, Davis Rothwell Earle & Xóchihua P.C., 111 SW Fifth Ave., Suite 2700, Portland, OR 97204, Tel (503) 222-4422; Lowell McKelvey, Mitchell, Lang & Smith, 2000 One Main Place, 101 S.W. Main Street, Portland, OR 97204, Tel (503) 221-1011.

2. State v. Williams, No. C082046CR (Wash. County Cir. Ct. 2009).

This was a rape case where each defendant was accused of raping the victim. Verdicts were Guilty of all counts for Defendant Williams, and Guilty of three of four counts for defendant Thomas.

Paul Malony was the Deputy District Attorney, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defense lawyers were Ethan Levi, Metropolitan Public Defender Services, Inc., 400 E. Main, Suite 210, Hillsboro, OR 97123, Tel (503) 726-7900 & Debrorah Burdzik, 520 SW Yamhill St., Portland, OR 97204, Tel (503) 221-0520.

3. State v. Melendez, C081571CR (Wash. County Cir. Ct. 2009).

This case involved the defendant brutally beating his girlfriend. The defendant was also sexually abusing his own daughter. The defendant pleaded guilty in the middle of trial and agreed to a 35 year prison sentence.

The Deputy District Attorneys were Bracken McKee and Megan Johnson, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defense lawyers were: Ethan Levi and Devon Fooks, Metropolitan Public Defender Services, Inc., 400 E. Main, Suite 210, Hillsboro, OR 97123, Tel (503) 726-7900.

4. State v. Lemarroy, C081633CR (Wash. County Cir. Ct. 2009).

This case involved a burglary that ultimately resulted in a stabbing. The defendant was charged with attempted aggravated murder. The defendant was

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convicted of robbery, burglary, and some assault charges. The defendant was found not guilty of the attempted murder charges.

The Deputy District Attorney was Jeff Lesowski, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defense attorney was John Manning, 8196 SW Hall Blvd., Suite 203, Beaverton, Oregon, Tel (503) 520-9130.

5. State v. Perez C081534CR (Wash. County Cir. Ct. 2008).

This case involved a gang-murder. A group of gang members sought out and killed a rival gang member in retaliation for a prior gang-fight. The defendant was found guilty. There were several co-defendants. Each was tried separately.

The Deputy District Attorney was Robert Bletko, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defense lawyer was Dianna Gentry, 1906 SW Madison St., Portland, OR 97205, Tel (503) 629-2121.

6. State v. Gonzalez C072445CR (Wash. County Cir. Ct. 2008).

This case involved a co-defendant to the Perez case. This case was tried to the court. The defendant was found guilty.

The Deputy District Attorney was Robert Bletko, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defendant was represented by Vince Deguc, 4550 SW Hall Blvd., Beavorton, OR 97005, Tel (503) 646-9955.

7. State v. Blancas C072485CR (Wash. County Cir. Ct. 2008).

This case involved a co-defendant to the Perez case. This was a separate jury trial from the other codefendants.

The state was represented by Robert Bletko and Dan Hesson, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defense attorney was John Manning, 8196 SW Hall Blvd., Suite 203, Beaverton, Oregon, Tel (503) 520-9130.

8. State v. Fabelo, C983989CR (Wash. County Cir. Ct. 2002).

This case involved the murder of defendant's girlfriend. The defendant was convicted of murder.

The state was represented by Bob Hermann, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defendant was represented by Greg Scholl, Metropolitan Public Defender Services, Inc., 400 E. Main, Suite 210, Hillsboro, OR 97123, Tel (503) 726-7900.

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9. State v. Rodriguez-Moreno, C062072CR and C062342CR (Wash. County Cir. Ct. 2007).

This case involved a murder of a baby. The defendant was convicted of murder.

The state was represented by Bob Hull and Megan Johnson, 150 N. First Ave., Suite 300, Hillsboro, OR 97124, Tel (503) 846-8671. The defendant was represented by Tom MacNair, Metropolitan Public Defender Services, Inc., 400 E. Main, Suite 210, Hillsboro, OR 97123, Tel (503) 726-7900 & Brian Butler (541) 776-3630.

10. Ivey Imaging v. Reeder C062144CV (Wash. County Cir. Ct. 2007).

This case involved a claim of violation of a non-compete agreement. The case was tried over several days. The verdict was for the plaintiff.

The plaintiff was represented by Douglas Parker, Littler Mendelson, P.C., 121 SW Morrison St., Suite 900, Portland, OR 97204, Tel (503)889-8873, and Daniel Barnhart, 1000 SW Broadway, Suite 1900, Portland, OR 97205, Tel (503) 248-1134. The defendant was represented by William Corum.

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.

As a trial judge, I have not issued written opinions. In some cases, I have issued letters to parties advising them in writing of my decision.

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

I am not aware of any case over which I presided 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.

State v. Senn, 145 Ore. App. 538 (Or. Ct. App. 1996). The Court of Appeals held that I should have suppressed a gun retrieved by police during a traffic stop on the basis that the scope of the stop was impermissibly expanded when the officer asked the defendant to exit the vehicle.

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In re Rykert, 146 Ore. App. 537 (Or. Ct. App. 1997). The Court of Appeals held that the petitioner was entitled to indefinite spousal support after a 20-year marriage where my ruling had provided for a term of spousal support.

State v. Johnson, 186 Ore. App. 186 (Or. Ct. App. 2003). Although I signed the judgment in this case, the Court of Appeals reversed a prior ruling that I had not issued.

Bates v. Gordon, 212 Ore. App. 336 (Or. Ct. App. 2007). The Court of Appeals upheld a local sheriff's decision to withdraw a concealed weapons permit where I had found the sheriff's decision unsupported by substantial evidence.

Ritchie v. Blackletter, No. 05-963-HA, 2008 U.S. Dist. LEXIS 81059, (D. Ore. 2008). On this petition for writ of habeas corpus, the federal District Court found that I should have allowed petitioner to withdraw his guilty plea on sex crimes stemming from his involvement with several teenaged girls on grounds that greater factual basis should have been elicited for compelling prostitution charges. The Court of Appeals affirmed the District Court on grounds of ineffective assistance of counsel. 2010 U.S. App. LEXIS 5868 (9th Cir. Mar. 22, 2010).

In the matter of R.A.B.O., 232 Ore. App. 598 (Or. Ct. App. 2009). On de novo review, the Court of Appeals reversed my finding for the State in this case for termination of parental rights where I had found the mother unfit.

State v. Valero, 231 Ore. App. 538 (Or. Ct. App. 2009). The Court of Appeals held that I should have denied a motion to suppress intoxilyzer machine results where the police offer had used another officer's personal identification number to operate the machine.

State v. Behen, 230 Ore. App. 31 (Or. Ct. App. 2009). The Court of Appeals, applying a recent Oregon Supreme Court decision, found that two counts should have been merged even though the issue had not been raised prior to appeal.

State v. Begay, 233 Ore. App. 201 (Or. Ct. App. 2010). The Court of Appeals held that the defendant was entitled to a judgment of acquittal on trespass claims by the local public transit authority on grounds that prior trespassing notice he had been given did not apply to the property on which trespass was charged.

State v. Ates, 233 Ore. App. 233 (Or. Ct. App. 2010). The Court of Appeals reversed a conviction of Assault in the Third Degree because of an intervening opinion that precluded application of an aid and abet theory to the case.

State v. Brown, 2010 Ore. LEXIS 396, (2010). The Supreme Court of Oregon reversed a ruling of the Court of Appeals, which had affirmed my decision to suppress evidence obtained by a warrantless search of a hotel room rented by a person other than the defendant.

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State v. Hathaway, No. A141732 (slip op.) (Or. Ct. App. June 30, 2010). The Court of Appeals, applying recent precedent, found that multiple counts should have been merged in this criminal case.

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 trial judge, I have not issued written opinions. In some cases, I have issued letters to parties advising them in writing of my decision. Copies of such letters are placed in the case file by our court clerk.

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.

As a trial judge, I have not issued written opinions. In some cases, I have issued letters to parties advising them in writing of my decision.

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.

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In our court, any party may move to disqualify a judge. Such motions require only that the party allege to the presiding judge that the assigned judge cannot be fair. They do not require any evidence or additional information. Two such motions are allowed to each side. I have tried hundreds of cases and handled thousands of matters and I am certain motions to disqualify have been filed against me. Judges do not receive notice of such Affidavits of Prejudice, however, and I have no way of tracking them.

I have not retained a list of cases in which I recused myself and our court clerk's office has informed me that it has no ability to generate such a list. I have recused myself from cases where I have a close relationship or a perceived close relationship to one of the parties or lawyer. I have recused myself in cases where I participated in a settlement conference and the matter proceeded to trial.

I recall only one particular case where I was asked to recuse myself. The lawyer sought to prohibit any sitting judge in Washington County to hear his case because he felt none of the judges could be fair to him. I refused to recuse myself. The lawyer has since been disbarred for reasons unrelated to his request.

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 office other than judicial office. I have had no unsuccessful candidacies for elective office.

On July 23, 2008, President George W. Bush nominated me to be United States District Judge for the District of Oregon. The Senate did not act on my nomination and it was returned on January 2, 2009.

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:

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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 clerk for a judge.

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.

1986-1989
Oregon Legal Services
230 NE Second Avenue
Hillsboro, Oregon 97124
Attorney

1989-1994
Washington County District Attorney's Office
150 NE Second Avenue
Hillsboro, Oregon 97124
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 mediated cases as a trial court judge as part of settlement conferences, but I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1986 to 1989, I was a legal services lawyer. I represented farm workers who had various claims against farm labor contractors and growers. My practice consisted of civil proceedings in federal court.

From 1989 to 1994, I was a deputy district attorney with the Washington County District Attorney's Office. I began by prosecuting minor crimes such as thefts and charges for Driving while Under the Influence of Intoxicants (DUIIs). I then was appointed to supervise the Misdemeanor

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Unit. I later was assigned to supervise the Family Law Team, which was in charge of support enforcement and juvenile delinquency and dependency cases. In about 1994, I was assigned to the felony unit. My practice consisted of criminal proceedings in state court.

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

When I worked at Oregon Legal Services I represented poor people. At the District Attorney's Office I represented the State of Oregon.

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 legal services lawyer nearly all of our cases were filed in federal court. I never appeared in court. As a deputy district attorney all cases were in state court. I appeared in court almost daily.

i. Indicate the percentage of your practice in:
   1. federal courts: 35%
   2. state courts of record: 65%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 35%
   2. criminal proceedings: 65%

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

I tried approximately 100 cases to verdict (not including juvenile, traffic and other non-criminal violations). I was sole counsel in all of these cases.

i. What percentage of these trials were:
   1. jury: 50%
   2. non-jury: 50%

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

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

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

    a. the date of representation;

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

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

1. *State v. Delgado*. C930461CR (1993); Judge Milnes and Judge Nachtigal.

   I represented the State of Oregon. This case involved a 16 year old defendant who was intoxicated and breaking into cars. He jumped into the victims' yard and noticed the door was open. He entered the apartment of the victims and began choking the female victim. The male tried to intervene. The defendant ran off. The case was aggravated because the victims were in their late 70s and 80s. They were very vulnerable. The defendant was moved from juvenile to adult court after a contested hearing. The defendant then pleaded guilty to attempted murder and burglary in the first degree.

   The defendant was represented by Robert Elliott, 247 SE Washington St., Hillsboro, OR 97123, Tel (503) 895-8266.

2. *State v. Timberlake*, C930779CR, (1993); Judge Gardner.

   I represented the State of Oregon. Two young women were walking to church on a Sunday morning. The defendant had been drinking all morning and was driving home. Defendant struck the young women with his car and injured them. The defendant claimed the women were in the roadway. The jury found the defendant guilty of assault and driving under the influence.

   Harry Elliott and John Elliott represented the defendant. Elliott Law Office; 122 NE 3rd Street; Hillsboro, OR 97124, Tel (503) 648-3146.

3. *State v. Newell*, C930496CR, (1993); Judge Gardner.

   I represented the State. The defendant took a car from a dealership. The police tried to stop the defendant who fled in a high speed chase. The defendant was

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able to elude the police. Later, the defendant was located in Vancouver, Washington, in a different stolen car. The second stolen car was taken within blocks of the location where the first car was recovered. Judge Gardner found the defendant guilty of car theft. The case was remarkable because of its purely circumstantial nature.

Julia Philbrook represented the defendant. Honorable Julia Philbrook, Circuit Court Judge Pro Tem, 1021 SW 4th Ave., Portland, OR 97204, Tel (503) 988-5474.

4. *State v. Edgerton* C921865CR, (1992); Judge McElligott.

I represented the State. Defendant was a 15 years old. He was in a gang. He took a gun and pointed it into the windshield of a car that had two occupants. Defendant fired the gun several times. The first part of case was tried before Judge Nachtigal who decided the defendant should be tried as an adult. The second part of the case was a jury trial before Judge McElligott on 2 counts each of attempted murder, attempted assault I, assault II and unlawful use of a weapon. The defendant was found guilty on all counts.

Carol Jones represented the defendant. Carol Jones has passed away.

5. *State v. Mulkern*, C931740CR, (1993); Judge Gardner.

I represented the State. The defendant got into fight at tavern. The defendant was ordered to leave. The defendant then went to a vehicle, got a firearm and returned to the tavern. The defendant then discharged the gun in the tavern. The defendant then left the scene. The defendant's vehicle was eventually located in a ditch. The defendant had prior felony convictions. The jury found the defendant guilty of all charges.

Trina Strom represented the defendant. Trina Strom, Sorensen-Jolink, 1020 SW Taylor St. Ste. 880, Portland, OR 97205, Tel (503) 224-0900.

6. *State v. Anderson*, C940206CR and C940207CR, (1994); Judge Bonebrake.

The victim was visiting the defendants on Christmas night. The defendants, who were high on drugs, decided that the victim was a police informant and told him he was being kidnapped. The defendants dragged the victim into a back of room where they beat him. A neighbor heard the commotion and called the police. The police found the victim curled up in a fetal position. The defendants were charged with kidnapping and felony assault. The case was challenging because the victim testified at trial that nothing had happened. The kidnapping was based on the theory that the defendants dragged the victim from one portion of the apartment to a more concealed room. The defendants were found not guilty of kidnapping and guilty of felony assault. I represented the State.

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Mr. Anderson was represented by Keith Rogers. Keith Rogers, Multnomah Defenders Inc., 522 SW 6th Ave. Ste 1500, Portland, OR 97204, Tel (503) 226-3038. Mr. Dunwoodie was represented by Wilber Smith - Smith and West, 1860 Blake St. Ste. 420, Denver, CO 80202, Tel (303) 391-0100.

7. *State v. Lipscomb*, C930560CR (1993); Judge Hollie Pihl.

The defendant stole an elderly woman's wallet at a grocery store. The store manager saw the theft and tried to stop the defendant. A fight ensued. The case was remarkable for defendant's extensive criminal history. The jury found the defendant guilty. I represented the State.

Scott Eisenstein represented defendant. Scott Eisenstein, 101 SW Washington Street, Hillsboro, OR 97123, Tel (503) 640-6612.

8. *State v. Macon*, C940289CR (1994); Judge Jon Lund.

The defendant used a gun to hold up a gas station. The gun was not operable. The defendant claimed he was at video store at time of event. The defendant had alibi witnesses who testified in defendant's behalf. Judge Lund found the defendant guilty. I represented the State.

Susan Isaacs represented the defendant. Susan Isaacs, 4915 SW Griffith Dr. #105, Beaverton, OR 97005, Tel (503) 646-4200.

9. *State v. McMillen*, C941322CR (1994); Judge Michael McElligott.

The defendant was in possession of a stolen car. The issue was whether the defendant had knowledge that the car was stolen. The defendant claimed he was in process of buying car from a third person. The jury found the defendant guilty of unauthorized use of a motor vehicle. I represented the State.

Jim Halley represented the defendant. Jim Halley, 735 SW 1st Ave., 2nd Flr, Portland, OR 97204, Tel (503) 295-0301.

10. *State v. Dizer*, C940163CR; Judge Jon Lund.

The defendant entered into victim's office area. The defendant took the victim's checkbook and calculator. The victim caught the defendant in the act. The defendant hit the victim and tried to run away. The defendant broke the victim's nose in the struggle. The Defendant argued that force used was not to keep property, but to escape, thus it was not a robbery. Judge Lund found the defendant guilty of Robbery, Assault, and Theft. I represented the State.

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Keith Rogers represented the defendant. Keith Rogers, Multnomah Defenders Inc., 522 SW 6th Ave. Ste 1500, Portland, OR 97204, Tel (503) 226-3038.

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

As a sitting judge since 1995, I have led and participated in several important initiatives in addition to my primary work presiding over cases.

In 1996, I launched a deferred sentencing / speedy-trial program for domestic violence offenders. The program allowed first time offenders the opportunity to plead guilty at arraignment and enter into a treatment program or proceed to trial on an accelerated time-frame.

From 2002-2005, I was the presiding judge of our district. Despite particular funding challenges for the State and our court during this period, I instituted case management practices that brought our court's docket current in all areas. For example, when my term as presiding judge began, there were more than 500 criminal cases that were over one year old (and many were over two years old). When my term as presiding judge concluded, there were approximately 20 criminal cases over one year old.

In 2007, I helped establish Washington County's first specialty court for non-violent mentally ill defendants. This court maintains a high-degree of contact and supervision over mentally ill probationers. We have attained success in helping the mentally ill find stable living, maintain sobriety, consistently take medications and complete their probation requirements.

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 presented at continuing legal education classes, but I have not taught 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.

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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.

    If confirmed, I will carefully follow the recusal statutes and the Code of Conduct for United States Judges and I would disclose relationships and/or recuse myself as called for by the rules and the code to avoid conflict and any 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 was a legal services lawyer for three years.

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I served on the Board for Washington County Community Action Program during the late 1970s.

I was on Oregon Legal Services Board until I became a judge.

I am currently a member of the Vision Action Network whose goal is to help non-profits coordinate and collaborate with each other in serving the disadvantaged.

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 the fall of 2007, Senator Ron Wyden and then-Senator Gordon Smith convened a bipartisan committee to receive and screen applications for a judicial vacancy on the United States District Court. I submitted an application to the Committee in response to an announcement about the vacancy made to the Oregon State Bar Association. The committee interviewed ten candidates and recommended me to the Senators. Then-Senator Smith forwarded my name and two others to the White House for consideration. I interviewed in Washington, D.C., with the White House Counsel's Office on February 19, 2008. In the subsequent months, I worked with pre-nomination officials at the Department of Justice. President George W. Bush submitted my nomination to the Senate on July 23, 2008. My nomination was returned by the Senate on January 2, 2009.

In early 2009, Senator Wyden and Senator Jeff Merkley formed a new committee to interview candidates for two judicial vacancies on the District Court. Senator Wyden interviewed me on August 12, 2009, in addition to candidates recommended by the 2009 committee, and he submitted my name with five others to the White House for consideration.

Since December 2009, I have been in contact with pre-nomination officials at the Department of Justice. On February 3, 2010, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. President Barack Obama submitted my nomination to the Senate on July 14, 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

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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.

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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
Hernandez, Marco A.	U.S. District Court, Oregon	07/13/2010
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 07/14/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2009 to 06/30/2010
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.	
145 NE Second Ave. Hillsboro, OR 97124	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. Co-trustee	Trust 1
2. Committee Member	Pacific University School of Psychology Advisory Committee
3. Committee Member	Vision Action Network
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 Hernandez, Marco A.	Date of Report 07/13/2010

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 Oregon, Judicial Salary	$112,800.00
2. 2009	State of Oregon, Judicial Salary	$114,468.00
3. 2010	State of Oregon, Judicial Salary	$66,773.00
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	David Evans and Associates, Salary
2. 2009	Standard Insurance, Disability benefits
3. 2010	David Evans and Associates, Salary
4. 2010	Standard Insurance, Disability benefits

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 Hernandez, Marco A.	Date of Report 07/13/2010

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 8

Name of Person Reporting	Date of Report
Hernandez, Marco A.	07/13/2010

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (includes those of spouse and dependent children; see pp. 54-60 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 Accounts	A	Interest	J	T	Exempt				
2. Oregon Savings Growth Plan									
3. -Life Path 2020 Fund		None	J	T					
4. -Stable Value Option		None	J	T					
5. -Intermediate-Bond Option		None	J	T					
6. -Large Company Value Stock		None	K	T					
7. -Stock Index Option		None	K	T					
8. -Large Co Growth Stock Option		None	K	T					
9. -International Stock Option		None	K	T					
10. -Small/Mid-Size Co. Stock Option		None	J	T					
11. Putnam IRA									
12. -Putnam Voyager Fund CI-A		None	J	T					
13. Washington County Deferred Comp									
14. -Maxim MFS International ValuePortfolio		None	J	T					
15. -Maxim Index 600 Portfolio		None	J	T					
16. -RidgeWorth Small Cap Growth Stock-I		None	J	T					
17. -Ariel Appreciation Fund		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
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
Hernandez, Marco A.	07/13/2010

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)
18. -Davis New York Venture Fund-R		None	J	T					
19. -Federated Capital Appreciation,A		None	J	T					
20. -Maxim Stock Index Portfolio		None	J	T					
21. -Oppenheimer Capital Appreciation, A		None	J	T					
22. -Maxim Bond Index Portfolio		None	J	T					
23. -Maxim Loomis Sayles Bond Portfolio		None	K	T					
24. Public Employees Retirement Account		None	N	T					
25. David Evans Stock (common)		None	K	T					
26. David Evans 401(k)									
27. -Bank of America Stable Value		None	J	T					
28. -Vanguard Int-Term Bd Idx Sig		None	J	T					
29. -Dodge And Cox Balanced		None	K	T					
30. -American Funds Gr Fnd R5		None	J	T					
31. -Baron Growth		None	J	T					
32. -DEEI Stock		None	J	T					
33. David Evans ESOP		None	K	T					
34. Standard Insurance Stock (common)	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	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 8	Name of Person Reporting Hernandez, Marco A.	Date of Report 07/13/2010

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)
35. Trust 1									
36. -Met Life Universal Life Policy		None	K	T					
37. -Sterling Savings Bank Account		None	J	T					
38.									
39									
40.									
41.									

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 8	Name of Person Reporting Hernandez, Marco A.	Date of Report 07/13/2010

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

Regarding Part VII:

Line 11 is a Putnum IRA. The Putnam IRA is comprised entirely of a mutual fund. It is called, Putnam Voyager Fund Cl-A.

Line 35 is Trust 1. "Trust 1" is a family trust which was set up by my parents. The trust has two assets: a universal life insurance policy and a checking account. The life insurance policy has a cash surrender value of approximately $210,588. The checking account has $258.00 in it. My parents put money into the checking account each year to pay the insurance premium. They deposit approximately $4107 to pay the premium. I have six brothers and sisters, and we are all equal beneficiaries of the trust. Accordingly, I listed the amount in line 35 to reflect my share of the policy.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Hernandez, Marco A.	Date of Report 07/13/2010

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 Marco Hernandez

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

Marco Hernandez

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		4	200	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities—see schedule		129	542	Notes payable to relatives			
Unlisted securities—see schedule		41	605	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -primary residence		88	866
Real estate owned-primary residence		380	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		10	000	Line of credit		37	853
Cash value-life insurance		30	121				
Other assets itemize:							
Oregon Savings Growth Plan		108	907				
Oregon Retirement Acct (defined benefit)		251	700				
David Evans ESOP		33	915	Total liabilities		136	719
Family Insurance Trust		30	084	Net Worth		883	355
Total Assets	1	020	074	Total liabilities and net worth	1	020	074
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	
Putnam Voyager Fund Class A	$ 9,974
Maxim MFS International Value Portfolio	128
Maxim Index 600 Portfolio	245
RidgeWorth Small Cap Growth Stock-I	218
Ariel Appreciation Fund	195
Davis New York Venture Fund-R	79
Federated Capital Appreciation A	27
Maxim Stock Index Portfolio	38
Oppenheimer Capital Appreciation A	98
Maxim Bond Index Portfolio	9,016
Maxim Loomis Sayles Bond Portfolio	16,903
Bank of America Stable Value	5,891
Vanguard Intermediate-Term Bond Index Sig	10,372
Dodge & Cox Balanced	42,749
American Funds Growth Fund R5	10,194
Baron Growth	8,869
DEEI Stock	14,546
Total Listed Securities	129,542
Unlisted Securities	
Standard Insurance Co. (Common Stock)	$ 7,795
David Evans & Assocs. (Common Stock)	33,810
Total Unlisted Securities	41,605

66817.379

AFFIDAVIT

I, **MARCO ANTONIO HERNANDEZ**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/12/10
(DATE)

Marco Hernandez
(NAME)

Debra S Roggi
(NOTARY)

OFFICIAL SEAL
DEBRA S ROGGI
NOTARY PUBLIC - OREGON
COMMISSION NO. 440654
MY COMMISSION EXPIRES OCTOBER 10, 2013

Marco Hernandez
145 NE Second Ave.
Hillsboro, OR 97124

August 30, 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 an amended AO-10 which I sent 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 July 14, 2010) to the Committee on the Judiciary in response to Question 22 of the Committee Questionnaire.

In addition, I neglected to report four shares of Coca Cola stock owned by my children on the financial disclosure report. The total value of the stock is less than $300. Therefore, I ask that you accept this letter and the enclosed as an amendment to my prior submission.

Thank you for your consideration.

Sincerely,

Marco Hernandez

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Encl.

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
Hernandez, Marco A.	U.S. District Court, Oregon	08/27/2010
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 07/14/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	1/1/2009 to 06/30/2010
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.**	
145 NE Second Ave. Hillsboro, OR 97124	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. Co-trustee	Trust I
2. Committee Member	Pacific University School of Psychology Advisory Committee
3. Committee Member	Vision Action Network
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1993	Oregon Public Employees Retirement System-Retirement Account; full benefits upon retirement age 65.
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting	Date of Report
	Hernandez, Marco A.	08/27/2010

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 Oregon, Judicial Salary	$112,800.00
2. 2009	State of Oregon, Judicial Salary	$114,468.00
3. 2010	State of Oregon, Judicial Salary	$66,773.00
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	David Evans and Associates, Salary
2. 2009	Standard Insurance, Disability benefits
3. 2010	David Evans and Associates, Salary
4. 2010	Standard Insurance, Disability benefits

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 Hernandez, Marco A.	Date of Report 08/27/2010

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 8

Name of Person Reporting	Date of Report
Hernandez, Marco A.	08/27/2010

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 Accounts	A	Interest	J	T	Exempt				
2. Oregon Savings Growth Plan-Deferred Compensation		None	M	T					
3. -Life Path 2020 Portfolio Fund									
4. -Stable Value Option									
5. -Intermediate-Bond Option									
6. -Large Company Value Stock									
7. -Stock Index Option									
8. -Large Co Growth Stock Option									
9. -International Stock Option									
10. -Small/Mid-Size Co. Stock Option									
11. Putnam IRA		None	J	T					
12. -Putnam Voyager Fund CI-A									
13. Washington County Deferred Comp		None	K	T					
14. -Maxim MFS International ValuePortfolio									
15. -Maxim Index 600 Portfolio									
16. -RidgeWorth Small Cap Growth Stock-I									
17. -Ariel Appreciation 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 8

Name of Person Reporting	Date of Report
Hernandez, Marco A.	08/27/2010

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. -Davis New York Venture Fund-R									
19. -Federated Capital Appreciation,A									
20. -Maxim Stock Index Portfolio									
21. -Oppenheimer Capital Appreciation, A									
22. -Maxim Bond Index Portfolio									
23. -Maxim Loomis Sayles Bond Portfolio									
24. David Evans Stock (common)		None	K	T					
25. David Evans 401(k)		None	L	T					
26. -Bank of America Stable Value									
27. -Vanguard Int-Term Bd Idx Sig									
28. -Dodge And Cox Balanced									
29. -American Funds Gr Fnd R5									
30. -Baron Growth Retail Fund BGRFX									
31. -DEEI Stock									
32. David Evans ESOP		None	K	T					
33. Standard Insurance Stock (common)	A	Dividend	J	T					
34. Trust 1		None	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 6 of 8	**Name of Person Reporting** **Hernandez, Marco A.**	**Date of Report** 08/27/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 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)
35. -Met Life Universal Life Policy									
36. -Sterling Savings Bank Account									
37.									
38.									
39.									
40.									

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

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Hernandez, Marco A.	Date of Report 08/27/2010

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

Regarding Part VII:

Lines 3-10 reflect fund catagories for a deferred compensation account. The account is 457 plan. It is managed by the State of Oregon Savings Growth Plan. Each item listed reflects investment catagories as opposed to mutual funds. I can select the catagories. However, I have no control over the individual inverstments within the catagories. The Oregon Savings Growth Plan controls the make-up of the catagories.

Line 11 is a Putnam IRA. The Putnam IRA is comprised entirely of a mutual fund. It is called, Putnam Voyager Fund Cl-A.

Line 34 is Trust 1. The reported income and value correspond with this beneficiary's share of Trust 1.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Hernandez, Marco A.	Date of Report 08/27/2010

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 Marco Hernandez

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

Senator WHITEHOUSE. Thank you, Judge Hernandez. We are delighted to have you.

Michael Simon comes to us, he is a partner at a major national firm and leads its Portland office. I do not know if you were actually an AUSA, but you were a trial attorney in the Department of Justice, what we used to refer to as main Justice. And very pleased that you, too, have a New England connection as a Rhode Islander and welcome you, welcome any statement or introductions you would care to make.

STATEMENT OF MICHAEL SIMON, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF OREGON

Mr. SIMON. Thank you, Mr. Chairman. I have no formal statement, but I would like to begin by thanking the President of the United States for his nomination. And if I am fortunate enough to be confirmed, I thank him and the Committee and the Senate as a whole for the opportunity to serve the public as a United States district judge in the district of Oregon.

I also thank you, Mr. Chairman, and Ranking Member Sessions for convening this hearing and for listening to our testimony and for asking us questions. I also express appreciation to Senator Franken for being here.

I also very much appreciate the very kind words from Oregon's senior Senator, Ron Wyden, and his support and encouragement throughout this process. And I also appreciate the very kind words and the presence of Oregon Senator Jeff Merkley, also, for his support and encouragement throughout this process.

I very briefly would like to introduce two of my family members who are here today and to acknowledge two family members who could not join us today in person. I, first, would like to introduce and ask to rise my wife, Suzanne Bonamici. And we have been married now for 25 years and for 25 years, a little more than 25 years, she has been my very best friend. Thank you.

I also have two wonderful children. My daughter, Sara Simon. Thank you.

Senator WHITEHOUSE. You thought you would get off easy, Sara.

Mr. SIMON. Sara is a college sophomore. And my other child, my son, Andrew, graduated from college a few months ago and is now off in graduate school at a far distance. He is watching on the Webcast, at least that is what I have been told. And I also understand that my mother, Arlene Simon, is going to be watching on the Webcast, as well, and I thank her for beginning my education and for instilling character and value traits in me and for which I am much appreciative.

I look forward to answering the questions from the Committee. Thank you very much.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Michael Howard Simon

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

   United States District Judge for the District of Oregon

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.

   Perkins Coie LLP
   1120 N.W. Couch Street, Tenth Floor
   Portland, Oregon 97209

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

   1956; New York City, 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.

   1978 to 1981, Harvard Law School; J.D. (*cum laude*), 1981

   1974 to 1978, University of California at Los Angeles; B.A. (*summa cum laude*), 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.

   1986 to Present
   Perkins Coie LLP
   1120 N.W. Couch Street, Tenth Floor
   Portland, Oregon 97209
   Partner (1990 – present)
   Associate (1986 – 1989)

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2009, 2006, 1999, and 1997
Lewis & Clark Law School
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219
Adjunct Professor of Law (teaching Antitrust Law for four semesters)

1981 to 1986
United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney (1981 – 1986)
Special Assistant United States Attorney, Eastern District of Virginia (1985)

1980 to 1981
Harvard University
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Teaching Fellow at Harvard College for Professor Archibald Cox in Constitutional Law
Teaching Fellow at Harvard Law School for Professor David Shapiro in Legal Methods

Summer 1980
Palmer & Dodge (now known as Edwards Angell Palmer & Dodge)
111 Huntington Avenue
Boston, Massachusetts 02199
Summer Associate

Summer 1979
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant for Professor Clark Byse in Administrative Law and Contract Law

Other Affiliations (Uncompensated)
2008 to Present
Oregon Area Jewish Committee
1220 S.W. Morrison Street, Suite 828
Portland, Oregon 97205
Vice President & Board Member

2006 to Present
American Constitution Society for Law and Policy, Oregon Lawyer Chapter
c/o Mr. Cody Hoesly, President
621 S.W. Morrison Street, Suite 1450
Portland, Oregon 97205
Board Member

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2005 to Present
Congregation Beth Israel
1972 N.W. Flanders Street
Portland, Oregon 97209
President (2008 – 2010)
Vice President (2006 – 2008)
Board Member (2005 – Present)

1998 to Present
Classroom Law Project
620 S.W. Main Street, Suite 102
Portland, OR 97205
President (2002 – 2003)
Board Member (1998 – Present)

2000 to 2008
American Jewish Committee, Oregon Chapter
1220 S.W. Morrison Street, Suite 828
Portland, Oregon 97205
President (2006 – 2008)
Vice President (2004 – 2006)
Board Member (2000 – 2008)

1997 to 2004
American Civil Liberties Union of Oregon
P.O. Box 40585
Portland, Oregon 97240
Vice President, Litigation (2000 – 2004)
Vice President, Legislation (1997 – 1998)
Board Member (1997 – 2004)

2003-2004
Tsongas Litigation Consulting, Inc.
One S.W. Columbia Street, Suite 600
Portland, Oregon 97258
Board Member

1995 to 2002
Jewish Federation of Greater Portland
6680 S.W. Capitol Highway
Portland, Oregon 97219
Vice President (2000 – 2002)
Chair, Community Relations Committee (1995 – 1997)
Board Member (1995 – 2002)

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1990 to 1993
Oregon Board of Bar Examiners
16037 S.W. Upper Boones Ferry Road
P.O. Box 231935
Tigard, Oregon 97281
Chair (1992 – 1993)
Member (1990 – 1993)

1987 to 1989 (approximate)
Waverly Children's Home (now known as the Trillium Waverly Children's Home)
3415 S.E. Powell Boulevard
Portland, Oregon 97202-3371
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 did not serve in the military. I registered for the selective service upon turning 18.

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

Fellow, American College of Trial Lawyers (2006)
"Best Lawyers in America" for commercial litigation, appellate litigation, and First Amendment Law (multiple years since 1995)
"America's Leading Lawyers for Business," *Chambers USA* (since approximately 2006)
"Oregon Super Lawyers," *Oregon Law and Politics* (since approximately 2006)
AV-Rated, Martindale-Hubbell (Highest Ranking for Legal Ability & Ethical Standards)
Phi Beta Kappa, U.C.L.A. (1978)

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

American Bar Association
Antitrust Section
Litigation Section
American College of Trial Lawyers
American Constitution Society for Law and Policy, Oregon Lawyers Chapter
Board of Directors (2006 – Present)
Federal Bar Association, Oregon Chapter
Multnomah Bar Association
Multnomah County Presiding Court Task Force on Civil Jury Trial Practices
Member (2006 –Present)

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Oregon Board of Bar Examiners (1990 – 1993)
Chair (1992 – 1993)
Oregon State Bar Association
Chair, Constitutional Law Section (2004)
Chair, Antitrust and Trade Regulation Section (1990 – 1991)
Owen M. Panner American Inn of Court (Master, 1996 – 2007; Emeritus, 2008 – Present)
Executive Committee (1999 – 2007)

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, 1981
District of Columbia, 1984
Oregon, 1986

There has been no lapse in my Oregon membership. I allowed my California and District of Columbia memberships to lapse after I had moved to Oregon and decided that I would not be practicing in those jurisdictions.

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, 1985
United States Court of Appeals for the Fourth Circuit, 1985
United States Court of Appeals for the Fifth Circuit, 1983
United States Court of Appeals for the Ninth Circuit, 1986
United States District Court for the District of Oregon, 1986

There have been no lapses in these memberships.

11. **Memberships**:

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

American Civil Liberties Union of Oregon (mid-1980s – Present)
Vice President, Litigation (2000 – 2004)
Vice President, Legislation (1997 – 1998)

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Board Member (1997 – 2004)
Lawyers Committee (1989 – Present)
American Jewish Committee National Legal Committee (1999 – Present)
American Jewish Committee, Oregon Chapter (mid 1990s – 2008)
President (2006 – 2008)
Vice President (2004 – 2006)
Board Member (2000 – 2008)
City Club of Portland (early 2000s – Present)
Classroom Law Project (1998 – Present)
President (2002 – 2003)
Board of Directors (1998 – Present)
Harvard Law School Association (1981 – Present)
Jewish Federation of Greater Portland (mid 1990s – Present)
Vice President (2000 – 2002)
Chair, Community Relations Committee (1995 – 1997)
Board Member (1995 – 2002)
Mittleman Jewish Community Center (1988 to late 1990s, approximate)
Oregon Area Jewish Committee
Vice President (2008 – Present)
Board Member (2008 – Present)
Member since 2008
U.C.L.A. Alumni Association (1978 – Present)
World Affairs Council of Oregon (early 2000s – Present)
West Hills Racquet & Fitness Club (late 1990s – Present, approximate)

I have made financial contributions to a number of charitable organizations over the years, including various educational, health research, cultural, literary, theater, 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."

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

To the best of my knowledge, none of the above-listed organizations invidiously discriminates on the basis of race, sex, religion, or national origin. I am not aware of any former discrimination by these organizations.

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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.

Traditional Publications

FEDERAL CIVIL LITIGATION IN OREGON (OSB Legal Pubs 2009). I was one of four general editors of this book published by the Oregon State Bar as well as one of three co-authors of Chapter 24 ("Trial Practice"). This book was first published in 1994, a cumulative supplement was issued in 2002, and a second edition published in 2009. I have supplied copies of the introduction and of Chapter 24 from the 2009 second edition and from the 1994 edition along with the 2002 cumulative supplement for that chapter.

Book review, "*Perilous Times* Have Always Been With Us," published in the July 2005 *Newsletter* of the Oregon State Bar Constitutional Law Section. Copy supplied.

"Civil Discovery: Working Backwards to Get Ahead," OREGON STATE BAR LITIGATION SECTION JOURNAL, Vol. 22, No. 2, pages 10-13 (August 2003). Copy supplied.

Michael H. Simon, *Jewish Community Appalled at Effort Making It Seem to Favor Measure 13*, OREGONIAN (Letter to the Editor), Oct. 25, 1994. Copy supplied.

Internet Postings

Posting to BlueOregon.com (Feb. 1, 2007), at http://www.blueoregon.com/2007/01/steve_novick_if.html#comments (last visited June 30, 2010).

Posting to BlueOregon.com (Jan. 24, 2007), at http://www.blueoregon.com/2007/01/attorney_genera.html#comments (last visited June 30, 2010).

Client Testimonial, Tsongas Litigation Consulting. Copy supplied.

Client Testimonial, Naegeli Reporting. Copy supplied.

Client Testimonial, Jeffrey Batchelor, professional mediator. Copy supplied.

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Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other publications I have been unable to recall or 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.

"Recommended Practices for Civil Jury Trials in Multnomah County Circuit Court," published in 2008 by the Multnomah County Presiding Court Task Force on Civil Jury Trial Practices. (I contributed to this document, but it was the joint product of the entire Task Force.) Copy supplied.

Although I have searched my memory, my records, and Internet databases in responding to this question, there may be other reports, memoranda or policy statements that I prepared or to which I contributed that I have been unable to recall or 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 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.

I searched my memory, my records, and Internet sources to create a list of speeches and talks that is as comprehensive as possible, but I may have given other speeches or talks that I have been unable to recall or identify.

Moderator, Beth Israel event on Darfur with *New York Times* columnist Nicholas Kristof on July 22, 2007 in Portland Oregon. I have no notes, transcript, or recording.

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"Recommended Practices for Civil Jury Trials in Multnomah County Circuit Court," a presentation delivered on November 12, 2009, to the Multnomah County Bar Association (co-presented with Multnomah County Circuit Court Judge Janice R. Wilson). I presented the Task Force paper, "Recommended Practices for Civil Jury Trials in Multnomah County Circuit Court," for which I have supplied the published form in response to question 12b.

"Campaign Finance Law in Oregon," a presentation delivered on July 15, 2009, to PolitiCorps students (a program of The Bus Project). Notes supplied.

Panelist, Northwest Classical Theatre Company's discussion on The Merchant of Venice, 2009. I have no notes, transcript, or recording.

"Recent Election Law Cases from the United States Supreme Court," a presentation sponsored by the Law School Democrats and delivered on October 30, 2008, at Lewis and Clark Law School, Portland, Oregon. A videocast of this presentation is available at http://lawlib.lclark.edu/podcast/?p=593 (last visited June 30, 2010). Notes supplied.

Panelist, Beth Israel event with Justice Ruth Bader Ginsburg on September 13, 2008 in Portland, Oregon. I have no notes, transcript, or recording.

"Intelligent Design, Science, and the Constitution," a presentation delivered as part of a debate entitled "Debate on the Teaching of Intelligent Design Theory," co-sponsored by the Federalist Society and the American Constitution Society Lewis and Clark Law School Chapters on April 10, 2008, at Lewis and Clark Law School, Portland, Oregon. A videocast of this debate is available at http://lawlib.lclark.edu/podcast/?p=487 (last visited June 30, 2010). Notes and speech text supplied.

"Science and Religion: A Conversation Between a Scientist and a Rabbi," a panel discussion that I moderated on February 10, 2008, at Congregation Beth Israel in Portland, Oregon. Notes supplied.

"The December Dilemma," a panel discussion in which I participated, held for parents and teachers in November 2007 in Portland, Oregon, at the Mittleman Jewish Community Center and sponsored by the Jewish Federation of Portland. I have no notes, transcript, or recording.

Master of Ceremonies, Oregon Jewish Museum's Art Auction in Nov 2007. I have no notes, transcript, or recording.

"The Religion Clauses: A Controversial History over a Simple Question," a presentation delivered as part of a program entitled "Another Viewpoint: Religious Freedom and the Law – A Response to Justice Scalia," presented by the

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American Constitution Society Oregon Lawyer Chapter on May 23, 2007, in Portland, Oregon. Speech text supplied.

"Preserving Civil Liberties and Security: What We Can Learn from History, Language, and First Principles," a presentation on March 1, 2007, to the Oregon Board of Rabbis, in Portland, Oregon. Speech text supplied.

"Freedom of Expression Under the First Amendment," a presentation on June 28, 2005, to the Classroom Law Project's Summer Institute for teachers in Portland, Oregon. Notes supplied.

"Civil Discovery: Working Backwards to Get Ahead," a presentation on March 31, 2004, to the Federal Practice and Procedure Seminar, Federal Bar Association, in Portland, Oregon. Notes supplied.

"Who Is the Client of a State Attorney General," a presentation delivered in October 2002 in Portland, Oregon, to the Antitrust Seminar of the National Association of Attorneys General. I have no notes, transcript, or recording.

"Discovery: Moving Forward by Working Backwards," a presentation on November 30, 2001, to the Federal Practice and Procedure Seminar, Federal Bar Association, in Portland, Oregon. Notes supplied.

"Balancing the Risk and the Remedy: Temporary Restraining Orders and Preliminary Injunctions," a presentation on December 10, 1999, to the Federal Practice and Procedure Seminar, Federal Bar Association, in Portland, Oregon. Notes supplied.

"Antitrust Basics: Price Discrimination and the Robinson-Patman Act," a presentation on September 18, 1999, to the Oregon State Bar Antitrust and Trade Regulation Section, in Seaside, Oregon. Notes supplied.

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

I searched my memory, my records, and Internet sources to create a list of interviews that is as comprehensive as possible, but I may have given other interviews that I have been unable to recall or identify.

Courtney Sherwood, *Second Lawsuit Filed Over Summit 'Ponzi Scheme,'* PORTLAND BUSINESS JOURNAL, Nov. 27, 2009.

Posting of Britten Chase to PolitickerOr.com (December 4, 2008) (*Simon confident next U.S. Attorney will uphold constitution and law*)

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Oregon Supreme Court Finds State's Harassment Statute Unconstitutional, STATES NEWS SERVICE, Aug. 14, 2008.

Yamhill County, Ore., Democrats call fair unfair, ASSOC. PRESS, Aug. 13, 2008.

No surcharge for S. Ore. political paraders, ASSOC. PRESS, July 15, 2008.

Michele Mihalovich, *Ashland parade entry fees will be changed. Charging higher fees for political floats violates the U.S. and Oregon constitutions, claims ACLU Foundation*, SO. OREGON'S MAIL TRIBUNE, July 15, 2008.

Deborah Moon, *Oregon Area Jewish Committee means local focus*, JEWISH REVIEW, July 14, 2008.

Peter Koon, *Allegro Builders Sue TriMet on $1 Sale*, THE PORTLAND TRIBUNE, April 22, 2008

Nigel Jaquiss, *Dozono Explains the Poll: Auditor's Decision Tomorrow*, WILLAMETTE WEEK, March 4, 2008.

Deborah Moon, *Science, religion called friends, not enemies*, JEWISH REVIEW, Feb. 14, 2008.

Ashbel S. Green, *Court Suggests Son Should Decide Circumcision Fight*, RELIGION NEWS SERVICE, Jan. 28. 2008

Ashbel S. Green, *The high court says a parents' battle over circumcising their son lacks the boy's state of mind*, OREGONIAN, Jan. 26, 2008.

Ashbel S. Green, *Jewish rite case needs more info. ruling says*, OREGONIAN, Jan. 26, 2008.

Melissa Rogers, *The Oregon Supreme Court on Friday blocked a divorced former Southern Oregon man from circumcising his 12-year-old son against the wishes of the boy's mother*, OREGONIAN, Jan. 25, 2008.

Kristian Foden-Vencil, *Court Rules Boy's Views Must Be Considered in Circumcision Case*, OREGON PUBLIC BROADCASTING (NEWS), Jan. 25, 2008.

Edward Hershey, *Parents teach schools lessons about religion*, OREGONIAN, Nov. 17, 2007.

Deborah Moon, *'Odd Couple' creator Daniel Simon, 86, dies in Portland*, JEWISH REVIEW, Nov. 14, 2007.

Deborah Moon, *Explore Religion in Schools Nov. 4*, JEWISH REVIEW, Oct. 19, 2007.

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Anne Saker, *Wu calls on lawyer while on jury duty, gets off case*, OREGONIAN, Aug. 17, 2007.

American College of Trial Lawyers elects Michael Simon as fellow, DAILY JOURNAL OF COMMERCE (PORTLAND, OR), Sept. 29, 2006.

Briefly; General News, THE REGISTER-GUARD, Sept. 9, 2006

Anne Saker, *Residency rule pushes judge out of race*, OREGONIAN, Sept. 8, 2006.

Anne Saker, *Bench battle pits neighbor against judge*, OREGONIAN, Sept. 6, 2006.

Angela Valdez, *Bench Brouhaha: A race for Multnomah County judge turns nasty*, WILLAMETTE WEEK, Sept. 6, 2006.

David Austin, *TV comedy scribe Daniel Simon dies*, OREGONIAN, July 28, 2005.

Harry Esteve and Michelle Cole, *Wu calls what he did in 1976 'inexcusable,'* OREGONIAN, Oct. 13, 2004.

Laura Gunderson, Dave Hogan and Jeff Kosseff, *Allegation of assault on woman in 1970s in college shadows Wu*, OREGONIAN, Oct. 13, 2004.

Harry Esteve and Michelle Cole, *Congressman Says College Romance Ended in 'Inexcusable Behavior,'* NEWHOUSE NEWS SERVICE, Oct. 12, 2004.

John Schrag, *Skinhead Revisited: A new book reexamines Portland's neo-Nazi legacy*, WILLAMETTE WEEK, Sept. 10, 2003.

Dylan Rivera, *Weyerhaeuser Loses Lawsuit, Jury Says Timber Giant Illegally Eliminated Rival*, OREGONIAN, Apr. 19, 2003.

Dylan Rivera, *Suit Says Weyerhaeuser Bullied Alder Producers*, OREGONIAN, Apr. 11, 2003.

Charles Lane, *Ruling Curbs Abortion Foes' Tactics: Court Says 'Wanted' Posters and Web Site are Intimidation*, WASH. POST, May 17, 2002.

Lisa Grace Lednicer, *Court Set to Take Up High Stakes Congressional Redistricting Battle*, OREGONIAN, Sept. 19, 2001.

Wendy Own, *Lawsuit alleges defamation via email*, OREGONIAN, March 10, 2001.

Willamette will give Weyerhaeuser stockholder list, ASSOC. PRESS, Dec. 27, 2000.

Dylan Rivera, *Portland, Ore-Based Forest Products Firm Resists hostile takeover*, OREGONIAN, Dec. 13, 2000.

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Noelle Crombie, *Schools Approach Clergy Visits Differently, District Attorneys and Civil Liberties Experts Say Ministers' School Visits Violate The U.S. And Oregon Constitutions*, OREGONIAN, Nov. 20, 2000.

Quinton Smith, *Gallagher Case Involves Principles of Openness*, OREGONIAN, Oct. 26, 2000.

Harry Esteve, *City Ordered to Hand Over Memo on Gallagher Inquiry*, OREGONIAN, Apr. 30, 1999.

Ashbel S. Green, *Jury Finds Anti-Abortion Web Site Threat To Doctors*, OREGONIAN, Feb. 3, 1999.

Sallie Tisdale's Second Thoughts: The Limits of Free Speech, SALON, Feb. 3, 1999, http://www.salon.com/life/feature/1999/02/cov_03feature3.html.

Kim Murphy, *Anti-Abortion Web Site Fined $107 Million; Court: Gruesome Internet Destination Constitutes Threat to Doctors, Ruling Says. Some Say Free Speech Is Undercut*, LOS ANGELES TIMES, Feb. 3, 1999.

Ashbel S. Green, *Free Speech Is Underlying Case On Abortion*, OREGONIAN, Jan. 24, 1999.

Peter Farrell, *Judge Reinstates Suit*, OREGONIAN, Dec. 14, 1998.

Maureen O'Hagan, *Words Hurt*, WILLAMETTE WEEK, Dec. 9, 1998.

David R. Anderson, *Judge Dismisses Suit*, OREGONIAN, Nov. 2, 1998.

David R. Anderson, *$5.5 Million Awarded to Ex-Wife in Shooting*, OREGONIAN, Aug. 21, 1998.

Steve Suo, *Court Asked To Unplug 'Christmas' Tree Bill*, OREGONIAN, Sept. 20, 1995.

Ken Goe, *Pettibone's Praying With Athletes Raises Questions*, OREGONIAN, July 2, 1995.

Mark O'Keefe and Maisha Maurant, *High Court Lowers Church, State Barrier*, OREGONIAN, June 30, 1995.

Sura Rubenstein, *OCA Claims That Gays Were Behind Holocaust*, OREGONIAN, Oct. 19, 1994.

Pat Forgey, *Astoria Libel Action Ends in Mistrial, Settlement*, OREGONIAN, Aug. 11, 1993.

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Pat Forgey, *Arguments Heard as Libel Suit Trial Opens in Astoria*, OREGONIAN, Aug. 4, 1993.

Paul Sturtz, *Smaller Rival Pushing Antitrust Charges Against Act III*, THE BUSINESS JOURNAL OF PORTLAND, Nov. 11, 1991.

Metzger Asks ACLU to Aid in Appeal, OREGONIAN, Nov. 6, 1990.

Award in Racial Slaying Is Lawyer's Latest Victory, CHICAGO TRIBUNE (ASSOC. PRESS), Oct. 25, 1990.

Anne Krueger, *Activists Hope Judgment Puts Metzger Out of 'Hate Business,'* SAN DIEGO UNION-TRIBUNE, Oct. 24, 1990.

Bob Baum, *Another Courtroom Victory Makes Dees Two for Two Against Racists*, ASSOC. PRESS, Oct. 23, 1990.

John Snell, *Metzger 'Stupid' To Defend Himself, Says Opposition Attorney*, OREGONIAN, Oct. 23, 1990.

James Willwerth, *Law: Making War on War*, TIME, Oct. 22, 1990.

John Snell, *Suit Dodges First Amendment Issues*, OREGONIAN, Oct. 19, 1990.

Kerry Godes, *Metzger Attacks the Credibility of Key Witness*, SEATTLE POST-INTELLIGENCER, Oct. 19, 1990.

Darlene Himmelspach, *Metzgers open defense, attempt to discredit accuser's testimony*, SAN DIEGO UNION-TRIBUNE, Oct. 19, 1990.

Kathy Brock, *Minority Hiring Targeted by Portland Law Firms*, THE BUSINESS JOURNAL OF PORTLAND, Oct. 15, 1990.

Fred Leeson, *Metzger Gets Points for Courtroom Style*, OREGONIAN, Oct. 13, 1990.

Robb London, *Law; Free Speech and Civil Rights Clash in Racism Trial*, NEW YORK TIMES, Oct. 12, 1990.

John Snell, *ACLU Brief Says 2 Metzger Counts Should Be Dropped*, OREGONIAN, Oct. 6, 1990.

Kathy Brock, *Starting Attorneys to Get 6 Percent More in 1990*, THE BUSINESS JOURNAL OF PORTLAND, Sept. 24, 1990.

Fred Leeson, *Bar Votes Against Bork By 3-1 Ratio*, OREGONIAN, Sept. 18, 1987.

Peace Ambulance Service; $17.5 Million Sought in Health-Care Antitrust Suit, BUSINESS WIRE, Feb. 20, 1987.

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Peace Ambulance Sues MWMC, HERALD AND NEWS, 1987.

Michael Specter, *Man Convicted of Mail Fraud; Immigrants Were Bilker's Target*, WASH. POST, May 25, 1985.

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.

By appointment of the Oregon Supreme Court, I served as a volunteer judge *pro tem* on the Multnomah County Circuit Court from December 11, 1997, to June 6, 2000. In this capacity, I heard and decided approximately 40 civil matters, primarily motions for summary judgment. In addition, in one of those cases, the parties later stipulated to having me serve as their "reference judge" and preside over their bench trial.

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

One.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	100%
civil proceedings:	100%
criminal proceedings:	0%

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

As a judge *pro tem* of the Multnomah County Circuit Court, I issued most decisions orally upon the conclusion of the argument and, on occasion, took a matter under advisement to later issue a letter opinion. These letter opinions would then often be attached to the final order prepared by the prevailing party and filed with the official case record.

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).

I presided over one trial. In the case of *Kagan v. Itex Corporation*, Multnomah County Circuit Court Case No. 9807-05589, I originally served as a judge *pro*

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tem, hearing the parties' pretrial motions. The parties requested that I serve as their "reference judge" and preside over their bench trial. This case involved allegations of breach of contract, breach of fiduciary duty, and violation of Oregon securities law. I found in favor of plaintiff with regard to his securities law claims and in favor of defendant with regard to all other claims.

The lead counsel for plaintiff was Michael J. Esler of Esler, Stephens & Buckley, 888 S.W. Fifth Avenue, Suite 700, Portland, OR 97204; telephone (503) 223-1510. The lead counsel for defendants was Bruce L. Campbell, Miller Nash LLP, 111 S.W. Fifth Avenue, Suite 3400, Portland, OR 97204; telephone (503) 205-2419. A copy of my opinion is supplied.

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. *Adam v. Scripter*, Multnomah County Circuit Court Case No. 9701-00379 (opinion dated January 9, 1998)

   Counsel: John A. Bennett, Bullivant Houser Bailey, 888 S.W. Fifth Avenue, Suite 300, Portland, OR 97204, Telephone: (503) 499-4418. Darien S. Loiselle, Schwabe Williamson & Wyatt, 1211 S.W. Fifth Avenue, Suite 1900, Portland, OR 97204, Telephone: (503) 222-9981.

2. *Richardson v. City of Portland*, Multnomah County Circuit Court Case No. 9701-00726 (opinion dated January 11, 1998)

   Counsel: Megan E. Glor, 621 S.W. Morrison Street, Suite 900, Portland, OR 97205, Telephone: (503) 223-7400. Mary T. Danford, Portland City Attorney's Office, 1221 S.W. Fourth Avenue, Suite 430, Portland, OR 97204, Telephone: (503) 823-4047.

3. *Jones v. Pacific Western Homes, Inc.*, Multnomah County Circuit Court Case No. 9706-04368 (opinion dated May 1, 1998)

   Counsel: Richard L. Grant, 1205 N.W. 25th Street, Portland, OR 97210, Telephone: (503) 222-7343. E. Michael Connors, Davis Wright Tremaine, 1300 S.W. Fifth Avenue, Suite 2300, Portland, OR 97201, Telephone: (503) 778-5227.

4. *Erickson v. Hamilton Construction Company*, Multnomah County Circuit Court Case No. 9707-05572 (opinion dated June 4, 1998)

   Counsel: Edward T. Tylicki, Nike, Inc., One Bowerman Drive, Beaverton, OR 97005, Telephone: (503) 532-4411. Richard J.

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Whittemore, Bullivant Houser Bailey, 888 S.W. Fifth Avenue, Suite 300, Portland, OR 97204, Telephone: (503) 499-4646.

5. *Panpat v. Owens-Brockway Glass,* Multnomah County Circuit Court Case No. 9708-06234 (opinions dated October 16 and December 4, 1998)

   Counsel: Jana Toran, TriMet, 4012 S.E. 17th Street, Portland, OR 97202, Telephone: (503) 962-5650. Chris Kitchel, Stoel Rives, 900 S.W. Fifth Avenue, Suite 2600, Portland, OR 97204, Telephone: (503) 294-9429.

6. *Moore v. City of Fairview,* Multnomah County Circuit Court Case No. 9805-03699 (opinion dated March 30, 1999)

   Counsel: Mark P. Reeve, Reeve Kearns, 621 S.W. Morrison Street, Suite 1225, Portland, OR 97205, Telephone: (503) 225-0713. Steven G. Marks, 3735 S.E. Clay Street, Portland, OR 97214, Telephone: (503) 417-1600.

7. *City of Gresham v. Lednicer,* Multnomah County Circuit Court Case No. 9804-03175 (opinion dated April 28, 1999)

   Counsel: Susan G. Bischoff, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301, Telephone: (503) 947-4442. Per A. Ramfjord, Stoel Rives, 900 S.W. Fifth Avenue, Suite 2600, Portland, OR 97204, Telephone: (503) 294-9257.

8. *Waldron v. CYR Enterprises, Inc.,* Multnomah County Circuit Court Case No. 9812-08704 (opinion dated August 6, 1999)

   Counsel: John Kaempf, Brooksby Kaempf, 121 S.W. Morrison Street, Suite 1100, Portland, OR 97204, Telephone: (503) 224-5006. Jeffrey M Batchelor, Markowitz Herbold Glade & Mehlhaf, 1211 S.W. Fifth Avenue, Suite 3000, Portland, OR 97204, Telephone: (503) 295-3085.

9. *Patrick v. Jones,* Multnomah County Circuit Court Case No. 9812-08853 (opinion dated November 7, 1999)

   Counsel: Roger J. Leo, 520 S.W. Yamhill Street, Suite 1025, Portland, OR 97204, Telephone: (503) 222-1414. Mark M. McCulloch, Powers McCulloch & Bennett, 1300 S.W. Fifth Avenue, Suite 1720, Portland, OR 97201, Telephone: (503) 228-8588.

10. *Northern Bank of Commerce v. Wendell,* Multnomah County Circuit Court Case No. 0001-00518 (opinion dated June 24, 2000)

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Counsel: Bennett H. Goldstein, 1132 S.W. 19th Avenue, Suite 106, Portland, OR 97205, Telephone: (503) 294-0940. Stephen E. Andersen, 12235 S.E. Juniper Avenue, Milwaukie, OR 97222, Telephone: (503) 659-1282.

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.

In the case of *Panpat v. Owens-Brockway Glass Container, Inc.*, I originally granted summary judgment to the defendant employer, but later granted the plaintiff's motion for a new trial based upon newly discovered evidence. The Oregon Court of Appeals reversed my grant of plaintiff's motion for a new trial and stated that I had correctly granted the defendant employer's motion for summary judgment. 21 P.3d 97 (Or. App. 2001). The Oregon Supreme Court reversed and remanded the decision of the Oregon Court of Appeals on other grounds. 49 P.3d 773 (Or. 2002). On remand, the Oregon Court of Appeals affirmed on other grounds, following the decision of the Oregon Supreme Court, and concluded that a factual dispute precluded summary judgment. 71 P.3d 553 (Or. App. 2003).

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.

Most of my decisions as a judge *pro tem* were rendered orally upon the conclusion of the argument. In approximately one dozen cases, I took the matter under advisement and later issued letter opinions, which are 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.

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

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

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

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

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

    As a judge *pro tem* of the Multnomah County Circuit Court, I was assigned cases by the clerk's office to be heard on dates that I had previously indicated availability for volunteer service. As soon as I received the case files for a particular hearing date, my law firm would promptly perform a standard computer-assisted conflicts check. We compared the names of the parties in the cases to which I was assigned to the names in my law firm's database, looking to see whether any party in the matter coming before me as a judge *pro tem* was a current or former client of my law firm or currently or formerly adverse to a law firm client. In a number of cases originally assigned to me, we discovered a conflict or potential conflict using this procedure, and I immediately recused myself from matters involving current clients or parties currently adverse to a firm client. In cases involving only former clients or parties formerly adverse to a firm client or former client, I disclosed that information to counsel and inquired whether any counsel requested that I recuse myself. This was the common practice followed by the *pro tem* judges in this court.

    In addition, in one case that I recall, a lawyer whom I did not know requested my recusal. Consistent with the practices of the court, that recusal request was granted. I later learned that the lawyer who requested my recusal did not know me, but simply wanted his motion heard by a "regular" circuit judge rather than by a volunteer judge *pro tem*.

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.

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I have never held a 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 provided legal services campaigns on both a *pro bono* basis and for compensation through the Perkins Coie LLP law firm where I am a partner. I also have volunteered in other capacities for several campaigns. I searched my memory and files to create as complete a list as possible of the campaigns and capacities in which I have been so involved, but there may be others I have been unable to recall or identify.

President Barack Obama (volunteer State Counsel in Oregon for the Obama-Biden presidential campaign of 2008; volunteer fundraising and other campaign activities)

Senator John Kerry (volunteer State Counsel in Oregon for the Kerry-Edwards presidential campaign of 2004)

Senator Jeff Merkley (volunteer election counsel in 2008; volunteer fundraising and other campaign activities; volunteer campaign advisor; some compensated representation in election-related legal matters)

Senator Ron Wyden (campaign volunteer in 1996)

Congressman David Wu (volunteer election counsel in 2008, 2006, 2004, and 2002; volunteer campaign advisor; some compensated representation in election-related legal matters)

Oregon Governor Ted Kulongoski (volunteer election counsel for gubernatorial elections in 2006 and 2002)

Oregon Attorney General John Kroger (volunteer election counsel in 2008; volunteer fundraising and other campaign activities; volunteer campaign advisor)

State Senator Suzanne Bonamici (to whom I am married) (volunteer fundraising and other campaign activities; volunteer campaign advisor in both 2008 election for State Senate and 2006 election for State Representative)

State Representative Chris Garrett (volunteer campaign activities in 2008)

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State Representative Brent Barton (volunteer campaign activities and volunteer campaign committee member in 2008)

State Representative candidate Toby Forsberg (volunteer election counsel in 2008)

State Representative candidate Michele Eberle (volunteer election counsel in 2008)

State Representative (then-candidate) Mitch Greenlick (volunteer election counsel in 2000)

Over the last fifteen years, I have often agreed to allow candidates for state judicial office to use my name among lists of public supporters. I have not retained a list of such candidates and their campaigns.

In addition, since 2001, I have volunteered for various activities for the Democratic Party of Oregon and have also performed various compensated legal work for the Democratic National Committee and related entities through the law firm of Perkins Coie LLP where I am a partner.

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

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

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

I have not served as a clerk to a judge.

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.

1981 to 1986
United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney (1981 – 1986)
Special Assistant United States Attorney (E.D. Va.) (1985)

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1986 to Present
Perkins Coie LLP
1120 N.W. Couch Street, Tenth Floor
Portland, Oregon 97209
Partner (1990 – present)
Associate (1986 – 1989)

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 in seven cases that I recall. In the one case, I was retained and paid by the lead counsel for the parties. In the other cases, I was appointed by the Oregon Court of Appeals as part of the Oregon Appellate Settlement Conference program. The matters that I have mediated are:

1. Claim of misappropriation of intellectual property and breach of contract to pay royalties (retained mediator);

2. Claim of employment discrimination and sexual harassment;

3. Claim to modify property division in a divorce action;

4. Claim of liability for business property negligently damaged;

5. Claim for money due in dispute involving commercial paper and banking practices;

6. Claim of personal injury caused by negligent dying of hair; and

7. Claim of negligent performance of a government contract, raising a question of who is a necessary party.

b. Describe:

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

In September 1981, I began work as a trial attorney with the United States Department of Justice, Antitrust Division, in Washington, D.C., having been hired under the Attorney General's Honors Program. I was assigned to the Transportation Section, which later became the Transportation, Energy, and Agriculture Section. While working for the Antitrust Division until early 1986, I handled both criminal and civil antitrust investigations and litigation. I worked on approximately one-half dozen grand jury investigations in four cities around the country, questioned

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witnesses before the grand jury, prepared charging recommendations, and negotiated and documented plea agreements. I also worked on several civil investigations, for which my work included review of documents, taking depositions, and developing analyses with economists employed by the Antitrust Division. I briefed civil motions and assisted more senior attorneys in preparing for oral argument of those motions at both the district court level and before the United States Court of Appeals for the Fifth Circuit. I also participated in negotiating and documenting civil settlement agreements, including consent decrees. In addition, I participated in some federal regulatory proceedings and pre-merger review analysis.

In early 1985, I volunteered for and was assigned to a six-month rotation as a Special Assistant United States Attorney in the United States Attorney's Office for the Eastern District of Virginia. In this position, I began by prosecuting misdemeanor crimes committed on federal property and was soon assigned to the investigation and prosecution of felonies. As the only prosecutor on the case, I handled the prosecution of a defendant accused of armed bank robbery through jury trial and sentencing. I briefed and argued the appeal from that trial to the United States Court of Appeals for the Fourth Circuit, resulting in an affirmance of the conviction. I also assisted a more senior Assistant United States Attorney in preparing and trying a multi-count case of white collar fraud, which resulted in a conviction following a three-week jury trial.

I entered the private practice of law in February 1986 when I joined the Portland office of the Perkins Coie law firm. I became a partner in 1990 and head of litigation for the Portland office several years ago. My practice focuses primarily on business litigation in both federal and state courts and at both the trial and appellate levels. Since joining Perkins Coie I have tried 20 civil cases to resolution (one additional case settled after three weeks of trial), including 14 jury trials and six bench trials. I have also handled preliminary injunctions and temporary restraining order proceedings.

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

When I worked for the United States Department of Justice, my client was the United States of America.

Since joining Perkins Coie almost 24 years ago, I have represented a broad range of private clients, among them corporate entities (large and small), small business owners, and individuals including indigent persons.

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Although I have been consulted by a range of clients throughout my years in private practice, over time they have increasingly sought me out for strategic advice and representation and have brought to me some of their more difficult problems. In addition to my work for private clients, beginning in about 2000, I have been representing elected officials and candidates with election law and other election-related legal issues, including, on occasion, litigation and potential litigation.

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

Throughout my career, I have 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: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 90%
2. criminal proceedings: 10%

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

I have tried 20 cases to verdict or final decision. In addition, I had one jury trial that settled after three weeks at trial and two jury trials that ended with deadlocked juries. Of the 20 cases that I tried to verdict, 12 were civil jury trials, two were criminal jury trials, and six were civil bench trials. Also, of these 20 trials tried to verdict or final decision, I was the sole counsel in three, the chief counsel in 13, and the associate counsel in four.

i. What percentage of these trials were:

1. jury: 70%
2. non-jury: 30%

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

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In the federal antitrust case of *Confederated Tribes of Siletz Indians and Ross-Simmons Hardwood Lumber Company, Inc. v. Weyerhaeuser Co.*, Civil No. 00-1693, U.S. District Court for the District of Oregon, I was the lead trial attorney for Weyerhaeuser before the district court. I also consulted with Weyerhaeuser's Supreme Court appellate counsel in the preparation of Weyerhaeuser's briefs and the presentation of Weyerhaeuser's argument before the U.S. Supreme Court. The Supreme Court unanimously ruled in favor of Weyerhaeuser, reversing the judgment that followed a jury verdict. In that decision, the Supreme Court unanimously accepted the monopsony argument that I had unsuccessfully urged upon the district court. *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Company, Inc.*, 549 U.S. 312 (2007).

In the case of *In re Louisiana-Pacific Inner-Seal™ Siding Litigation*, Civil No. 95-879-JO-LEAD, U.S. District Court for the District of Oregon, a question of federal jurisdiction involving, among other things, the All Writs Act and the Anti-Injunction Act arose after a third-party sued LP Corporation in state court in Minnesota and won a jury verdict there. The U.S. District Court in Oregon granted an injunction against a portion of the Minnesota state court verdict. *See Sandpiper Condominium Assn. v. Louisiana-Pacific Corp.*, 234 F. Supp. 2d 1170 (D. Or. 2002). The Ninth Circuit reversed. *Sandpiper Condominium Assn. v. Louisiana-Pacific Corp.*, 428 F.3d 831 (9th Cir. 2005). I unsuccessfully petitioned for *certiorari* in the United States Supreme Court. I supervised and edited our Petition for Writ of *Certiorari*. After the attorney who was primarily responsible for drafting that Petition left our law firm to teach law school, I drafted Petitioner's Reply to Brief in Opposition. A copy of that Reply is supplied.

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

    a. the date of representation;

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

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

    1. *In re Louisiana-Pacific Inner-Seal™ Siding Litigation*, Civil No. 95-879-JO-LEAD, U.S. District Court for the District of Oregon; Hon. Robert E. Jones, Senior District Judge; Hon. Richard L. Unis (retired Oregon Supreme Court Justice), Special Master for Settlement Implementation.

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After a multi-year nationwide products liability federal class action settlement was reached in the fall of 1995, I became the lead lawyer for Louisiana-Pacific Corporation in this matter, first in handling a contested class action fairness hearing and then with claims processing during a seven-year claims period and two-year follow-on period. In April 1996, Senior District Judge Robert E. Jones approved this class action settlement after certain changes were made to the agreement. In June 1996, Judge Jones appointed the Honorable Richard L. Unis (just retiring from service on the Oregon Supreme Court) to act as the Special Master in overseeing this settlement. By December 2005, when all of the many activities in this case had concluded, this settlement paid approximately $523 million to about 142,000 claimants nationwide. As Justice Unis reported to Senior District Judge Jones in the Final Report of the Special Master on the State of the Settlement, "we have tried to make this Settlement a model for other complex product liability settlements, and I have been informed that this Settlement has already served as a blueprint for others."

Special Master was Hon. Richard L. Unis, 28338 Historic Columbia River Highway, Troutdale, OR 97060-9344, Telephone: (503) 665-9459. Lead Opposing Counsel was Christopher I. Brain, Tousley Brain Stephens PLLC 1700 Seventh Avenue, Suite 2200, Seattle, WA 98101-7332, Telephone: (206) 682-5600.

2. *Confederated Tribes of Siletz Indians and Ross-Simmons Hardwood Lumber Company, Inc. v. Weyerhaeuser Co.*, Civil No. 00-1693, U.S. District Court for the District of Oregon; Hon. Owen M. Panner, Senior District Judge; judgment reversed in *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Company, Inc.*, 549 U.S. 312 (2007) (federal court jury trial with ultimate decision by the U.S. Supreme Court)

I was the lead trial attorney for defendant Weyerhaeuser in this antitrust lawsuit alleging unlawful monopolization in violation of Section 2 of the Sherman Act. After a two-week jury trial in 2003, a judgment of approximately $79 million was entered against Weyerhaeuser and in favor plaintiff Ross-Simmons, although the jury found against plaintiff Confederated Tribes. This case presented novel issues relating to the standard of conduct in a monopsony case and whether allegations of predatory buying should be treated similarly under the antitrust law to allegations of predatory selling. Ultimately, the Supreme Court of the United States unanimously concluded that the two situations should be treated similarly and, accordingly, reversed the trial judgment against Weyerhaeuser. Although I consulted on the Ninth Circuit appeal and Supreme Court litigation, those matters were handled by other law firms. The case settled after the Supreme Court's decision.

Co-Counsel (at Perkins Coie) was Thomas R. Johnson, Jr., Perkins Coie LLP 1120 N.W. Couch Street, Tenth Floor, Portland, OR 97209-4128, Telephone: (503) 727-2176. Opposing Counsel was Michael E. Haglund, Haglund Kelley

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Horngren Jones & Wilder LLP, 101 S.W. Main Street, Suite 1800, Portland, OR 97204, Telephone: (503) 225-0777.

3. *National Management Services, Inc. v. Qwest Dex, Inc.*, Civil No. 01-1772-DJH, United States District Court for the District of Oregon; Hon. Dennis J. Hubel (U.S. Magistrate Judge); affirmed on appeal, 219 Fed. Appx. 658 (9th Cir. 2007) (federal court jury trial)

I represented the defendant in this matter in which the plaintiff sought several million dollars in consequential damages for an alleged breach of contract. After a one-week jury trial in 2005, the jury returned a plaintiff's verdict of approximately $200,000.

Co-Counsel (at Perkins Coie) was Sarah J. Crooks, Perkins Coie LLP, 1120 N.W. Couch Street, Tenth Floor, Portland, OR 97209-4128, Telephone: (503) 727-2252. Opposing Counsel was Hon. Leslie M. Roberts (then in private practice), Multnomah County Circuit Court Judge, Multnomah County Courthouse, 1021 S.W. Fourth Avenue, Portland, OR 97204, Telephone: (503) 988-6760.

4. *Hoeck v. U S WEST Communications, Inc.*, Civil No. 94-1354-JE, U.S. District Court for the District of Oregon; Hon. John Jelderks (U.S. Magistrate Judge) (federal court jury trial)

I represented the defendant in this matter in which the plaintiff sought several million dollars in consequential damages for an alleged breach of contract. After a one-week jury trial 1998, the jury returned a defense verdict.

Opposing Counsel was Clinton D. Simpson, Simpson Law Office, 627 Country Club Road, Suite 201, Eugene, OR 97401, Telephone: (541) 302-6400.

5. *B-Line Holdings, LLC and Lone Star U.S. Acquisitions, LLC v. Weinstein*, Case No. 0604-03645, Multnomah County Circuit Court, Hon. Michael Marcus (state court bench trial)

I was the lead trial counsel for plaintiff-intervenor Lone Star U.S. Acquisitions, LLC. In the summer of 2006, I tried a bifurcated three-week bench trial for permanent injunctive relief, seeking to enforce a corporate drag-along agreement in connection with an acquisition for $270 million. After the trial judge issued his decision in favor of my client and plaintiff B-Line Holdings, LLC, the transaction closed but the defendant appealed and pursued certain counterclaims for money damages. The dispute was later settled, but the result from the 2006 trial was kept in place.

Co-Counsel (representing B-Line Holdings, LLC) was James Lico, Kirkland & Ellis LLP, 555 California Street, San Francisco, CA 94104, Telephone: (415) 439-1875. Local Co-Counsel (representing B-Line Holdings, LLC) was Bruce A. Rubin, Miller Nash LLP, 111 S.W. Fifth Avenue, Suite 3400, Portland, OR 97204, Telephone: (503) 205-2447. Opposing Counsel (lead) was Spencer Hall,

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Hall Zanzig Claflin McEachern, 1200 Fifth Ave, Suite 1414, Seattle, WA 98101, Telephone: (206) 292-5900. Opposing Counsel (local) was Gary M. Berne, Stoll Berne LLP, 209 S.W. Oak Street, Suite 500, Portland, OR 97204, Telephone: (503) 227-1600

6. *Dex Media, Inc. v. Deibert*, Case No. 0605-05162, Multnomah County Circuit Court; Hon. Henry Kantor (state court bench trial)

I was the lead trial counsel for plaintiff Dex Media, Inc. in this case alleging fraudulent transfer and piercing the corporate veil. After a week-long bench trial in 2008, the trial court rendered a decision in favor of plaintiff for the full amount sought of $1.9 million.

Co-Counsel (at Perkins Coie) was Sarah J. Crooks, Perkins Coie LLP, 1120 N.W. Couch Street, Tenth Floor, Portland, OR 97209-4128, Telephone: (503) 727-2252. Opposing Counsel was Gordon T. Carey, Jr., Gordon T. Carey, Jr. PC 721 S.W. Oak Street, Second Floor, Portland, OR 97205, Telephone: (503) 222-1923.

7. *Unified Western Grocers, Inc. v. PricewaterhouseCoopers, LLP*, Case No. 0108-08668, Multnomah County Circuit Court; Hon. Janice R. Wilson; affirmed on appeal, 131 P.3d 796 (Or. App. 2006) (state court jury trial)

Plaintiff brought this action alleging professional accounting malpractice against defendant in connection with a merger of two businesses that resulted in plaintiff's formation. Plaintiff sought $20 million in damages. I was the lead trial lawyer for defendant. After a three-week jury trial in 2004, the jury returned a verdict in favor of plaintiff for slightly under $3 million.

Opposing Counsel was Peter H. Glade, Markowitz Herbold Glade & Mehlhaf PC 3000 Pacwest Center, 1211 S.W. Fifth Avenue, Portland, OR 97204-3730, Telephone: (503) 295-3085.

8. *In re Estate of Mary L. Bauman: Schwindt v. Mirhady*, Case No. 0707-91125, Multnomah County Circuit Court, Hon. Katherine Tennyson (state court bench trial)

I was the lead trial counsel for the personal representative, Paul Schwindt, and his siblings in this will contest and action alleging financial elder abuse against the decedent's fourth husband. After a seven-day bench trial in 2008, the trial court upheld the will tendered by my client, rejected the will tendered by the opposing party (the fourth husband), and found that the facts presented constituted financial elder abuse. The case settled shortly thereafter.

Co-Counsel (at Perkins Coie) was Sarah J. Crooks, Perkins Coie LLP, 1120 N.W. Couch Street, Tenth Floor, Portland, OR 97209-4128, Telephone: (503) 727-2252. Co-Counsel on Estate Matters was Philip N. Jones, Duffy Kekel LLP, 1100 S.W. Sixth Avenue, Suite 1200, Portland, OR 97204, Telephone:

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(503) 226-1371. Opposing Counsel was Kevin P. O'Connell, Hagen O'Connell LLP, 121 S.W. Morrison Street, Suite 1500, Portland, OR 97204, Telephone: (503) 227-2900.

9. *Perrin v. Kitzhaber*, Case No. 0107-07021, Multnomah County Circuit Court; Hon. Jean Kerr Maurer (state court bench trial)

After the Oregon Governor vetoed the Oregon Legislature's congressional redistricting plan in 2001, the matter of congressional redistricting in Oregon in response to the 2000 census went to the courts. I was the lead trial attorney for plaintiffs, who were affiliated with Democratic interests, in this civil rights lawsuit brought under 42 U.S.C. § 1983. Parties representing Republican interests intervened without objection, and a three-week trial was held in the fall of 2001. The trial court adopted the redistricting plan proposed by plaintiffs. No party appealed the merits of the trial court's redistricting decision, but all private parties appealed the trial court's decision to deny prevailing party attorney fees. The Oregon Court of Appeals determined that plaintiffs were entitled to their prevailing party attorney fees. 83 P.3d 368 (Or. App. 2004)

Co-Counsel (at Perkins Coie) was Thomas R. Johnson, Jr., Perkins Coie LLP 1120 N.W. Couch Street, Tenth Floor, Portland, OR 97209-4128, Telephone: (503) 727-2176. Opposing Counsel representing the State of Oregon was Hon. Stephen K. Bushong (then with the Oregon Department of Justice), Multnomah County Circuit Court Judge, Multnomah County Courthouse, 1021 S.W. Fourth Avenue, Portland, OR 97204, Telephone: (503) 988-3546. Opposing Counsel representing Republican-affiliated parties was John DiLorenzo, Jr., Davis Wright Tremaine LLP, 1300 S.W. Fifth Avenue, Suite 2300, Portland, OR 97201, Telephone: (503) 241-2300.

10. *Cornerstone Partners, Inc. v. Pricewaterhouse*, Case No. 9805-03393, Multnomah County Circuit Court; Hon. Robert W. Redding (now retired) (state court jury trial)

Plaintiff brought this action alleging professional accounting malpractice against defendant in connection with a business acquisition. Plaintiff sought several million dollars in damages. I was the lead trial lawyer for defendant. After a one-week jury trial in 1999, the jury returned a defense verdict.

Opposing Counsel was Daniel H. Skerritt, Tonkon Torp LLP, 888 S.W. Fifth Avenue, Suite 1600, Portland, OR 97204, Telephone: (503) 802-2024.

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 which you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

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(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While I was at the U.S. Department of Justice, Antitrust Division, I played a significant role in the development of a new legal theory under Section 2 of the Sherman Act that was adopted by the United States Court of Appeals for the Fifth Circuit in *United States v. American Airlines, Inc.*, 743 F.2d 1114 (5th Cir. 1984).

While in private practice at Perkins Coie, I was the lead attorney for International Business Machines Corp. before both the United States District Court and the United States Court of Appeals for the Ninth Circuit in a business dispute that involved issues exploring the boundary between contract responsibilities and tort liability in cases involving only economic loss. I won summary judgment before the district court and maintained that victory on appeal. *See A. T. Kearney, Inc. v. International Business Machines Corp.*, 73 F.3d 238 (9th Cir. 1995), *affirming* 867 F. Supp. 943 (D. Or. 1994).

Also while at Perkins Coie, I was the lead attorney, on a *pro bono* basis, for *amicus curiae* ACLU Foundation of Oregon, Inc. before both the United States District Court and the United States Court of Appeals for the Ninth Circuit in a civil lawsuit that involved issues exploring the boundary under the First Amendment between protected free speech and unprotected "true threats."" *See Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists, et al.*, 290 F.3d 1058 (9th Cir. 2002 *en banc*), *affirming in part and vacating and remanding in part* 244 F.3d 1007 (9th Cir. 2001), *vacating and remanding* 41 F.Supp.2d 1130 (D. Or. 1999).

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.

    In the Spring semesters of 2009, 2006, 1999, and 1997, I taught Antitrust Law as an adjunct professor at the Lewis and Clark Law School in Portland, Oregon. Syllabi supplied.

    I served as a teaching fellow Harvard Law School while a student there, in which capacity I assisted full-time faculty by leading discussion sections and grading papers in law and undergraduate 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.

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None. If confirmed, would leave Perkins Coie LLP, at which time I expect that the law firm would return my paid-in capital, and I would cease to be entitled to any further income from the firm.

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 such plans, commitments, or agreements. If a responsible commitment to my judicial workload permits, I may consider seeking the permission of the Chief Judge of the Circuit or District to continue to teach from time to time as a law school adjunct professor within the time and income limits permitted to 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.

My wife, Suzanne Bonamici, currently is a State Senator in Oregon. My family members are not otherwise engaged in business or activities likely to present conflicts of interest if I am confirmed. In addressing any potential conflicts of interest, I would follow the Code of Conduct for United States Judges and all other applicable statutes, rules, policies, procedures, and case authority.

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 resolve all issues of any potential conflict of interest by referring to and following the Code of Conduct for United States Judges and all other applicable statutes, rules, policies, procedures, and case authority. I intend to err on the side of recusing myself when faced with any legitimate challenge to my impartiality.

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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 24 years of private practice, I often have performed legal services at no charge for financially disadvantaged people.

For example, I assisted an individual with no resources, other than a modest home, and no insurance when he was sued for defamation by a businessman who had participated in several business deals with a local public official. My client had written several "letters to the editor" critical of these business dealings. After one letter was published containing facts that were largely, but not completely, correct, the businessman sued the letter writer for defamation, although the public official did not sue the writer. The businessman demanded that the writer stipulate to a sizable judgment (more than the value of the writer's home) that would not be executed upon so long as the writer never again mentioned in public the businessman's name. The writer was referred to me, and I represented that writer in a week-long jury trial, ultimately winning vindication for the writer when the businessman dropped his lawsuit after the first trial resulted in a deadlocked jury.

I have assisted multiple indigent persons in obtaining appropriate relief from debt burdens. I assisted one particular client, who was homeless, in working through a variety of legal issues that arose for him.

I probably spend about 50 hours per year on *pro bono* work, although in some years the number has been significantly higher. In addition, I have also assisted in fundraising for the Campaign for Equal Justice in Oregon, which raises money for legal aid programs.

In addition, through my involvement with the Classroom Law Project, I have taught high school and middle school students as well as high school and middle school teachers. I have coached high school mock trial teams, assisted and judged the "We the People" high school competition at the local, state, and national levels, made presentations to and had discussions with high school and middle school students at many Law Day programs, and taught high school and middle school teachers about the law, the Constitution, and constitutional history and theory, all as part of continuing teacher training to assist teachers in teaching civics and related matters to their students.

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

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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 April 6, 2009, I submitted to the office of United States Senator Ron Wyden my letter of interest in being considered for this nomination, along with my resume and several letters of recommendation. In late May, I received a telephone call inviting me to an interview from the administrator of the 13-member citizen Judicial Selection Committee appointed by Senator Wyden and Senator Jeff Merkley. On June 5, 2009, I interviewed with the members of the Selection Committee. On July 16, 2009, Senator Wyden issued a press release stating that the committee had recommended several finalists for the two federal district court judgeship vacancies and that Senator Wyden would be forwarding to the White House the names of all finalists. I was one of those finalists. The press release also stated that Senator Wyden planned to interview each of the finalists in August. After that announcement, additional letters of recommendation were sent to Senator Wyden on my behalf.

On August 14, 2009, Senator Wyden and his then-Chief of Staff interviewed me at Senator Wyden's Portland, Oregon office. Since December 16, 2009, I have been in contact with pre-nomination officials at the United States Department of Justice. On February 4, 2010, I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office and the United States Department of Justice. The President submitted my nomination to the Senate on July 14, 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.

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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
Simon, Michael H.	U.S. District Court, Oregon	07/13/2010
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 07/14/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2009 to 06/30/2010
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.	
1120 N.W. Couch Street, Tenth Floor Portland, OR 97209-4128	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	Perkins Coie, L.L.P.
2.	Vice President	Perkins Coie Oregon, P.C.
3.	Director	Classroom Law Project
4.	Vice President and Director	Oregon Area Jewish Committee
5.	Director	American Constitution Society, Oregon Lawyers Chapter
6.	Administrator	Estate #1

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 Simon, Michael H.	Date of Report 07/13/2010

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	Perkins Coie Oregon, P.C., wages	$180,922.00
2. 2010	Samuel French, Inc., theatrical royalties	$7,719.00
3. 2010	International Authors Society, theatrical royalties	$3,532.00
4. 2010	Tams-Witmark Music Library, theatrical royalties	$1,098.00
5. 2009	Perkins Coie Oregon, P.C., wages	$494,219.00
6. 2009	Samuel French, Inc., theatrical royalties	$17,117.00
7. 2009	International Authors Society, theatrical royalties	$8,006.00
8. 2009	Tams-Witmark Music Library, theatrical royalties	$254.00
9. 2008	Perkins Coie Oregon, P.C., wages	$553,680.00
10. 2008	Samuel French, Inc., theatrical royalties	$27,127.00
11. 2008	International Authors Society, theatrical royalties	$13,300.00
12. 2008	Tams-Witmark Music Library, theatrical royalties	$661.00
13. 2008	McGraw-Hill Companies, Inc., theatrical royalties	$417.00

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. 2010	Legislative Assembly, State of Oregon, wages
2. 2009	Legislative Assembly, State of Oregon, wages
3.	
4.	

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

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

FINANCIAL DISCLOSURE REPORT Page 3 of 10	Name of Person Reporting Simon, Michael H.	Date of Report 07/13/2010

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 10	Name of Person Reporting Simon, Michael H.	Date of Report 07/13/2010

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.			

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Name of Person Reporting	Date of Report
Simon, Michael H.	07/13/2010

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. 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 mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. U S Bank (checking, savings, CDs)	D	Interest	O	T	Exempt				
2. Bank of America (checking and savings)	A	Interest	J	T					
3. Perkins Coie Oregon, P.C. (capital account)	D	Interest	M	T					
4. Microsoft Corporation (common stock)	C	Dividend	M	T					
5. Procter & Gamble (common stock)	A	Dividend	K	T					
6. Brokerage #1 (Vanguard) (401(k))									
7. -- Vanguard Inflation Protected Securities mutual fund	D	Int./Div.	M	T					
8. -- Vanguard REIT Index mutual fund	D	Int./Div.	M	T					
9. -- Vanguard PRIMECAP mutual fund	D	Int./Div.	M	T					
10. -- Vanguard Energy mutual fund	C	Int./Div.	L	T					
11. -- Vanguard Health Care mutual fund	C	Int./Div.	L	T					
12. -- Vanguard Capital Opportunity mutual fund	C	Int./Div.	L	T					
13. -- Vanguard Emerging Markets Stock Index mutual fund	C	Int./Div.	K	T					
14. -- Vanguard European Stock Index mutual fund	C	Int./Div.	K	T					
15. -- Vanguard/Perkins Coie Cash Balance Plan (cash)	E	Interest	L	T					
16. Brokerage #2 (Ameriprise Fin.) (stocks, bonds, cash, IRAs)									
17. -- Cash	B	Interest	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; I =$15,000 or less; J =$15,001 - $50,000; K =$50,001 - $100,000; L =$100,001 - $250,000; 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

2. Value Codes (See Columns C1 and D3)
Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Stinon, Michael H.	07/13/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 54-60 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 mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. -- Energy Conversion Devices, Inc. (common stock)		None	J	T					
19. -- Gap, Inc. (common stock)	A	Dividend	J	T					
20. -- Oregon State Dept. of Admin. Services Municipal Bond	C	Interest	L	T					
21. -- Developers Diversified Realty (preferred stock)	A	Int./Div.	J	T					
22. -- DWS Dreman Value Income Edge F (preferred stock)	A	Int./Div.	J	T					
23. -- HRPT Properties Trust Pref. Ser. B (preferred stock)	A	Int./Div.	J	T					
24. -- AllianceBern Intl Value B (mutual fund)	A	Int./Div.	J	T					
25. -- Ameriprise Active Diver. Fund (no control managed fund)	C	Int./Div.	M	T					
26. -- Calvert New Vision Small Cap A (mutual fund)	A	Int./Div.	J	T					
27. -- Federated Market Opportunity (mutual fund)	A	Int./Div.	J	T					
28. -- Fidelity Advisor Divers. Intl. A (mutual fund)	C	Int./Div.	M	T					
29. -- Franklin Biotechnology Discovery A (mutual fund)	A	Int./Div.	J	T					
30. -- Franklin Equity Income A (mutual fund)	A	Int./Div.	J	T					
31. -- Franklin Flex Cap Growth A (mutual fund)	A	Int./Div.	K	T					
32. -- Franklin Income A (mutual fund)	B	Int./Div.	K	T					
33. -- Franklin Mutual Global Discovery A (mutual fund)	A	Int./Div.	J	T					
34. -- Franklin Mutual Shares A (mutual fund)	B	Int./Div.	L	T					

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

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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Simon, Michael H.	07/13/2010

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 mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. -- Franklin Small Cap Value A (mutual fund)	B	Int./Div.	L	T					
36. -- Franklin Small-Mid Cap Growth A (mutual fund)	B	Int./Div.	K	T					
37. -- Invesco Mid-Cap Equity B (mutual fund)	A	Int./Div.	J	T					
38. -- Lord Abbett Mid-Cap Value B (mutual fund)	A	Int./Div.	J	T					
39. -- MFS Growth Allocation A (mutual fund)	C	Int./Div.	L	T					
40. -- MFS International New Discovery A (mutual fund)	B	Int./Div.	L	T					
41. -- Oppenheimer Developing Markets B (mutual fund)	A	Int./Div.	J	T					
42. -- Oppenheimer Global A (mutual fund)	A	Int./Div.	K	T					
43. -- Oppenheimer Global Opportunities A (mutual fund)	A	Int./Div.	K	T					
44. -- Oppenheimer Intl. Small Co. B (mutual fund)	A	Int./Div.	J	T					
45. -- RiverSource Divers. Equity Income A (mutual fund)	A	Int./Div.	K	T					
46. -- RiverSource Partners Fundamental Value A (mutual fund)	B	Int./Div.	L	T					
47. -- Van Eck International Investors Gold (mutual fund)	A	Int./Div.	K	T					
48. Brokerage #3 (Wells Fargo Advisors)									
49. -- Microsoft Corporation (common stock)	A	Dividend	J	T					
50. -- Cash	A	Interest	J	T					
51. Brokerage #4 (Fidelity Advisors) (two 529 college plans)	D	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
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Name of Person Reporting	Date of Report
Simon, Michael H.	07/13/2010

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of spouse and dependent children; see pp. 35-66 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 mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. Brokerage #5 (Charles Schwab) (stocks and cash)									
53. – Netflix, Inc.	A	Dividend	J	T					
54. Northwest Mutual Life Ins. (life ins. cash value)	D	Int./Div.	L	T					
55. MetLife GVUL Life Ins. (life ins. cash value)	C	Int./Div.	L	T					
56. -- Fidelity VIP Index 500 Portfolio (incl. in MetLife)	C	Int./Div.	L	T					
57. Gold coins		None	L	T					
58. TWB Investment Partnership, L.P.	B	Distribution	J	U					
59. TWB Investment Partnership II, L.P.	A	Distribution	J	U					
60. 1201 Venture Investments, L.P.	A	Distribution	J	U					
61. Estate #1 (Administrator)									
62. – U S Bank (savings and money market accounts)	A	Interest	O	T					
63. – Theatrical royalties (same as in Part III-A)	E	Royalty	L	W					
64.									
65.									

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 Simon, Michael H.	Date of Report 07/13/2010

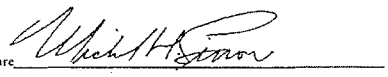
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Simon, Michael H.	Date of Report 07/13/2010

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

Michael Simon

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		648	424	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities—see schedule	2	053	844	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			
Real estate owned-primary residence		559	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		95	000				
Cash value-life insurance (including $71,466 in Fidelity VIP Index 500 Portfolio)		139	763				
Other assets itemize:							
Perkins Coie Capital		169	907				
Royalties (estimated present value)		100	000				
				Total liabilities			0
				Net Worth	3	765	938
Total Assets	3	765	938	Total liabilities and net worth	3	765	938
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	
Microsoft Corporation	$ 92,454
Procter & Gamble	30,590
Energy Conversion Devices	4,100
Gap, Inc.	6,558
Smuckers	241
Citigroup Inc.	25
E House China Holdings	370
Google Inc.	445
Jetblue Airways Corp.	82
Netflix Inc.	1,412
Texas Instruments	251
Laudus International Marketmasters Investors	409
Schwab Core Equity Fund	297
Oregon State Dept of Admin Serv (muni. bond)	97,246
Ameriprise Active Dvsfd Fund (no control)	121,036
Calvert New Vision Small Cap A	7,687
Fidelity Advisor Diversified International	104,970
Franklin Flex Cap Growth A	41,031
Franklin Income A	46,366
Franklin Small-Mid Cap Growth A	41,240
Franklin Small Cap Value A	56,149
Franklin Mutual Shares A	66,007
MFS Growth Allocation A	77,934
MFS International New Discovery	53,451
Oppenheimer Global A	42,844
Oppenheimer Global Opportunities A	25,068
RiverSource Diversified Equity Income Fund A	34,037
RiverSource Partners Fundamental Value	68,781
Fidelity Advisor 529 College Savings Plans (two) (NH)	118,590
Vanguard Infl. Protected Sec. Fund	195,960
Vanguard REIT Index Fund	159,476
Vanguard PRIMECAP Fund	163,757
Vanguard Energy Fund	64,892
Vanguard Health Care Fund	61,539
Vanguard Capital Opportunity Fund	47,941
Vanguard Emerg. Mkts Stock Index Fund	48,941
Vanguard European Stock Index Fund	34,195
AllianceBern International Value	6,017
Federated Market Opportunity	8,506
Franklin Biotechnology Discovery A	2,959
Franklin Equity Income A	4,106
Franklin Mutual Global Discovery A	11,581

Invesco Mid-Cap Core Equity B	10,973
Lord Abbett Mid-Cap Value B	9,571
Oppenheimer Developing Markets B	13,219
Oppenheimer International Small Company B	9,674
Van Eck International Investors Gold	39,279
Developers Diversified Realty Preferred	11,390
DWS Dreman Value Income Edge F	3,063
HRPT Properties Trust Preferred Series B	7,134
Total Listed Securities:	**$ 2,053,844**

AFFIDAVIT

I, **MICHAEL HOWARD SIMON**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 12, 2010
(DATE)

Michael Howard Simon
(NAME)

OFFICIAL SEAL
MICHELE KAY ANDERSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 420686
MY COMMISSION EXPIRES AUG. 26, 2011

Michele Kay Anderson
(NOTARY)

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Senator WHITEHOUSE. Thank you very much.

Our last nominee on this panel is Judge Jones, who serves with distinction on the superior court of the State and is the presiding judge on the felony drug court.

Like Judge Hernandez, he is also a former assistant district attorney in his home State. So we have the prosecutors' offices, Federal and State, well represented in this panel.

As a graduate of the University of Georgia, I promised that I will follow Senator Chambliss' injunction and not discuss football.

Judge JONES. Thank you.

Senator WHITEHOUSE. You are welcome here for any statement or introductions you would care to make, sir.

STATEMENT OF HON. STEVE JONES, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA

Judge JONES. Thank you, Senator Whitehouse. I would like to thank Chairman Leahy, Ranking Member Sessions, and the Committee for your consideration of my nomination and scheduling of this hearing today.

I would also especially like to thank President Obama for the nomination. I feel honored and privileged to be here today.

I would also like to thank Senator Chambliss for being here today and for his introduction, and Senator Isakson for his letter of support and introduction. Senators Chambliss and Isakson have been really helpful to me and I really appreciate and honor to have their support and the support their staffs have given me through this entire process.

I would not be here today without the support of my family and friends, and I would like to recognize the ones that are here today and two that could not be here today, but are here in spirit.

I would like to start off, first, by introducing my beautiful wife of 20 years, Lillian Kincey. I have made a lot of decisions as a judge, but the best decision I ever made was asking her to marry me.

I would also like to introduce my sister, Deloris Ford, and my niece, Donna Ford. They both have also played an important part in me being here today.

There are two ladies that cannot be here today, but they are here with me in spirit, and, because of their health, they cannot be here. And one is my mother, Katie Jones, and the other is my mother-in-law, Mrs. Stella Kincey, and they both have been very supportive and I know they are watching and are here with me in spirit today.

I would also like to acknowledge the remainder of my family and friends and my colleagues who could not make the trip, as well as my office staff, who are watching via Webcast today. And I would also like to thank them.

And, Senator Sessions, I understand that Auburn beat us last week, but it was a great game.

I will be glad to answer any questions the Committee may have. Thank you, Senator Whitehouse.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Steve CarMichael Jones

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.

   Athens-Clarke County Courthouse
   325 East Washington Street, Room 580
   Athens, Georgia 30603

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

   1957; Athens-Clarke County, 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.

   1985 – 1987, University of Georgia, J.D., 1987
   1975 – 1978, University of Georgia, B.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.

   1995 – Present
   Tenth Superior Court District of Georgia, Western Judicial Circuit
   325 East Washington Street, Room 580
   Athens, Georgia 30603
   Superior Court Judge (1995 – Present)
   Presiding Felony Drug Court Judge, Western Judicial Circuit (2004 – present)

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1993 – 1995
Athens-Clarke County Municipal Court
325 East Washington Street
Athens, Georgia 30601
Municipal Court Judge

1987 – 1993
Western Judicial Circuit District Attorney's Office
325 East Washington Street
Athens, Georgia 30601
Assistant District Attorney (1987 – 1993)
Intern Practicing Law (under Third Year Practice Act) (1986 – 1987)
Director, Child Support Recovery Unit (1978 – 1985)

Other Affiliations (uncompensated except as noted)

2009 – Present
Bread for Life
3761 Mars Hill Road
Watkinsville, Georgia 30677
Board of Directors

2007 – Present
University of Georgia
Alumni Association
298 S. Hull Street
Athens, Georgia 30602
Board of Directors

2007 – Present
Athens Area Community Foundation
P.O. Box 1543
Athens, Georgia 30603
Chairman, Board of Directors

2004 – Present
Hope Haven
795 Newton Bridge Road
Athens, Georgia 30607
Board of Directors

2003 – Present
Piedmont College
165 Central Avenue
Demorest, Georgia 30535
Board of Trustees

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2002 – Present
Athens Academy
1281 Spartan Lane
Athens, Georgia 30606
Board of Directors

2002 – Present
Athens First Bank and Trust
150 West Hancock Avenue
Athens, Georgia 30601
Board of Directors (2002 – present) (paid)
Chair, Audit Committee (2005 – present)

1998 – Present
Salvation Army, Georgia Division
484 Hawthorne Avenue
Athens, Georgia 30606
Board of Directors

2008 – 2010
Girl Scouts of Historic Georgia
185 Newton Bridge Road
Athens, Georgia 30607
Board of Directors

2003 – 2009
Boy Scouts of Northeast Georgia
Post Office Box 399
Jefferson, Georgia 30549
Board of Directors

2002 – 2008
St. Mary's Hospital
1230 Baxter Street
Athens, Georgia 30601
Board of Directors

2005 – 2006
Western Judicial Circuit Bar Association
P.O. Box 1702
Athens, Georgia 30603
Board of Directors

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2002 – 2006
Georgia Children's Chorus
University of Georgia
School of Music
250 River Road
Board of Directors

1994 – 2002
Y.W.C.O.
562 Research Drive
Athens, Georgia 30605
Board of Directors

1999 – 2002
Camp Sunshine
1850 Clairmont Road
Decatur, Georgia 30033
Board of Directors

1990-1991
Athens Neighborhood Health Center
675 College Avenue
Athens, Georgia 30601
Board of Directors

1990-1991
Athens Regional Attention Home (no longer in operation)
Athens, Georgia
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 United States Military. I registered for the Selective Service upon turning 18.

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

   Legacy Award (outstanding leadership and service), Hill Chapel Baptist Church (2010)
   Outstanding Jurist Award, Gate City Bar Association (2009)
   W. Lee Arrendale Award, Athens Rotary (2008)
   "Heart of Gold Award," St. Mary's Hospital (2008)

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Robert S. Stubbs Guardian of Ethics Award, Rotary Club (2008)
Georgia Justice Builder Award, Georgia Legal Services Program (2007)
President's Fulfilling the Dream Award, University of Georgia (2007)
Spirit of Athens Award (2007)
Volunteer of the Year, Junior League of Athens and Athens First Bank & Trust (2007)
Omega Citizen of the Year, Zeta Beta Beta Chapter of Omega Psi Phi Fraternity (2007)
Distinguished American Award, National Football Foundation and Hall of Fame, University of Georgia Chapter (2006)
Outstanding Community Service Award, Kappa Alpha Psi (2005)
Community Service Award for Region One, Noble (2004)
Leadership Georgia, Graduate (2003)
Billy Hudson Distinguished Citizen Award, Boy Scouts of America (2003)
Legal Professional of the Year, Association of Legal Professionals (2003)
Distinguished Judicial Service Award, Young Lawyers Division of the State Bar of Georgia (2002)
Distinguished Judicial Service Award (2002)
W. Lee Arrendale Award, Athens Rotary (1999 & 2001)
Boss of the Year, Athens Legal Secretaries (1998, 1992 & 1983)
Chief Justice Robert Benham Award for Community Service (1998)
Fellow, Lawyers Foundation of Georgia (1998)
Paul Harris Fellow, Rotary (1997)
Four Way Test Award, Rotary (1996)
Spirit of Olympism Award, Hilsman Middle School (1996)
Award for Meritorious Contributions to the University of Georgia, UGA Black Faculty and Staff (1994)
University Arch Award for Community Betterment (1993)
African-American C.L.A.S.S. Award (1993)
A. Phillip Randolph Distinguished Citizen Award (1992)
Supreme Dedication and Outstanding Service Award, Athens-Clarke County (1992)
Julian Bond Humanitarian Award (1991)
Henry A. Morse Community Service Award (1991)
Jackson County Drum Major for Justice Award (1991)
Leadership Athens, Graduate (1989)
A. Phillip Randolph President's Award (1988)
Outstanding Young Men of America Award (1982)
VFW Post 2872, Duty-Honor-Country, JROTC Award (1974)
Citation for the Superior Junior Cadet Decoration, JROTC Award, Department of the Army (1973)

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 Judges Association

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Council of Superior Court Judges
Committee memberships: Access to Justice and Fairness in the Courts, Accountability and Treatment Courts, and Public Outreach
Georgia Judicial Qualifications Commission (1996 – 2006)
Chairman (2002 – 2006)
Supreme Court of Georgia
Commission on Equality (2006 – 2008)
Commission on Access and Fairness in the Courts (2002 – 2006)
Judicial Council on Domestic Violence (2001 – 2004)
State Bar of Georgia
University of Georgia School of Law
Panel on Equal Justice Award for Outstanding Public Interest Work (1998)
Board of Visitors (2000-2003); Chairman, Board of Visitors (2003)
Western Judicial Circuit Bar Association
Secretary-Treasurer (1989 – 1990)
Board of Directors (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.

Georgia, 1987

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, 2007
United States District Court for the Middle District of Georgia, 1994
Supreme Court of Georgia, 1988
Georgia Court of Appeals, 1988
Superior Courts of Georgia, 1987

There have been no lapses in memberships.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

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Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

A. Phillip Randolph Institute (1991 – present)
Athens Area Community Foundation (2007 – present)
    Chairman, (2007 – present)
Athens Area Council for Prevention of Child Abuse and Neglect (1990 – 1991)
Athens Athletic Hall of Fame, Advisory Board (1989 – 2007)
Athens Banner-Herald, Community Advisory Board (2010 – present)
    Co-Moderator (2010 – present)
Athens-Clarke County Bicentennial Committee (2001)
Athens Neighborhood Health Center, Board of Directors (1990 – 1991)
Athens Rotary Club (1993 – present)
    Board of Directors (2002 – 2004)
Athens Touchdown Club (2004 – present)
Black Men of Athens (1994 – 1998)
Boy Scouts of Northeast Georgia, Board of Directors (2003 – 2009)
Bread for Life, Board of Directors (2009 – present)
Camp Sunshine, Board of Directors (1999 – 2002)
Clarke County School Mentoring Program (2000 – 2004)
Delta Psi Boule (2006 – present)
Foundation of Freedom Commission Member (2006)
Georgia Children's Chorus, Board of Directors (2002 – 2006)
Girl Scouts of Historic Georgia, Board of Directors (2008 – 2010)
Gridiron Secret Society (2001 – present)
Hope Haven, Board of Directors (2004 – present)
Lincoln Masonic Lodge No. 62 (1994 – present)
Mercy Health Clinic, Board of Advisors (2009 – present)
National Football Foundation, College Hall of Fame, University of Georgia
    Chapter (2006-present)
    Second vice-president (2009)
Partners for a Prosperous Athens/OneAthens (2006 – 2008)
    Chairman (2006 – 2008)
Piedmont College Board of Trustees (2003 – present)
    Executive committee member (2005 – present)
Regional Attention Home, Board of Directors (1990 – 1991)
ReNew Athens, Honorary Chairman of Board of Directors (2009 – present)
Riverside Military Academy, Board of Visitors (2009 – present)
St. Mary's Health Care, Board of Directors (2002 – 2008)
Sphinx (2010)
Taylor/Grady Advisory Committee for Junior League of Athens (1989 – 1990)
UGAHEROs, Board of Advisors (2008 – present)
United Way of Northeast Georgia (1998 – 2002)
University of Georgia Alumni Association Executive Committee (2007 – present)
    Vice-president (2009 – present)
Y.W.C.O., Board of Directors (1999 – 2002)

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Over the years, I also have made charitable contributions to various organizations that may have considered me a member solely by virtue of my financial contribution, such as the Boys & Girls Clubs, the NAACP, and the Y.M.C.A.

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 practice invidious discrimination.

The Lincoln Masonic Lodge, Delta Psi Boule, and Gridiron are fraternal societies that have no female members. Lincoln Masonic Lodge and Delta Psi Boule have companion organizations with female-only membership, with which they participate in joint social activities.

The Boy Scouts and Girl Scouts have only male and female members at the young participant level, although men and women are involved in each organization at the adult level (such as in my participation on the Girl Scouts board). Junior League is a female-only membership organization, although the advisory board on which I participated had both men and women members.

To my knowledge, at least one of the organizations above has discriminated invidiously prior to my becoming a member. The Athens Rotary Club once allowed only white male members. Today this organization is non-discriminatory.

Some of the organizations above may not have had diverse membership in the past because of their history. Black Men of Athens had black male-only membership prior to my association; it subsequently did not restrict its membership based on race/gender and is currently inactive. The A. Philip Randolph Institute (Athens Chapter) started out with black male-only membership, but it has had a diverse membership during my association.

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.

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Letter to the Editor, "Steve Jones/Red Petrovs: Great first step for war on poverty," *Athens Banner-Herald*, March 31, 2006. A copy is supplied.

Travel reflection paper, "Getting Off the Boat," *2006 METS Reflections*, 2006. A copy is supplied.

155 Recommendations Statement, Partners for a Prosperous Athens website, http://www.prosperousathens.org/about-ppa/155-recommendations A copy is supplied.

155 Recommendations Cover Letter, December 4, 2006, Partners for a Prosperous Athens website. A copy is supplied.

Letter to the Editor, "Steve C. Jones: Legal community raises funds for service program," *Athens Banner-Herald*, November 11, 2007. A copy is supplied.

Letter to the Editor, "Steve C. Jones: OneAthens chairman corrects two oversights," *Athens Banner-Herald*, April 23, 2008. A copy is supplied.

Opinion, "Foundation about investing in the community," *Athens Banner-Herald*, October 12, 2008. A copy is supplied.

Website, http://www.judgestevecjones.us/index.php.

Dear Partners Letter, Partners for a Prosperous Athens website, http://www.prosperousathens.org/ A copy is supplied.

Dear Partners Letter Regarding OneAthens Initiative Strategies, Partners for a Prosperous Athens website. A copy is supplied.

"Endowing Athens," Athens Area Community Foundation Website, http://athensareacf.org.

I do not recall other publications, though there may be some I have been unable to remember or 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.

During my tenure as chairman of the Georgia Judicial Qualifications commission, I contributed to the preparation of a revision of the Georgia Code of Judicial Conduct and Rules of the Judicial Qualifications Commission. This revision was

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promulgated on January 7, 2004 and printed in June of 2005. The address for the Georgia Judicial Qualifications Commission is: Suite C, 8206 Hazelbrand Road Covington, GA 30014.

Partners for a Prosperous Athens, 155 Recommendations (to address poverty in the Athens community). A copy is supplied.

Partners for a Prosperous Athens, OneAthens Initiative Strategies. A copy is supplied.

In 2002, during my term on the Georgia Supreme Court's Commission on Equality, the Commission revised the Court Conduct Handbook. It is available at http://www.georgiacourts.org/agencies/gcafc/court%20conduct.pdf.

In 2005, during my term on the Georgia Supreme Court's Commission on Access and Fairness, the Commission published a Court Accessibility Handbook. It is available at http://www.georgiacourts.org/files/ADAHandbk_MAY_05_800.pdf.

Partners for a Prosperous Athens has published some documents, in addition to those listed above, during my service as chair of the organization from 2006 to 2008. They are available on the organization's website at http://www.prosperousathens.com.

I do not recall other reports, memoranda, or policy statements, though there may be some I have been unable to remember or 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.

In approximately 2006, I testified before the Athens-Clarke County Board of Commissioners in my capacity as Superior Court Judge. I urged the Board to consider the need for a diversion center / work release program in our community. I have no notes or transcript of my remarks.

I do not recall and I have not been able to identify any other testimony, official statements, or communications relating to matters of public policy or legal interpretation.

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

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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 sought to list all speeches or talks I have delivered based on searches of my files and of publicly-available information. There may, however, be others I have been unable to remember or identify. Since becoming a judge, I have made it my practice to speak frequently within the community about the work of the courts and issues facing the criminal justice system, as well as legal, professional, and other service careers. I have spoken with groups of students at all levels, from elementary to graduate and law school, and have not retained any record of many of those visits and conversations.

1994 – speech at the Black History Celebration at the Navy Supply Corps School, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

November 17, 1995 – my swearing in ceremony for the Western Circuit Superior Court bench, Classic Center, Athens, Georgia. A video recording is supplied on compact disc.

January 1998 – "Judges and media interviews – ethical considerations," Annual Conference of Superior Court Judges, Georgia Continuing Education Center, Athens, Georgia. Speech notes supplied.

March 1999 – speech at annual African-American History Luncheon hosted by the Oconee County High School Multicultural Committee, Oconee County, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

June 17, 2000 – speech at the Public Information and Education expo, given to local residents and representatives from non-profit and government agencies, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter and a press report are supplied.

June 2000 – Presenter, "Fatherhood Summit," sponsored by the office of Child Support Enforcement's Fatherhood Program. Press coverage with statement supplied.

September 2000 – guest speaker at Corinth Baptist Church, Arnoldsville, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

Approximately 2001 – speech at the Northeast Georgia Police Academy Graduation, Holiday Inn, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

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February 14, 2001 – speech at Black History Month program of Timothy Baptist Church, 280 Timothy Road, Athens, Georgia. Speech notes supplied.

March 2001 – "Importance of Studying History," delivered at the annual African-American History Luncheon hosted by the Oconee County High School Multicultural Committee. I have no notes, transcripts, or recordings of this event. A summary of the subject matter and a press report are supplied.

March 2001 – Welcome at the Georgia/State Mock Trial Finals, Atlanta, Georgia. Speech notes supplied.

July 2001 – speech at Eagle Scout ceremony, Ebenezer Baptist Church, West, 205 N. Chase Street, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter and press report are supplied.

March 2002 – Men's Day Speaker, Ebenezer Baptist Church, West, 205 N. Chase Street, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

April 2002 – "Meeting Responsibility of Citizenship Through Community Involvement," 23rd annual Schacht Lecture, Athens Academy, Athens, Georgia. Speech notes and press report are supplied.

May 24, 2002 – panelist, "What are the Ethical Boundaries?" 20th Annual Family Law Institute, Amelia Island, Florida. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

June 30, 2002 – speech at Annual Education Day of the Northwestern Baptist Association No. 1, Shady Grove Baptist Church, Watkinsville, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

September 27, 2002 – Judge, J. Melvin England Mock Trial Competition. I have no notes, transcripts, or recordings of this event.

January 2003 – speech honoring Governor Carl Sanders on behalf of the University of Georgia Board of Visitors, University of Georgia, Athens, Georgia. Speech notes supplied.

January 2003 – Lighthouse speech delivered at the Youth Pow-Wow held at the Unitarian Universalists Fellowship, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter and press report are supplied.

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January 16, 2003 – "Fulfilling the Dream," speech delivered at the Freedom Breakfast sponsored by the Unified Government of Athens-Clarke County and the University of Georgia, Athens, Georgia. Speech notes supplied.

February 11, 2003 – Black History Month speaker, Barrow Elementary School, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

April 2003 – "Adoption Law" presented to Social Work Students (Masters-level) at the University of Georgia, Athens, Georgia. A speech outline is supplied.

April 2003 – "How to Try a Case in Superior Court" presented to Young Lawyer's Association. Speech notes supplied.

April 26, 2003 – keynote speaker at Rites of Passage ceremony, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

May 10, 2003 – Piedmont College Commencement address, Demorest, Georgia. Speech notes supplied.

July 2003 – keynote speech at Shady Grove Baptist Church, Watkinsville, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

August 24, 2003 – speech at the Civilian Police Academy Graduation, Trumps Ballroom, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

Summer 2003 – I gave brief remarks at a Recognition Ceremony for Mr. Willie Dupree, a long-time employee of a local grocery distribution company. I thanked him for his community contributions. I have no notes, transcript, or recording.

January 2004 – presentation to Dink NeSmith in recognition of three years of service to the State on the Georgia Judicial Qualifications Commission, Atlanta, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter and press report are supplied.

February 2004 – Judge, 2004 J. Ralph Beaird Closing Argument Mock Trial Competition. I have no notes, transcripts, or recordings of this event.

March 2004 – "Adoption Law" presented to Social Work Students (Masters-level) at the University of Georgia, Athens, Georgia. Speech notes supplied.

April 2004 – Salvation Army lecture, Athens, Georgia. Speech notes supplied.

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April 2004 – Presentation, Civil Litigation for Younger Lawyers Seminar, Litigation Committee of Georgia State Bar. I have no notes, transcripts, or recordings of this event.

May 28, 2004 – Session Panelist, 22nd Annual Family Law Institute Practical Family Law, Volume II, Institute of Continuing Legal Education in Georgia. I have no notes, transcripts, or recordings of this event.

September 2004 – speech to Athens Academy students on their "Community Service Day," Athens, Georgia. Speech notes supplied.

March 2005 – speech at Men and Women's Day event, Neal's Grove Baptist Church. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

April 2005 – speech at the annual meeting of the Council of Probate Judges and in honor of incoming president, Michael Bracewell, Athens, Georgia. Speech notes supplied.

May 23, 2005 – speech at the meeting of the Athens Full Gospel Business Men's Fellowship International, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

April 2005 – "Adoption Law" presented to Social Work Students (Masters-level) at the University of Georgia, Athens, Georgia. A speech outline is supplied.

November 5, 2005 – Participant, Timothy Core Family Recognition and Leadership Community Service Seminar. I welcomed participants and thanked the organizers. I have no notes, transcript, or recording.

January 2006 – poverty initiative speech, St. Mary's Hospital, Athens, Georgia. Speech notes supplied.

February 10, 2006 – Served as judge at the University of Georgia School of Law's "J. Ralph Beaird Closing Argument Competition." I have no notes, transcripts, or recordings of this event.

February 2006 – guest speaker at Multicultural Day at Oconee County High School, Watkinsville, Georgia. Speech notes supplied.

March 12, 2006 – Judge, Annual Georgia Mock Trial Competition, Lawrenceville, Georgia. I have no notes, transcripts, or recordings of this event.

March 30, 2006 – "Lifting the Poor Out of Poverty: Is Anything Working" speech delivered at "The Politics of Race and Persistent Poverty: Impact on Families and Communities," the eighth annual University of Georgia African American

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Families Conference, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

March 2006 – first Partners for a Prosperous Athens community meeting, Cedar Shoals High School, Athens, Georgia. Speech notes supplied.

April 7, 2006 - Working in the Public Interest Law Conference, Georgia. I have no notes, transcripts, or recordings of this event.

May 4, 2006 – speech for the Second Annual Oconee County National Day of Prayer Breakfast, Oconee County Civic Center, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

June 11, 2006 – speech at annual Men's Day program, East Friendship Baptist Church, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

September 15, 2006 – speech at the Athens-Clarke Literacy Council's recognition luncheon, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

September 24, 2006 – speech at the 140th Church Anniversary of New St. Mark AME Church, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

September 25, 2006 – Poverty Task Force speech given to local community members, Athens, Georgia. Speech notes are supplied.

October 11, 2006 – speech at evening colloquium, First Baptist Church, 355 Pulaski Street, Athens, Georgia. Speech notes supplied.

October 29, 2006 – speech at annual Men's Day service, "Spirit Fed, Spirit Led Men Making a Difference," Hill Chapel Baptist Church, 1692 W. Hancock, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

November 2, 2006 – Question and Answer Session, 2006 Law School Academy, Athens Georgia. I have no notes, transcripts, or recordings of this event.

November 10, 2006 – "Felony Drug Court Program: Keeping with the Spirit of Social Work Practice and the Letter of the Law" presented to Social Work Practitioners and Faculty at the University of Georgia, Athens, Georgia. Speech notes supplied.

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November 14, 2006 – "A Challenge: Implementing the Strategies of Partners for a Prosperous Athens," Athens-Clarke County Family Connection and Communities in Schools, annual meeting, Athens, Georgia. Speech notes supplied.

November 16, 2006 – Opening remarks, "Wage Slaves: Not Getting By in America," Cosponsored by the University of Georgia's Carl Vinson Institute of Government and the School of Social Work. I have no notes, transcripts, or recordings of this event.

December 4, 2006 – speech at the public meeting of Partners for a Prosperous Athens/One Athens, Athens, Georgia. Speech notes and press coverage supplied.

December 13, 2006 – graduation speech at the Classic City Performance Learning Center, Athens, Georgia. Speech notes and press report are supplied.

2006 – speech to employees at the University of Georgia, South Campus Custodial Physical Plan Division, Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

January 2007 – introduction of Dr. Michael Adams (President, University of Georgia) at the Athens Rotary Club, Athens, Georgia. Speech notes supplied.

January 12, 2007 – Speaker, fourth annual Freedom Breakfast and President's Fulfilling the Dream Awards Ceremony, University of Georgia. I have no notes, transcripts, or recordings of this event.

January 13, 2007 – keynote speech at the Athens Area Human Relations Council's 28th Annual Martin Luther King, Jr. Awards Banquet, Athens, Georgia. Speech notes and press report are supplied.

February 2007 – "New Child Support Guidelines," Family Law Institute, Atlanta, Georgia. Speech notes supplied.

February 19, 2007 – poverty initiative speech presented to Classic City Rotary Club, Athens, Georgia. Speech notes supplied.

March 11, 2007 – speech at the deacon and deaconess anniversary of Waggoner Grove Baptist Church, Colbert, Georgia. Speech notes supplied.

March 19, 2007 – speech at public meeting, "From Recommendations to Implementation, Help Create OneAthens," Athens, Georgia. A video recording was made of this speech. A compact disc is supplied.

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March 30, 2007 – keynote speech, "Working in the Public Interest: Challenging Poverty through Law" presented at the University of Georgia School of Law, Working in the Public Interest Law Conference. Speech notes supplied.

April 5, 2007 – keynote conference address, for conference entitled "Black & Brown Bridges, Building Successful Partnerships Among African Americans & Latinos in the New South," University of Georgia, Georgia Center of Continuing Education, Athens, Georgia. A video recording was made of this speech. A compact disc is supplied.

April 7, 2007 – Special guest speaker, 2007 Battle Against Poverty Concert, Georgia. I have no notes, transcripts, or recordings of this event.

May 3, 2007 – I made comments at a presentation by Dr. Benjamin Carson as part of "An Evening of Inspiration and Hope," sponsored by the Clarke County Sherriff's Office. I urged young people participating in the program to look to Dr. Carson's example that growing up wealthy was not required to make big contributions to society. I have no notes, transcript, or recording. Press coverage is supplied.

August 26, 2007 – Presentation to Athens Area Chamber of Commerce. I have no notes, transcripts, or recordings of this event. Press coverage supplied.

August 2007 – "Partners for a Prosperous Athens: Working to Solve a County's Poverty Problem," co-presented with Athens-Clarke County Chief of Police, Joseph Lumpkin, Detroit, Michigan. Speech notes supplied. (I likely used the same speech text in other presentations around the same time period, and for which I have not retained a record, during my chairmanship of Partners for a Prosperous Athens).

August 2007 – poverty initiative speech presented to the Kiwanis Club, Athens, Georgia. Speech notes supplied.

September 2007 – "He Gave His All," speech given at the First United Methodist Church, Athens, Georgia. Speech notes supplied.

September 7, 2007 – poverty initiative speech given to University of Georgia geography students, Athens, Georgia. Speech notes supplied.

September 24, 2007 – remarks at the funeral services of the Honorable Joseph J. Gaines, First United Methodist Church, Athens, Georgia. Speech notes and press report are supplied.

October 9, 2007 – Introduction of the Honorable Roy Barnes, Former Governor of Georgia at the Athens Justice Project Annual Lunch Program. Speech notes supplied.

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October 21, 2007 – poverty initiative speech presented to First Presbyterian Baptist Church. Speech notes supplied.

October 29, 2007 – Partners for a Prosperous Athens/OneAthens Speech given to local community members, Athens, Georgia. Speech notes supplied.

December 2007 – speech at the convocation ceremony for the University of Georgia's College of Education, Athens, Georgia. Speech notes supplied.

January 6, 2008 – poverty initiative speech presented at Ebenezer Baptist Church West, Athens, Georgia. Speech notes supplied.

January 2008 – poverty initiative speech given at the Athens-Clarke County Health Department meeting, Athens, Georgia. Speech notes supplied.

February 2008 – Judge, "Dancing with the Athens Stars," Project Safe Fundraiser, Athens, Georgia. I have no notes, transcripts, or recordings of this event.

February 2008 – introduction of the Honorable Lawton E. Stephens, Chief Judge, Western Judicial Circuit, Athens, Georgia. Speech notes supplied.

February 19, 2008 – poverty initiative speech given to community leaders in Albany, Georgia. Speech notes supplied.

February 19, 2008 – speech to Dougherty County Rotary Club. Press coverage with statement supplied.

February 29, 2008 – poverty initiative speech given to local community members, Athens, Georgia. Speech notes supplied.

March 8, 2008 – poverty initiative speech (part I) presented at Ebenezer Baptist Church West, 205 N. Chase St., Athens, Georgia. Speech notes supplied.

March 15, 2008 –poverty initiative speech (part II) presented at Ebenezer Baptist Church West, 205 N. Chase St., Athens, Georgia. Speech notes supplied.

March 17, 2008 – Judge, UGA vs. Oxford Union Debate, "Resolved: That the United States Federal Government should ratify and implement the Rome Statute of the International Criminal Court." I have no notes, transcripts, or recordings of this event.

March 31, 2008 – OneAthens Community meeting – implementation of the initiatives, Athens, Georgia. A video recording was made of this speech. A compact disc is supplied.

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March 2008 – Speech, Men's Day at Browns Chapel Baptist Church. I have no notes, transcripts, or recordings of this event.

April 7, 2008 – "Crime and Justice in Athens-Clarke County: The Problem and Some Innovative Solutions." Panel member/discussion: Federation of Neighborhood Associations meeting, Athens, Georgia. I have no notes, transcripts, or recordings of this event. Press coverage plus a summary of the subject matter are supplied.

April 8, 2008 – "Adoption Law" presented to Social Work Students (Masters-level) at the University of Georgia, Athens, Georgia. Speech notes supplied.

April 17, 2008 – poverty initiative speech given to community leaders, Albany Georgia. Speech notes supplied.

April 2008 – Children's Church message, presented at Ebenezer Baptist Church, West, 205 N. Chase Street, Athens, Georgia. Speech notes supplied.

May 2008 – Athens Technical College induction ceremony, Athens, Georgia. Speech notes supplied.

July 12, 2008 – Words of encouragement given to the Journeymen/Rites of Passage program for young males (ages 13-16), sponsored by Alpha Phi Alpha Fraternity, Inc., Athens, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

August 2008 – speech regarding Regional Teacher Reuse Store, Athens, Georgia. I have no notes, transcripts, or recordings of this event. Press coverage is supplied.

August 23, 2008 – poverty initiative speech presented to the Association of Legal Professionals, Athens, Georgia. Speech notes supplied.

September 2008 – speech at University of Georgia's Black Faculty and Staff Organization's sixth annual Founders Award. Speech notes and press release with statement supplied.

October 24, 2008 – speech to Israeli police officers about the Western Judicial Circuit Felony Drug Court program, Athens-Clarke County Courthouse, Athens, Georgia. Speech notes supplied.

October 25, 2008 – Guest speaker at banquet honoring Pastor S.A. Bishop and his wife, Risa Bishop of New Bethlehem Baptist Church, Carlton, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

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October 28, 2008 – speech at Tom Fitz's retirement roast, Athens, Georgia. Speech notes supplied.

November 8, 2008 – speech to residents of my subdivision, Double Bridges Crossings, Athens, Georgia. Speech notes supplied.

November 2008 – "Now that I am A Judge, How Do I Act Like One?" presented at the 2008 Fall Conference, National College of Probate Judges. Speech notes supplied.

December 2008 – College of Education graduation speech, University of Georgia, Athens, Georgia. Speech notes supplied.

April 18, 2009 – Keynote address, Think Local! Conference, Fourth Annual Roosevelt @ UGA Symposium. I have no notes, transcripts, or recordings of this event.

April 24, 2009 – speech congratulating Athens Voices of Truth on 30 years of service, Athens, Georgia. Speech notes supplied.

May 2009 – introduction of the Honorable Michael Thurmond, Labor Commissioner for the State of Georgia, Athens, Georgia. Speech notes supplied.

May 21, 2009 – "Judges: Shrinking Budgets, Increasing Case Loads – Same Justice?" presented to Family Law Institute attendees, Amelia Island, Florida. Speech notes supplied.

May 30, 2009 – guest speaker at WOW series/youth program, Huff Grove Baptist Church, Nicholson, Georgia. I have no notes, transcripts, or recordings of this event. A summary of the subject matter is supplied.

June 9, 2009 – Presentation, Oconee County Citizens Advisory Committee on Land Use and Transportation Planning. Program with summary discussion supplied.

July 1, 2009 – Introduction of Presiding Justice Carley, Investiture Ceremony, Georgia Supreme Court, Atlanta, Georgia. Speech notes and press report are supplied.

July 9, 2009 – Host, Western Judicial Circuit Felony Drug Court Program Graduation, Athens-Clarke County Courthouse. I have no notes, transcripts, or recordings of this event.

August 2009 – Welcome and Professionalism Speech given to the Class of 2012, University of Georgia School of Law, Athens, Georgia. Speech notes supplied.

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January 15, 2010 – remarks at the funeral services for Attorney James "Jim" Hudson, Saint Stephens Anglican Catholic Church, 800 Timothy Road, Athens, Georgia. Speech notes supplied.

February 28, 2010 – "What do these stones mean to you?" Black History Month program, Bethel Baptist Church, Watkinsville, Georgia. Speech notes supplied.

July 6, 2010 – Speech, Retirement party for Municipal Court Judge Kay Giese. Speech notes supplied.

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

I have searched my memory, my files, and available Internet databases to assemble the list of interviews below, but there may be others I have been unable to remember of identify. Copies supplied of all clips.

"The Torch Bar," *Fulton County Daily Report*, March 1, 1996.

"Law school project helps decrease domestic violence," *Red & Black*, University of Georgia's Student Newspaper, May 15, 1998.

"Superior Court computerized," *Athens Banner-Herald*, March 22, 1999.

"Death Penalty Trial Set for Alleged Child Killer," *Athens Banner-Herald*, February 15, 2000.

"Teen-agers sentenced for armed robbery," *Athens Banner-Herald*, March 8, 2000.

"Broadcaster Holder remembered: 'Excitement' of life theme at funeral," *Athens Banner-Herald*, May 10, 2000.

"Civil rights era judge mourned as American hero," *Athens Banner-Herald*, May 31, 2000.

"Athens Remembers Life of Jurist," *The Augusta Chronicle*, June 1, 2000.

"Justice for all: Judge Barrow's quiet role in the fight for equal rights spoke loud and clear," *Athens Banner-Herald*, June 4, 2000.

"Dunn: Communities must help dads get involved with children," *Athens Banner-Herald*, June 18, 2000."

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

In November 1995, I was appointed by then-Governor Zell Miller to serve as a Superior Court Judge of the Western Judicial Circuit, Athens-Clarke and Oconee Counties, Georgia. I was re-elected (unopposed) in 1996, 2000, 2004, 2008 (to four year terms). My present term of office expires in 2012. The Superior Court is Georgia's general jurisdiction trial court.

In 1993, I was appointed to serve as a Municipal Court Judge for Athens-Clarke County, Georgia. I served in this capacity until my appointment as a Superior Court Judge. The Municipal Court has jurisdiction to hear cases involving many misdemeanor offenses (including most traffic offenses), and local ordinance violations (including parking violations).

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

As a Superior Court Judge, I have tried approximately 170 criminal jury trials to verdict and 56 civil jury trials to a verdict. I have conducted approximately 495 bench trials. I have also disposed of approximately 7,749 criminal cases by means other than jury trials and approximately 6,528 civil cases by means other than jury trials.

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As a Municipal Court Judge, I presided over approximately 25,000 cases to judgment (via plea and/or bench trial). There are no jury trials at the Municipal Court level.

i. Of these, approximately what percent were:

jury trials:	30%
bench trials:	70%
civil proceedings:	40%
criminal proceedings:	60%

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

As a trial court judge in a court of general jurisdiction, I have entered thousands of orders, which can vary from one-page to fifty-page documents – depending upon the issue(s) to be addressed. To my knowledge, no opinion I have written has been assigned a citation. Instead, my orders are entered in the record and distributed to the attorneys and parties after I sign them; they are not published in an official reporter (or on Westlaw or Lexis) and are not maintained in my office.

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) State v. Mills, SU-97-CR-0254-J (Athens-Clarke County Super. Ct., filed June 19, 1997, *unreported*)

I presided as the trial court judge in this case. The defendant was charged with possession of a firearm by a convicted felon (two counts) and felony murder. Upon motion of the defendant, I dismissed the two counts of the indictment relating to possession of a firearm by a convicted felon. The undisputed evidence showed that the defendant had completed a three-year first offender sentence and not been adjudicated guilty under that sentence. The State argued that the defendant was never formally discharged from the first offender sentence by the sentencing court, even though three-years had passed since the defendant's sentencing and placement on probation. I found that the defendant was not a convicted felon because he completed a three-year period of first-offender probation for his prior criminal acts. I further found that the defendant was never adjudicated guilty for the crimes and therefore was not a convicted felon. The State appealed and the Georgia Supreme Court affirmed. 268 Ga. 873 (1998). The Supreme Court held that a discharge of a probationer is automatic upon the successful completion of the terms of the sentence.

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Counsel for the State was Mr. Will Tanner (then Assistant District Attorney for the Western Judicial Circuit), Payne & Hodous, LLP, 414 East Jefferson Street Charlottesville, VA 22902, (434) 977-4507. Counsel for the Defendant was Mr. Russell Gabriel, University of Georgia School of Law, 225 Herty Drive 14 North Quadrangle, Athens, GA 30602, (706) 542-7818.

(2) Destag of North America, Inc. v. LAN Intern., Inc., SU-95-CV-0940-J (Athens-Clarke County Super. Ct., filed December 30, 1997, *unreported*)

A majority shareholder filed a motion for summary judgment against the minority shareholder seeking specific enforcement of an alleged contract obligating the minority shareholder to sell its interest at book value. I denied the motion for summary judgment filed by the majority shareholder, finding that the disparity between the prices offered by the majority shareholder and third-party was great enough to create a material issue of fact as to whether the shareholder's agreement was unconscionable. I later granted summary judgment to the minority shareholder, finding that under the shareholder's agreement, the third-party offer received by the minority shareholder did not qualify as a bona fide written offer due to its discretionary contingencies; decision *affirmed* by Georgia Court of Appeals. 236 Ga. App. 476 (1999).

Counsel for the Plaintiff was Mr. Walter J. Hotz, 2434 Spencer's Way, Stone Mountain, GA 30087, (770) 938-6120. Counsel for the Defendant was Mr. R. Chris Phelps, 313 Heard Street, PO Box 1056, Elberton, GA 30635-1056, (706) 283-5000.

(3) Unified Government of Athens-Clarke County v. North, SU-97-CV-0898-J (Athens-Clarke County Super. Ct., filed August 3, 2000, *unreported*)

I presided during a three-day jury trial in this case. The case arose from the plaintiff/developer bringing a civil action for breach of contract against the defendant. The plaintiff/developer purchased 562 acres of land and obtained approval from the defendant/county for a residential subdivision. Before the plaintiff completed the first house, he learned that the defendant planned to build a water treatment plant next to his property. The plaintiff requested that the defendant purchase his property because he considered the building of a water treatment plan next to his property as inverse condemnation. The defendant bought 452 acres of the 562 acre tract. As part of the sales agreement, the defendant agreed to build a new access road to the water treatment plant so as to eliminate the need for plant-related traffic to drive through the residential area belonging to plaintiff. When the defendant failed to construct the road in a timely manner, the plaintiff sued for breach of contract. The defendant sought summary judgment on an ultra vires ground. I denied the defendant's motion for summary judgment, finding that the agreement did not improperly bind the successor commission so as to prevent free legislation in matters of municipal government.

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This decision was affirmed by the Georgia Court of Appeals, along with the jury's verdict for the plaintiff/developer. 250 Ga. App. 432 (2001).

Counsel for the Plaintiff were Mr. J. Vincent Cook, Cook, Noell, Tolley and Bates, LLP, 304 E. Washington Street, PO Box 1927, Athens, GA 30603, (706) 549-6111; Mr. Douglas McKillip, Lancaster & McKillip, P.C., 648 South Milledge Avenue, Athens, GA 30605, (706) 613-1900. Counsel for the Defendant was Mr. Ernie De Pascale, Jr., 455 Highland Avenue, Athens, GA 30606, (706) 548-6988.

(4) Paul v. State, SU-99-CR-1243-J (Athens-Clarke County Super. Ct., filed November 22, 2000, *unreported*)

The defendant was indicted for the crimes of malice murder and felony murder arising from the death of his girlfriend's ten-year old son. The State sought the death penalty. The defendant received life imprisonment. The evidence showed that the defendant repeatedly struck his girlfriend's child with a belt for between 25 and 35 minutes, after the child was suspended from school for stealing money from a classmate's desk. The evidence also showed that the child died due to massive blunt force injuries to the buttocks and legs that resulted in fat embolization that caused death. The defendant sought a new trial based on sufficiency of the evidence, improper jury charge, and alleged error in the permitted introduction of psychiatric evidence. I denied the defendant's motion for new trial. This decision was affirmed by Georgia Supreme Court. 274 Ga. 601 (2001).

Counsel for the State was Eric Eberhardt (then Assistant District Attorney), Eberhardt & Hale LLP, 1160 S. Milledge Avenue, Suite 120, PO Box 7908, Athens, GA 30604, (706) 549-1965. Counsel for the Defendant were Mr. Edward D. Tolley & Mr. Ronald E. Houser, Cook, Noell, Tolley & Bates, LLP, 304 E. Washington Street, PO Box 1927, Athens, GA 30603-1927, (706) 549-6111.

(5) Stuart Enterprises Intern., Inc. v. Peykan, Inc., SU-98-CV-0454-J (Athens-Clarke County Super. Ct., filed August 17, 2000, *unreported*)

I presided as the trial judge in the jury trial of this case. The plaintiff/buyer sued the defendant/seller regarding the purchase of "Munchies Italian Restaurant." The plaintiff/buyer sued the defendant/seller for breach of contract and the defendant/seller raised a counterclaim for default on the promissory note made in connection with the purchase. The plaintiff's breach of contract claim involved the defendant's alleged failure to buy the business back if it did not gross certain revenues. I directed a verdict for the defendant/seller for $63,004.99 on his claim under the promissory note and the jury returned a verdict for the defendant/seller on the plaintiff's breach of contract claim. The jury also awarded $23,000 to the defendant/seller for stubborn litigiousness. This case was affirmed by Georgia Court of Appeals. 252 Ga. App. 231 (2001).

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Counsel for the Plaintiff was Mr. Gary R. Kessler, Irvin & Kessler LLC, Two Securities Centre, 3500 Piedmont Road N.E., Suite 750, Atlanta, GA 30305, (404) 237-1020. Counsel for the Defendant was Mr. J. Hue Henry, PO Box 808 Athens, GA 30603-0808, (706) 546-1395.

(6) Marshall v. State, SU-98-CR-0290-J (Athens-Clarke County Super. Ct., filed January 11, 2002, *unreported*)

This was the first death penalty case for which I presided. This case involved the co-defendant of the State v. Paul case, referenced above. (The two defendants were tried separately). The evidence at trial showed that the defendant's child (also the alleged victim) was struck at least 100 times and with such force that the fat beneath his skin was emulsified, entered broken capillaries, and clogged the vessels leading to his lungs – a process called fat embolization. In her motion for new trial, the defendant raised several enumerations of error regarding cross-examination of witnesses; introduction of the co-defendant's statement; Golden Rule arguments; and sufficiency of the evidence. The motion for new trial was denied on all grounds. The conviction was affirmed by Georgia Supreme Court. 276 Ga. 854 (2003).

Counsel for the State was Mr. Kenneth W. Mauldin, District Attorney, 325 E. Washington Street, P.O. Box 1226, Athens, GA 30603-1226, (706) 613-3240. Counsel for the Defendant was Mr. Russell Gabriel, University of Georgia, School of Law, 316 Hirsch Hall, Athens, GA 30602, (706) 542-7818.

(7) Orr v. City of Winterville, SU-05-CV-0438-J (Athens-Clarke County Super. Ct., filed May 5, 2005, *unreported*)

This case involved a complaint for declaratory judgment in regard to a proposed subdivision for the City of Winterville, Georgia. The property owner plaintiffs (who would be neighbors to the subdivision) sought to have rights declared that there had been no public hearing on the matter, no legally approved preliminary plat, and no grant of a variance. The property owners also sought to have a moratorium applied to the property at issue. I reviewed each claim in turn and declared the rights of the parties – essentially holding that the City of Winterville had acted properly. This decision was not appealed.

Counsel for the Plaintiffs were Mr. Victor Y. Johnson, P.O. Drawer 300, Danielsville, GA 30633-0300, (706) 795-2184; Mr. Frank E. Jenkins, III, Jenkins Olson & Bowen PC, 15 South Public Square, Cartersville, GA 30120-3350, (770) 387-1373. Counsel for the Defendant was Ms. Kathryn M. Zickert Smith, Gambrell & Russell, LLP, Promenade II, Suite 3100, 1230 Peachtree Street N.E., Atlanta, GA 30309-3592, (404) 815-3704.

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(8) Green v. State, SU-06-CR-0695-J (Athens-Clarke County Super. Ct., filed February 16, 2007, *unreported*)

The defendant was charged with contributing to the delinquency of a minor and contributing to the unruliness of a minor. The defendant filed a demand for speedy trial; however, post-filing, the case was transferred to a lower court, the State Court of Athens-Clarke County. The defendant later filed a Motion for Absolute Discharge and Acquittal (on the basis of the State's failure to try him in the Superior Court within the statutory requirements, pursuant to his speedy trial demand) in the Superior Court. I had to determine whether I had jurisdiction to consider the motion. In deciding the issue, I had to review the local acts that established the State Court of Athens-Clarke County and that provide for transfer of a case from Superior Court to State Court. I also had to review relevant appellate decisions. I concluded that the earlier transfer placed the case immediately within the State Court's jurisdiction and I was without authority/jurisdiction to consider the motion; decision *affirmed* by Georgia Court of Appeals. 288 Ga. App. 854 (2007).

Counsel for the State was Mrs. Rebecca Smith Fogal, Assistant District Attorney, 325 E. Washington Street, P.O. Box 1226, Athens, GA 30603-1226, (706) 613-3240. Counsel for the Defendant was Mr. William Overend, 269 North Jackson Street, Athens, GA 30601, (706) 353-7736.

(9) Haugabook v. Crisler, SU-06-CV-2803-J (Athens-Clarke County Super. Ct., filed September 21, 2007, *unreported*)

This case involved a now disbarred attorney who wrote checks on his own law firm's bank accounts in order to fund a $1 million wire transfer to his clients for a "manufactured" settlement of a wrongful death action that did not exist. The attorney asked his father-in-law for a loan to cover the checks that he had written in a check-kiting scheme. The father-in-law brought this action against the clients for the money that he loaned to his son-in-law. The action was for money had and received and several other equitable claims. In a detailed 49 page order, I granted summary judgment to the defendants/clients on the ground that the father-in-law had not met the legal requirement of showing that he was the "true owner" of the money at issue. The timeline of events showed that the clients received their $1 million dollars before the father-in-law was even approached for a loan by his son-in-law. In my summary judgment order, I noted that in reviewing the applicable authority, there was some conflicting case law regarding whether there was a "true owner" requirement in a money had and received claim and I ultimately utilized the more recent case law from which one could infer that there was such a requirement. In its review of the case on appeal, the Georgia Court of Appeals resolved this conflicting authority by clarifying the case law to state that no showing of true ownership was required in a money had and received action. The Georgia Court of Appeals affirmed my order in part and reversed the order in

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part, 297 Ga. App. 428 (2009), ultimately holding that the father-in-law was entitled to recover judgment on his claim.

Counsel for the Plaintiffs were Mr. H. Jerome Strickland & Mr. C. Brian Jarrard, P.O. Box 6437, Macon, GA 31208-6437, (478) 745-2821. Counsel for the Defendants were Mr. J. Edward Allen & Mr. Jeffrey DeLoach, 2500 Daniell's Bridge Road, Building 200, Suite 3A, Athens, GA 30606, (706) 548-1151; Mr. F. Gregory Melton, 100 North Selvidge Street, P.O. Box 988, Dalton, GA 30722-0988, (706) 277-4000.

(10) Partain v. Oconee County, 2004-CV-0651-J (Oconee County Super. Ct., filed October 25, 2007, *unreported*)

This case was a negligence civil action filed in the Superior Court of Oconee County, Georgia. The plaintiff sought damages for the deaths of his wife and daughter, who were killed in a car accident by a drunk driver. Approximately 45 minutes prior to the fatal accident, the drunk driver had been encountered by a deputy in Oconee County during a minor rear-end collision investigation. The drunk driver only had an instructional permit and did not have a licensed driver in the car with him at the time the Oconee County accident occurred. The plaintiff sued Oconee County, as well as the deputy in his official and individual capacity (for his failure to inquire into the license status of the drunk driver during the investigation of the first accident). The defendants sought summary judgment on the following grounds: public duty doctrine; no liability under the theory of respondeat superior for the actions of the deputy sheriff; sovereign immunity; official immunity; and unforeseeable negligent or criminal act of the drunk driver. I concluded that under the public duty doctrine of Georgia law, the defendants had shown that the deputy had no actionable duty to the plaintiff's decedents to detain and/or otherwise protect them from the tortfeasor in regard to the investigation of the first accident. I granted summary judgment on this ground, as well as the ground of respondeat superior, and official immunity. Decision *affirmed* by Georgia Court of Appeals. 293 Ga. App. 320 (2008).

Counsel for Plaintiff was Mr. C. David Joyner, 1305 Mall of Georgia Blvd., Suite 130, Buford, GA 30519-8146, (770) 614-6415. Counsel for Defendant was Mr. Terry E. Williams, 4330 South Lee Street NE, Bldg. 400-A, Buford, GA 30518, (678) 541-0790.

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

1. State v. Mills, SU-97-CR-0254-J (Athens-Clarke County Super. Ct., filed June 19, 1997, *unreported*), decision *affirmed* at 268 Ga. 873 (1998).

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Counsel for the State was Mr. Will Tanner (then Assistant District Attorney for the Western Judicial Circuit), Payne & Hodous, LLP, 414 East Jefferson Street, Charlottesville, VA 22902, (434) 977-4507. Counsel for the Defendant was Mr. Russell Gabriel, University of Georgia School of Law, 316 Hirsch Hall Athens, GA 30602, (706) 542-7818.

2. Destag of North America, Inc. v. LAN Intern., Inc., SU-95-CV-0940-J (Athens-Clarke County Super. Ct., filed December 30, 1997, *unreported*), decision *affirmed* at 236 Ga. App. 476 (1999).

Counsel for the Plaintiff was Mr. Walter J. Hotz, 2434 Spencer's Way, Stone Mountain, GA 30087, (770) 938-6120. Counsel for the Defendant was Mr. R. Chris Phelps, 313 Heard Street, PO Box 1056, Elberton, GA 30635-1056, (706) 283-5000.

3. Unified Government of Athens-Clarke County v. North, SU-97-CV-0898-J (Athens-Clarke County Super. Ct., filed August 3, 2000, *unreported*), decision *affirmed* by Georgia Court of Appeals at 250 Ga. App. 432 (2001).

Counsel for the Plaintiff were Mr. J. Vincent Cook, Cook, Noell, Tolley and Bates, LLP, 304 E Washington Street, PO Box 1927, Athens, GA 30603, (706) 549-6111; Mr. Douglas McKillip, Lancaster & McKillip, P.C., 648 South Milledge Avenue, Athens, GA 30605, (706) 613-1900. Counsel for the Defendant was Mr. Ernie De Pascale, Jr., 455 Highland Avenue, Athens, GA 30606, (706) 548-6988.

4. Paul v. State, SU-99-CR-1243-J (Athens-Clarke County Super. Ct., filed November 22, 2000, *unreported*), *affirmed* at 274 Ga. 601 (2001).

Counsel for the State was Mr. Eric Eberhardt (then Assistant District Attorney), Eberhardt & Hale LLP, 1160 S. Milledge Avenue, Suite 120, PO Box 7908, Athens, GA 30604, (706) 549-1965. Counsel for the Defendant were Mr. Edward D. Tolley & Mr. Ronald E. Houser, Cook, Noell, Tolley & Bates, LLP, 304 E. Washington Street, PO Box 1927, Athens, GA 30603-1927, (706) 549-6111.

5. Stuart Enterprises Intern., Inc. v. Peykan, Inc., SU-98-CV-0454-J (Athens-Clarke County Super. Ct., filed August 17, 2000, *unreported*), decision *affirmed* at 252 Ga. App. 231 (2001).

Counsel for the Plaintiff was Mr. Gary R. Kessler, Irvin & Kessler LLC, Two Securities Centre, 3500 Piedmont Road N.E., Suite 750, Atlanta, GA 30305, (404) 237-1020. Counsel for the Defendant was Mr. J. Hue Henry, PO Box 808 Athens, GA 30603-0808, (706) 546-1395.

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6. Marshall v. State, SU-98-CR-0290-J (Athens-Clarke County Super. Ct., filed January 11, 2002, *unreported*), conviction *affirmed* at 276 Ga. 854 (2003).

Counsel for the State was Mr. Kenneth W. Mauldin, District Attorney, 325 E. Washington Street, P.O. Box 1226, Athens, GA 30603-1226, (706) 613-3240. Counsel for the Defendant was Mr. Russell Gabriel, University of Georgia School of Law, 316 Hirsch Hall, Athens, GA 30602, (706) 542-7818.

7. Orr v. City of Winterville, SU-05-CV-0438-J (Athens-Clarke County Super. Ct., filed May 5, 2005, *unreported*), decision was not appealed.

Counsel for the Plaintiffs were Mr. Victor Y. Johnson, P.O. Drawer 300, Danielsville, GA 30633-0300, (706) 795-2184; Mr. Frank E. Jenkins, III, Jenkins Olson & Bowen PC, 15 South Public Square, Cartersville, GA 30120-3350, (770) 387-1373. Counsel for the Defendant was Ms. Kathryn M. Zickert, Smith, Gambrell & Russell, LLP, Promenade II, Suite 3100, 1230 Peachtree Street N.E., Atlanta, GA 30309-3592, (404) 815-3704.

8. Green v. State, SU-06-CR-0695-J (Athens-Clarke County Super. Ct., filed February 16, 2007, *unreported*), decision *affirmed* at 288 Ga. App. 854 (2007).

Counsel for the State was Mrs. Rebecca Smith Fogal, Assistant District Attorney, 325 E. Washington Street, P.O. Box 1226, Athens, GA 30603-1226, (706) 613-3240. Counsel for the Defendant was Mr. William Overend, 269 North Jackson Street, Athens, GA 30601, (706) 353-7736.

9. Haugabook v. Crisler, SU-06-CV-2803-J (Athens-Clarke County Super. Ct., filed September 21, 2007, *unreported*), affirmed in part and reversed in part at 297 Ga. App. 428 (2009).

Counsel for the Plaintiffs were Mr. H. Jerome Strickland & Mr. C. Brian Jarrard, P.O. Box 6437, Macon, GA 31208-6437, (478) 745-2821. Counsel for the Defendants were Mr. J. Edward Allen & Mr. Jeffrey DeLoach, 2500 Daniell's Bridge Road, Building 200, Suite 3A, Athens, GA 30606, (706) 548-1151; Mr. F. Gregory Melton, 100 North Selvidge Street, P.O. Box 988, Dalton, GA 30722-0988, (706) 277-4000.

10. Partain v. Oconee County, 2004-CV-0651-J (Oconee County Super. Ct., filed October 25, 2007, *unreported*), decision *affirmed* at 293 Ga. App. 320 (2008).

Counsel for Plaintiff was Mr. C. David Joyner, 1305 Mall of Georgia Blvd., Suite 130, Buford, GA 30519-8146, (770) 614-6415. Counsel for Defendant was Mr. Terry E. Williams, 4330 South Lee Street NE, Bldg. 400-A, Buford, GA 30518, (678) 541-0790.

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

I am not aware of any case over which I presided in which certiorari was requested from or granted by the Supreme Court of the United States.

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.

Hargett's Telephone Contractors, Inc. v. McKeehan, 228 Ga. App. 168 (1997) (reversal of denial of summary judgment motion of firm and contractor in suit where administrator of estate of motorist who was killed in accident brought action against second driver, who was subcontractor for contracting firm hired by telephone company to install lines, and also asserted claims against company and firm).

Billups v. State, 228 Ga. App. 804 (1997) (reversal of denial of motion to dismiss indictment on double jeopardy grounds).

Anderson v. State, 228 Ga. App. 617 (1997) (affirmed in part and reversed in part defendant's convictions for robbery by sudden snatching, burglary, rape, and two counts of aggravated sodomy).

Borders v. Board of Trustees, Veterans of Foreign Wars Clubs 2875, Inc., 231 Ga. App. 880 (1998) (4-3 full court opinion; reversal of grant of summary judgment to defendant/club where social club patron sued club for negligence).

Lay Bros., Inc. v. Tahamtan, 236 Ga. App. 435 (1999) (reversal of grant of partial summary judgment for landowners on res judicata grounds in an action where landowners sued lessee for failing to pay property taxes on leased lot).

Brown v. Walton Elec. Membership Corp., 238 Ga. App. 347 (1999) affirmance by Court of Appeals reversed by Georgia Supreme Court at 272 Ga. 453 (2000) (reversal of grant of summary judgment to electric utility where electric utility sued commercial customer to recover amounts owed as result of underbilling for electric service).

Ellerbee v. Hawes, 248 Ga. App. 206 (2001) (reversal of grant of summary judgment to lessor on his counterclaim in action brought by lessee against lessor, purchaser of property, and bank seeking, among other things, specific performance of a lease/purchase agreement).

Riddle v. Geo-Hydro Engineers, Inc., 254 Ga. App. 119 (2002) (reversal of judgment for former employee where former employer brought action against

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former employee seeking injunctive relief alleging that former employee was in violation of restrictive covenants in employment contract, and former employee counterclaimed for declaratory judgment that covenants were unenforceable).

Stuart v. Peykan, Inc., 261 Ga. App. 46 (2003) (reversal of grant of summary judgment in favor of seller in a suit where seller of restaurant sought to recover from out-of-state guarantor based on promissory note used to purchase restaurant and holding that trial court lacked personal jurisdiction over guarantor).

Johnston v. Ross, 264 Ga. App. 252 (2003) (reversal of grant of summary judgment to landlord (under equal knowledge/prior traverse rules) where residential tenant sued landlord for personal injuries following fall from steps that lacked handrails).

Baker v. Baker, 276 Ga. 778 (2003) (reversal of denial of custody request of former husband as legal and presumptive father of a child where former wife had rebutted presumption of legitimacy raised by child's birth during marriage through blood test results showing former husband to not be the biological father of the child).

Chambers v. State, 260 Ga. App. 48 (2003) (affirmed in part and reversed in part defendant's convictions for possession of marijuana and possession of cocaine with intent to distribute).

Reliance Elec. Co. v. Brightwell, 284 Ga. App. 235 (2007) (reversal of affirmance of decision of Appellate Division of the Board of Workers' Compensation, which ordered employer to continue claimant's benefits, after filing notice of suspension of benefits, until date of hearing on claimant's challenge to the suspension).

Smith v. State, 268 Ga. App. 231 (2007) affirmance by Georgia Court of Appeals *reversed* by Georgia Supreme Court at 279 Ga. 396 (2005) (reversal of denial of defendant's motion to dismiss on double jeopardy grounds).

Champion v. Pilgrim's Pride Corp. of Delaware, Inc., 286 Ga. App. 334 (2007) (reversal of grant of summary judgment to the employer on the ground of assumption of risk, whereby administrator of the estate of deceased employee sought damages against employer for premises liability and negligence).

Stewart v. State, 288 Ga. App. 735 (2007) (affirmed in part and reversed in part defendant's convictions for driving under the influence and failure to maintain a lane).

Haugabook v. Crisler, 297 Ga. App. 428 (2009) (affirmed in part and reversed in part the grant of summary judgment for defendant in an action for money had and received in which plaintiff loaned $1 million to cover checks his son-in-law/attorney wrote on his own law firm's bank accounts in order to fund a $1

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million wire transfer to his clients. Clients refused to return money to plaintiff/father-in-law and Court of Appeals held plaintiff was entitled to recover judgment on his claim).

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 estimate that in my judicial career (of seventeen years), I have written thousands of orders that were not published in official reporters. These orders are available to the public in the Clerk's Offices for Athens-Clarke and Oconee Counties, Georgia.

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.

Merritt v. Athens-Clarke County, SU-92-CV-0472 (Athens-Clarke County Super. Ct., filed August 26, 1997, *unreported*).

Gremillion v. State, SU-96-CR-1294-J (Athens-Clarke County Super. Ct., filed June 9, 1997, *unreported*), *aff'd* 233 Ga. App. 393 (1998).

Brewer v. Schacht, SU-91-CV-0220-J (Athens-Clarke County Super. Ct., filed July 17, 1997, *unreported*) *aff'd* 235 Ga. App. 313 (1998).

Walsh v. State, 1997-CR-0052-J (Oconee County Super. Ct., filed December 8, 1997, *unreported*), *aff'd* 236 Ga. App. 558 (1999).

Dillard v. Denson, SU-97-CV-2040-J (Athens-Clarke County Super. Ct., filed May 25, 1999, *unreported*), *aff'd* 243 Ga. App. 458 (2000).

Jones v. State, SU-99-CR-0382-J (Athens-Clarke County Super. Ct., filed July 31, 2000, *unreported*), *aff'd* 249 Ga. App. 327 (2001).

Cooper v. Unified Government of Athens-Clarke County, SU-01-CV-1396-J (Athens-Clarke County Super. Ct., filed January 10, 2003, *unreported*), *aff'd* 277 Ga. 360 (2003).

Briggs v. State, SU-04-CR-0986-J (Athens-Clarke County Super. Ct., filed September 13, 2005, *unreported*) (finding that O.C.G.A. § 16-8-60, *aff'd* 281 Ga. 329 (2006).

Harden v. Clarke County Bd. of Educ., SU-03-CV-0771-J (Athens-Clarke County Super. Ct., filed April 1, 2005, *unreported*), *aff'd* 279 Ga. App. 513 (2006).

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Lost Cat Records and Publishing, Inc. v. McCarthy, SU-04-CV-1511-J (Athens-Clarke County Super. Ct., filed January 12, 2006, *unreported*); decision was not appealed.

Hassel v. State, SU-08-CR-0542-J (Athens-Clarke County Super. Ct., filed July 14, 2008, *unreported*), *aff'd* 284 Ga. 861 (2009).

State v. Smith, SU-07-CR-0350-J (Athens-Clarke County Super. Ct., filed October 30, 2008, *unreported*), appeal denied by Georgia Supreme Court, S09IO430, *unreported.*

Boswell v. State of Georgia, 2006-CV-0118-J and 2007-CV-0171-J (Oconee Co. Super. Ct., filed January 5, 2009, *unreported*); decision currently on pro se appeal to the Georgia Court of Appeals.

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.

I do not maintain a standing recusal list; however, I do maintain a practice of reviewing each case assigned to me for entities in which I may own stock and/or serve on the board. I also review the parties' names for close personal relationships that would create an appearance of impropriety by my presiding over the case.

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To my knowledge, the following cases are ones in which I recused myself:

State v. Shownica Hull, Athens-Clarke County criminal case no.: SU-09-CR-0170-J (sua sponte recusal because the restitution in regard to the alleged criminal activity was owed to Athens First Bank & Trust)

State v. Damishic Rochelle Moore, Athens-Clarke County criminal case no.: SU-07-CR-1888-J (sua sponte recusal because the restitution in regard to the alleged criminal activity was owed to Athens First Bank & Trust)

State v. Tyrone Davis, Athens-Clarke County criminal warrant/case no.: CR-CR-08-177-8-J (sua sponte recusal because the restitution in regard to the alleged criminal activity was owed to Athens First Bank & Trust)

State v. Christopher Jones, Athens-Clarke County criminal case no.: SU-07-CR-1456-J (sua sponte recusal because the restitution in regard to the alleged criminal activity was owed to Athens First Bank & Trust)

Ford Motor Credit Company v. Carry L. Harrison, Athens First Bank & Trust, Athens-Clarke County civil action no.: SU-08-CV-0697-J (sua sponte recusal because it involves Athens-First Bank & Trust as a named party)

Crystal Farms Mills, Inc. v. Mark Dawson, Athens First Bank & Trust, Oconee Co. civil action no.: 2007-CV-0458-9-J (sua sponte recusal because it involves Athens-First Bank & Trust as a named party)

State v. Bellew, Athens-Clarke County criminal case no., SU-07-CR-1075-J (I granted a recusal motion, made following disclosures I provided in open court, because the victim was a local attorney I knew personally)

In re: petition for an adult adoption, Athens-Clarke County Civil Action no.: SU-07-A-0001-J (I denied respondent's motion for my recusal, for which stated ground was an intent to call me as a witness regarding disputed facts as to what occurred at an earlier adoption proceeding over which I presided, because case law provided that doing so was not permitted where other witnesses were available to prove the facts in question)

Rigby v. Rigby, Athens-Clarke County civil action no.: SU-03-CV-1636-J (defendant moved for my recusal based on ex parte communications with plaintiff; I denied the motion because the communication in question was delivery to the court of any offers to purchase a property in dispute, for which I had previously put the parties on notice by requiring such communication in a written order)

Athens Residential Rental Property Association, Inc. v. Unified Government of Athens-Clarke County, Athens-Clarke County civil action no.: SU-03-CV-1080-

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S (sue sponte recusal over constitutional challenge to newly-adopted rental registration ordinance because I own rental property in Athens-Clarke County and would have been subject to the $122.00 fee imposed by the rental registration ordinance)

Ann Blum v. Schrader, Supervisor of Elections in Athens-Clarke County and Clarke County Registrar, Athens-Clarke County civil action no.: SU-06-CV-1153 (sua sponte recusal to this redistricting challenge because I live in the district at issue; my two similarly-situated colleagues also recused)

I also recuse myself in all cases in which there is a close personal relationship, whereby presiding in the case would create an appearance of impropriety. There have been numerous cases to this regard (in my seventeen years on the bench) and I do not have a formal record of all of them. I have been able to identify the following such cases:

Palmore v. Palmore, Athens-Clarke County civil action no.: SU-08-CV-1967-J

Thornton v. First American Bank and Trust Company, Successor Administrator of the Estate of Lawrence Jackson Thornton, deceased, Athens-Clarke County civil action no.: SU-06-CV-1347-J.

Chastain v. Goff, Oconee Co. civil action no.: 2009-CV-0946-J

HSBC Bank Nevada, N.A., v. Alford, Athens-Clarke County civil action no.: SU-09-CV-1264-J

LVNV Funding, LLC v. Morgan, Oconee Co. civil action no., 2008-CV-0398-J

Welborn v. Welborn, Oconee Co. civil action no.: 2007-CV-0559-J

Turrentine Surrency v. Surrency, Oconee Co. civil action no.: SU-98-CV-1264-J

State v. Simpson, Athens-Clarke County criminal case no.: SU-07-CR-1623-J

Alexander v. Alexander, Oconee Co. civil action no.: 2007-CV-0512-J

Sheats v. Heirs of Fannie Deadwyler, Athens-Clarke County civil action no.: SU-09-CV-1011-J

State v. Gabriel, Oconee County criminal case no.: 2007-CV-0276-J

State v. Hunt, Athens-Clarke County criminal/warrant no.: CR-CR-09-2779-83-J

State v. Geter, Athens-Clarke County criminal case no.: SU-07-CR-1413-4-J

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Midland Funding LLC v. Nunnally, Oconee County civil action no.: 2009-CV-1035-J

State v. Taylor, Athens-Clarke County Civil action no.: SU-10-CR-0083-J

I am also aware of the following cases in which the defendants attempted to file a motion to recuse, pro se; however, they were represented by counsel at the time of the filing. For each case, I made a finding that the filing had no legal effect whatsoever and I based it on the case law which provides that "'a criminal defendant no longer has the right to represent himself and also be represented by an attorney.'" Brown v. State, 264 Ga. App. 9, 10 (2003) (quoting Daniels v. State, 253 Ga. App. 296, 298(2) (1998)).

State v. Lyons, Athens-Clarke County criminal case no.: SU-08-CR-1591-J.
State v. Johnson, Athens-Clarke County criminal case no.: SU-04-CR-0255-J.

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 worked as a volunteer in 1979 for John Jeffreys' campaign for County Commission for Clarke County, Georgia. I helped the candidate with speeches and his platform. I have not participated in any other campaigns or served on other political committees.

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;

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I have not served as a judicial law clerk.

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.

1987 – 1993
Western Judicial Circuit District Attorney's Office
(Athens-Clarke and Oconee Counties, Georgia)
325 East Washington Street
Athens, Georgia 30601
Assistant 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 not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

From 1987-1993, I was a prosecutor with the following duties: assisting the District Attorney in attending to grand juries, advising in matters of law and swearing and examining witnesses before the grand jury; preparing indictments or presentments and prosecuting all indictable offenses; prosecuting or defending any civil action in the prosecution or defense of which the State had an interest; and advising law enforcement officers concerning the sufficiency of evidence, warrants and similar matters relating to the investigation and prosecution of criminal offenders.

From 1993 to the present, I have served in a judicial capacity.

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

As a prosecutor, I represented the State of Georgia.

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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 estimate that 95% of my practice as an Assistant District Attorney involved litigation. During this time, I appeared in court frequently for call calendars, arraignments, motions hearings, and trials.

i. Indicate the percentage of your practice in:

federal courts:	
state courts of record:	90%
other courts:	10%
administrative agencies:	

ii. Indicate the percentage of your practice in:

civil proceedings:	20%
criminal proceedings:	80%

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

I was sole counsel, as Assistant District Attorney, in approximately sixty (60) jury trial cases that were tried to verdict.

i. What percentage of these trials were:

jury:	90%
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;

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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) Blackwell v. State, 259 Ga. 810 (1990)
This was the first case I tried as an Assistant District Attorney (representing the State of Georgia) in which the defendant was charged with murder, felony murder, and aggravated assault (two counts). The defendant shot his wife three times after an argument and killed her. The evidence showed that the parties had a violent twenty-two year marriage with each participating in violent acts against the other. On the night the defendant shot his wife, he had been drinking and the police determined that he had a blood alcohol content of 0.34. Defense counsel argued that the case at best was voluntary manslaughter. I argued and presented evidence that showed the defendant had time to cool off after the parties' argument and that he maliciously retrieved his gun and shot his wife not once, but three times. The jury trial lasted three days and the defendant was convicted of felony-murder. He received a life sentence. The case was affirmed on appeal by the Georgia Supreme Court.

(a) Trial date: January 17, 1989
(b) Honorable Joseph J. Gaines, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Donald T. Wells, Jr.
347 West Hancock Avenue
Athens, Georgia 30601
(706) 543-8596

(2) Borders v. State, 201 Ga. App. 754 (1991)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. I prosecuted the defendant on charges of murder (two counts), felony murder (two counts), and aggravated assault (two counts). The evidence in the case showed that the defendant's mother lived in an apartment complex on the Westside of Athens. The two victims lived at the same apartment complex. One day, while going to visit his mother, the defendant got into an argument with the two victims, who were brothers. After an exchange of insults amongst the three, the defendant left the complex in his car. The brothers followed and caught up with the defendant, blocking his car from travel. After exiting their car, both brothers were shot and killed by the defendant. Defense counsel argued and presented evidence of self-defense. I argued that the brothers had no weapons and the defendant did not have to use deadly force. The defendant was convicted of two counts of voluntary manslaughter of the two brothers. A verdict was entered in Superior Court of Clarke County, Georgia. The defendant was sentenced to forty years in confinement. Affirmed by the Georgia Court of Appeals.

(a) Trial date: 1990
(b) Honorable Joseph J. Gaines, Superior Court of Athens-Clarke County, Western Judicial Circuit, Georgia

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(c) Defense Attorney: Kenneth W. Mauldin
325 East Washington Street
Athens, Georgia 30601
(706) 613-3240

(3) Williams v. State, 204 Ga. App. 43 (1992)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. This case was one of the first cases of this type tried in the State of Georgia. The defendant was charged with illegally accessing computers. Data from the defendant's employer (a printing company) was constantly being erased, causing the company to lose client information and delay work. The evidence showed that the defendant had erased files and data from his employer's computer for approximately six (6) months. After months of trying to determine what was wrong with the computer, a computer analyst designed an electronic trap that led to the defendant. The defendant argued to the jury that the evidence was not sufficient to convict him. A verdict of guilty was entered in Superior Court of Clarke County, Georgia. Affirmed by the Georgia Court of Appeals.

(a) Trial date: exact date unknown.
(b) Honorable Joseph J. Gaines, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Stephen H. McElwee
347 West Hancock Avenue
Athens, Georgia 30601
(706) 543-8596

(4) Bonds v. State, 203 Ga. App. 51 (1992)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. The defendant was charged with armed robbery. The allegation was that the defendant robbed a liquor store and a convenience store. I indicted both robberies in the same indictment because the same clerk was robbed in both cases. (The stores were owned by the same person.) There was evidence presented by the defense that the clerk was part of a plan with the defendant to set up fake robberies. A person outside the liquor store at the time of the crime picked the defendant out of a photo line up. One of the issues in this case involved the manner in which police conducted the photo line up. The defendant argued that the photo line up was impermissibly suggestive and that it cause irreparable misidentification. The trial court disagreed and allowed the evidence. The trial court also allowed the defendant's confession. The jury convicted the defendant of the liquor store armed robbery and acquitted him of the convenience store armed robbery. He was sentenced to life imprisonment. Affirmed by the Georgia Court of Appeals.

(a) Trial date: exact date unknown
(b) Honorable Joseph J. Gaines, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Stephen H. McElwee
347 West Hancock Avenue

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Athens, Georgia 30601
(706) 543-8596

(5) McDaniel v. State, 204 Ga. App. 753 (1992)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. The defendant was convicted of two counts of child molestation, one count of aggravated sodomy, and one count of child molestation. I argued that the statement given by the defendant to police should be admitted into evidence. The statement was: "what (the victim) said, I did, I did. I might have been drunk." The trial court allowed the statement. At trial, the child testified using an anatomically correct doll to show how the defendant touched her, where he touched her, and what parts of his body he used. A verdict of guilty was entered in Superior Court of Clarke County, Georgia. The case was affirmed by the Georgia Court of Appeals.

(a) Trial date: exact date unknown
(b) Honorable Joseph J. Gaines, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Russell Gabriel
School of Law
225 Herty Drive
14 North Quadrangle
Athens, Georgia 30602
(706) 542-7818

(6) Aguilar v. State, 202 Ga. App. 62 (1991)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. The defendant was charged with rape, aggravated assault, and cruelty to children. The defendant was accused of committing the above charges against his step-child. In preparing for the trial, I had to work with the Clarke County Department of Children Services (DFCS), because the DFCS investigation had led to the charges at issue. The significant aspect of this case was the determination of whether the recent Supreme Court of the United States case of Pennsylvania v. Ritchie, 480 U.S. 39, 107 S. Ct. 989 (1987) (holding that defendant was not entitled to examine confidential records of department of children's service, but was entitled to have the confidential records reviewed by the trial court to determine what would change outcome of trial) was properly followed. The defendant in the Aguilar case argued that the State was responsible for providing the material to the defendant even if the material was in the possession of DFCS records. The trial court reviewed the confidential DFCS records and provided copies to the defendant. After review, the defendant argued irreparable harm due to the delay in receiving the records after opening statements and cross-examination of the victim. The trial court provided an opportunity for an additional opening statement and a re-cross examination of the victim, which the defendant declined. The defendant was convicted before the Superior Court of Clarke County of rape, aggravated assault, and cruelty to children. The conviction was affirmed on appeal.

(a) Trial date: exact date unknown

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(b) Honorable James, Barrow, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Theresa M. Clyne
3190 Dan Tucker Cemetery Drive
Elberton, GA 30635
(706) 353-7898

(7) Miller v. State, 195 Ga. App. 89 (1990)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. The defendant was charged with enticing a child for indecent purposes, child molestation, and aggravated sodomy. The evidence in the case showed that the minor child/victim was living in a home with his parents (who were low income and did not graduate from high school). The defendant became friends with the child/victim (through church) and provided him with gifts that his parents could not afford to give him. My investigation of the case showed that the defendant allowed the child/victim to view x-rated pornographic magazines and movies at his home. The defendant engaged in acts of oral sodomy on the child/victim and had the child/victim (a thirteen-year old) perform oral sodomy on him. The defendant denied the child's statements as to what happened. The child/victim had an IQ of 51. The trial lasted five (5) days and the defendant was convicted of the above-charges. He received a sentence of twenty-years with the first ten years in confinement. The case was affirmed on appeal.

(a) Trial date: exact date unknown.
(b) Honorable Joseph J. Gaines, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Samuel Atkins, Jr.
P.O. Box 15515
Augusta, GA 30919
(706) 597-8880

(8) Taylor v. State, 262 Ga. 584 (1992)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. The defendant was accused of stabbing another individual to death after an argument at a party. I prosecuted this case twice. The first trial lasted four days and resulted in a conviction of felony-murder. In the first trial, the trial judge did not charge the jury on the crime of voluntary manslaughter and the Georgia Supreme Court reversed the conviction. The second trial lasted four days. The defendant was again convicted of felony-murder; however, the case was reversed again by the Georgia Supreme Court because five months earlier, the court had decided Edge v. State, 261 Ga. 865 (1992) and held that the sequential jury charge of murder, felony-murder, and voluntary manslaughter was no longer the proper charge in Georgia. The Supreme Court further found that even though the defendant was tried five months before Edge was issued, the decision applied retroactively. I did not participate in writing or arguing the appeal because I became a municipal court judge prior to the appeal being docketed.

(a) Trial date: exact date unknown
(b) Honorable James Barrow, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Russell Gabriel

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University of Georgia
School of Law
225 Herty Drive
14 North Quadrangle
Athens, GA 30602
(706) 542-7818

(9) Yearby v. State, 195 Ga. App. 757 (1990)
This was the first case I argued before an appellate court. The argument was at the Georgia Court of Appeals, before then Chief Judge Carley (who is now Presiding Justice of the Georgia Supreme Court), Presiding Judge McMurray, and Judge Sognier. I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. It was a two-day trial and defendant was convicted of forgery in the first degree. The main issue argued on appeal was whether there was ineffective assistance of counsel I argued that opposing trial counsel was not deficient and there was no reasonable probability to believe that but for her errors, the outcome of the trial would have been different. The case was affirmed.

(a) Trial date: exact date unknown
(b) Honorable James Barrow, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: Kenneth Kalivoda
P.O. Box 8068
Athens, GA 30603-8068
(706) 549-9823

(10) Bradford v. State, 202 Ga. App. 724 (1992)
I served as the Assistant District Attorney, prosecuting the defendant in this case on behalf of the State of Georgia. The defendant was accused of acting with another man to commit the crimes of kidnapping, possession of firearm during commission of a crime, and armed robbery. The defendant was not charged with conspiracy in the indictment; however, during the trial, I presented evidence that showed that the two individuals conspired to commit the crimes with full knowledge of the actions of each other. The trial court charged the jury on conspiracy. The defendant was convicted and the verdict affirmed.

(a) Trial date: exact date unknown
(b) Honorable Joseph Gaines, Superior Court, Western Judicial Circuit, Georgia
(c) Defense Attorney: James Danny Love
355 Gaines School Road
Athens, GA 30605
(706) 369-1331

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

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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 served as a member of the State of Georgia's Judicial Qualifications Commission (JQC) from 1996 until December 2006, and served as JQC Chairman from 2002 to 2006. I was appointed to the JQC by the Georgia Supreme Court. The power to discipline, remove, and cause involuntary retirement of judges is vested in the JQC. The JQC is also authorized to render and publish official formal advisory opinions concerning proper interpretation of the *Code of Judicial Conduct*. During my time on the JQC, there were significant changes made in the laws regarding the election of judges in Georgia. Specifically, the cases of Republican Party v. White, 536 U.S. 765 (2002) and of Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002) changed prior interpretations of the *Canons of Judicial Conduct* and allowed judges to publicly state personal views on disputed issues. These cases also made it possible for judges and judicial candidates to personally solicit campaign contributions, as well as solicit publicly stated support. The JQC was responsible for advising and educating all incumbents and judicial candidates about the changes in the law. The JQC also had to revise and distribute the *Code of Judicial Conduct* and *Rules of the Judicial Qualifications Commission* to over 1500 sitting judges.

In 2004, the Western Judicial Circuit (Clarke and Oconee Counties, Georgia) established a Felony Drug Court and I became presiding judge – in addition to my regular caseload and other judicial duties. The mission of the Felony Drug Court is to provide an alternative means for addressing substance abuse through a judicially supervised regimen of treatment for chemically dependent offenders with the goal of yielding sober, law-abiding citizenry, thereby reducing the cost and negative effect on the community while resolving public safety issues. Rather than focusing on incarcerating individuals, the Felony Drug Court attempts to address the underlying problems that contribute to the participant's criminality. In my role as presiding judge, I participate as an active member of the Felony Drug Court Team. I also make the final decision as to each participant's sanction, incentive, progress, termination, etc. In addition, I also seek to develop a relationship with each Felony Drug Court participant; monitor the participant's progress; address personal and ancillary issues of the participant without losing the aura of judicial authority; and issue appropriate incentives and sanctions to address participant conduct.

I have not performed 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.

None.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

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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 will receive pension payments, upon retirement, from the State of Georgia and from the Unified Government of Athens-Clarke County, Georgia. According to my latest pension estimates, I will receive a gross monthly benefit from the State of Georgia of $7,744.46 (or sixty percent of my highest State paid salary) and $1,482.55 (per month) from the Unified Government of Athens-Clarke County, Georgia.

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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

I envision only a handful of special conflicts that could arise if I am confirmed as a district judge. I would recuse myself from habeas corpus proceedings on any case over which I presided as a superior court judge. I would also recuse from any case involving organizations to which I have or have recently had fiduciary affiliations, and in particular the Athens Bank and Trust (anticipating that I would resign from the Board, if confirmed).

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I would continue to carefully monitor each case and take advantage of automatic recusal systems used the court to avoid conflicts or the appearance of conflicts and I would make disclosures on the record or recuse myself from cases as required.

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 careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons, statutory provisions, and applicable 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.

As an assistant district attorney, and later Judge, I was not allowed to represent clients in the pro bono aspect; however, I have made substantial investments of time in projects designed to help Georgia Legal Services (the non-profit entity which provides civil legal representation to low-income Georgians) and the community as a whole. One example of my community involvement on behalf of the disadvantaged is my work as chairman of the local anti-poverty initiative, Partners for a Prosperous Athens/OneAthens.

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 2009, the Georgia Democratic Congressional delegation appointed a panel to review applications and interview applicants for four federal district judgeships (three in the Northern District and one in the Middle District). I submitted an application to the panel and was interviewed by it on March 28, 2009, in Macon, Georgia. The panel provided three names to the Congressional delegation for each one of the four federal district court positions. I was informed that for the Middle District of Georgia federal judgeship, my name was submitted as one of the three. I was later contacted and asked if I was willing to be considered for a federal judgeship in the Northern District of Georgia and, if recommended,

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whether I would be willing to relocate my residence to the Northern District of Georgia. I responded in the affirmative.

On Friday, February 26, 2010, I was contacted by staff from the Department of Justice and informed that my name had been sent to the Justice Department from the White House in regard to an open judgeship in the Northern District of Georgia. Since that time, I have been in contact with pre-nomination officials at the Department of Justice. On May 7, 2010, I interviewed in Washington, D.C., with attorneys from the White House Counsel's Office. On July 14, 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.

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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
Jones, Steve C.	United States District Court, Northern District of Georgia	07/19/2010
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**
United States District Judge	☑ Nomination, Date 07/14/2010 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	01/01/2009 to 06/19/2010
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.**	
325 E. Washington Street, Room 580 P.O. Box 1623 Athens, Georgia 30603	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. Superior Court Judge (for the Western Judicial Circuit)	State of Georgia/Superior Courts of GA
2. Superior Court Judge (for the Western Judicial Circuit)	Unified Government of Athens-Clarke County, GA
3. Superior Court Judge (for the Western Judicial Circuit)	Oconee County Government, GA
4. Director	University of Georgia Alumni Association
5. Director	Athens Academy
6. Member, Board of Trustees (without control over investment assets)	Piedmont College
7. Director	Athens First Bank & Trust
8. Director	Salvation Army
9. Director	Hope Haven
10Director	Girl Scouts of Historic Georgia
11Director	Boy Scouts of Northeast Georgia
12Director/Chairman	Athens Area Community Foundation
13Advisor	UGAHEROs
14Advisor	Mercy Health Clinic
15Member, Board of Visitors	Riverside Military Academy
16Director	Bread For Life

17 Advisor/Co-moderator	Athens Banner Herald Community Advisory Board

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1995	Steve C. Jones & Georgia Judicial Retirement System, pension upon age 60 and minimum 16 years of service
2. 1978	Steve C. Jones & Unified Government of Athens-Clarke County, pension upon retirement at age 62
3.	

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

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	Athens First Bank & Trust Company -- Director Fees	$4,875.00
2. 2010	Superior Courts of Georgia -- salary	$32,565.00
3. 2010	Unified Government of Athens-Clarke County -- salary supplement	$10,622.00
4. 2010	Oconee County Government -- salary supplement	$6,508.00
5. 2009	Athens First Bank & Trust Company -- Director Fees	$10,975.00
6. 2009	Superior Courts of Georgia -- salary	$66,083.00
7. 2009	Unified Government of Athens-Clarke County -- salary supplement	$21,402.00
8. 2009	Oconee County Government -- salary supplement	$13,016.00
9. 2008	Athens First Bank & Trust Company -- Director Fees	$10,975.00
10. 2008	Superior Courts of Georgia -- salary	$64,694.00
11. 2008	Unified Government of Athens-Clarke County -- salary supplement	$20,638.00
12. 2008	Oconee County Government -- salary supplement	$12,706.00
13. 2008	Speech Honoraria	$900.00

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. 2010	self-employed seamstress
2. 2010	Clarke County School District -- compensation
3. 2009	self-employed seamstress
4. 2009	Clarke County School District -- compensation

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

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

FINANCIAL DISCLOSURE REPORT Page 4 of 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 5 of 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

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. Chase Bank	mortgage on rental property #1 (Athens, GA, Part VII, line 1)	L
2. Athens First Bank & Trust	line of credit on rental property #1 (Athens, GA, Part VII, line 1)	K
3. Wells Fargo	mortgage on rental property #2 (Athens, GA, Part VII, line 2)	L
4. Athens First Bank & Trust	unsecured line of credit	K
5.		

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

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. rental property #1,Athens, GA,1988,$64,000	D	Rent	M	R	Exempt				
2. rental property #2,Athens, GA,1989,$37,500	D	Rent	M	R	Exempt				
3. rental property #3,Compton, CA,1987,apprx $35,000	D	Rent	N	R	Exempt				
4. Athens First IRA (cd holdings)	A	Interest	J	T	Exempt				
5. Total System Services -- common stock	A	Dividend	J	T	Exempt				
6. Synovus Financial Corp -- common stock	A	Dividend	J	T	Exempt				
7. Commercial Bank -- CD	A	Interest	K	T	Exempt				
8. Ga. Peach State Reserves 457-plan- 100% ING Stable Value Fund	D	Interest	M	T	Exempt				
9. VALIC (IRA)				T	Exempt				
10. -VALIC Stock Index Fund (VSTIX)	B	Interest	K	T	Exempt				
11. -Vanguard Windsor II (VWNFX)	C	Interest	K	T	Exempt				
12. - VALIC Mid Cap Index Fund (VMIDX)	C	Interest	K	T	Exempt				
13. - VALIC Small Cap Value Fund (VCSVX)	C	Interest	K	T	Exempt				
14. - VALIC Int'l Equities Fund (VCIEX)	B	Interest	K	T	Exempt				
15. -VALIC Int'l Small Cap Equity Fund (VIS EX)	A	Interest	J	T	Exempt				
16. -VALIC Fixed Account Plus	C	Interest	L	T	Exempt				
17. -Vanguard LT Inv. Grade Fund (VWESX)	C	Interest	K	T	Exempt				

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 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

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)
18. Athens First Bank & Trust account		None	J	T	Exempt				
19. Clarke Co Bd of Ed 457 Plan-100% Fixed Account Plus Fund	B	Interest	L	T	Exempt				
20. ING ReliaStar - Annuity	B	Interest	K	T	Exempt				
21. Invesco Large Cap Growth Fund	A	Dividend	J	T	Exempt				
22.									
23.									
24.									

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 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

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

Part I.(3) positions: I am a member of the Board of Trustees for Piedmont College. This position is equivalent to serving as a member of a Board of Directors. I have no control over investment assets of Piedmont College.

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Jones, Steve C.	Date of Report 07/19/2010

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 Steve C. Jones

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

Steve Jones

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		15	682	Notes payable to banks-secured		63	879
U.S. Government securities				Notes payable to banks-unsecured		29	148
Listed securities—see schedule		8	957	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable — see schedule		298	881
Real estate owned—see schedule		880	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		90	000				
Cash value-life insurance							
Other assets itemize:							
Retirement Accounts—see schedule		576	750				
				Total liabilities		391	908
				Net Worth	1	179	481
Total Assets	1	571	389	Total liabilities and net worth	1	571	389
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?	YES		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities	
Synovus Financial Corporation	$ 5,822
Total System Services	1,442
Invesco – Large Cap Growth Fund	1,693
Total Listed Securities	$8,957
Retirement Accounts	
Peach State Reserves 457 Plan	
ING Stable Value Fund	$ 185,127
IRA #1	
VALIC Stock Index Fund (VSTIX)	16,841
Vanguard Windsor II (VWNFX)	31,548
VALIC Mid Cap Index Fund (VMIDX)	19,331
VALIC Small Cap Value Fund (VCSVX)	26,725
VALIC Int'l Equities Fund (VCIEX)	22,137
VALIC Int'l Small Cap Equity Fund (VISEX)	7,558
VALIC Fixed Account Plus	105,975
Vanguard LT Inv. Grade Fund (VWESX)	34,496
Clarke County Bd. Of Ed. 457 Deferred Comp	73,106
ING ReliaStar – Annuity	46,059
IRA #2	
Athens First Bank & Trust CDs	7,847
Total Retirement Accounts	$576,750
Real Estate Owned	
Personal residence	$ 350,000
Rental – Athens, Georgia	130,000
Rental – Athens, Georgia	110,000
Rental – Compton, California	210,000
House – Athens, Georgia	80,000
Total Real Estate Owned	$880,000
Real Estate Mortgages Payable	
Personal residence	$ 150,122
Rental – Athens, Georgia	78,601
Rental – Athens, Georgia	56,315
House – Athens, Georgia	13,843
Total Real Estate Mortgages Payable	$ 298,881

66817.497

AFFIDAVIT

I, **Steve C. Jones**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 20, 2010
(DATE)

Steve C. Jones
(STEVE C. JONES)

Ashley T. Barrett
(NOTARY)
NOTARY PUBLIC, OGLETHORPE COUNTY, GEORGIA
MY COMMISSION EXPIRES JULY 31, 2011

Senator WHITEHOUSE. Thank you, Judge Jones. I cannot guarantee that the Ranking Member will follow Senator Chambliss' injunction and show mercy for this nominee.

Senator SESSIONS. No.

[Laughter.]

Senator WHITEHOUSE. It is a very solemn thing for members of the U.S. Senate to consider nominees for the United States district court. It is very important that you have the support of your colleagues from your home State, who know you better than anyone, but each Senator also has their own responsibility to inform themselves so they can vote, as their duty in their best lights, requires them to vote.

And as we do that, we are keenly aware that we are voting on lifetime appointments; that long after we are gone, you may very well still be serving on these district courts, we hope, with great distinction. But I think we do bring a perspective about the appropriate role of a judge to our duties, and I would like to share that perspective with you and then ask each of you to comment briefly on your agreement or disagreement with that perspective.

It is my belief that judges must do a number of things. One is to respect the role of Congress as the

duly elected representatives of the American people in our system of American democracy. Two is to decide cases based on the facts and the law, nothing else. Three is to not prejudge any case, but listen to every party that comes before you, powerful or weak, rich or poor, irrespective of station or position; to respect the precedent that the Supreme Court and the circuit courts for your districts have laid down and the precedent that exists within your own district; and, finally, to limit yourself in your decisions to the issues that the court must decide that are properly presented before it.

It is my belief that those disciplines, which must be self-imposed by judges, are key to the successful operation of the carefully balanced system of government that the Founding Fathers created and that we all honor and enjoy the fruits of.

So if I could ask each of you for a comment on that, and I will then turn to Senator Sessions for his questioning.

Mr. COGBURN. Senator, I agree with everything you said, absolutely. That is what a judge is—that is exactly what a judge has to do, be impartial, be fair, and follow the law.

Senator WHITEHOUSE. Judge Hernandez.

Judge HERNANDEZ. I agree, as well. I think that I would add to the mixture that it is important for judges to do all of those things with a great deal of judicial temperament and evenness so that the parties that are appearing before you trust that you are judging these cases in a fair and just way.

Mr. SIMON. Chairman Whitehouse, I, too, agree with everything that you have just described as the qualities and character of judging.

Judge JONES. Senator Whitehouse, I agree with what you said and it is important, because if we fail to do that, then the communities we serve or preside over lose confidence in our courts and, as judges, we will not have credibility.

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Senator WHITEHOUSE. Yes. And as we know, for judges, credibility is the coin of the realm and it is the confidence of the American people and the judiciary that allows judicial orders to be followed and it is an important concern, because you do not have an army to go and enforce your opinions.

The opinions and the orders that come down from our courts have the weight that they do because the American people accepts them and accepts the rigor and the discipline and the fairness that you bring to your task.

So I appreciate that very much and I look forward to your successful process through the confirmation process; I might even hazard to say successful and rapid process.

Senator SESSIONS. Well said, Mr. Chairman. I think you did set forth good standards for judges, and you answered well in affirming that, I think.

Mr. Cogburn, my daughter went to Cumberland and that is good. It is a very fine law school. I am very proud of it. The dean, Dean John Carroll is a former magistrate, United States magistrate, and does as great job there, and it is a large and fine law school.

You have been a Federal prosecutor. You started, it looks like, before the sentencing guidelines became law, and you prosecuted and sent a lot of people to the bastille as a prosecutor, it looks like, over a number of years after the guidelines, also.

How would you share to your colleagues here the impact of the sentencing guidelines and to what extent do you believe a judge should give respect and deference to those guidelines?

Mr. COGBURN. Senator Sessions, the sentencing guidelines were brought into being in order to get rid of any kind of meaningless disparity in sentencing; that is, to try to have most people who commit the exact same crime receive generally the same sentence and to try to have some uniformity across the board, depending on where you were sentenced, in what court you were sentenced in and what state you might be sentenced in, wherever that might occur.

A great deal of effort was put into the sentencing guidelines and into getting them established and deciding where those particular guideline ranges fall.

Under 18 United States Code Section 3553, which is the sentencing statute, the first thing that a judge is to do is to determine what those sentencing guidelines are before going into the rest of the sentencing process.

They are to be given substantial weight in determining what these sentences are. They are a very important part of the sentencing process.

Senator SESSIONS. Before the guidelines, in my district, you would see dramatic differences in sentencing for very similar offenses. I am not sure how that played out in every district. I think it did happen all over the country.

Did you perceive there was more uniformity and more coherence in the sentencing process post-sentencing guidelines?

Mr. COGBURN. There was more uniformity post—sentencing guidelines than there had been before. There had been some back-and-forth differences in sentences before. Depending on cooperation

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and that sort of thing, you could get some very, very strong differences in sentences.

But cooperation is still taken into consideration and people are able to get some relief for cooperation. So the sentencing guidelines, generally, have brought a great deal more uniformity to the sentencing process.

Senator SESSIONS. In general, do you think they reflect a considered consensus of where sentences should fall?

Mr. COGBURN. Those who have prepared the sentencing guidelines have given a great deal of time and effort into placing those sentences into various categories and they are—the majority of sentences that I am observing have been falling within the sentencing guideline range; that most of the judges have been tending to sentence within the guideline range rather than departing from that.

Senator SESSIONS. Well, we could talk about it a good bit more, but I would just say to you that the guidelines were developed by judges and the Sentencing Commission, but it was, in large part, based on the tendency of judges to sentence in a mainstream way around the country. They examined what the sentences were and they considered other areas.

So I think it reflects a fairly good consensus of where sentencing should be. It may not be perfect.

I would ask each of you to state to what extent you feel that you would desire or you would seek to be in harmony with those guidelines, recognizing that a judge, once he is given a lifetime appointment, can ignore them pretty regularly under some of the more recent case law.

Judge Hernandez, would you share with us your thoughts?

Judge HERNANDEZ. Thank you for the question, Senator Sessions.

I am accustomed to guidelines. Oregon has sentencing guidelines. I use them all the time. I am very comfortable with them.

On the Federal side, it is my opinion that the guidelines need to be given a great deal of deference as we approach cases. Those guidelines were well thought out. A lot of time was invested in determining whether and what appropriate sentences should be, and, again, they should be given a great deal of deference.

Senator SESSIONS. Thank you.

Mr. Simon.

Mr. SIMON. Senator Sessions, I, too, would give the guidelines a great deal of deference, and I recognize their importance in providing consistency and uniformity in sentencing throughout the Nation. I also recognize that they were the result of a bipartisan consensus from this body, that they are the result of a great deal of input and expertise from a wide variety of people.

I will note that in response to Chairman Whitehouse's comment at the beginning, it has been a number of years since I was a Federal prosecutor. I did begin at main Justice, in the antitrust division, prosecuting antitrust defenses, but I was designated on a special detail as a special assistant U.S. attorney in Alexandria, Virginia, where I prosecuted both white collar fraud trials and armed bank robbery.

I will also admit that that was before the sentencing guidelines came out. And so to acquaint myself with those, I started reading

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these. I note that about 2 weeks ago, the 2010 guidelines manual was just issued. I have begun reading that.

But I do agree with the values and the policies behind it and I would give them great deference.

Senator SESSIONS. Thank you.

Judge Jones.

Judge JONES. Senator Sessions, I also believe that the guideline should be given substantial and great deference, because uniformity and consistency in sentencing brings about confidence in our courts and, also, helps us reach a reasonable sentence.

Senator SESSIONS. It was a dramatic, historic event, really, when Congress, in the early 1980s, made some of these decisions. Senator Kennedy and Senator Thurman and Senator Biden and Senator Hatch and all, Leahy and others, all worked together to bring it about, and I do think there has been more integrity in the process.

It is easier to defend the sentences intellectually and morally to anybody who challenges them. Any guidelines sentence is backed up by quite a good bit of research, debate, discussion. And I worry that there may be a belief that judges are now free to sentence like they would like, but I believe you will sleep better at night if you follow the guidelines, because when you have the momma and the minister and the brother and the children before you at sentencing time, it is no fun and at least you have got an objective fallback that I am trying to operate within what a consensus is for the country.

Mr. Simon, you have been a member for some years with the ACLU. I see one thing conservatives would like. I see you filed a lawsuit defending the free speech of anti-abortion protestors, and ACLU does take sides that are not always liberal, if you would call it that.

But it also is an institution that has taken quite a few positions that are troubling to me, such as legalization of drugs. Does that reflect your views?

Mr. SIMON. Senator Sessions, I have been involved as a volunteer lawyer for the ACLU for a number of years and it certainly is true. In my case, as well as, frankly, in almost everyone's that I have interacted with, that we do not necessarily agree with all of the positions taken by the American Civil Liberties Union.

And to answer your question, what I have primarily been focusing on in my activities for the American Civil Liberties Union of Oregon has been involved in First Amendment issues.

Senator SESSIONS. Well, we have had a big debate about legalization of drugs, and you would be a judge that will have to impose some rather stiff sentences for violation of drug laws.

Have you taken a position personally on that?

Mr. SIMON. I have not, Senator, and I would have no difficulty at all enforcing all of our laws.

Senator SESSIONS. I notice the Oregon Website said that the ACLU supports a moratorium on the death penalty. Would you personally agree with that and have you advocated for that?

Mr. SIMON. I have not taken any positions on that issue, Senator, but I do observe that the Fifth Amendment to the United States Constitution does refer to capital crimes. It does refer to not put-

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ting anyone in double jeopardy for life or limb, and, also, that no one shall be deprived of life without due process of law.

And so I do think that the United States Supreme Court, using those references, among others, has quite clearly said that the death penalty does not violate the Eighth Amendment's prohibition on cruel and unusual punishment, and I am fully prepared to follow all of the precedent from the United States Supreme Court and the applicable courts of appeal, including that.

Senator SESSIONS. Well, I agree with that constitutional analysis, very clearly, although we had two members on the Supreme Court for quite a number of years that dissented in every death penalty case, saying it did violate the Constitution.

Within the Constitution itself, there are a host of references, more than you just made, to the death penalty and implicit in the document is an affirmation of the death penalty. But the ACLU Website in Oregon posted a white paper, eight objections to the death penalty, and one of those was, quote, "Capital punishment is cruel and unusual" and that it, quote, "denies due process of law."

So are you saying that it is not cruel, that you do not share that view, or what would be your comment?

Mr. SIMON. I played no role in the preparation of that particular white paper to which you refer nor have I ever taken any public positions on that question.

I am prepared to commit to you that I will follow all of the precedent from the United States Supreme Court and from the courts of appeal, and I do recognize the constitutional references that you have highlighted for us.

Senator SESSIONS. What do they mean it would deny due process of law? Do you know what the ACLU could be referring to with that?

Mr. SIMON. I do not know specifically what you are referring to, Senator. I did not play a role in the preparation of that document at all.

Senator SESSIONS. We have had quite a number of cases—judges, nominees, recently that have not followed the sentencing guidelines with regard to child pornography, and some of that is legitimate and some of that was troubling to me, in their decisionmaking processes.

ACLU has opposed any laws that limit pornography, including child pornography. Do you agree with that policy of the ACLU and will you enforce the law and follow the guidelines, as appropriate?

Mr. SIMON. I most certainly will enforce the law and, as I expressed earlier, I do anticipate giving great deference to the guidelines, including all aspects of the guidelines. I have not spoken or written with respect to the issue of child pornography, but I do fully anticipate having no difficulty in supporting and enforcing all of our laws and in giving great deference to all aspects of the sentencing guidelines.

Senator SESSIONS. And if confirmed, would you have any reservation in applying the death penalty, if it were appropriately consistent with the law?

Mr. SIMON. In the appropriate circumstances, I would have no difficulty enforcing the law in all of its aspects, including that.

Senator SESSIONS. Thank you. Well, we have got Senator Franken here. I am sorry. I am past my time. But we do have a number of nominees on the panel and it takes a little more time than normal.

Thank you.

Senator WHITEHOUSE. We can happily do a second round.

Senator SESSIONS. Thank you.

Senator WHITEHOUSE. We will happily do a second round to accommodate any further questions Senator Sessions may have, but I think it is appropriate for Senator Franken to have his turn.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Thank you, Ranking Member Sessions. And a second round would be great, because I know Senator Sessions has a lot of questions.

Judge Jones, you served as presiding judge on the felony drug court.

Judge JONES. Yes, sir.

Senator FRANKEN. For the Western Judicial District of Georgia since 2004. Can you tell me about that? What is a drug court? Who do you deal with? Obviously, it is drug felony offenses.

But I think that we have a lot of people in prison for drug offenses that maybe could be better served by having treatment. What do you do in the felony drug court?

Judge JONES. Well, thank you, Senator Franken. Felony drug court is a court in which after an individual has entered a plea of guilty, they are charged, a drug charge. The prosecutor works out a negotiated plea with the defense counsel. And in the program, the felony drug is a 17- to 24-month program, in which the individuals go through five phases.

In the first phase, they are drug tested randomly anywhere between three to four times a week. They may receive a call as early as 6:00 in the morning for a drug test and as late as 10:00 at night for a drug test.

They meet biweekly with me and we discuss matters. They go through classes weekly. And as they move through the phases, the amount of contact somewhat reduces, but the requirements are still the same.

The mission of the felony drug court is to provide treatment for individuals so they will not become repeat offenders or recidivists. We have found that sentencing one to jail with a drug offense, when they get out of jail, they still have a drug addiction or substance abuse problem.

So what we are trying to do is stop the substance abuse problem so they will not become recidivists. And the program has been very successful, in my opinion. But we try to keep in contact with individuals after they graduate, as much as 2 years later, and we have a number of individuals come back. It is probably one of the most successful and most rewarding things I get to do as judge, and I look forward to meeting the individuals biweekly in the felony drug court.

Senator FRANKEN. And do you have any sort of longitudinal studies? I know you have been there for 6 years. But is the evidence that this works, that there is less recidivism, that this actually

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saves not just society money by not having to incarcerate people, but that the treatment has a return on investment?

Judge JONES. The State of Georgia, Senator, conducted an audit on all the felony drug courts in the State recently and it showed that the felony drug courts were less expensive and they were probably one of the most successful aspects of the courts.

For my particular drug court, I can say we have less than 20 percent of the individuals that graduate from felony drug court commit a crime within 2 years after graduating from the felony drug court. So an 80 percent success rate, I feel, is showing that they are successful and the court does work.

Senator FRANKEN. So would it be too bold to say that if we are interested in long-term deficits in this country, that maybe it would be a smart approach to have drug courts all over the country and make sure that we are not incarcerating people in a way that actually is more expensive for society in all kinds of ways?

Judge JONES. Yes, sir. I would agree with that statement completely.

Senator FRANKEN. Thank you. And I know that your job is not to talk about deficits, it is to be a judge, but my job is.

I would like to know, on the sentencing guidelines—and it sounds like all of you said that they deserve great deference and sounds like that you are talking about the consistency and uniformity of sentencing gives credibility to the court, which I find very important.

Can any of you speak to when you kind of make exceptions to or when your deference to the guidelines is also colored by other factors? Is there anyone who would like to speak to that?

Mr. COGBURN. Senator, it would certainly depend on the facts of the case, but 18 USC 3553 has all of those factors and after you determine the sentencing guideline, the proper guideline range, you look at all those other factors.

Normally, those factors probably would determine just where within that guideline range you would go.

Senator FRANKEN. So the guidelines themselves have within them the factors that you would consider.

Mr. COGBURN. They have some factors, too, but, also, in the statute itself, there are things that you look at and consider. After you get the sentencing guideline range determined, there are other factors that you look at and some of those would implicate where within this guideline range you would go.

And on occasion, and I would not know without what particular fact situation it would be, you might—so there might be one of those other factors that you are looking at under 3553 that would cause you to go outside the guideline range.

Senator FRANKEN. Well, thank you. My time is up and I have to go vote.

Senator WHITEHOUSE. We will return to Senator Sessions. It appears that Chairman Leahy will be coming to chair for a period to allow me to go and vote on the two votes that we have. So we will continue forward and back for a second round to Senator Sessions.

Senator SESSIONS. Thank you. Judge Jones, I do think that drug courts have great merit and have advocated for them since the

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early 1980s, and, well managed and properly handled, it can be effective.

But I do believe, do you not, that the ultimate authority of a judge to adjudicate a person guilty and sentence them to custody provides a kind of opportunity or the environment to get the attention of the offender and perhaps give them a chance to alter their lifestyle?

Judge JONES. Yes, sir. I agree with that totally. I think that, as judge, it is my job to listen to the facts in the case and follow the law in rendering a reasonable sentence on one. And if you fail to do that, then you are not doing your job as judge.

Senator SESSIONS. I just wonder, in this day and age, that some are discussing legalization of drugs and California has had votes on that. It seems to me that a low level offender can be given a second chance and it ought to be done in a way that has good supervision, as drug court does.

But, also, would you be concerned about a legalization of drugs in the country?

Judge JONES. Well, sir, what I believe is that right now, the law that I have to recognize is what is put forth by the Supreme Court and the 11th Circuit Court of Appeals and the Congress of the United States, and I will follow that law as far as drugs.

I agree with you that the supervision of individuals on drugs helps them tremendously.

Senator SESSIONS. The *Athens Banner-Herald* quoted you as saying, "Sentencing does not deter crime. The only thing I see sentencing doing is taking a person off the street so they can't do it for a while."

Well, that is true. It does take the person off. The incapacitation is one of the factors in it. But are you saying you truly do not believe that consistently enforced laws do not deter other people from violating the law?

Judge JONES. No, sir. Senator Sessions, when you are sentencing one to a sentence for being convicted for the law, that not only sends a message to that individual, but to other individuals that there is a punishment for violating the laws.

So I definitely believe that sentencing does deter crime.

Senator SESSIONS. Well, good. I think about the squeegee crackdowns, the street crimes in New York that New York cracked down on, and all crime plummeted when they did that.

Judge JONES. Yes, sir.

Senator SESSIONS. And it was consistent prosecutions that ended it. And if you do not prosecute it, you do not get deterrence. The same, I think, about at the border with Operation Streamline, where, when people are apprehended at the border are actually prosecuted and serve some time in jail, they come back less often than if they are not prosecuted. And I think of public corruption.

I do believe there is real deterrence. If a community allows corruption to continue without prosecuting, it does do that. And I just was troubled by your statement. I am glad to see that you clarified that.

And Senator Chambliss did not have the gumption to show up at the Auburn-Georgia game, but Senator Isakson was there sitting one row away from me with his Georgia shirt on, that sea of or-

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ange. I thought it was a courageous act. And after you guys had whipped us 4 years in a row, I think it was good to have a little different outcome. The SEC football is a lot of fun.

Judge JONES. Yes, sir.

Senator SESSIONS. A fabulous thing. I thank all of you for being willing to undergo this scrutiny. I will say I know that Chairman Leahy knows that more of it is done behind closed doors than in the open meeting and if anything bad had shown up, we would have been asking you about it.

So to some degree, you can certify that you have been checked out clean.

Judge Hernandez, it is great to see you and I am glad that after 600 days, we are finally being able to see you confirmed.

Judge HERNANDEZ. Thank you very much, Senator.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman LEAHY. [presiding] Thank you, Senator Sessions. I voted on this first one, so I will let you go. And I know the questions have been asked of all of you, and I congratulate each one of you, congratulate you on the jobs you have been nominated for, or offer condolences, depending upon how much of a backlog there may be in the district.

But as one who has practiced in state court, Federal Court, all the appellate courts, I know how hard judges work. And I am not going to ask questions, so we can bring up the next panel, but I would remind you of just one thing.

We had a judge who was here, a very, very good judge, and she had made some comment about the fact that she always worried because she was quite short. And I said, "You have to remember, when you go in the courtroom, you are the tallest person there."

Everybody in the courtroom stands and looks up at you. Do not let it go to your head. You are there to do justice to everybody and for everybody. You all have legal careers. You are used to walking into the court. I mean, there are days you could do it on some motions and some proceedings are so easy, it is almost a matter of rogue.

A lot of the people, when they are in the case before you, it is the only time that litigant has ever been in a Federal court. It is the only time probably they ever will be. And everything they know or think or feel about the judicial system will depend upon how a Judge Cogburn or a Judge Hernandez or a Judge Simon or a Judge Jones treats them while they are there.

They will not see any other judges. They probably will not ever be in another court, and they do know whether we have a good court system and a good judiciary, based upon how you are, not on how anybody else is.

So that is an awesome responsibility. I felt that responsibility even when I was a prosecutor. How you treated defendants or, as we call them, respondents in Vermont or a victim, because for many of them, it is the only time they ever saw the criminal justice system.

Now, I have read your backgrounds, each one of you, and impressed by it. Senator Sessions and I always meet privately if there are questions that need to be resolved before, both the Republican and Democratic side. We look at that very carefully and openly

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with each other. I agree with him, there is nothing to worry us there.

So I thank you all for being here, and I will not ask questions. And I know you have all been introduced, and thank you for taking the time.

Did you all get to introduce your family, too, earlier?

Judge JONES. Yes, we did.

Chairman LEAHY. Because someday, that will be in your archives and everybody says, "Now, who was there?" Thank you.

Mr. SIMON. Thank you, Senator.

Mr. COGBURN. Thank you, Senator.

Chairman LEAHY. Before we begin this panel, Michele Leonhart, Patti Saris, Stacia Hylton, if you would all raise your right hand.

[Nominees sworn.]

Chairman LEAHY. Thank you. And I am not Sheldon Whitehouse. I am Patrick Leahy. Somehow we have to get those in there.

I understand, Ms. Leonhart, you have already been introduced; is that correct?

Ms. LEONHART. That's correct.

Chairman LEAHY. And Judge Patti Saris has served as U.S. district court judge for the district of Massachusetts since 1993. Before that, she was an associate justice of the Massachusetts superior court; magistrate judge in the district of Massachusetts; worked in the U.S. attorney's office for the district of Massachusetts, where she was chief of the civil division.

She served as counsel to our dear friend, Senator Kennedy, on this Committee from 1979 to 1981; became counsel a little bit after I became a member of the Committee.

Born in Boston, BA from Radcliffe, JD from Harvard Law School. And I should note for the record that Senator Kerry has submitted a statement of support for you.

And Stacia Hylton is a 24-year veteran of the U.S. Marshals Service. She has posts, including acting deputy director and the assistant director for prisoner operations.

From 2004 to February this year, she served as Federal detention trustee in the Department of Justice, where she managed thousands of prisoners in Federal custody awaiting trial or deportation.

She currently operates her own consulting company, Hylton, Kirk & Associates. She was born in Red Bank, New Jersey. She is a graduate of Northeastern University.

I will include for the record a statement in support for Ms. Hylton—I apologize for the voice—from Senator Webb of Virginia.

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

Chairman LEAHY. Now, Ms. Leonhart, have you had a chance to introduce any family members who are here?

Ms. LEONHART. I have not, Chairman. Thank you.

Chairman LEAHY. Please go ahead, so it can be part of the record.

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STATEMENT OF MICHELE M. LEONHART, NOMINEE TO BE ADMINISTRATOR OF DRUG ENFORCEMENT, DEPARTMENT OF JUSTICE

Ms. LEONHART. Thank you very much. I am proud to introduce my better half, my partner, Gene Johns, my husband, who today celebrates his 28th year with the Los Angeles County Sheriff's Department. He is currently a narcotics detective in Los Angeles.

And also with me is Hon. Peter Bensinger, who was the DEA administrator from 1976 to 1981. He has been a mentor for me and, in fact, was the administrator that swore me in as a DEA agent and presented me with my badge and credentials.

And I would also like to note three people that are not here today. My oldest son got married on Saturday and I didn't want to take him away from a honeymoon. And my youngest son is a deputy sheriff in Los Angeles and had to work. And then my mother earlier this year suffered a stroke and she is recovering or would be here.

So thank you very much.

Chairman LEAHY. Please give her our best.

Ms. LEONHART. Thank you, Chairman.

Chairman LEAHY. And, Ms. Saris, do you have family members here?

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   My name is Michele Marie Leonhart. The name on my birth certificate is Michele Marie Brown. I have been Michele Marie Leonhart since birth and have never used the name Michele Marie Brown.

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

   Administrator
   Drug Enforcement Administration

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: 700 Army-Navy Drive
   Arlington, Virginia 22202

   Residences: [redacted]

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

   Born 1956
   Fargo, North Dakota

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

   Bemidji State University, Bemidji, Minnesota
   September 1976 – June 1978
   Bachelor of Science Degree in Criminal Justice June 1978

   Lakewood Junior College, White Bear Lake, Minnesota
   September 1974 – June 1976
   Associate Degree in Law Enforcement June 1976

   *In addition, selected by DEA to attended Boston University's School of Leadership in 1997

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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 job description.

November 2007 – present
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Acting Administrator

March 2004 – present
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Deputy Administrator

August 2003 –March 2004
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Acting Deputy Administrator

September 1998 – March 2004
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Los Angeles, California
Position: Special Agent in Charge

July 1997 – September 1998
U.S. Department of Justice
Drug Enforcement Administration (DEA)
San Francisco, California
Position: Special Agent in Charge

July 1996 – July 1997
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Executive Assistant to Assistant Administrator

April 1996 – July 1996 (TDY)
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Executive Assistant to Assistant Administrator

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October 1995 – July 1996
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Los Angeles, California
Position: Assistant Special Agent in Charge

December 1994 – September 1995
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Executive Secretary to the Career Board

May 1993 – December 1994
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Inspector (Office of Professional Responsibility)

March 1993 – May 1993
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Staff Coordinator (Operations Division)

January 1988 – February 1993
U.S. Department of Justice
Drug Enforcement Administration (DEA)
San Diego, California
Position: Group Supervisor

May 1986 – January 1988
U.S. Department of Justice
Drug Enforcement Administration (DEA)
St. Louis, Missouri
Position: Special Agent

April 1981 – May 1986
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Minneapolis, Minnesota
Position: Special Agent

January 1981 – March 1981
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Washington, DC.
Position: Special Agent (DEA Training Academy)

July 1979 – January 1981
Baltimore Police Department
Baltimore, Maryland
Position: Police Officer

66817.501

July 1978 – June 1979
White Bear Lake School District
White Bear Lake, Minnesota
Position: Resource Worker (Lincoln Elementary School)

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. .

   No military service. Not required to register for selective service.

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

   Federal Drug Agents Foundation Lifetime Achievement Award, 2008

   DARE Lifetime Achievement Award, 2008

   Law Enforcement Exploring William H. Spurgeon Award, 2006

   Women in Federal Law Enforcement Outstanding Federal Employee Award, 2005

   Presidential Rank Award for Meritorious Service, 2005

   Presidential Rank Award for Distinguished Executive, 2004

   Presidential Rank Award for Meritorious Service, 2000

   National ONDCP Director's Award, 2001

   SES Performance Awards, 1998 – 2008

   Administrator's Award for Distinguished Service, 1993

   Various DEA Performance Awards, 1982 - 1996

   Graduated Outstanding Student from DEA Academy, March 1981

   Graduated Outstanding Student from Baltimore Police Academy, November 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.

   Not applicable; I am not an attorney

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.

Not applicable; I am not an attorney

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.

Not applicable; I am not an attorney

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 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.

- International Association of Chiefs of Police (IACP), 1997 - Present; Current Chair of the Narcotics and Dangerous Drugs Committee, Current Chair of the Advisory Committee to the International Policing Division Steering Committee, and Current member of the Executive Committee
- Peace Officers Association of Los Angeles County (POALAC), 1998 - 2002; Former Chair of Narcotics Committee
- California Narcotic Officers Association (CNOA), 1991 – Present; member
- International Narcotic Enforcement Officers Association (INEOA), 1995 – Present (on and off); member
- International Narcotic Interdiction Association (INIA), 1997 – 1998; Former Board Member (Honorary)

b. Indicate whether any of these organizations listed in response to 11(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – 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 that I am aware of.

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. Please supply four (4) copies of all published material to the Committee.

- Article entitled "*Chicago Museum Exhibit Hits the Bulls-Eye: Target America Shows Damages of Drugs, Builds Partnerships*" for Police Chief Magazine May 2008 (see attached)

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, please 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.

- March 20, 2000, testimony before the House Subcommittee On Criminal Justice, Drug Policy, and Human Resources
- July 6, 2000, testimony before the House Judiciary Subcommittee on Crime in Pasadena, California
- March 12, 2008, testimony before the Committee on Appropriations, House Subcommittee on Commerce, Justice, Science and Related Agencies
- March 26, 2009, testimony before the Committee on Appropriations, House Subcommittee on Commerce, Justice, Science and Related Agencies

d. Supply four (4) copies, transcripts or tape 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 tape recording of your remarks, please 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, please furnish a copy of any outline or notes from which you spoke.

See attached list

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.

See attached list

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

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

I was unanimously confirmed as the Deputy Administrator of the Drug Enforcement Administration (DEA) by the U.S. Senate on March 8, 2004, following my nomination by President George W. Bush. On April 15, 2008, I was nominated by President George W. Bush to be the Administrator of DEA but did not have a confirmation hearing before the Administration ended. I have been Acting Administrator of DEA since November 2007.

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

None.

14. **Legal Career:** Please 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 am not an attorney.

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

I am not an attorney.

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.

November 2007 – present
U.S. Department of Justice
Drug Enforcement Administration (DEA)

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Arlington, Virginia
Position: Acting Administrator

March 2004 – present
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Deputy Administrator

August 2003 –March 2004
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Acting Deputy Administrator

September 1998 – March 2004
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Los Angeles, California
Position: Special Agent in Charge

July 1997 – September 1998
U.S. Department of Justice
Drug Enforcement Administration (DEA)
San Francisco, California
Position: Special Agent in Charge

July 1996 – July 1997
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Executive Assistant to Assistant Administrator

April 1996 – July 1996 (TDY)
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Executive Assistant to Assistant Administrator

October 1995 – July 1996
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Los Angeles, California
Position: Assistant Special Agent in Charge

December 1994 – September 1995
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Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Executive Secretary to the Career Board

May 1993 – December 1994
U.S. Department of Justice

Drug Enforcement Administration (DEA)
Arlington, Virginia
Position: Inspector (Office of Professional Responsibility)

March 1993 – May 1993
U.S. Department of Justice
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Arlington, Virginia
Position: Staff Coordinator (Operations Division)

January 1988 – February 1993
U.S. Department of Justice
Drug Enforcement Administration (DEA)
San Diego, California
Position: Group Supervisor

May 1986 – January 1988
U.S. Department of Justice
Drug Enforcement Administration (DEA)
St. Louis, Missouri
Position: Special Agent

April 1981 – May 1986
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Minneapolis, Minnesota
Position: Special Agent

January 1981 – March 1981
U.S. Department of Justice
Drug Enforcement Administration (DEA)
Washington, DC.
Position: Special Agent (DEA Training Academy)

July 1979 – January 1981
Baltimore Police Department
Baltimore, Maryland
Position: Police Officer

July 1978 – June 1979
White Bear Lake School District
White Bear Lake, Minnesota
Position: Resource Worker (Lincoln Elementary School)

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 am not an attorney.

b. Describe:

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

I am not an attorney.

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

I am not an attorney.

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;
2. state courts of record;
3. other courts;
4. administrative agencies

I am not an attorney.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. criminal proceedings.

I am not an attorney.

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

I am not an attorney.

i. What percentage of these trials were:
1. jury;
2. non-jury.

I am not an attorney.

e. Describe your practice, if any, before the Supreme Court of the United States. Please 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 am not an attorney.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the

citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

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

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

PROFESSIONAL REPUTATION LIST

Richard G. Kerlikowske
ONDCP Director
202-395-6700

General Barry McCaffrey
Former ONDCP Director
703-824-5160

John (Jack) Lawn
former DEA Administrator and FBI agent
919-357-6441 (cell)
919-932-1555 (home)

Peter Bensinger
Former DEA Administrator
312-807-0502

Asa Hutchinson
Former DEA Administrator
202-297-2897

Robert Mueller
FBI Director
202-324-3444

John Clark
Director
U.S. Marshals Service
202-307-9001

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William Bratten
Former Los Angeles Police Chief
Chairman, Altegrity Risk International
703-448-0178

Dan Rosenblatt
IACP Executive Director
703-836-6767 Ext:201

Doug DeLeaver
Former NOBLE President
410-515-2884

Margie Moore
Director
Women in Federal Law Enforcement
703-981-6903

Michael Braun
Spectre Group International
703-519-4201

Neil MacBride
United States Attorney
Northern District of Virginia
703-299-3700

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

I was unanimously confirmed as the Deputy Administrator of the Drug Enforcement Administration by the U.S. Senate on March 8, 2004, following my nomination by President George W. Bush. In that capacity, I, as a career DEA Special Agent, am the chief operating officer of the $2.6 billion agency, responsible for all enforcement, administrative and regulatory operations and over 10,000 employees across the U.S. and in 86 foreign offices. Under my leadership, DEA investigations resulted in criminal charges against 78 percent of the most wanted drug trafficking leaders, and record-breaking extraditions, drug and asset seizures, and revenue denied to drug cartels. I have forged relationships with federal, state, local and foreign counterparts, realigned DEA resources to expand DEA's foreign presence to combat emerging threats, and enhanced intelligence sharing with foreign countries to include Mexico and Colombia. I also implemented a plan to deploy the first teams of DEA agents to conduct counter-narcotics operations in Afghanistan post 9-11, leading to the first U.S. extradition from Afghanistan and the investigation and prosecution of Afghan drug lords. I am currently the Acting DEA Administrator and have served in that role since the retirement of former Administrator Karen P. Tandy in November 2007.

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I oversaw the development and launch of DEA's award-winning website www.justthinktwice.com, designed for teens regarding the consequences of illegal drugs which received wide acclaim from teenagers, schools, drug prevention specialists, and community coalitions. As chairperson of DEA's Career Board, I revamped DEA's career development program to strengthen succession planning and development of future leaders for DEA. In recognition of my leadership, performance, and commitment to public service, I was awarded the rank of Distinguished Executive by President Bush in 2004, the Presidential Rank Award for Meritorious Service from President Bush in 2005, and the Presidential Rank Award for Meritorious Service from President Clinton in 2000. I was also the recipient of the Women in Federal Law Enforcement Outstanding Federal Law Enforcement Employee Award in 2005.

Prior to becoming DEA Deputy Administrator, I held several positions within DEA's Senior Executive Service (SES). I was the Special Agent in Charge of DEA's Los Angeles Field Division from 1998-2003. In that capacity, I commanded one of DEA's largest Field Divisions and was responsible for all enforcement and administrative operations in the Los Angeles area, as well as Nevada, Hawaii, Guam and Saipan. I previously held the position of Special Agent in Charge of DEA's San Francisco Field Division from 1997-1998. My first appointment within the SES was in 1996 when I spearheaded DEA's Special Agent Recruitment efforts at DEA Headquarters.

As a career DEA Special Agent, I held several key positions as I moved through the ranks of DEA. In 1995 I was promoted to the position of Assistant Special Agent in Charge of the Los Angeles Field Division, responsible for Southwest Border enforcement operations and division administrative functions. Between 1993 and 1995, I held management positions within DEA Headquarters to include Career Board Executive Secretary, Office of Professional Responsibility (OPR) Inspector, and Staff Coordinator in the Operations Division. My first supervisory position was as Group Supervisor of an enforcement group in DEA's San Diego Field Division. Prior to that, I initiated major drug investigations and conspiracy cases in Minneapolis and St. Louis, and served as a DEA Special Agent recruiter. While at DEA, I was selected to attend Boston University's Leadership Institute.

I began my law enforcement career as a Baltimore City Police Officer after graduating from college in Minnesota with a B.S. degree in Criminal Justice in 1978. Throughout my 29 years as a Special Agent for the DEA, I have aspired to serve the DEA mission and to grow professionally. I have sought to respond effectively to opportunities and situations, making good use of DEA methods, procedures and resources. I believe my efforts tangibly and positively impacted organizational goals of DEA and the Department of Justice. I also believe I have garnered the respect of my fellow special agents through integrity and a positive work ethic. I honed my leadership skills and welcomed increased responsibility as I moved up the ranks within DEA, all the way to the position I now hold as Acting Administrator.

Through my varied experiences, I have been able to communicate effectively and lead by example. I seek to develop in my subordinates motivation, participation, and opportunities for initiative. I practice leadership qualities that render optimal results, even when faced with limited resources. I strive to assertively turn deficient programs into award-winning examples. The quality of my work and accomplishments throughout my law enforcement career reflect the high professional standards that I seek to uphold. My supervisory and leadership experiences in several DEA field offices, DEA Headquarters, and as Deputy Administrator and Acting Administrator have enabled me to see the broad prospective of government in which DEA operates.

I have forged partnerships within and outside DEA, developing enduring professional relationships. The combination of law enforcement operational experience and varied levels of management within the DEA environment has afforded me a unique opportunity to experience the benefits, limitations, and difficulties of coalition building. Throughout my many years in the law enforcement community, I have continuously developed my skills, vision, and commitment to public service.

I welcome the opportunity to lead DEA to continued successes and to capitalize on the critical opportunity we have to disrupt and dismantle the world's largest drug organizations and their financial infrastructures, and combat drug violence in our communities should I be confirmed Administrator of DEA by the United States Senate.

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

None.

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

As a U.S. Government career employee, I have invested in the Thrift Savings Program.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest**:

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. I am not aware of any other potential conflicts of interest.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. I am not aware of any other potential conflicts of interest.

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

During my twenty-nine (29) year career as a DEA Special Agent, I have participated in numerous law enforcement, community, and school programs to educate children, teens, parents, teachers, and community leaders on drug prevention. This includes participation in DARE, Partnership for a Drug Free America, CADCA and various other prevention and treatment activities as well as Town Hall meetings and law enforcement seminars. I have forged relationships with numerous prevention and treatment organizations and have brought them to the table to partner with state, local and federal law enforcement officials to collectively combat drug threats in their areas.

I have been involved for the past 25 years in volunteering opportunities to mentor teens and young adults interested in careers in law enforcement. This involvement includes training young people on drug abuse issues, drug enforcement investigations and techniques, and volunteering to participate in their state and national conferences.

FINANCIAL STATEMENT Michele Leonhart

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	58	114	00	Notes payable to banks-secured	4	457	00
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule (Wells Fargo Bank)	292	407	00
Real estate owned-add schedule (residence in Redondo Beach, CA)	600	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	45	000	00	Chase – spouse	2	800	00
Cash value-life insurance				American Express	8	000	00
Other assets itemize:							
US Government Thrift Savings	287	350	00				
Spouse Retirement Account	458	800	00				
Spouse Thrift Savings	203	373	00	Total liabilities	316	664	00
				Net Worth 1,	335	973	00
Total Assets 1,	652	637	00	Total liabilities and net worth 1,	652	637	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor (Niece's School Loan-cosigner-Wells Fargo)	9	000	00	Are any assets pledged? (Add schedule)	No		
On leases or contracts	No			Are you a defendant in any suits or legal actions?	No		
Legal Claims	No			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	No						
Other special debt	No						

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence [redacted]	$ 600,000
Total Real Estate Owned	$ 600,000
Real Estate Mortgages Payable	
Personal residence- [redacted]	
Wells Fargo Bank	$ 292,407



U.S. Department of Justice

Washington, D.C. 20530

DEC 2 2 2009

Robert I. Cusick
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Michele M. Leonhart. President Obama has announced his intent to nominate Ms. Leonhart to serve as the Administrator, Drug Enforcement Administration, United States Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. § 208, requires that Ms. Leonhart recuse herself from participating personally and substantially in any particular matter that has a direct and predictable effect on her financial interests or the financial interests of any other person whose interests are imputed to her, unless she first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208(b)(2). Ms. Leonhart understands that the interests of the following persons are imputed to her: her spouse; her minor children; any general partner; any organization in which she serves as an officer, director, trustee, general partner or employee; and any person or organization with which she is negotiating or has an arrangement concerning prospective employment. In determining whether a particular matter has a direct and predictable effect on her financial interests or on those of any other person whose interests are imputed to her, Ms. Leonhart will consult with Department of Justice ethics officials.

We have advised Ms. Leonhart that because of the standard of conduct on impartiality at 5 C.F.R. § 2635.502, she should seek advice before participating in any particular matter involving specific parties in which a member of her household has a financial interest or in which someone with whom she has a covered relationship is or represents a party. Notwithstanding the general advice, we provided more specific advice regarding Section 502 and matters concerning Ms. Leonhart's husband's employer, the Los Angeles County Sheriff's Department (LACSD). We also note that Ms. Leonhart's husband is currently the Acting Supervisor of a joint task force comprised of LACSD, DEA and other law enforcement agents.

The DEA has an ongoing working relationship with state and local law enforcement organizations throughout the country, including LACSD. This relationship includes ongoing

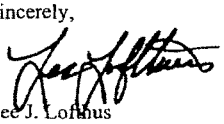
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communication, assistance, and coordination of law enforcement activities; joint participation in established task forces that include federal, state and local law enforcement; and ad hoc arrangements among DEA, LACSD, and perhaps other law enforcement entities that coordinate efforts for a particular matter(s). As a general rule, we do not believe LACSD's law enforcement assistance or participation in a particular matter creates an appearance of a conflict of interest to require prior, specific authorization for Ms. Leonhart's participation in the matter. However, we have advised Ms. Leonhart and she has agreed that she will seek prior authorization before she participates in any particular matter when the LACSD and/or any of its employees are a target or subject of an investigation conducted in whole or in part by DEA.

Finally, Ms. Leonhart understands that as an appointee she is required to sign the Ethics Pledge (Exec. Order No. 13490) and that she will be bound by the requirements and restrictions therein in addition to the commitments she has made in this and any other ethics agreement.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you may so certify to the Senate Judiciary Committee.

Sincerely,



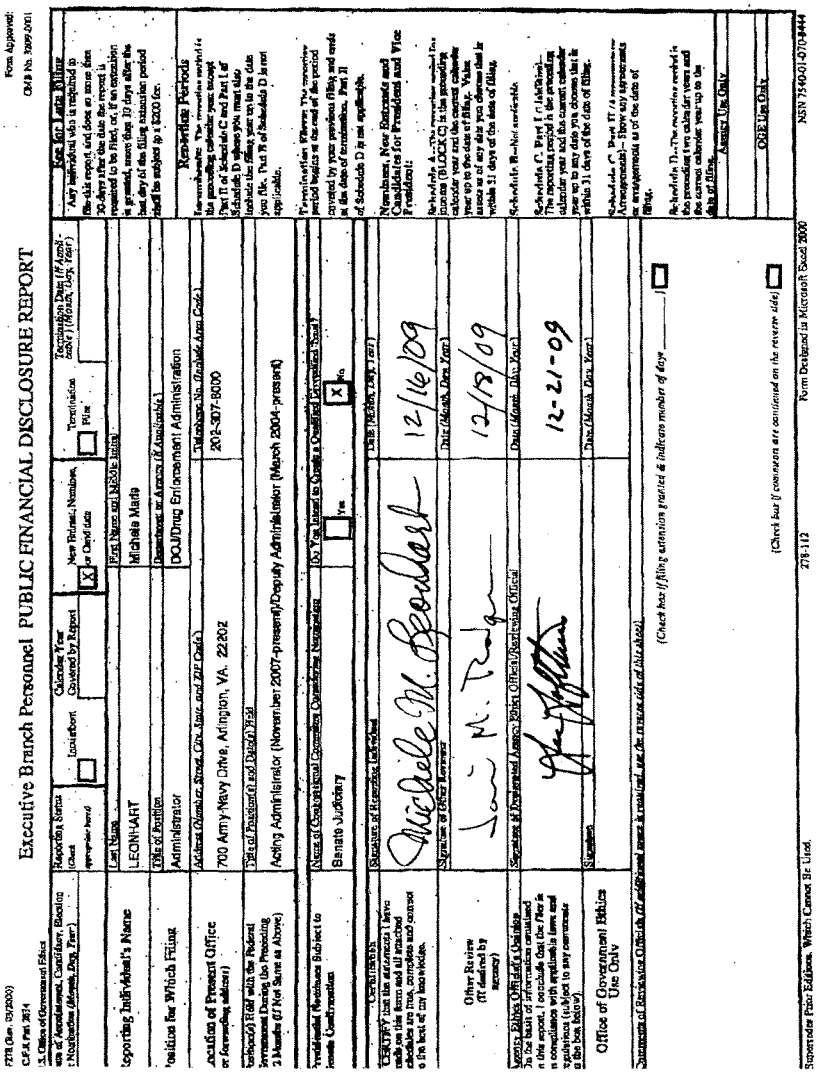
Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

NOMINEE STATEMENT

I have read the attached Ethics Agreement signed by Lee J. Lofthus, Assistant Attorney General for Administration and Designated Agency Ethics Official on December 22 2009, and I agree to comply with the conflict of interest statute and regulations, and to follow the procedures set forth in the agreement. In addition, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Michele M. Leonhart Date



Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved: OMB No. 3209-0001

278 (Rev. 12/2000)
U.S. Office of Government Ethics

1. Office of Government and Ethics use only / Date Received / Calendar Year Covered by Report / Nominee / Incumbent / New Entrant, New Hire or Candidate / Termination Date (If Applicable) (Month, Day, Year) / Termination Filer

See Act, Latin, Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is requested is fined $200 for each day the report is late, up to a maximum of $5,000, unless a waiver is granted. If an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fine.

Reporting Individual's Name — Last Name: LEONHART; First Name and Middle Initial: Michele Marie

Position for Which Filing — Title of Position: Administrator; Department or Agency (If Applicable): DOJ/Drug Enforcement Administration

Reporting Periods

Location of Present Office or Forwarding Address — Address (Number, Street, City, State, and ZIP Code): 700 Army-Navy Drive, Arlington, VA. 22202; Telephone No. (Include Area Code): 202-307-8000

Individual's Role with the Federal Government During the Preceding 12 Months (If Not Same as Above) — Date of Position(s) and Title(s) Held: Acting Administrator (November 2007-present)/Deputy Administrator (March 2004-present)

Nominations, New Entrants and Candidates for Presidential and Vice Presidential Positions

Presidential Nominees Subject to Senate Confirmation — Name of Congressional Committee Considering Nomination: Senate Judiciary; Do You Intend to Create a Qualified Diversified Trust? Yes / X No

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge. — Signature of Other Nominee: — Date (Month, Day, Year):

Other Review (If desired by agency) — Signature of Nominee (If Applicable): Michele M. Leonhart — Date (Month, Day, Year): 12/16/09

Agency Ethics Official's Opinion — Signature of Designated Agency Ethics Official: — Date (Month, Day, Year): 12/18/09

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments on the back hereof). — Signature: — Date (Month, Day, Year): 12-21-09

Office of Government Ethics Use Only

Statement of Reviewing Official, if additional space is required, use the reverse side of this sheet. (Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Agency Use Only

OGE Use Only

278-112 — Form Developed in Microsoft Excel 2000 — NSN 7540-01-670-9444

Supersedes Prior Editions Which Cannot Be Used. — Prescribed by 5 C.F.R. Part 2634

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SF278 (Rev 03/2006)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: LEONHART

SCHEDULE A

Page Number: 2 of 5

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a *fair market* value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual source of any honoraria over $200 of your spouse).

None ☐

		Valuation of Assets (BLOCK B)												Income Type (BLOCK C)			Income Amount (BLOCK C)									Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
		None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000		
Examples	Central Asylnea Common		x		x											x						x								
	Doe Jones & Smith, Hometown, State																													
	Kenestone Equity Fund					x								x										x						
	IRA Heartland 500 Index Fund						x							x											x					
1	Los Angeles County (S)																												Salary	
2	County of Los Angeles Defined Compensation and Thrift Plan(s)																													
3	- Horizons Mid Cap Equity Fund - Horizons Large Cap Equity Fund - Horizons Stable Income Fund		x		x									x x x									x x	x						
4	Cabrillo Federal Credit Union, San Diego, CA			x																x										
5	Southland Credit Union Los Angeles, CA (J)			x																x										
6	Minneapolis Federal Credit Union, Bloomington, MN		x																	x										
	ING Direct, Wilmington, DE (s)		x																	x										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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5 C F R Part 2634
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Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
		3 of 5

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (*)			Date (Mo., Day, Yr.)	Amount of Transaction (+)														
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of Divestiture
Example	Central Airlines Common	X			2/1/99			X								
1																
2																
3																
4																
5																

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totalling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$700
1			
2			
3			
4			
5			

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5 C F R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number
		4 of 5

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if appli-cable	Category of Amount or Value (x)											
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples:	First District Bank, Washington, DC John Jones, 123 J St., Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand					x						
1	Chase, Palatine, IL	Consumer Credit	2006	8%	Monthly	X										
2	American Express	Consumer Credit	2008	0	Monthly	X										
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation); (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
LEONHART, Michele		5 of 5

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None [X]

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None [X]

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

Prior Editions Cannot Be Used

Attachment for Question#12d (note: due to the volume of speeches, conferences, and talking events during my 29 year career, this is not to be considered a complete list).

Speaking Activities

- **Community Oriented Policing Services (COPS) National Methamphetamine Conference:** On November 3, 2003, Acting Deputy Administrator Michele M. Leonhart was the keynote speaker at the National Community Oriented Policing Services (COPS) National Methamphetamine Conference in Long Beach, California. DEA methamphetamine strategies and successes were presented.*

- **National Youth Crime Prevention Conference:** On February 15, 2004, Acting Deputy Administrator Michele M. Leonhart addressed approximately 500 participants at the National Youth Crime Prevention Conference in Arlington, Virginia. The Acting Deputy Administrator stressed the connection between drugs and crime and encouraged the participants to use their talents and energies in the fight against drugs.*

- **National Narcotic Officers' Association Coalition:** On March 19, 2004, Acting Deputy Administrator Michele M. Leonhart addressed a Board of Delegates meeting of the National Narcotic Officers' Association in Washington, D.C. The Acting Deputy Administrator addressed issues relating to federal law enforcement and the national drug strategy.*

- **Organized Crime and Drug Enforcement Task Force (OCDETF) Conference:** On April 8, 2004, Deputy Administrator Michele M. Leonhart addressed the participants of the Pacific Region national OCDETF conference in Las Vegas, Nevada. The Deputy Administrator discussed the challenges facing law enforcement and the importance of the OCDETF program.*

- **United States Attorney's Narcotics and Dangerous Drugs Committee:** On April 26, 2004, Deputy Administrator Michele M. Leonhart addressed the U.S. Attorney's Narcotics and Dangerous Drugs Committee in San Diego, California. The Deputy Administrator focused her comments on drug trafficking and investigative strategy. Remarks were used from OCDETF speech given April 8, 2004 listed above.*

- **Panel Discussion at National Association of Black Narcotic Agents (NABNA) Conference:** On June 23, 2004, Deputy Administrator Michele M. Leonhart participated in the NABNA Training Conference held in Arlington, Virginia as a member of the "Women in Law Enforcement Panel." No prepared speech or outline used.

- **2004 National Law Enforcement Exploring Conference:** On July 19, 2004, Deputy Administrator Michele M. Leonhart addressed the 2004 Law Enforcement Exploring Conference in Atlanta, Georgia. The Deputy Administrator discussed the mission of DEA and provided an overview of the agency's operations. No prepared speech or outline used.

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- **Closing Remarks at International Narcotics Enforcement Management Seminar:** On September 24, 2004, Deputy Administrator Michele M. Leonhart provided closing remarks at the conclusion of the International Narcotics Enforcement Management Seminar in Potomac, Maryland. The Deputy Administrator commented on the importance of international cooperation and the global challenges facing law enforcement. No prepared speech or outline used.

- **Keynote Speaker at Steroids and Athletic Stimulants Summit:** On October 17, 2004, Acting Administrator Leonhart provided the keynote address at the CIF/DEA Steroids and Athletic Stimulants Summit held in Los Angeles.*

- **International Narcotic Enforcement Officers Association (INEOA) Conference:** On October 18, 2004, Deputy Administrator Michele M. Leonhart was the keynote speaker at the 45th Annual Conference of the INEOA in Ft. Lauderdale, Florida. The Deputy Administrator emphasized the importance of drug enforcement efforts and the dedication and commitment demonstrated by law enforcement officers.*

- **Speech at Corpus Christi Elementary School during Red Ribbon Week:** On October 25, 2004, Deputy Administrator Michele M. Leonhart addressed students at Corpus Christi Elementary School in Falls Church, VA at a Red Ribbon celebration. The Deputy Administrator discussed the dangers associated with drug abuse and encouraged a drug-free lifestyle.*

- **Remarks given to Center for Substance Abuse Treatment Advisory Council:** On January 27, 2005, Deputy Administrator Michele M. Leonhart provided remarks to the Center for Substance Abuse Treatment Advisory Council during its 41st meeting held in Rockville, Maryland.*

- **Century College Commencement Address:** On May 13, 2005, Deputy Administrator Michele M. Leonhart provided the commencement address to the graduates of Century College in Maplewood, Minnesota.*

- **18th Annual International Drug Abuse Resistance Education (DARE) Conference:** On August 11, 2005, Deputy Administrator Michele M. Leonhart was the key note speaker and presented the DEA-DARE Law Enforcement Executive of the Year Award at the closing banquet in San Antonio, Texas.*

- **Remarks given at Department of Justice EEO Symposium:** On September 20, 2005, Deputy Administrator Michele M. Leonhart provided remarks during a plenary session of an EEO Symposium sponsored by the Department of Justice in Washington, DC.*

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- **Keynote Address for the National Red Ribbon Kick-Off Event:** On October 3, 2005, Deputy Administrator Michele M. Leonhart was the keynote speaker at the National Red Ribbon Kick-Off event hosted by the Informed Families Education Center in Miami, Florida. The Kick-Off event was a prelude to the 2005 Red Ribbon Week, an annual symbol of drug prevention which began as a tribute to Drug Enforcement Administration Special Agent Enrique "Kiki" Camarena who in 1985 was abducted, tortured, and murdered in Guadalajara, Mexico. During Red Ribbon Week, Drug Enforcement Administration offices throughout the United States conduct special events emphasizing anti-drug messages.*

- **2005 Association of Former Federal Narcotics Agents National Conference Banquet:** On October 12, 2005, Deputy Administrator Michele M. Leonhart was the keynote speaker at the 2005 Association of Former Federal Narcotics Agents National Conference Banquet in Newport, Rhode Island. The Deputy Administrator acknowledged the professional contributions of former federal narcotics agents and thanked the association for its support of the Drug Enforcement Administration.*

- **Los Angeles Police Department Women's Leadership Conference:** On November 10, 2005, Deputy Administrator Michele M. Leonhart was a panel speaker at the Los Angeles Police Department Women's Leadership Conference. Deputy Administrator discussed her career, leadership and diversity at DEA. *

- **National Narcotics Officers' Associations' Coalition:** On February 15, 2006, Deputy Administrator Michele M. Leonhart addressed the National Narcotics Officers' Associations' Coalition in Washington, D.C. The Deputy Administrator commented on methamphetamine and medical marijuana issues, and provided an update on the Drug Enforcement Administration's recent successes and most challenging issues. No prepared speech or outline used.

- **Opening Remarks at the National Association of Black Narcotics Agents (NABNA) Annual Conference:** On July 17, 2006, Deputy Administrator Michele M. Leonhart provided the opening remarks at the 2006 NABNA conference in Pasadena, California. The Deputy Administrator spoke about the challenges and opportunities facing narcotics officers. No prepared speech or outline used.

- **Drug Abuse Resistance Education (DARE) Annual Conference Banquet:** On July 27, 2006, Deputy Administrator Michele M. Leonhart was the keynote speaker at the 2006 DARE Conference in Orlando, Florida. The Deputy Administrator spoke about drug prevention efforts and presented the DARE Executive of the Year Award.*

- **Keynote Speaker at the Annual International Outlaw Motorcycle Gang Investigators' Association Conference:** On September 18, 2006, Deputy Administrator Michele M. Leonhart was the keynote speaker at the 32nd annual International Outlaw Motorcycle Gang Investigators' Association conference in San Diego, California, attended by more than 400 law enforcement officers from around the world. The conference addressed issues involving motorcycle gangs and their criminal activities, including the manufacture, sale, and distribution of illegal drugs.*

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- **National Narcotic Officers' Association Coalition:** On February 12, 2007, Deputy Administrator Michele M. Leonhart addressed the National Narcotics Officers' Association Coalition in Washington, D.C. The Deputy Administrator commented on DEA drug strategies. No prepared speech or outline used.

- **Tri-State Commander's Conference:** On March 7, 2007, Deputy Administrator Michele M. Leonhart addressed the Tri-State Commander's Conference in Laughlin, Nevada. The conference was an annual gathering of narcotics commanders from California, Nevada, and Arizona. The Deputy Administrator delivered the opening remarks and expressed DEA's appreciation regarding the cooperation between state and local agencies and DEA.*

- **Northern Border DEA-RCMP Conference:** On May 23, 2007, Deputy Administrator Michele M. Leonhart made opening remarks at the Northern Border DEA-RCMP Conference held in Rochester, Michigan. The conference was sponsored by DEA and the Royal Canadian Mounted Police (RCMP) and was attended by senior officials from both agencies. This conference addressed policy issues relating to ongoing international law enforcement initiatives.*

- **13th Annual National Association of Drug Court Professionals (NADCP) Training Conference:** On June 15, 2007, Deputy Administrator Michele M. Leonhart attended the 13th Annual NADCP Training Conference in Washington, D.C. where she participated as a panelist. The NADCP promotes the establishment, growth, and funding of drug courts.*

- **Women in Federal Law Enforcement (WIFLE) Conference:** On June 26, 2007, Deputy Administrator Michele M. Leonhart attended the Women in Federal Law Enforcement (WIFLE) conference in Rancho Mirage, California where she was the keynote speaker. WIFLE promotes gender equity in federal law enforcement through training, research, scholarships, awards, and networking partnerships.*

- **Drug Abuse Resistance Education (DARE) Annual Training Conference:** On July 19, 2007, Deputy Administrator Michele M. Leonhart was the keynote banquet speaker at the annual DARE training conference in Nashville, Tennessee. She also presented the DEA DARE Law Enforcement Executive of the Year Award. DARE is an educational drug prevention program that is taught in 75 per cent of the nation's school districts and more than 43 countries around the world. *

- **National Organization of Black Law Enforcement Executives (NOBLE) Workshop:** On July 29, 2007, Deputy Administrator Michele M. Leonhart participated in a three-member panel of the NOBLE Chief Executive Officer and Leadership Forum in Fort Lauderdale, Florida, regarding "The First 90-180 Days as a Chief / CEO." No prepared speech or outline was utilized.

- **U.S. Attorney's Conference:** On February 13, 2008, Acting Administrator Michele M. Leonhart spoke at the U.S. Attorney's Conference in Washington, D.C. The conference was sponsored by the Department of Justice, and was attended by U.S. Attorneys and Assistant U.S. Attorneys representing all 94 U.S. Judicial Districts.*

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- **DEA Museum Foundation Awards Ceremony:** On March 6, 2008, Acting Administrator Michele M. Leonhart spoke at the DEA Museum Foundation award ceremony in Washington, D.C. during which Mrs. Betty Sembler was presented with the 2008 Lifetime Achievement Award. Mrs. Sembler was being recognized for her work in the White House Conference for a Drug Free America and the Florida Governor's Drug Policy Task Force, and as a board member of the Florida Drug Abuse Resistance Education project.*

- **2008 Midyear Conference of the International Association of Chiefs of Police, State and Provincial Police Division:** On March 7, 2008, Acting Administrator Michele M. Leonhart spoke at the 2008 Midyear Conference of the International Association of Chiefs of Police, State and Provincial Police Division, in Washington, D.C., and addressed mutual drug law enforcement challenges and successes.*

- **2008 National HIDTA Conference:** On May 22, 2008, Acting Administrator Michele M. Leonhart was the keynote speaker at the National High Intensity Drug Trafficking Area (HIDTA) Conference held in Coronado, California.*

- **New Jersey Women in Law Enforcement:** On May 28, 2008, Acting Administrator Michele M. Leonhart was the keynote speaker at the New Jersey Women in Law Enforcement Conference held at Rutgers University in New Brunswick, New Jersey. Acting Administrator Leonhart spoke about women in law enforcement, and recent DEA successes, with a particular emphasis on cases and accomplishments in New Jersey.*

- **DEA Special Agent Graduation**: On June 20, 2008, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 177 in Quantico, Virginia. Acting Administrator Leonhart spoke about what graduates have endured to get to this point and the vitally important work they'll soon be doing.*

- **International Drug Enforcement Conference**: On July 8, 2008, Acting Administrator Michele M. Leonhart gave the opening remarks at the IDEC conference in Istanbul, Turkey. Acting Administrator Leonhart as co-president of IDEC welcomed conference participants and spoke about global partnerships to stop transnational drug traffickers.*

- **International Drug Enforcement Conference**: On July 10, 2008, Acting Administrator Michele M. Leonhart gave closing remarks at the IDEC conference in Istanbul, Turkey. Acting Administrator Leonhart spoke about the importance of international drug enforcement cooperation and the challenges ahead.

- **Law Enforcement Explorer's Conference**: On July 21, 2008, Acting Administrator Michele M. Leonhart gave opening remarks at the Law Enforcement Explorer's Conference in Colorado Springs, Colorado. Acting Administrator Leonhart welcomed participants to the weeklong event and encouraged youth to seek careers in law enforcement.*

- **Law Enforcement Explorer's Conference**: On July 24, 2008, Acting Administrator Michele M. Leonhart gave closing remarks at the Law Enforcement Explorer's Conference in Colorado Springs, Colorado. Acting Administrator Leonhart spoke about recruitment and careers in law enforcement, and recapped the week's events. No prepared speech or outline used.

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- **DEA Special Agent Graduation**: On August 8, 2008, Acting Deputy Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 178 in Quantico, Virginia, welcoming the new agents to the DEA.*
- **DARE Awards**: On August 13, 2008, Acting Administrator Michele M. Leonhart spoke at the Drug Abuse Resistance Education awards luncheon in San Antonio, Texas. Acting Administrator Leonhart spoke about DARE's important work over the past 25 years, DEA's partnership, and presented the DARE Executive of the Year award.*
- **Special Agent Eulogy**: On September 9, 2008, Acting Administrator Michele M. Leonhart gave a eulogy in Rockville, Maryland for the line of duty death of Special Agent Thomas Byrne. Acting Administrator Leonhart spoke about the commitment of SA Byrne to DEA and public service.*
- **Target America Reception**: On October 1, 2008, Acting Administrator Michele M. Leonhart gave remarks at the opening reception for DEA's premier traveling exhibit, Target America, in Los Angeles, California. Acting Administrator Leonhart thanked DEA's sponsors and partners, and reinforced the important message that all of us are impacted by drug abuse.*
- **AFFNA Agent of the Year**: On October 8, 2008, Acting Administrator Michele M. Leonhart gave remarks at the Association of Former Federal Narcotics Agents annual banquet and presented the officer of the year award in Las Vegas, Nevada. Acting Administrator Leonhart updated the retired agents on DEA activities and expressed DEA's appreciation for their service.*
- **DEA Red Ribbon Ceremony**: On October 15, 2008, Acting Administrator Michele M. Leonhart gave remarks at DEA's annual Red Ribbon event at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart introduced NBC's Pete Williams, gave examples of how people are living drug free lives, and spoke about DEA's efforts fighting drug abuse and drug traffickers.*
- **DOD Red Ribbon Award Ceremony**: On October 24, 2008, Acting Administrator Michele M. Leonhart gave remarks at a Department of Defense Red Ribbon Awards Ceremony at the Pentagon in Arlington, Virginia. The Acting Administrator spoke about DEA's partnership with DOD, international successes and the impact of working together.*
- **Federal Drug Agents Foundation Awards Dinner**: On October 27, 2008, Acting Administrator Michele M. Leonhart gave remarks at a Federal Drug Agents Award Banquet in New York City. Acting Administrator Leonhart spoke about the important work DEA is doing and the sacrifice of agents, including recognition of SA Tom Byrne who was recently murdered.*
- **Colombian Wreath Laying Ceremony**: On October 29, 2008, Acting Administrator Michele M. Leonhart gave remarks at a wreath laying ceremony for the Colombian National Police in Bogotá, Colombia. Acting Administrator Leonhart spoke about partnership DEA has with the CNP and the Colombian Government, the sacrifice of those on the front lines of drug law enforcement, and the joint determination to triumph over the traffickers.*

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- **Tripartite Conference**: On October 29, 2008, Acting Administrator Michele M. Leonhart gave remarks at the opening of the Tripartite conference in Bogotá, Colombia. Acting Administrator Leonhart spoke about law enforcement strategies and the positive impact of US, Mexico and Colombian law enforcement joint efforts.*
- **Colombian Law Enforcement Dedication**: On October 30, 2008, Acting Administrator Michele M. Leonhart gave remarks at a plaque dedication at the US embassy in Bogotá, Colombia. Acting Administrator Leonhart spoke about the courage and sacrifice of slain DEA Supervisor Octavio Gonzalez.*
- **DEA Veterans Ceremony**: On November 3, 2008, Acting Administrator Michele M. Leonhart gave remarks at DEA's annual Veterans Day ceremony at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about the contributions veterans have made to DEA's success, and the close partnerships DEA has fostered with DOD in Afghanistan and around the world.*
- **DEA Intelligence Research Specialist Graduation**: On November 7, 2008, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BIRS 61 in Arlington, Virginia. The address focused on DEA's Intelligence program and successes.*
- **DARE to CARE Gala**: On December 3, 2008, Acting Administrator Michele M. Leonhart spoke at the DARE to CARE gala in New York City. Acting Administrator Leonhart accepted an honorary award, and spoke about DEA's partnership with DARE.*
- **ONDCP Awards**: On December 4, 2008, Acting Administrator Michele M. Leonhart gave remarks at the Office of National Drug Control Policy's Marijuana Awards in Washington, DC. Acting Administrator Leonhart spoke about recent operations, particularly against those growing marijuana on public lands and a report on recent statistics that show decreasing marijuana use.*
- **Clan Lab Dedication**: On December 5, 2008, Acting Administrator Michele M. Leonhart gave remarks at the dedication of DEA's new clandestine laboratory training facility in Quantico, Virginia. Acting Administrator Leonhart spoke about the importance of methamphetamine lab training and DEA's valued assistance to state and local officers.*
- **DEA Special Agent Graduation**: On December 19, 2008, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 179 in Quantico, Virginia.*
- **DEA Martin Luther King Day Ceremony**: On January 13, 2009, Acting Administrator Michele M. Leonhart gave remarks at DEA's annual Martin Luther King Day event at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about the legacy of Martin Luther King and the important work of DEA.*
- **CADCA Convention**: On February 11, 2009, Acting Administrator Michele M. Leonhart gave remarks at the annual convention of the Community Anti-Drug Coalitions of America Conference in National Harbor, Maryland. Acting Administrator Leonhart spoke about DEA's partnership with CADCA and DEA's efforts to reduce drug use, particularly demand reduction initiatives.*
- **DEA Special Agent Graduation**: On February 13, 2009, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 180 in Quantico, Virginia.*

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- **DEA Black History Month Ceremony**: On February 18, 2009, Acting Administrator Michele M. Leonhart gave remarks at DEA's annual Black History Month ceremony at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about the important role African-Americans have at DEA.*
- **DEA Intelligence Research Specialist Graduation**: On April 10, 2009, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BIRS 62 in Arlington, Virginia, highlighting DEA's Intelligence program.*
- **Attorney General's Law Enforcement Summit**: On April 20, 2009, Acting Administrator Michele M. Leonhart gave remarks at the Attorney General's Law Enforcement Summit in Washington, DC. Acting Administrator Leonhart spoke on a panel about DEA's partnerships with state and local law enforcement and Task Force successes.*
- **DEA Wreath Laying Event and Memorial Service**: On May 13, 2009, Acting Administrator Michele M. Leonhart gave remarks and laid a wreath at DEA's annual Memorial Day Service at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about DEA and FBI agents who died in the line of duty over the past year and those who have died in the line of duty over the history of DEA.*
- **Special Agent Memorial Service**: On May 21, 2009, Acting Administrator Michele M. Leonhart made remarks at a memorial service honoring Special Agent Thomas Byrne in Houston, Texas. Acting Administrator Leonhart spoke about the life of SA Byrne and how his memory inspires all who knew him to rededicate themselves to the DEA mission.*
- **DEA Miami Headquarters Dedication**: On May 28, 2009, Acting Administrator Michele M. Leonhart gave remarks at the dedication and ribbon cutting for DEA's new division office headquarters in Miami, Florida. Acting Administrator Leonhart spoke about DEA's strong history in Miami and the important role it will play in DEA's future.*
- **DEA Special Agent Graduation**: On June 19, 2009, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 181 in Quantico, Virginia.*
- **Survivors Benefit Reception**: On June 22, 2009, Acting Administrator Michele M. Leonhart gave remarks at DEA's Survivors Benefit Fund Reception at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about the efforts the Survivors Benefit Fund, which provides assistance to families of those DEA employees who have died in the line of duty.*
- **International Narcotic Enforcement Management**: On June 24, 2009, Acting Administrator Michele M. Leonhart gave closing remarks at the conclusion of training at INEMS in Potomac, Maryland. Acting Administrator Leonhart spoke about international cooperation and successes combating international drug trafficking organizations.*
- **Victim Witness Coordinator Training**: On June 24, 2009, Acting Administrator Michele M. Leonhart gave remarks to Victim Witness Coordinators at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about the important work of DEA employees who act as coordinators and provide the special help victims of drugs, particularly children, need.*

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- **DEA Intelligence Research Specialist Graduation**: On July 17, 2009, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BIRS 63 in Arlington, Virginia about their new careers in drug law enforcement.*
- **Organized Crime Drug Enforcement Task Force Conference:** On July 22, 2009, Acting Administrator Michele M. Leonhart spoke at the OCDETF annual conference in Washington, DC. Acting Administrator Leonhart spoke about how the cooperation of different law enforcement agencies produce results, particularly targeting major drug organizations.*
- **DEA Special Agent Graduation**: On August 7, 2009, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 182 in Quantico, Virginia.*
- **DEA Awards Ceremony**: On August 7, 2009, Acting Administrator Michele M. Leonhart gave extended remarks at the DEA Awards Ceremony in Quantico, Virginia. Acting Administrator Leonhart spoke about the incredible and heroic work of DEA employees who have excelled in their careers, presenting more than 100 awards.*
- **DEA Hispanic Heritage Month Event**: On September 29, 2009, Acting Administrator Michele M. Leonhart gave remarks at DEA's annual Hispanic Heritage Month event at DEA Headquarters in Arlington, Virginia.*
- **Awards Ceremony, Recruitment Event**: On October 1, 2009, Acting Administrator Michele M. Leonhart gave remarks during an alumni award presentation and at a class recruitment event at Bemidji State University in Bemidji, Minnesota. Acting Administrator Leonhart spoke about how her law enforcement career and career opportunities.*
- **DEA Intelligence Research Specialist Graduation**: On October 23, 2009, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BIRS 64 in Arlington, Virginia.*
- **Special Agent Michael Eulogy**: On November 5, 2009, Acting Administrator Michele M. Leonhart gave a eulogy in Muncy, Pennsylvania for Special Agent Chad Michael who died in the line of duty in Afghanistan. Acting Administrator Leonhart spoke about the career, service and sacrifice of SA Michael.*
- **Special Agent Weston Eulogy**: On November 6, 2009, Acting Administrator Michele M. Leonhart gave a eulogy at Quantico, Virginia for Special Agent Michael Weston who died in the line of duty in Afghanistan. Acting Administrator Leonhart spoke about SA Weston's incredible patriotism and the important work he did at DEA and throughout his career.*
- **DEA Veterans Ceremony**: On November 9, 2009, Acting Administrator Michele M. Leonhart gave remarks at DEA's annual Veterans Day ceremony at DEA Headquarters in Arlington, Virginia. Acting Administrator Leonhart spoke about the incredible contributions of veterans at DEA and the heroic sacrifice of many of them, including recent tragic deaths in Afghanistan.*
- **Special Agent Leamon Eulogy**: On November 14, 2009, Acting Administrator Michele M. Leonhart gave a eulogy in McLean, Virginia for Special Agent Forrest Leamon who died in the line of duty in Afghanistan. Acting Administrator Leonhart spoke about SA Leamon's dedication and commitment to DEA and its mission.*
- **DEA Special Agent Graduation**: On February 5, 2010, Acting Administrator Michele M. Leonhart spoke at the Graduation Ceremony for BA 185 in Quantico, Virginia.*

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- **CADCA Convention**: On February 11, 2010, Acting Administrator Michele M. Leonhart gave remarks at the 20th annual meeting of the Community Anti-Drug Coalitions of America at National Harbor, Maryland. She was a part of a federal panel participating in a question and answer session with participants. No prepared remarks were used.
- **Target America Reception**: On March 2, 2010, Acting Administrator Michele M. Leonhart gave remarks at the opening reception for DEA's traveling exhibit, Target America, in New Orleans, Louisiana. Acting Administrator Leonhart spoke about the impact the exhibit can have, how vital it is for the public to learn about how drugs are produced, distributed, and to understand the connection between traffickers, violence, and terrorism.

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Attachment for Question#12e (note: due to the volume of media interviews, activities and press release and press events during my 29 year career, this is not to be considered a complete list).

Media Interviews, Activities and Press Releases

- **DEA Observes 25th Anniversary of Death of Special Agent Enrique "Kiki" Camarena:**
  DEA Press Release, March 4, 2010
  The Washington Times, March 5, 2010
  States News Service, March 4, 2010
  Targeted News Service, March 4, 2010

- **DEA Opens Powerful Museum Exhibit in New Orleans:**
  March 2, 2010, *DEA News Release*
  US Fed News, March 3, 2010
  States News Service, March 2, 2010
  Targeted News Service, March 2, 2010

- **Target America Press Conference**: On March 3, 2010, Acting Administrator Michele M. Leonhart gave remarks at a press conference at the opening of DEA's traveling exhibit, Target America, in New Orleans, Louisiana. Acting Administrator Leonhart spoke about how drug abuse impacts all of us and encouraged the public to see the exhibit. (see stories above)

- **Extradition of Alleged Mexican Drug Trafficker Jesus Vicente Zambada-Niebla.**
  February 19, 2010, *DEA News Release*
  State and Local Health Weekly, March 4, 2010
  Biotech Week, March 3, 2010
  Drug Law Weekly, March 2, 2010
  Pharma Law Weekly, March 2, 2010
  Pharma Business Week, March 1, 2010
  The Washington Times, February 23, 2010
  Targeted News Service, February 19, 2010
  US Fed News, February 19, 2010
  States News Service, February 19, 2010

- **U.S. indicts 'Merchant of Death' arms dealer; Thailand refuses to extradite Bout to U.S.:** February 17, 2010, *DEA News Release*
  The Washington Times, February 18, 2010
  Canadian Press, February 17, 2010
  Associated Press, February 17, 2010
  Targeted News Service, February 17, 2010
  States News Service, February 17, 2010

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- **Mexico's Narco War Escalates:**
  Pacific Free Press, February 2, 2010

- **Federal Register: DEA Issues Final Rule for Redelegation of Functions (Department of Justice):**
  US Fed News, February 2, 2010

- **DEA: Mexico Marks Another Success Against Drug Cartels:** January 13, 2010, *DEA News Release*
  International Herald Tribune, January 14, 2010
  States News Service, January 13, 2010
  The New York Times, January 13, 2010
  The Los Angeles Times, January 13, 2010
  The San Diego Union Tribune, January 13, 2010

- **No letup seen in violence by Sonora cartels:**
  Arizona Daily Star, December 20, 2009

- **Three Al-Qaeda Associates Arrested for Drug and Terrorism Charges:** December 18, 2009, *DEA News Release*
  New York Daily News, December 19, 2009
  The New York Times, December 19, 2009
  Newsday, December 19, 2009
  The Washington Times, December 19, 2009
  The Washington Post, December 19, 2009
  Indio Asian News Service, December 19, 2009
  Wilmington News Journal, December 19, 2009
  US Fed News, December 19, 2009
  Virginian Pilot, December 19, 2009
  Associated Press, December 19, 2009
  Agence France Presse, December 18, 2009
  Canadian Press, December 18, 2009
  PR Newswire, December 18, 2009
  Targeted News Service, December 18, 2009

- **Statement from DEA Acting Administrator Michele M. Leonhart on the Death of Mexican Drug Cartel Leader Arturo Beltran-Leyva:** December 17, 2009, *DEA News Release*
  Los Angeles Times, December 18, 2009
  Chicago Tribune, December 18, 2009
  US Fed News, December 18, 2009
  States News Service, December 17, 2009
  CNN.com, December 17, 2009

- **Three FARC Members Arrested and Charged with Hostage-Taking of U.S. Citizen:** December 4, 2009, *DEA News Release*

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US Fed News, December 19, 2009
States News Service, December 4, 2009
Targeted News Service, December 4, 2009

- **Afghanistan, Fort Hood casualties mourned; Funeral for DEA agent in Va.; services in Okla., Ind. for shooting victims:**
The Washington Post, November 15, 2009

- **New Orleans Man Sentenced to 30 Years for Murder of DEA Special Agent:**
US Fed News, November 5, 2009
Associated Press, November 4, 2009
Targeted News Service, November 4, 2009

- **DEA Remembers its Fallen Heroes (Remarks in Absentia from Acting Administrator Leonhart at Kabul Memorial Service):** October 29, 2009, *DEA News Release*

- **3 DEA agents, 7 others die in helicopter crash in Afghanistan:**
The Washington Post, October 28, 2009
New York Daily News, October 27, 2009
Digital Journal, October 27, 2009
Associated Press, October 26, 2009
Canadian Press, October 26, 2009
Carleton Place, October 26, 2009
Guelph Mercury Ontario, October 26, 2009
Waterloo Chronicle, October 26, 2009
CNN.com, October 26, 2009

- **Interview with Oliver North on Fallen Agents, Fox News Channel:** October 27, 2009.

- **DEA Announces Largest Single U.S. Strike Against Mexican Drug Cartels:** October 22, 2009, *DEA News Release*
Pharma Investments, Ventures and Law Weekly, November 8, 2009
Law and Health Weekly, November 7, 2009
Obesity, Fitness, and Wellness Week, November 7, 2009
Biotech Law Weekly, November 6, 2009
Drug Week, November 6, 2009
Health Business Week, November 6, 2009
Medicine and Law Weekly, November 6, 2009
Medical Verdicts and Law Weekly, November 5, 2009
State and Local Health Law Weekly, November 5, 2009
Biotech, November 4, 2009
US Fed News, October 29, 2009
Austin American Statesman, October 23, 2009
Christian Science Monitor, October 23, 2009
Houston Chronicle, October 23, 2009
Los Angeles Times, October 23, 2009

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The New York Times, October 23, 2009
Minneapolis Star Tribune, October 23, 2009
Thai Press Reports, October 23, 2009
US Fed News, October 23, 2009
Vancouver Sun, October 23, 2009
The Washington Times, October 23, 2009
The Washington Post, October 23, 2009
ABC World News Tonight, October 22, 2009
Digital Journal, October 22, 2009
PR Newswire, October 22, 2009
States News Service, October 22, 2009
Targeted News Service, October 22, 2009
UPI, October 22, 2009
Voice of America, October 22, 2009
White House Bulletin, October 22, 2009
CNN.com, October 22, 2009

- ***Project Coronado* Press Conference**: On October 22, 2009, Acting Administrator Michele M. Leonhart gave remarks with the Attorney General at a press conference announcing the results of *Project Coronado* at the Department of Justice in Washington, DC. Acting Administrator Leonhart spoke about how *Coronado* was the largest coordinated operation against a major Mexican drug cartel, and how *Coronado* targeted *La Familia Michoacana*. (stories listed above)

- **DEA Kicks off 2010 Red Ribbon Week:** October 20, 2009, *DEA News Release*
  Colusa County, CA Sun Herald, November 4, 2009
  US Fed News, October 21, 2009
  Targeted News Service, October 20, 2009

- **Deputy Attorney General, U.S. Attorney, and Other Federal and Local Officials Unveil New OCDETF Strike Force Site, Highlight Successes of Phoenix Operation:** October 1, 2009, *DEA News Release*
  Politics & Government Business, October 15, 2009
  US Fed News, October 6, 2009
  Targeted News Service, October 1, 2009
  States News Service, September 30, 2009

- **DEA head honors BSU roots**
  The Bemidji Pioneer, October 2, 2009

- **DEA Announces Indictments of 57th Front FARC Members:** September 28, 2009, *DEA News Release*
  US Fed News, September 29, 2009
  Boston Globe, September 29, 2009
  States News Service, September 28, 2009
  Targeted News Service, September 28, 2009
  Associated Press, September 28, 2009

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Canadian Press, September 28, 2009

- **DEA Hosts Methadone Stakeholders Meeting:** September 24, 2009, *DEA News Release*
  US Fed News, September 25, 2009
  States News Service, September 24, 2009
  Targeted News Service, September 24, 2009

- **DEA Announces Extradition of Jesus Eduardo Valencia-Arbelaez, a.k.a. "Padre:"**
  September 3, 2009, *DEA News Release.*
  US Fed News, September 4, 2009
  States News Service, September 3, 2009
  Targeted News Service, September 3, 2009
  UPI, September 3, 2009

- **U.S. Indicts 10 Drug Cartel Leaders: Unprecedented move targets chiefs of every drug syndicate in Mexico as well as 33 other traffickers CARTELS: Indictments state $5.8 billion:** *DEA Press Release,* August 20, 2009
  Drug Law Weekly, September 1, 2009
  Pharma Law Weekly, September 1, 2009
  Bioterrorism Week, September 1, 2009
  Biotech Business Week, August 31, 2009
  Health and Medicine Week, August 31, 2009
  Pharma Business Week, August 31, 2009
  Lab Business Week, August 30, 2009
  Pharma Investments, Ventures and Law Weekly, August 30, 2009
  Associated Press, August 23, 2009
  Los Angeles Times, August 23, 2009
  Canadian Press, August 22, 2009
  Targeted News Service, August 22, 2009
  The Houston Chronicle, August 21, 2009
  US Fed News, August 21, 2009
  The Washington Times, August 21, 2009
  States News Service, August 20, 2009
  Al Jazeera, August 20, 2009

- **Mexico-based Drug Kingpins Press Conference**: On August 20, 2009, Acting Administrator Michele M. Leonhart gave remarks with the Attorney General at a press conference announcing indictments against some of the leading Mexico-based drug kingpins at the Department of Justice in Washington, DC. (stories above)

- **DEA Announces Guilty Plea of Diego Montoya-Sanchez:** August 11, 2009, *DEA News Release*
  Lab Business Week, August 30, 2009
  Pharma Investments, Ventures and Law Weekly, August 30, 2009
  Healthcare Mergers, Acquisitions, and Ventures Week, August 30, 2009
  Law and Health Weekly, August 30, 2009

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Biotech Law Weekly, August 28, 2009
Drug Week, August 28, 2009
Health Business Week, August 28, 2009
US Fed News, August 15, 2009
Miami Herald, August 12, 2009
Targeted News Service, August 12, 2009

- **DEA Announces Arrest of La Troca.** August 3, 2009, *DEA News Release*
  Deseret News, August 4, 2009
  Houston Chronicle, August 4, 2009
  McClatchy News, August 4, 2009
  Mexico City News, August 4, 2009
  The Washington Post, August 4, 2009
  Canadian Press, August 3, 2009
  Associated Press, August 3, 2009

- **Gulf Cartel/Los Zetas Indictments Announced.** July 20, 2009, *DEA News Release*
  States News Service, July 20, 2009
  Targeted News Service, July 20, 2009
  US Fed News, July 21, 2009

- **FARC Commander "Cesar" Extradited.** July 17, 2009, *DEA News Release*
  US Fed News, July 18, 2009
  States News Service, July 17, 2009
  Targeted News Service, July 17, 2009

- **Indictment and Arrival of Haji Bagcho:** June 29, 2009, *DEA News Release*
  Pharma Investments, Ventures and Law Weekly, July 19, 2009
  Pajhwok Afghan News, June 30, 2009
  States News Service, June 29, 2009
  Targeted News Service, June 29, 2009

- **Response to UNODC World Drug Report:** June 25, 2009, *DEA News Release*
  US Fed News, June 26, 2009
  States News Service, June 25, 2009
  Targeted News Service, June 25, 2009

- **Mexico moves quietly to decriminalize minor drug use; The president wants to focus on traffickers, but critics fear that it will lead to more addiction:**
  Los Angeles Times, June 21, 2009

- **DEA shares powers in deal; U.S. immigration agents get ability to make drug busts:**
  DEA Press Release, June 18, 2009
  Chicago Tribune, June 19, 2009
  The Leader Post, June 19, 2009
  Los Angeles Times, June 19, 2009

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McAllen Monitor, June 19, 2009
Nanaimo Daily News, June 19, 2009
Ottawa Citizen, June 19, 2009
Star Phoenix Canada, June 19, 2009
US Fed News, June 19, 2009
The Washington Times, June 19, 2009
The Washington Post, June 19, 2009
Windsor Star, June 19, 2009
Agence France Presse, June 19, 2009
Canwest News Service, June 18, 2009

- **ICE/DEA Press Conference**: On June 18, 2009, Acting Administrator Michele M. Leonhart gave remarks with ICE Director John Morton at a press conference announcing the signing of a Memorandum of Understanding between DEA and ICE at the National Press Club in Washington, DC. Acting Administrator Leonhart spoke about the expanded partnership between ICE and DEA, and how it will increase cooperation between the two agencies. (stories above)

- **Five Arrested in Plot to Murder U.S. Agent:** June 12, 2009, *DEA News Release*
  States News Service, June 12, 2009
  Targeted News Service, June 12, 2009

- **National Prescription Drug Threat Assessment Released:** May 20, 2009, *DEA News Release*
  US Fed News, May 21, 2009
  State News Service, May 20, 2009

- **Drug violence may bleed into the U.S.; Authorities say the leader of the Sinaloa cartel has given the OK to open fire here:**
  Los Angeles Times, May 6, 2009

- **Historic Transfer of Defendants from Sierra Leone to Face Drug Trafficking Charges:** April 22, 2009, *DEA News Release*
  US Fed News, April 24, 2009
  States News Service, April 22, 2009

- **Media Roundtable on Mexico Drug Situation on April 15, 2009:**
  The Associated Press, April 16, 2009
  New York Daily News, April 16, 2009

- **Ryan Haight Act Regulations Take Effect:** April 13, 2009, *DEA News Release*
  US Fed News, April 14, 2009
  States News Service, April 13, 2009
  UPI, April 13, 2009

- **Monzer Al-Kassar Associate Found Guilty of Terrorism Charges:** March 18, 2009, *DEA*

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News Release
US Fed News, March 25, 2009
States News Service, March 18, 2009

- **Police see hike in Canada drug violence:**
The Associated Press, March 6, 2009

- **AUC Leader Mejia-Munera Extradited:** March 5, 2010, *DEA News Release*
US Fed News, March 25, 2009
UPI , March 4, 2009
States News Service, March 4, 2009

- **DEA Targets Sinaloa Cartel in Operation XCellerator:** *DEA News Release,* February 25, 2009
St. Paul Pioneer Press, February 25, 2009
Phoenix Business Journal, February 25, 2009
Agence France Presse, February 25, 2009
UPI, February 25, 2009
CNN.com, February 25, 2009
The Associated Press, February 26, 2009
Orange County Register, February 26, 2009
Los Angeles Times, February 26, 2009
Las Cruces Sun-News, February 26, 2009
El Paso Times, February 26, 2009
Abilene Reporter, February 26, 2009
Australian Broadcast Corporation, February 26, 2009
The New York Times, February 26, 2009
The Washington Times, February 26, 2009
Whittier Daily News, February 27, 2009
Houston Chronicle, February 28, 2009
US Fed News, February 28, 2009

- ***Operation Xcellerator* Press Conference**: On February 25, 2009, Acting Administrator Michele M. Leonhart gave remarks with the Attorney General at a press conference announcing *Operation Xcellerator* at the Department of Justice in Washington, DC. Acting Administrator Leonhart spoke about *Xcellerator*, one of the largest joint international drug investigations of all time. *Xcellerator* targeted the Mexico-based Sinaloa Cartel and the remarks explain who they are and what DEA is doing to put them out of business (Stories listed above)

- **Monzer Al Kassar Sentenced to 30 Years in Prison on Terrorism Charges:** February 25, 2009, *DEA News Release*.
States News Service, February 25, 2009
Agence France Presse, February 24, 2009

- **DEA Launches Educational Website for Parents:** February 11, 2009, *DEA News Release*

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US Fed News, February 28, 2009

- **Rite Aid Settlement Announcement:** January 12, 2009, *DEA News Release*
  Associated Press, January 13, 2009
  States News Service, January 12, 2009

- **Mexico sends 10 drug defendants to U.S.:** December 31, 2008, *DEA News Release*
  UPI, December 31, 2008
  States News Service, December 31, 2008

  Member of Afghan Taliban Sentenced to Life in Prison in Nation's Fist Conviction of Narco-Terror Charges:
  Pajhwok Afghan News, December 23, 2008
  States News Service, December 22, 2008

- **U.S. Cocaine Market Disrupted: Prices Continue 21-Month Surge:** December 11, 2008, *DEA News Release*
  Agence France Presse, December 11, 2008

- **DEA Dedicates Clan Lab Training Facility at Quantico:** December 5, 2008, *DEA News Release and Media interviews took place.*
  The Washington Post, December 21, 2008
  Free Lance Star, December 6, 2008
  Agence France Presse, December 5, 2008
  States News Service, December 5, 2008

- **Acting DEA Administrator Leonhart Delivers 35th Anniversary Message:**
  US Fed News, December 1, 2008

- **DEA to Dedicate Clan Lab Training Facility at Quantico:** November 20, 2008, *DEA News Advisory*

- **International Arms Dealer Convicted on Terrorism Charges:**
  Al Jazeera, November 25, 2008
  States News Service, November 20, 2008
  Agence France Presse, November 20, 2008

- **Brazil Extradites Alleged Colombian Cocaine Capo to the U.S.:**
  International Enforcement Law Reporter, November 2008

- **Gun Battle Ends With Arrest of Eduardo Arrellano-Felix:** October 27, 2008, *DEA News Release*
  States News Service, October 27, 2008
  US Fed News, October 27, 2008

- **Afghan drug trafficker arrested on charges of financing Taliban:**

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Blast Magazine, October 26, 2008

- **Ribbons show anti-drugs stance:**
  Whittier Daily News, October 26, 2008

- **Afghan Drug Kingpin Charged with Financing Taliban Terrorist Insurgency:** October 24, 2008, *DEA News Release.*
  Associated Press, October 25, 2008
  Pajhwok Afghan News, October 25, 2008
  States News Service, October 24, 2008

- **DEA Kicks Off Red Ribbon Campaign.** October 14, 2008, *DEA News Release.*
  Defense Department Documents and Publications, October 24, 2008
  US Fed News, October 14, 2008

- **Argentina a new hub for meth traffickers ; Crackdowns in Mexico have prompted drug gangs to look south for supplies of ephedrine, a key ingredient.**
  Los Angeles Times, October 13, 2008

- **Target America Opens at California Science Center:** October 3, 2008, *DEA News Release.*
  Ventura County Star, October 9, 2008
  The Daily News of Los Angeles, October 6, 2008
  States News Service, October 2, 2008
  Desert Sun, September 19, 2008

- **Cardinal pays $34M to settle substance claims:**
  Lab Business Week, October 19, 2008
  Pharma Investments, Ventures and Law Weekly, October 19, 2008
  Drug Week, October 17, 2008
  Columbus Dispatch, October 12, 2008

- **Congress Passes Ryan Haight Online Pharmacy Consumer Protection Act:** October 1, 2008, *DEA News Release.*
  Chain Drug Review, October 13, 2008
  US Fed News, October 1, 2008
  States News Service, October 1, 2008

- **Press Conference and Media Preview of Target America in Los Angeles:** September 30, 2008, *DEA News Release.*

- **Top Taliban Associate Haji Bashir Noorzai Found Guilty of Heroin Trafficking:** September 24, 2008, *DEA News Release.*
  US Fed News, September 24, 2008

- **Press Conference: Project Reckoning - 175 Alleged Gulf Cartel Members Arrested in**

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Massive International Operation: September 17, 2008, *DEA News Release.*
Atlanta Journal Constitution, September 18, 2008
The New York Times, September 18, 2008
Raleigh News and Observer, September 18, 2008
Cox News Service, September 17, 2008
States News Service, September 17, 2008

- **Thomas J. Byrne; DEA Supervisory Agent in Houston:**
Washington Post, September 5, 2008

- **Cocaine Cartel Leader to Face Charges in the U.S.:** August 25, 2008, *DEA News Release.*
US Fed News, August 25, 2008
Australia Sunday Times, August 24, 2008
The Associated Press, August 23, 2008
Grand Rapids Press, August 23, 2008
Los Angeles Times, August 23, 2008

- **Press Event at Bulgarian Ministry of Interior, Sofia, Bulgaria on July 14, 2008**

- **Press Conference and Media Interviews: International Drug Enforcement Conference, Istanbul, Turkey:** July 7, 2008. *DEA News Release.*
US Fed News, July 7, 2008

- **DEA Marks 35th Anniversary:** July 1, 2008, *DEA News Release.*
US Fed News, July 2, 2008

- **26th Annual IDEC to be Held in Turkey:** June 30, 2008, *DEA News Release*

- **Cartel Violence Intensifies:**
Dallas Morning News, June 17, 2008

- **Colombian AUC member admits drug trafficking:**
June 17, 2008, *DEA News Release*
UPI, June 17, 2008

- **International Arms Dealer Extradited to the United States from Spain on Terrorism Offenses:** June 13, 2008, *DEA News Release*
The Washington Times, June 14, 2008
US Fed News, June 13, 2008

- **Media Roundtable Event with ONDCP Director John Walters held at ONDCP Headquarters in Washington, D.C. on June 3, 2008:** (see outline)

- **U.S Department of Justice; Member of Afghan Taliban Convicted in U.S. Court on Narco-Terrorism and Drug Charges:** *Pharma Investments, Ventures & Law Weekly,* June 1, 2008

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- **U.S. Department of Justice; 14 Members of Colombian Paramilitary Group Extradited to the United States to Face U.S. Drugs Charges**: *Lab Business Week*, June 1, 2008
- **U.S. Department of Justice; 14 Members of Colombian Paramilitary Group Extradited to the United States to Face U.S. Drugs Charges**: *Pharma Investments, Ventures & Law Weekly,* June 1, 2008
- **U.S. Department of Justice; 14 Members of Colombian Paramilitary Group Extradited to the United States to Face U.S. Drugs Charges**: *Drug Week*, May 30, 2008
- **Brother's Memory Honored in Victory; Memorial Day has special meaning for Derek Maltz, now maybe more so**: *The Post-Standard (Syracuse, New York)*, May 27, 2008
- **Member of Afghan Taliban convicted in U.S. Court on narco-terrorism and drug charges**: *U.S. Fed News,* May 20, 2008
- **Khan faces minimum 20 years sentence**: *Pajhwok Afghan News,* May 16, 2008
- **Member of Afghan Taliban convicted in U.S. Court on narco-terrorism and drug charges**: *Justice Department Documents and Publications* , May 15, 2008
- **U.S. Department of Justice; McKesson Corporation agrees to pay more than $13 Million to settle claims that it failed to report suspicious sales of prescription medications**: *Biotech Week*, May 14, 2008
- **Colombian paramilitaries to be tried by U.S. for terror, drugs**: *Agence France Presse – English,* May 14, 2008
- **Colombian paramilitary leaders to be tried in U.S.**: *Agence France Presse – English,* May 13, 2008
- **Member of Afghan Taliban Convicted in U.S. Court on Narco-Terrorism and Drug Charges:** May 20, 2008, *DEA News Release*
- **14 Members of Colombian Paramilitary Group Extradited to the United States to Face U.S. Drugs Charges:** May 13, 2008, *DEA News Release*
- **'Merchant of Death' nabbed in arms deal**: *Daily News (New York),* May 7, 2008
- **FARC arms deal risk to Americans; U.S. seeks suspect's extradition**: *Washington Times,* May 7, 2008

- **U.S. authorities bring charges against Russian 'arms dealer'**: *RIA Novosti* May 7, 2008

- **Indictment accuses reputed Russian arms smuggler of conspiring to kill Americans**: *Associated Press Worldstream*, May 6, 2008

- **Former Chief Pharmacist sentenced to two years of incarceration for stealing $95,000 of medication from St. Elizabeths Hospital**: *US Fed News,* May 6, 2008

- **Indictment: Reputed Russian arms smuggler conspired to kill:** *Associated Press,* May 6, 2008

- **U.S. unveils terror charges against Russian arms dealer**: *Agence France Presse-English,* May 6, 2008

- **U.S. Announces Indictment of International Arms Dealer for Conspiracy to Kill Americans and Related Terrorism Charges**, May 6, 2008, *DEA News Release*

- **Health giant will pay states $13.25M**: *The Salt Lake Tribune,* May 4, 2008

- **McKesson Corporation agrees to pay more than $13 million to settle claims that it failed to report suspicious sales of prescription medications**: *States News Service,* May 2, 2008

- **DEA News: McKesson Corporation Agrees to Pay More Than $13 million to Settle Claims that it Failed to Report Suspicious Sales of Prescription Medications**, May 2, 2008, *DEA News Release*

- **Man tied to Colombian rebels extradited to U.S.**: *Washington Times,* April 23, 2008

- **Associate of Colombian Narco-Terrorist Group Extradited to United States on Cocaine Importation Charges:** April 22, 2008, *DEA News Release*

- **Leonhart second woman picked to lead DEA**: *Washington Times* April 16, 2008

- **Quest Diagnostics Incorporated; Use of Methamphetamine Among U.S. Workers and Job Applicants Drops 22 Percent in 2007 and Cocaine Use Slows Dramatically, Reports Quest Diagnostics**: *Lab Business Week,* March 30, 2008

- **Rep. Alan B. Mollohan Holds a Hearing on Drug Enforcement Administration**: *Political Transcript Wire,* March 14, 2008

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- **Meth use down in Nebraska, Iowa Cold-medicine restrictions and an anti-trafficking push are credited for a decline across most of the U.S.**: *Omaha World-Herald (Nebraska),* March 13, 2008

- **Methamphetamine, Cocaine Use Plummet; New Workplace Drug Testing Data Show Effects of Supply Crunch:** March 12, 2008, *DEA News Release*

- **Studies show meth use in workplace and the seizures of labs continue to decline**: *Associated Press Worldstream*, March 12, 2008

- **Studies show meth use in workplace and the seizures of labs continue to decline**: *Associated Press,* March 12, 2008

- **Sting Nabs 'Lord of War' Fiend**: *New York Post,* March 7, 2008

- **FARC Arms Supplier Arrested**: *Latinnews Daily*, March 7, 2008

- **U.S. Indicts Alleged Arms Dealer**: *UPI,* March 6, 2008

- **DEA Acting Administrator Michele Leonhart and ONDCP Director John P. Walters Visit the Dominican Republic:** On March 3, 2008, DEA Acting Administrator Leonhart, and the ONDCP Director John Walters conducted an official visit to the Dominican Republic to meet with Dominican President Leonel Fernandez, and with the highest ranking representatives of the Ministry of Justice, the Armed Forces, the National Drug Control Directorate, the National Police, the National General Customs Directorate, and the National Drug Council which was covered by the press. *DEA News Release*

- **Sigue Corporation and Sigue LLC Enter Into Deferred Prosecution Agreement and Forfeit $15 Million to Resolve Bank Secrecy Act Violations**: *PR Newswire,* January 28, 2008

- **Sigue Corporation to Forfeit $15 Million to Resolve Bank Secrecy Act Violations:** January 29, 2008, *DEA News Release*

- **Appropriations bill frees up DEA hiring**: *Washington Times* , January 5, 2008

- **Congress Passes Funding for 200 More DEA Agents**: *Talk Left the Politics of Crime,* January 5, 2008

- **War on Drugs**: *Coyote Gulch,* January 5, 2008

- **Superhighways for Drug and Immigrant Smuggling; Illegal Aliens Stretch Healthcare System to Breaking Point; Deadliest Hispanic Gangs**: *Fox News Network,* December 30, 2007

- **Drug Enforcement Administration to Hire 200 Special Agents:** December 27, 2007, *DEA News Release*

- **United States Announces Historic Extradition of Iranian Heroin Trafficker to New York**: *States News Service,* December 14, 2007

- **United States Announces Historic Extradition of Iranian Heroin Trafficker to New York**, December 14, 2007, DEA News Release

- **Opening of DEA Prescription Drug Abuse Exhibit "Good Medicine, Bad Behavior: Drug Diversion in America"**: On November 8, 2007, Acting Administrator Leonhart held a press conference announcing the opening of DEA's new museum exhibit.

- **DEA Prescription Drug Abuse Exhibit "Good Medicine, Bad Behavior: Drug Diversion in America"**: *DEA News,* November 5, 2007

- **U.S. flees from 'House of Death'; Suit dismissed, responsibility denied in Mexican drug deaths:** *Washington Times*, October 9, 2007

- **Questions linger about the 'House of Death'; Families sue U.S. Government over informant's role in slayings:** *Fort Worth Star-Telegram (Texas),* May 20, 2007

- **Attorney General Honors 16 DEA Employees at DOJ Annual Awards Ceremony**: *US Fed News*, September 12, 2006

- **Attorney General Honors 16 DEA Employees at the Department of Justice's Annual Awards Ceremony: Individuals honored for Katrina relief efforts, anti-drug teen website, and law enforcement corruption battles:** September 12, 2006, *DEA News Release*

- **Operation Black Gold Rush**: On August 16, 2006, Acting Administrator Leonhart spoke with reporter Mike Sniffen of the *Associated Press* about the culmination of *Operation Black Gold Rush*, a coast-to-coast DEA investigation of an international heroin ring.

- **Feds Arrest 138 Alleged Heroin Traffickers:** *USA Today,* August 16, 2006

- **Drug ring raids nab 138, with 20 in S.C.; Agents say pipeline spread heroin from Mexico across U.S.**: *The Post and Courier (Charleston, SC)*, August 16, 2006

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- **Feds bust major heroin ring**: *Chicago Tribune,* August 16, 2006

- **Illegal immigrants nabbed in heroin bust**: *The Calgary Herald (Alberta),* August 16, 2006

- **Ford admitted to hospital for testing**: *The Bismarck Tribune,* August 16, 2006

- **DEA busts coast-to-coast heroin ring that offered home delivery**: *The Associated Press State & Local Wire*, August 16, 2006

- **Press Conference with Assistant Attorney General Alice Fisher, Criminal Division; Deputy Administrator Michele Leonhart, DEA; and Director of the Justice Departments Organized Crime; Drug Enforcement Task Force Director Stuart Nash; and Deputy Assistant Attorney General Mary Lee Warren, Criminal Division**: *Federal News Service*, August 15, 2006

- **What Happened to the Gangs of New Orleans?; Before Katrina, New Orleans had a murder rate 10 times worse than the U.S. average. The killers evacuated too. Tracing the criminal exodus**: *Time*, May 22, 2006

- **Women in Federal Law Enforcement (WIFLE) To Host Open Career Day**: *DEA News,* May 22, 2006

- **Time Magazine-Hurricane Katrina:** On May 12, 2006, Acting Administrator Leonhart conducted an interview with reporter Amanda Ripley of *Time Magazine* in reference to a story about crime in New Orleans after Hurricane Katrina.

- **CNN Interview:** On March 29, 2006, Acting Administrator Leonhart conducted an on-camera interview with CNN reporter Casey Wian in relation to the extradition of 13 Mexican nationals to the United States.

- **U.S.—Mexico Operation Results in Arrest of Mexican Drug Lord**: *States News Service,* February 6, 2006

- **Mexican authorities capture drug lord sought in United States**: *Associated Press Worldstream,* February 4, 2006.

- **U.S. - Mexico Operation Nets Drug Kingpin**: *Washington Times*, February 4, 2006

- **Joint U.S.—Mexico Operation Nets Head of International Drug Cartel**: *States News Service,* February 3, 2006

- **Joint U.S.-Mexico Operation Nets Head of International Drug Cartel:** February 3, 2006, *DEA News Release*

- **DEA Dismantles International Cocaine Trafficking Ring: Investigation Targets Criminal Drug Cartel with Ties to Two Countries:** November 30, 2005, *DEA News Release*

- **DEA Dismantles International Cocaine Trafficking Ring**: *State News Service*, November 20, 2005

- **Stern Magazine Interview on Afghanistan:** On November 11, 2005, Acting Administrator Leonhart conducted an interview with *Stern Magazine* in regard to the DEA mission in Afghanistan. No copy available

- **DEA "Agent of the Year" to be Recognized, 2005 Association of Former Federal Narcotics Agents Presents Award**: *News from DEA,* October 11, 2005

- **Red Ribbon Campaign Marks 20th Anniversary**: *News from DEA,* September 29, 2005

- **DEA Heavily Recruits at BYU**: University Wire (July 8, 2005).

- **DEA Recruiting Drive Features Accountants**: *Narcotics Enforcement & Prevention Digest,* June 20, 2005

- **Newsweek Methamphetamine cover story**: On June 6, 2005, Acting Administrator Leonhart conducted an interview with *Newsweek Magazine* in relation to its cover story on methamphetamine.

- **Getting Ahead**: *Federal Times*, June 6, 2005

- **Drug Enforcement Administration Recruiting Accounting Finance Experts**: *US Fed News,* June 2, 2005

- **Drug Enforcement Administration Recruiting Accounting and Finance Experts:** May 31, 2005, *DEA News Release*

- **CG breaks cocaine seizure record:** On November 1, 2004, Acting Administrator Leonhart conducted an interview with *Coast Guard Magazine* in relation to the over 240,518 pounds of cocaine seized by the Coast Guard.

- **High Schools; Summit Over Steroids a Sign of Trouble:** On October 17, 2004, Acting Administrator Leonhart conducted a media interview regarding the CIF/DEA Steroids and Athletic Stimulants Summit held in Los Angeles.

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- **Summit Over Steroids a Sign of Trouble:** *Los Angeles Times,* October 17, 2004

- **CIF Ties to Take Lead in Curbing Prep Steroid Abuse:** *San Diego Union Tribune,* October 13, 2004

- **Cocaine Crackdown; Coast Guard Seized Record Amounts of the Drug in Fiscal '04:** *Navy Times,* October 11, 2004

- **Canada, U.S. Break Big Source of Ephedrine:** *Narcotics Enforcement & Prevention Digest,* October 1, 2004

- **U.S. Canada Break Up Canadian Drug Ring Tied to Mexico; Neighboring Countries Work Together on Dismantling Drug Network:** *State Department,* September 28, 2004

- **Coast Guard Officials Holds a News Conference Regarding Maritime Cocaine Seizures:** *Political Transcript Wire*, September 27, 2004

- **DEA Eliminates Major Source of U.S. Meth:** *US Fed News*, September 23, 2004

- **DEA Eliminates Major Source of US Meth: Joint US/Canada Investigation Yields Large Amounts of Ephedrine, Meth**: September 23, 2004, *DEA News Release*

- **Mexico Arrests Leading Suspect In Drug Cartel**: On August 24, 2004, Acting Administrator Leonhart attended a press conference on the arrest of Gilberto Higuera Guerrero, who is accused of being a leader of a crime organization responsible for nearly half the cocaine and marijuana entering into the United States.

- **Mexico Arrests Leading Suspect in Drug Cartel:** *The New York Times*, August 24, 2004

- **Mexican Officials Announce Major Drug Arrest:** *Associated Press Worldstream,* August 23, 2004

- **Mexican Officials Announce Arrest of Major Figure in Cross-Border Drug Smuggling:** *The Associated Press*, August 23, 2004

- **Drug Czar, caregivers, police target glut of heroin:** On June 17, 2004, Acting Administrator Leonhart conducted an interview with the *Chicago Tribune* in regards to an event with ONCDP Director Walters during a tour of the Women's Treatment Center. The event brought together DEA agents, specialists in the field of drug prevention and rehabilitation, as well as Chicago and suburban police, with the goal of fostering greater cooperation.

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- **Reward Rolls in for Anti-Drug Agency Stanislaus DEA Receives $1.6 Million for 1997 Bust:** Modesto Bee, June 2, 2004

- **DEA Announces Sharing of $2.75 Million in Forfeited Assets:** On June 1, 2004 Acting Administrator Leonhart, together with U.S. Attorney McGregor W. Scott, presented equitable sharing checks to state and local law enforcement agencies that participated in a significant precursor chemical prosecution against Custom Lab Supply located in Oakland, California. In combating the methamphetamine epidemic in California's Central Valley, local, state, and federal enforcement agencies designed a strategy to target commercial suppliers of chemicals and equipment used in the production of methamphetamine. The investigation ultimately led to the prosecution of Custom Lab, which was found to be responsible for over 50% of cash sales of such chemicals and equipment.

- **Pioneer Press Interview:** On April 22, 2004, DEA Acting Administrator Leonhart was interviewed by the *St. Paul Pioneer Press* about her career as a law enforcement officer.

- **People; Vol. 36, No. 13 Around the Agencies:** *The National Journal*, March 27, 2004

- **Battling the Meth War:** On March 3, 2004, Acting Administrator Leonhart conducted an interview with the *Associated Press* in regards to methamphetamine abuse.

- **Home Drug-Making Laboratories Expose Children to Toxic Fallout**: On February 23, 2004, Acting Administrator Leonhart conducted an interview with the *New York Times* on the dangers of methamphetamine use and the victims associated with meth labs.

- **Minnesota Native Nominated to be No. 2 Drug Cop:** *Star Tribune* (Minneapolis, MN), August 16, 2003

- **US, Mexican officials announce blow to major drug cartel**: On August 1, 2003, Acting Administrator Leonhart attended a press conference to announce that U.S. and Mexican authorities arrested 240 suspects in an anti-drug sweep that crippled a major Mexican-based drug cartel. The sweep, code-named *Operation Trifecta*, capped a 19-month investigation targeting a Mexican drug cartel headed by Ismael Zambada Garcia.

- **U.S. Indictments Target Mexican Drug Cartel:** *LA Times*, August 1, 2003

- **Operation X-Out:** On May 7, 2003, Acting Administrator Leonhart was present at a Youth Town Hall Meeting and a daylong information seminar in Las Vegas, Nevada. This event highlighted the use and abuse of MDMA in a town hall-style forum.

- **Operation X-Out in Las Vegas:** *DEA News*, May 7, 2003

- **Inland counties still top nation in meth labs:** On March 24, 2003, Acting Administrator Leonhart conducted an interview with the *San Bernandino Sun* regarding methamphetamine production in the Inland Empire.

- **San Bernardino County remains nation's meth capital:** *Associated Press State and Local Wire*, March 23, 2003

- **Middle East Drug Connections under Investigation:** *San Bernardino Sun,* March 22, 2003

- **Area Still No. 1 in Meth; Big-Money 'Superlabs' Major Obstacle in Fight Against Drug:** *San Bernardino Sun*, March 22, 2003

- **La Verne traffic stop triggers 2-state operation; 9 arrested**: On March 12, 2003, Acting Administrator Leonhart conducted an interview with the *Inland Valley Empire Bulletin* regarding the arrest of nine individuals associated with *Operation Silver Strike*.

- **Nine Arrested in Sweep Seven Homes Raided in Desert:** San Bernardino Sun, March 12, 2003

- **FEDS Join War on Gangs:** *The Daily News of Los Angeles*, December 17, 2002

- **The Nation 130 Charged in Alleged Links to Mexican Drug Cartel:** *LA Times*, November 8, 2002

- **LA to Alaska Drug Corridor: More than 100 subjects arrested in multi agency drug operations:** November 8, 2002, *DEA News Release*

- **Cartel Crackdown includes Inland sites: RAIDS: A key figure is arrested in Lake Elsinore, and a arrest warrant is served in Hemet:** *Press Enterprise*, June 14, 2002

- **Drug Busts Net Dozens of Arrests in Nationwide Effort Against Mexican Drug Cartel; Cooley Says 38 More at Large:** *Metropolitan News Enterprise,* June 14, 2002

- **Drug Cartel Takes a Hit:** *Daily Breeze,* June 14, 2002

- **41 Arrested as Drug Cartel Decimated; Mexico's Largest Narcotics Gang Distributed in Valley:** *The Daily News of Los Angeles*, June 14, 2002

- **State Weathers Shift of FBI Agents to Counterrorism; Intelligence: Move will have Impact in California's Other Operations, including Drug Enforcement:** *LA Times*, June 13, 2002

- **2 Year Investigation Strikes 4 Narcotics Networks with Ties to Tijuana Gang:** *Copley News Service*, June 13, 2002

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- **Local, Federal Agencies Arrest 41, Dismantle Four Drug Networks:** *City News Service*, June 13, 2002

- **Agony and Ecstasy in the Face of Efforts to Crack Down on Raves, a Coalition Rallies for Electronica Culture:** *The Seattle Post-Intelligencer,* May 11, 2002

- **California Operations Put a Face on Minority Gains at DEA:** *LA Times,* March 23, 2002

- **Valley Man Named in Meth Indictment:** *The Desert Sun (Palm Springs),* January 11, 2002

- **Possible Terror Ties Probed in Drug Bust:** *United Press International,* January 10, 2002

- **Pseudoephedrine Ring:** *City News Service,* January 10, 2002

- **Violence Rises as Club Drug Spreads Out Into the Streets:** June 24, *2001, The New York Times*

- **As Ecstasy Use Spreads, Drug Dealer Violence Rises; the Club Drug has Broken Ethnic Barriers, High School Students Report Increasing Exposure:** June 24, 2001, *Contra Costa Times* (California)

- **Mishandling of Informant Hurt Cases, DEA Concedes; Crime: Because the System Missed Warning of Operative's Misdeeds, Many Charges Have Been Dismissed or Weakened:** June 5, 2001, *Los Angeles Times*

- **Cracking Down on Ecstasy:** February 5, 2001, *U.S. News & World Report*

- **Ecstasy Kingpin Nabbed:** November 25, 2000, *Herald Sun* (Melbourne, Australia

- **Giant Ecstasy Ring Smashed by Worldwide Police Effort; Crime: Official say they have arrested dozens of operatives of a global cartel trafficking in the designer drug. The alleged ringleader was based in Santa Monica. For the Record:** November 23, 2000, *Los Angeles Times*

- **Huge Heroin Ring Broken by U.S. as 280 Arrested; S.D. was key center for Mexico-based Outfit:** June 16, 2000, *The San Diego Union-Tribune*

- **LA-Based Mexican Drug Ring Target of 200 Arrests; Crime: Officials Blame the Unusually Pure Heroin it Distributed for a High Number of Overdoses:** June 16, 2000, *Los Angeles Times*

- **Heroin Ring:** June 15, 2000, *City News Service*

- **Sunday Report; When Drug Dealers Move in Next Door; Cartels Exploit LA's Size and Diversity to set up Operations, Even in Pricey Suburban Homes, Turning the Area into a Hub of the Mexican Narcotics Trade:** May 28, 2000, *Los Angeles Times*

- **Sentences for Drug Offenses Decline: Study Notes Trend in Federal Cases Prosecuted in Southern California:** March 13, 2000, *Press Enterprise* (Riverside, CA)

- **Ex-Minneapolis DEA Chief Jim Braseth, 'as true mentor,' dies:** January 17, 2000, *Star Tribune* (Minneapolis, MN)

- **Top U.S. Drug Snitch is Legend and a Liar:** January 16, 2000, *St. Louis Post-Dispatch*

- **DEA to Put Agents in Modesto Full Time:** November 14, 1997, *Modesto Bee*

- **Twenty Jailed in Operation's Final Day:** August 28, 1997, *Modesto Bee*

- **Fronts in Drug War; A&E, NBC Series Depict DEA Battles:** January 17, 1992, *The San Diego Union-Tribune*

- **Arts: Nursing a Grudge – Television:** December 12, 1991, *The Guardian (London)*

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STATEMENT OF HON. PATTI B. SARIS, TO BE A MEMBER AND CHAIR OF THE UNITED STATES SENTENCING COMMISSION

Judge SARIS. I do. Thank you very much for holding this hearing today. I would like to introduce my husband, Arthur Segal. We will celebrate our 34th wedding anniversary next week.

Chairman LEAHY. Now, Judge, that is an accomplishment, and he is obviously aware that he married up. My wife and I celebrated our 48th this year.

Judge SARIS. I hope to go there. And I'd like to introduce my daughter, Celia. Senator Franken introduced her, as well, as being a gem. She used to work for him.

And as well, I'd like to mention my other three kids who couldn't be here today, my daughter, Marissa, who is teaching in a charter school in Boston; my son, Eddy, who is on the west coast and couldn't make it; and, my baby, who actually fell asleep in my lap when I went through my confirmation hearing is, believe it or not, a freshman. So I'm newly an empty-nester.

I'd like to introduce my friend, Wendy Gray, who is here; my brother-in-law, Jim Segal; and, a whole lot of other friends and staff who have come down to be with me today.

I'd also like to thank the Judicial Conference for suggesting my name; to President Obama for nominating me; and, to this whole Committee for hearing me today, because this was the Committee that I first started in as a staff member, as you noted. And, in fact, in 1981, I learned about sentencing policy by being a staff member on this Committee when I was very young.

Thank you.

Chairman LEAHY. And I am sure you are going to get a lot of good advice from the outgoing chair, Judge William Sessions of Vermont.

Judge SARIS. I consider him a good friend and we've talked a lot. I should also mention, or she'll kill me, my mom, who couldn't make it here today and I'm sure is going to be watching this from Boston.

Chairman LEAHY. Well, I hope she will and please give my best to Judge Sessions. He is a wonderful friend.

About the only time I have been in Federal court since I became a Senator was to appear before him to move the admission of one of his law clerks to the Federal court.

The law clerk was my oldest son. I went through and made the usual motions. Judge Sessions looked at him and he goes, "Hmm." And we had joked about that. He quickly made up his mind and admitted him.

Ms. Hylton, do you have any friends or family members here?

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Patti B. Saris

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

   Member and Chair, United States Sentencing Commission

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.

   John Joseph Moakley U.S. Courthouse
   1 Courthouse Way, Suite 8110
   Boston, MA 02210

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

   1951; Boston, 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.

   Harvard Law School: 1973-1976, J.D. Cum Laude, 1976
   Radcliffe College, 1969-1973, B.A. Magna 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.

   1994-Present
   United States District Judge
   John Joseph Moakley U.S. Courthouse
   One Courthouse Way, Suite 8110,
   Boston, MA 02210

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1989 to 1993
Associate Justice
Massachusetts Superior Court
Suffolk County Courthouse
Boston, MA 02109

1986-1989
United States Magistrate Judge
United States District Court, District of Massachusetts
John W. McCormack Post Office and Courthouse Building
90 Devonshire Street
Boston, MA 02109

1982-1986
Attorney, Chief of the Civil Division, 1984-1986
Attorney, Member of the Civil Division, 1982-1984
United States Attorney's Office, District of Massachusetts
John W. McCormack Post Office and Courthouse Building
90 Devonshire Street
Boston, MA 02109

1981-1982
Litigation Associate
Berman, Dittmar & Engel, P.C.
No longer exists.

1981
Counsel, Personal Staff
Senator Edward M. Kennedy
United States Senate
Washington, DC 20510

1979-1981
Staff Counsel
United States Senate Judiciary Committee
Majority, Full Committee
United States Senate
Washington, DC 20510

1977-1979
Litigation Associate
Foley, Hoag & Eliot
155 Seaport Boulevard
Boston, MA 02210

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1976-1977
Law Clerk to the late Justice Robert Braucher
Massachusetts Supreme Judicial Court
John Adams Courthouse, Suite 2500
One Pemberton Square
Boston, MA 02108

Uncompensated

2009-Present
Director
Codman Academy
637 Washington Street
Dorchester, MA 02124
(a charter school)

2009-Present
President
Boston Intellectual Property Inn of Court
Boston, MA

2008 – Present
Vice President Security and Planning
Federal Judges' Association
111 West Washington Street, Suite 1100
Chicago, IL 60602

2007-Present
Clerk, Director
21st Century Fund
Brookline High School
115 Greenough Street
Brookline, MA 02445

2006- Present
Director
Bottom Line
500 Amory Street, Suite Three
Jamaica Plain, MA 02130

2000-Present
Member
Harvard School of Education
Visiting Committee
86 Brattle Street
Cambridge, MA 02138

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2000-Present
Member
Harvard College
Visiting Committee
86 Brattle Street
Cambridge, MA 02138

2000-2009
Member
Harvard Law School Visiting Committee
86 Brattle Street
Cambridge, MA 02138

2000-2006
President - 2005-2006
Overseer - 2000-2005
Harvard Board of Overseers
86 Brattle Street
Cambridge, MA 02138

2002-2006
Director
Legal Affairs, Inc. (magazine)
New Haven, CT

2003
Director
Boston Medical Center
One Medical Center Place,
Boston, MA 02118

1993
Director
Riesman Center for Harvard Hillel
Rosovsky Hall
52 Mount Auburn Street
Cambridge, MA 02138

Approximately 1993
Director
Boston Inns of Court
Now defunct

Approximately 1991
Trustee
Beth Israel Deaconess Medical Center

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330 Brookline Avenue
Boston, MA 02215

1987-1992
Director
American Jewish Committee
126 High Street
Boston, MA 02110

1982-1986
Director
Women's Bar Association
27 School Street, Suite 500
Boston, MA 02108

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, nor have I 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.

Judicial Conference of the United States, Resolution of Appreciation for Work as Chair of the Committee on Defender Services from 2002-2005 (September 20, 2005)
Boston Bar Association, Citation of Judicial Excellence (May 6, 2003)
Boston Bar Association, Haskell Cohn Distinguished Judicial Service Award (July 29, 1997)
Federal Bar Association Judicial Recognition (January 24, 2007)
Boston Patent Law Association Distinguished Public Services Award (2008)
The Harvard University Medal of Honor (2009)
Girls' Latin School Distinguished Alumni Award
National Merit Scholar (1969)
Phi Beta Kappa, Radcliffe College (1973)
Award from: Mothers of Murdered Children, North Shore (1993)

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

Budget Committee, United States Judicial Conference (2007 to present)

Defender Services Committee, United States Judicial Conference, (Member 1997-2002,

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Chair, 2002-2005)

Federal Judges' Association (Member 1994 to present, Vice President Security and Planning, 2008 to present)

Harvard Law School, Visiting Committee (2000 to 2009)

Boston Intellectual Property Inn of Court (President, 2009 to present)

Ad Hoc Committee on Patent Jury Instructions, selected by Federal Circuit Judge Paul Michel (2008 to 2009)

Administrative Office, United States Courts working groups, including:
Improving the Criminal Justice Act voucher system
Court-room sharing
Computer-assisted legal research
(There may have been others over the years, but I do not have records of them.)

United States District Court liaison to the CJA Board (2006-2009)

Nelson Fellows Program, Boston, co-founder of program to mentor inner city youth in the courthouse (1995 to present)

American Bar Association Task Force on Pre-Trial Release and Speedy Trials (1999)

Women's Bar Association, Board of Directors (1982-1986)

Boston Bar Association, past member of Bench-Bar Committee (until 1986)

Boston Inns of Court, Board of Directors (approximately 1993)

Supreme Judicial Court, Committee on Civil Rules (Member from approximately 1988 to 1993)

Law Clerk Committee, Superior Court (approximately 1990-1993)

Time Standards Committee, Superior Court (approximately 1990-1993)

Massachusetts Association of Women Judges (approximately 1990-1993)

National Association of Women Judges (approximately 1990-1993)

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.

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I was admitted to the Massachusetts Bar in December 1976. 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.

I was admitted to the bar of the United States District Court for the District of Massachusetts on November 14, 1977, and to the First Circuit Court of Appeals in March, 1983. There have been no lapses.

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.

Harvard Board Of Overseers, Cambridge, MA (President 2005-2006, Member 2000-2006).

Harvard School of Education, Visiting Committee (2000 to present)

Harvard College, Visiting Committee (2000 to present)

Bottom Line, Boston MA, Board of Directors (a philanthropy dedicated to helping inner city youth get into college and succeeding) (2006-present).

21st Century Fund, Brookline, MA, Board of Directors, Clerk (a philanthropy that supports innovative programming at Brookline High School, where my children attend) (2007-present)

Legal Affairs, Inc. (magazine), New Haven, CT, Board of Directors (2002-2006)

Codman Academy, Dorchester, MA, Board of Directors, (a charter school) (2009 to present)

The Saturday Club (an eating club) (at least 1994 to present)

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Boston Medical Center, Board of Directors (2003); (I attended one meeting and then resigned due to a potential conflict with a pending case)

American Jewish Committee, Board of Directors (approximately 1987-1992)

Beth Israel Hospital, Board of Trustees (Approximately 1991)

Wexner Heritage Foundation. I participated as a student in an educational program every other Thursday night which taught Jewish history, ethics and religion (1990-1991)

Harvard Hillel, Board of Directors (1993)

Nisi Prius (eating club for lawyers and judges) (1994 to present)

The Lawyers' Club (dinner club for lawyers, professors and judges) (1994 to present)

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

None.

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 provided copies of all published materials that were available to me. I no longer have any copies of some of the older materials, the originals of which were provided at the time of my confirmation in 1994.

As an undergraduate at Harvard, I wrote for the school newspaper, The Crimson. Some of those articles are available at http://www.thecrimson.com/writer/6804/Patti_B._Saris/

Note: Is Federalism Dead? A Constitutional Analysis of the Federal No-Fault Automobile Insurance Bill Reform, 12 Harvard Journal on Legislation 668 (June 1975).

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Principal author of Senate Judiciary Committee Report on Regulatory Reform, S.262, 96th Congr., 2d Session (1980). This report evaluates proposed changes in the Administrative Procedure Act and legislative proposals to alter the direction of regulatory policy.

Judge Abner J. Mikva, and Patti B. Saris, Congress: The First Branch of Government (Franklin Watts, Publisher, 1983).

Patti B. Saris, Setting Bail: A Proposal for Change, (Boston Bar Journal, September-October 1991).

Patti B. Saris, Linda Sandstrom, William F. Lee, The Basis of Expert Testimony: A Window into Reliability, (MCLE 1992).

Patti B. Saris, Below the Radar Screens: Have the Sentencing Guidelines Eliminated Disparity? One Judge's Perspective, 30 Suffolk U. L. Rev. 1027, 1060 (1997).

Patti B. Saris, Women in the Profession: A Firm Commitment (The WBA Quarterly, October 1998).

Honorable J. Harold Flannery, Honorable Patti B. Saris, Honorable Martha Sosman, and J.W. Carney, Jr., Massachusetts Evidence: A Courtroom Reference (MCLE 1999).

Massachusetts Continuing Legal Education (MCLE). Co-editor of book on women lawyers in Massachusetts (currently in planning stages).

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.

American Bar Association, Standards on Pretrial Release.
American Bar Association, Standard on Speedy Trials and Timely Resolution of Criminal Cases.

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 gave a statement to the U.S. Sentencing Commission as Chair of Defender Services on November 16, 2004. See attached.

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Testimony to the Joint Committee on Criminal Justice of the Massachusetts Legislature, about bail reform proposed as part of a Domestic Violence Bill, April 15, 1992. I do not have a copy of my testimony.

Testimony to the Governor's Council on behalf of Margot Botsford at her confirmation hearing for the Supreme Judicial Court, September 30, 2007. I do not have a copy 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.

In addition to the many speeches and remarks I have delivered over the years, I have also served on innumerable panels on federal civil practice, employment law, criminal law (including sentencing), intellectual property and trial procedures offered by the Boston Bar Association, Massachusetts Continuing Legal Education, the American Intellectual Law Association, etc. I have tried to identify as many of these as I could by reviewing my calendars and electronic databases, but I have not kept records of all my participation in education panels, and there may be some I have not been able to recall.

1985-1986, I was a panelist at the annual MBA meeting in Chatham, MA. I discussed the award of attorneys' fees to parties prevailing against the federal government. No notes or speech. No notes or speech.

Late 1985 or early 1986, I spoke at a conference of Assistant United States Attorneys to encourage them to undertake more affirmative civil litigation, particularly in the area of civil rights. No notes or speech.

June 1988, I spoke to a seminar of about 200 school teachers concerning the role of the Senate in confirming Article III judges. No notes or speech.

December 13, 1990, Boston, MA, Boston Bar Program, Tough Issues in Discovery: Tackling Issues that Defy Simple or Black Letter Answers. No notes or speech.

May 2, 1991, Boston, MA, Boston Bar Forum, A view from the Bench: Motions for Preliminary Injunction in Trade Secret and other Intellectual Property Cases. No notes or speech.

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May 16, 1991, Boston, MA, Massachusetts Continuing Legal Education (MCLE), Rule 11 Snags Lawyers – Sanctions under Rules 11 and 37. No notes or speech.

June 1992, Boston, MA, MCLE, Direct and Cross Examination of Experts. No notes or speech.

September 8, 1992, MCLE, Obtaining and Defending Prejudgment Security – A view from the Bench. No notes or speech.

September 30, 1992, Boston, MA, Boston Bar Foundation, Labor and Employment Section, Motions to Dismiss in Employment Cases. No notes or speech.

February 26, 1993, Boston, MA, Suffolk University Law School, Advanced Legal Studies: How to Try a Discrimination Case to Jury. No notes or speech.

March 10, 1993, Boston, MA, Boston Human Resources Association mock trial on a sexual harassment, wrongful discharge case. No notes or speech.

January 23, 1993, Boston, MA, Boston Human Resources Association, Federal Civil Practice. No notes or speech.

September 1993, I spoke to the Brookline, MA, League of Women Voters regarding domestic violence. No notes or speech.

October 1993, I addressed a conference on violence at Salem State College in a program run by the Probation Department. No notes.

October 30, 1993, Massachusetts Association of Trial Attorneys, Address on civil trial developments. No notes or speech.

January 4, 1994, Boston, MA, Investiture Remarks, United States District Court. No notes or speech. Press coverage attached.

January 20, 1994, Boston, MA, Women's Bar Association, Remarks about being a judge. Speech attached.

May 4, 1994, Boston, MA, Excellence in Government Awards, Federal Executive Board, Speech to federal employees. Speech attached.

March 10, 1995, Boston, MA, MCLE, Panel Discussion on Practicing in Federal Court. No notes or speech.

April 5, 1995, Exeter, NH, Speech to Phillips Exeter Academy. Speech attached.

May 15, 1995, Boston, MA, Evidence Seminar at court. No notes or speech.

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July 23, 1995, Plymouth, MA, Naturalization Ceremony. No notes or speech.

September 13, 1995, Boston, MA, Boston Patent Association, Remarks at Patent and Trademark dinner. Outline attached.

November 4, 1995, Boston, MA, Securities Litigation, Panel: View from the Bench. No notes or speech.

November 14, 1995, Cambridge, MA, Speech at Harvard Law School, Police, Lying and Truth Symposium. Speech Attached.

November 1, 1996, Joint Federal/State Probation Conference, Federal Sentencing Guidelines. No notes or speech.

January 1997, Boston, MA, Boston Bar Association, Speech on Recent Federal Developments in Criminal Law. Outline attached.

March 11, 1997, Boston, MA, MCLE, From State to Federal Practice. Outline attached.

April 3, 1997, Boston, MA, Suffolk University Law School Lecture, Speeches re: Sentencing Guidelines. Speech attached.

May 2, 1997, Waltham, MA, Bentley College Chapter of Beta Gamma Sigma Speech. Speech attached.

May 22, 1997, Boston, MA, Conference for Court-Appointed Counsel in Federal Criminal Cases, Downward Departure Rates in D. Mass, D. NH, D. Conn, and D. RI. Outline attached.

July 29, 1997, Boston, MA, Boston Bar Association Haskell Cohn Award. Speech attached.

December 12, 1997, New Orleans, LA, Tulane University, Panel: DNA in the Courtroom. No notes or speech.

January 15, 1998, Boston, MA, Boston Bar Association, Cutting Edge Issues in Federal Court. Outline attached.

January 30, 1998, Cambridge, MA, Harvard Law School, Member of panel, Celebration 45 "The New Courtroom and ADR". No notes or speech.

February 10, 1998, Boston, MA, MCLE, Evidence Rules for Trial Lawyers. No notes or speech.

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March 5, 1998, Boston, MA, Combined Jewish Philanthropies. Speech attached.

March 23, 1998, New York, NY, New York University Employment Law Seminar, Panel on Practical Issues in Employment Litigation Presented in multiple years. No notes or speech.

April 21, 1998, Boston, MA, Harvard Alumni Association. Remarks attached.

June 3, 1998, Cambridge MA, Harvard 25th Reunion, Toast of Class Marshal. Speech attached.

June 17, 1998, Boston, MA, MCLE, Claim Construction and Markman Hearings. Notes attached.

August 27-28, 1998, Portland, ME, Criminal Justice Act Conference "Winning Strategies for Defending Federal Criminal Cases", Panel "From Conviction to Sentencing". No notes or speech.

September 13, 1998, Boston, MA, Boston Patent Law Association. No notes or speech.

October 6, 1998, Boston, MA, Boston Bar Association, Hot Topics in Criminal Law '98, Panel, No notes or speech.

October 15, 1998, Boston, MA, Combined Jewish Philanthropies. Speech attached.

January 14, 1999, Boston, MA, Boston Bar Association, Panel: The Cutting Edge: 1998's Most Important Changes in Federal and State Criminal Law. Speech attached.

March 5, 1999, Boston, MA, The Equal Employment Opportunity Commission, Formal Speech. Speech attached.

April 22, 1999, Boston, MA, ALI-ABA Program, Trade Secrets and Protecting High Tech Markets. No notes or speech.

May 26, 1999, Boston, MA, Flaschner Institute, "What is the Role of Spiritual Values in our Services as Judges?" No notes or speech.

June 30, 1999, Boston, MA, MCLE Intellectual Property Conference, Panel on Markman hearings in patent infringement cases. No notes or speech.

August, 1999, A Legislative Challenge: Fairly Funding Indigent Criminal Defense. While my records and memory are unclear, I believe this was a speech to a group of panel attorneys in the First Circuit. Speech attached.

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November 16, 1999, Boston, MA, Boston University Women's Council. Speech attached.

January 2000, Boston, MA, Boston Bar Association, The Cutting Edge: 1999's Most Important Changes in Federal and State Criminal Law with a Look Ahead at 2000. Speech attached.

February 8, 2000, Boston, MA, MCLE Daubert program, Panel "A View from the Bench". Outline attached.

March 29, 2000, BIO 2000, Panel on Intellectual Property. No notes or speech.

May 3, 2000, panelist, Digital Discovery Workshop, The Berkman Center for Internet & Society at Harvard Law School. No notes or speech. Discussion log of event available at: http://cyber.law.harvard.edu/digitaldiscovery/chat-log.html

May 17, 2000, Boston, MA, Citizen Schools Moot Court Speech on Federal Court Public Education Project. Speech on Role of Courts. Attached.

June 29, 2000, Boston, MA, Federal Defender Training Groups, "Winning Strategies". No notes or speech.

July 6, 2000, Boston, MA, Federal Public Defenders. Outline attached.

September 14, 2000, Boston, MA, MCLE, Panel on Employment Law Practice after Abramian, Reeves, Wynn & Winn. No notes or speech.

October 17, 2000, Boston, MA, International Women's Insolvency and Restructuring Federation, Speech at a Reception. Outlined attached.

November 8, 2000, Waltham, MA, New Jewish High School, View from the Bench. Speech attached.

December 1, 2000, MCLE, Trial Tactics and Ethics. Outline attached.

December 13, 2000, Boston, MA, Citizen Schools, Comment/Remarks about Federal Court Public Education Project. Outline attached.

January 17, 2001, Federal Judges Association, Lecture on Judicial Perspective on Civil Rights Actions Under Section 1983. No notes or speech.

April 26, 2001, Boston, MA, Speech to Temple Israel Brotherhood, "Jewish View from the Bench". Speech attached.

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May 10-12, 2001, Boston, MA, ALI-ABA, Program on Employment Litigation. No notes or speech.

May 22, 2001, Boston, MA, The Federal Court Education Project. Remarks attached.

June 14, 2001, Boston, MA, MCLE, Class Action Seminar. No notes or speech.

July 2001, Seattle, WA, Panel Member, "Validity of Patents in the Patent Office and Courts – USA." Center for Advanced Study & Research on Intellectual Property, 2001 High Technology Summit Conference, University of Washington, Seattle. Transcript attached.

October 30, 2001, Boston, MA, Boston Bar Association Criminal Law Section, Panel on Federal Developments. No notes or speech.

January 16, 2002, Boston, MA, Boston Bar Association, Panel: The Cutting Edge: 2001's Most Important Changes in Federal and State Criminal Law with a Look Ahead at 2002. Summary attached.

January 24, 2002, Boston, MA, State Sentencing Commission, The Sentencing Guidelines: The Federal Experience. Speech attached.

January 26, 2002, Boston, MA, Massachusetts Bar Association: A Celebration of Law and Justice, Moderator: Bench Bar Forum on the effects of 9/11 on civil liberties; confronting the legal issues. Remarks attached.

April 9, 2002, Boston, MA, MCLE, Federal Civil Litigation in the First Circuit. Program Outline attached.

May 15, 2002, Boston, MA, MCLE Sentencing Program, Tips from Judges. No notes or speech.

May 23, 2002, Boston, MA, Massachusetts Association for Law-Related Education (for school teachers), Panels: protecting the public from terrorism: the difficult balance between security and civil reform: panel; Facing challenges for immigration law: the rights of foreigners after 9/11. No notes or speech.

July 10, 2002, Boston, MA, MCLE, Employment Discrimination Law. No notes or speech.

July 25-26, 2002, Federal Bar Association, Panel: Cutting Edge Issues in Federal Criminal Law and Procedure. No notes or speech.

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August 23, 2002, Washington DC, Reinventing Sentencing Workshop given by Defender Services Division of the Administrative Office, Remarks on Judging at Sentencings. No notes or speech.

October 18, 2002, Boston, MA, Boston Bar Association, Commercial Cases in Federal Courts. Outline attached.

October 20, 2002, Boston, MA, Massachusetts Association for Law-Related Education Conference (for school teachers), Panel on Search and Seizure and rights of criminals vs. rights of victims. No notes or speech.

November 8, 2002, Sedona, AZ, "Summary Judgment Trials After Festo & Markman" The Third Annual Sedona Conference on Patent Litigation. No notes or speech.

January 15, 2003, Boston, MA, Boston Bar Association, Panel: Cutting Edge Issues in Federal Criminal Law. Outline attached.

February 26, 2003, Boston, MA, MCLE Second Annual Business Litigation Conference, The Federal Perspective. Outline attached.

April 8, 2003, Boston, MA, Boston Bar Association, Moderator/Sponsor Gideon's Promise. Outline attached.

April 28, 2003, Patent Seminar - Patent Litigation Find Law, Panel: Developments in Patent Law. No notes or speech.

July 15, 2003, Boston, MA, MCLE Program, Electronic Filing. No notes or speech.

October 2, 2003, Cambridge, MA, Harvard Law School Hale & Dorr Conference, Speech on Intellectual Property. Speech attached.

October 2-3, 2003, Boston, MA, American Bar Association and University of Texas Law School: The Future of Class Action Litigation in America, Panel: Hot Topics in Class Actions, New Areas, New Subjects & More. No notes or speech.

November 14, 2003, Cleveland, OH, "The Past, Present & Future of the Federal Circuit," Law, Technology & the Arts Symposium, Center for Law, Technology & the Arts, Case Western Reserve University School of Law. No notes or speech.

February 5, 2004, Boston, MA, Combined Jewish Philanthropies, SEA Speech to lawyers and accountants: The Story of the Sea. Speech attached.

March 24, 2004, Boston, MA, Federal Criminal Appellate Practice, CJA Panel (rates and management). No notes or speech.

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May 1, 2004, Cambridge, MA, Signet Society. Speech attached.

May 12, 2004, Cambridge, MA, Dinner Speech, Harvard Foundation and the Harvard Alumni Association Evening in honor of Judge A. David Mazzone. No notes or speech. Press coverage attached.

November 8, 2004, Boston, MA, National Consumer Law Center/Consumer Class Action Symposium, Panel on Class Action Litigation. No notes or speech.

November 16, 2004, Statement as Chair of the Defender Services Committee, Statement to Sentencing Commission. Attached.

March 18, 2005, Boston, MA, Boston Town Meeting on Patent Reform, Speech attached.

April 7, 2005, Boston, MA, MCLE Seminar, Panel: Representing Directors, Officers and Employees in Securities Cases. No notes or speech.

May 17, 2005, Boston Bar Association Program on Complex Torts, Panel Discussion. No notes or speech.

October 7, 2005, Galveston, TX, Conference on Patent Reform, Speech on Patent Reform. Speech attached.

October 19, 2005, Cambridge, MA, Harvard Law School Conference on Intellectual Property, Patent Litigation: View from the Bench. No notes or speech.

March 9, 2006, Boston, MA, Women's Bar Association Annual Conference. Speech attached.

June 20, 2006, Boston, MA, American Bar, Practical Tips on Handling Intellectual Property Disputes. Speech attached.

July 27, 2006, Boston, MA, Anti-Defamation League, Speech to Lawyers. Outline attached.

October 26, 2006, Boston, MA, BIO - Intellectual Property Counsels Conference, Committee Meeting. Speech attached.

November 16, 2006, Alexandria, VA, George Mason University School of Law and Univ. Of Texas School of Law 2006 Advanced Patent Law Institute on Current Developments in Claim Construction, Remarks on Panel on claim construction and other patent issues. No speech or notes.

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January 19, 2007, Boston, MA, MCLE Business Litigation Conference, Views from the Bench. No notes or speech.

January 24, 2007, Boston, MA, Federal Bar Association, Speech after receiving award. Speech attached.

January 25, 2007, Boston, MA, American Immigrant Lawyers Association, Panel on Immigration Law. No notes or speech.

March 1-2, 2007, San Diego, CA, ABA, White Collar Crime, Panel on practical advice on sentencing. No notes or speech.

April 12, 2007, Crystal City, Washington, D.C., ABA Annual Meeting, Section of Intellectual Property, Panel: Patent Litigation: Is It Broken and Can We Fix It? No notes or speech.

May 9, 2007, Boston, MA, American Intellectual Patent Law Association, Patent Law Speech on Patent Reform. Attached.

May 23-25, 2007, Salt Lake City, UT, The 16th Annual National Seminar on Federal Sentencing Guidelines, Panel on View from the Bench. Notes attached.

July 23, 2007, Boston, MA, Federal Bar Association, Young Lawyers Division. Remarks attached.

August 22, 2007, Boston, MA, Speech to the Chemical Society, Science Litigation, views from the bench and bar. Remarks attached.

September 18, 2007, Boston, MA, Boston Bar Association, Speech regarding Tony Doniger, the new President. Speech attached.

October 5, 2007, Boston, MA, U.S. Courthouse, Tribute to Judge Robert Keeton. Speech attached.

October 25, 2007, Boston, MA, American Bar Association, Speech on Issues of Sub-Classing. Attached.

November 15-16, 2007, Patent Claim Construction, The Advance Legal Forum, View from the Bench. Notes attached.

January 10-11, 2008, Alexandria, VA, 2008 Advanced Patent Law Institute at USPTO, District Judges Panel. No notes or speech.

January 15, 2008, Boston, MA, MCLE, Panel on trying your first criminal case. No notes or speech.

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March 28, 2008, New York City, NY, The New York Intellectual Property Law Association, Trying a patent case in view of recent Supreme Court cases. No notes or speech.

May 1, 2008, ALI-ABA Online CLE, Securities Litigation: Planning and Strategies. No notes or speech.

May 15, 2008, Washington, D.C., Federal Circuit Judicial Conference (25th Anniversary), Panel. Notes attached.

June 10, 2008, Boston, MA, Boston Patent Law Association Litigation Committee Damages Seminar, Panel. Notes attached.

June 18, 2008, Boston, MA, Class Action Litigation Torts Program; Complex Issues and Emerging Trends in Class Action Litigation, Panel discussion. No notes or formal speech.

September 17, 2008, Boston, MA, Naturalization Ceremony, Fenway Park. Remarks Attached.

April 6, 2009, Boston, MA, Federal Bar Association, Speech Honoring Chief Judge Wolf. Attached.

May 8, 2009, Palo Alto, CA, Patent Litigation in the Biosciences: A View from the Bench, The Stanford Law School Conference on Intellectual Property Law and BioSciences. MP3 available at http://www.slsipbioconference.com/materials/

July 9-10, 2009, Boston, MA, ALI-ABA, Panel Discussion on Insurance and Financial Services Industry Litigation. No notes or speech.

October 7, 2009, Boston, MA, CJA Panel Attorneys, Reception for CJA Attorneys; Introduction Speech. No notes or speech.

October 17, 2009, American Intellectual Property Law Association Annual Meeting, Outline re: patent trials. Attached.

October 25, 2009, National Employment Lawyers Association, Outline attached.

January 27, 2010, Boston, MA, Roundtable with Judge Young, Judge Saris and Judge Gertner, Gaining Insights Into Federal Practice, MCLE. No notes or speech. MP3 available at http://www.mcle.org/program-calendar/program-catalog.cfm?product_code=2100139P01

January 28, 2010, Boston, MA, Boston Bar Association, "The Cutting Edge Issues in Criminal Law." No notes or speech.

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March 18, 2010, New Orleans, LA, Sentencing Advocacy Workshop, "Judging at Sentencing" Panel. No speech or notes.

April 13, 2010, Boston, MA, Harvard Jewish Law Students Association. Notes attached.

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.

Over the years, as a prosecutor, federal magistrate judge, state judge, and federal district court judge, I have made it a general policy not to give interviews about particular cases, but I have spoken to reporters about various more general legal issues, and about other topics, including my involvement at Harvard. I have searched my files and various internet databases to try and provide as complete a list of these interviews as possible.

Leslie J. Seifert, *"University Contemplates Additional Energy Moves,"* The Harvard Crimson, Dec. 8, 1973.

Jean Dietz, *"Insurance Hearing Ponders Requiring Maternity Benefits,"* The Boston Globe, Apr. 4, 1984.

Peter Gosselin and Stephen Kurkjiam, *"Banks Are Not the Only,"* The Boston Globe, May 14, 1985.

Elizabeth Neuffer, "*Few Applicants So Far for US Magistrate Job*," The Boston Globe, November 8, 1989, at 36.

Toni Locy, "*Bail Plan Receives Tepid Response from Female Legislators' Caucus*." The Boston Globe, April 16, 1992 at 30.

"Women Not Totally Sold on Domestic Violence Bill," Worcester Telegram & Gazette, Apr. 16, 1992.

Heidi B. Perlman, *"Two Brookline Women Seek Nods for Federal District Court,"* The Jewish Advocate, August 19, 1993 at 1.

Scott S. Greenberger, *"Kennedy Staffers 'Graduate' to Positions of Power,"* States News, July 7, 1994.

Ralph Ranalli, *"New Views from the Bench,"* The Boston Herald, August 7, 1994, Magazine at 15.

Judy Rakowsky, *"A New Order in the Court,"* The Boston Globe, September 24, 1995 at 33.

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Michael Gelbwasser, *"Stories of Spirituality: 'Celebrity Teachers' Tell of Spiritual Quests Through Torah, Talmud and Other Jewish Texts,"* The Jewish Advocate, March 19, 1998, at 17.

Patricia Wen and Bruce Mohl, *"A Practical Mother's Day Gift: Tips to Save Time and Money,"* The Boston Globe, May 10, 1998.

"Judge Patti Saris: On Returning for a 25th Reunion," The Harvard University Gazette, June 4, 1998.

William F. Doherty, *"Judges Aren't All Smiling for Camera,"* The Boston Globe, April 7, 2000, at B6.

Denise Magnell, *"WBA Survey: Part-Timers Get Raw Deal,"* The National Law Journal, Dec. 11, 2000.

Erica B. Levy, *"Patti B. Saris: Local Judge Cites Harvard as Inspiration,"* The Harvard Crimson, May 2, 2000.

Shelley Murphy, *"Finding Defender for Flemmi Proves a Hard Sell,"* The Boston Globe, February 3, 2001, at B6.

Kendra Johnson, *"Building Citizens,"* The Patriot Ledger, March 1, 2002, at 11.

"Committee Defends Independence of Representation: An Interview with Judge Patti B. Saris," The Third Branch, April 2005.

Albert W. Alschuler, *"Disparity: The Normative and Empirical Failure of the Federal Guidelines,"* 58 Stanford Law Review 85, October 2005.

Laurel J. Sweet, *"Federal Trials Up 154 Percent With Sullivan at the Helm,"* The Boston Herald, November 7, 2005, at 8.

"Lawrence Summers to Step Down as President at End of Academic Year," States News, February 21, 2006.

Daniel J. T. Schuker, *"Overseeing – But Not Heard?"* The Harvard Crimson, June 7, 2006.

Stephanie Ebbert, *"Hearing Bodes Well for Botsford,"* The Boston Globe, August 30, 2007, at B1.

"Anthony M. Doniger Takes Office as New BBA President," Boston Bar Association Week, September 3, 2007.

Barbara Rabinovitz, *"Massachusetts Bench, Bar Reflect on Passing of 'Very Special Guy,'"* Massachusetts Lawyers Weekly, March 23, 2009.

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Wil Haygood, *"A Connection to the End,"* The Washington Post, August 30, 2009, at A10.

Emma Baccalough, *"Questions and Answers,"* Intellectual Property, October 2009.

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

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

When I was 18 in 1969, I was elected to the Democratic Ward Committee in West Roxbury, Massachusetts.

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 played a low-level volunteer role in Senator Kennedy's campaign for President in 1980.

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

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

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

I clerked for Justice Robert Braucher (former Harvard Law Professor, now deceased), Massachusetts Supreme Judicial Court, 1976-1977.

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.

1982-1986: United States Attorney's Office, District of Massachusetts, Civil Division.

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Berman, Dittmar & Engel, PC (Associate) 1981-1982. I was involved primarily in commercial litigation.

Senate Judiciary Committee Staff Counsel, 1979-1981. I worked for Senator Edward M. Kennedy who for two years was chairman of the committee. In 1980-81, I handled the Comprehensive Crime Control Act, including the bail reform provision that added the criterion of dangerousness to a judge's decision-making process and sentencing reform.

Foley, Hoag & Eliot, Litigation Associate, 1977-1979.

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.

1994 – Present. United States District Court Judge, United States District Court, District of Massachusetts.

1989-1993 Justice, Massachusetts Superior Court. The Superior Court is the court of general trial jurisdiction which handles all significant felony trials and all civil trials worth more than $25,000. On the criminal side, the court has jurisdiction over murder, rape, child abuse, robbery, drug distribution, etc. On the civil side, the court handles commercial disputes, medical malpractice, personal injury, civil rights, employment disputes, etc. The court also has exclusive equity jurisdiction. I was appointed for life by the Governor after being approved by a State Merit Selection Committee. I was approved by the Governor's Council.

1986-1989. United States Magistrate Judge, United States District Court, District of Massachusetts. I was appointed by the federal judges. My jurisdiction was criminal (except felony trials), and civil.

1982-1986: United States Attorney's Office, District of Massachusetts, Civil Division. As Chief of the Division from 1984-1986, I supervised 12 Assistant United States Attorneys and an administrative staff of 12. I assigned complaints; reviewed significant briefs; approved settlements; reviewed appeal recommendations; prepared personnel evaluations;

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coordinated civil and criminal actions; and supervised performance of trial attorneys. Throughout my employment in the U.S. Attorney's Office, I engaged in litigation in all stages of a civil action from complaint through appellate argument in the First Circuit Court of Appeals. My litigation arose under the Federal Tort Claims Act; the Fair Housing Act; the False Claims Act; Title VII of the Civil Rights Act of 1964; various environmental statutes like the Clean Air Act, the Clean Water Act, and CERCLA, the SuperFund statute; drug forfeiture statutes; and the social security laws.

Berman, Dittmar & Engel, PC (Associate) 1981-1982. I was involved primarily in commercial litigation. My most significant experience there was as second chair in a four month jury trial in federal District Court, Manhattan Life Ins. Co. v. Boston Safe Deposit and Trust Co., Civ. Action No. 70-837-K. I also engaged in motions practice in state and federal court.

Senate Judiciary Committee Staff Counsel, 1979-1981. I worked for Senator Edward M. Kennedy who for two years was chairman of the committee. My area of expertise was regulatory reform. I was the full Committee staff person responsible for the regulatory reform legislation in the committee such as the Regulatory Flexibility Act to reduce the burden of regulation on small business; and omnibus legislation to reform the Administrative Procedure Act, such as a requirement for cost-benefit analysis in rulemaking. I also handled certain civil rights legislation like making Martin Luther King day a federal holiday, and the so-called Stanford Daily legislation to provide certain statutory protections against searches of press offices. In 1980-81, I handled the Comprehensive Crime Control Act, including the bail reform provision that added the criterion of dangerousness to a judge's decision-making process and sentencing reform.

Foley, Hoag & Eliot, Litigation Associate, 1977-1979. I represented General Dynamics and the University of Massachusetts, among others, in labor matters like arbitrations under collective bargaining agreements. I was involved in the pro bono program. My most significant activity was working on the investigation of a state judge for alleged unethical conduct.

Clerk for Justice Robert Braucher (former Harvard Law Professor, now deceased), Massachusetts Supreme Judicial Court, 1976-1977.

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

When I worked in the private law firms, as described above, I usually represented businesses or institutions in commercial litigation, primarily

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as a defendant.

When I worked in the Civil Division, I represented government agencies when they were defendants in tort litigation or in challenges to the constitutionality or legality of their programs or actions. I also initiated litigation on behalf of the agencies under the False Claims Act when the agencies believed that a company was defrauding them; under the environmental statutes against violators; under the drug forfeiture laws; and under the civil rights provisions. For example, I initiated litigation against certain landlords whom HUD believed were violating the Fair Housing Act; and against the Department of Corrections for discriminating against women under Title VII.

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.

Now, as a federal judge, all my time, of course, is in federal court.

i. Indicate the percentage of your practice in:
   1. federal courts; **90%**
   2. state courts of record; **10%**
   3. other courts; **None**
   4. administrative agencies **None**

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

Altogether, as a litigator, I have personally tried to conclusion five cases in Federal District Court. I second-chaired another federal court jury trial. As a student district attorney, I prosecuted about twelve cases in Cambridge District Court, Middlesex County.

i. What percentage of these trials were:
   1. jury;
   2. non-jury.

As a litigator, 95% of my trials were non-jury, and 5% jury.

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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.

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

a. the date of representation;

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

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

I have included as many matters as I could after consulting my records, my memory, and the questionnaire I submitted to the Judiciary Committee in 1993 in connection with my nomination to the District Court. It has been many years since I practiced law and my records are limited.

United States v. AVX Corporation, Civ. Action No. 83-3882-Y, U.S. District Court, MA. Litigation before Judge Young under the Comprehensive Environmental Response Compensation and Liability Act of 1980, commonly known as the Superfund law, against two manufacturing plants which discharged PCBs into New Bedford Harbor. For about one year, 1985-1986, I was lead counsel representing the Environmental Protection Agency. It settled after I became a United States Magistrate Judge.
Opposing counsel were:
Verne Vance, Foley Hoag & Eliot, 1 Post Office Square, Boston, MA, 617-482-1390.
Daniel J. Gleason, Mary Ryan, Nutter McLennen & Fish, 1 International Place, Boston, MA, 617-439-2000
Paul Galvani, Ropes & Gray, 1 International Place, Boston, MA, 617-951-7000
David A. McLaughlin, McLaughlin & Folan, New Bedford, MA, 508-992-9730
John Quarles, Janine Sweeney, Morgan Lewis & Bockius, Washington, DC.

United States v. Holyoke Housing Authority, Civ. Action No. 85-0493-F, U.S. District Court, MA. Litigation in 1985 under the Fair Housing Act against the Authority for discriminating against Hispanics. I was lead counsel in developing facts and legal theories and negotiating consent decree.

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Opposing counsel: Thomas M. Barrett, Bussell, Barrett, Marra & Smith, 324 High Street, Holyoke, MA, 413-536-0800.

Bucci v. Bell, Civ. Action No. 81-2973-MA, U.S. District Court, MA. In 1983, I was lead counsel in defending the Department of Education in a discrimination suit under Title VII. This bench trial before Judge Mazzone lasted several days spread over two weeks. Opposing counsel: Mitchell Benjoya (not listed in lawyer's directory).

Chesna v. International Fueling Co., Civ. Action No. 80-2230-K, U.S. District Court, MA. I represented a member of the Federal Reserves charging employment discrimination in a bench trial before Judge Robert Keeton, and handled the appeal of the action. The trial judge was affirmed. See 753 F.2d 1067 (1st Cir. 1984). Opposing counsel was John W. Lincoln, 440 Market Street, Rockland, MA, 871-1533.

Ricci v. Murphy, Civ. Action No. 72-0469-T, U.S. District Court, MA. I represented the Secretary of Health and Human Services in class action involving the state schools for the mentally retarded before Judge Tauro. Opposing counsel were: Carl Valvo, then Assistant Attorney General, 1 International Place, Boston, MA, 617-439-7770; Beryl Cohen, 11 Beacon Street, Boston, MA 617-742-3322; Nonnie Burnes, Hill & Barlow, 1 International Place, Boston, MA, 617-439-3555.

Manhattan Life Ins. Co. v. Boston Safe Deposit & Trust Co., Civ. Action No. 70-887-K, U.S. District Court, MA. In 1981, I second chaired a four month jury trial with James Dittmar representing Boston Safe Deposit and Trust Co. Opposing counsel were Erik Lund, 100 Charles River Plaza, Boston, MA, 617-367-9595; James St. Clair, Hale and Dorr, 60 State Street, Boston, MA, 617-742-9100; Robert Bonin, 1 Boston Place, Boston, MA, 617-723-2525.

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

As a federal judge, I have handled two multi-district litigation cases involving the pharmaceutical industry, multiple criminal trials (guns, drugs, immigration), complex patent and securities cases, and numerous diversity trials. My two multi-district litigation cases are In re: Pharmaceutical Industry Average Wholesale Price Litigation, Civ. Action No. 01-12257-PBS, and In re: Neurontin Marketing, Sales Practices, and Products Liability Litigation, Civ. Action No. 04-10981-PBS.

Prior to becoming a federal judge, the litigation I was most proud of involved the Holyoke Housing Authority which was discriminating against Hispanic applicants for

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public housing. The Authority believed that if too many minorities entered the housing project, it would "tip" and become entirely minority rather than be integrated. Therefore, it allowed applications based on race: for every Hispanic accepted, there had to be one white. The problem was that there were far more Hispanic applicants than white applicants, so that Hispanic applicants had to wait years to get in while white applicants had to wait a much shorter period of time. The litigation was brought under the Fair Housing Act, and resulted in a consent decree. United States v. Holyoke Housing Authority, Civ. Action No. 85-0493-F, U.S. District Court, MA.

The other legal activity I was most proud of before becoming a judge involved my testimony on an Act to Strengthen the Bail Laws to Ensure the Safety of the Public before the Criminal Justice Committee, on April 5, 1992. As a staff member on the Senate Judiciary Committee, I had worked on federal legislation to require federal judges to consider dangerousness of certain defendants charged with serious crimes in setting bail. When I became a United States Magistrate Judge, I interpreted and applied this law in setting bail. When I became a Superior Court Judge, I was concerned that the only factor in setting bail was risk of flight. Accordingly, I wrote an article in the Boston Bar Journal proposing change and testified in support of reform. On October 7, 1992, Governor William F. Weld signed the legislation which authorized judges to consider whether a defendant is dangerous in setting bail. See Chapter 201 of the Acts of 1992. The State Supreme Judicial Court declared the statute unconstitutional. New legislation with better constitutional safeguards was later considered by the legislature.

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

    I have taught two courses. At Harvard Law School, I taught Federal Litigation as a lecturer in about 1986 and 1987. In 1989, I taught Trial Practice at Boston University. I do not have a syllabus for either of these courses.

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

    None.

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

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None.

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

    I attach a copy of my Financial Disclosure Report.

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

    See attached.

22. **Potential Conflicts of Interest**:

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

       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 do not expect any conflicts to arise in this position. I am careful to identify and avoid conflicts as a federal judge, and were any conflicts to arise in the position, I would identify and resolve them in the same way that I do in my role as a federal judge. I follow the Code of Judicial Conduct. With respect to any potential conflict of interest, I always inform the attorneys and any interested parties to determine whether there is an objection. If I know that my husband has a significant business relationship with a person or company, even if we do not have a financial interest in the company, I inform the counsel and any interested parties to see if there is an objection. I currently do and will continue to recuse myself where even an appearance of impropriety might otherwise result.

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

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I care passionately about the education of young people, particularly inner city youth. In the District of Massachusetts, I am a co-founder of the David S. Nelson Fellowship Program. Each judge in the District of Massachusetts takes a student from an inner- city school for the summer, mentors the student and provides assistance in getting him/her into college. I have helped run the program since about 1995, and we have 137 graduates, some of whom are now lawyers, probation officers, and college graduates. I have also helped initiate a court program for college students who want to become lawyers called the Lindsay Fellowship.

In my private time, I am on the Board of Bottom Line, a non-profit organization in Boston, Massachusetts, which helps low income children get into college and stay there. We have a 72 percent graduation rate in our "success" program (in contrast to about 31 percent for Boston students as a whole). I am also on the board of the 21st Century Fund which pays for innovative programming at Brookline High School, my children's school. For example, we have helped pay for courses in engineering and social justice, and have provided tutorials and support for students at risk. Finally, I have been very active at the Harvard School of Education, where I have served on the Visiting Committee and Dean's Advisory Council for nine years, and helped support education for leaders in large urban school districts. I recently joined the board of a charter school in Dorchester, Massachusetts (near where I went to school). We are also supportive of other local philanthropies like Summer Search, Posse, and Citizen Schools.

As a judge, I have seen the tragic consequences for defendants who drop out of school and have no education, hope, or job potential. Through my work both in the Nelson Fellows Program and in private philanthropy, I hope to help in providing a better education for the inner-city students of the Boston area.

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Patti Saris

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	$767,749 see schedule 1	Notes payable to banks-secured	0
U.S. Government securities-add schedule	$3,881,462 see schedule 2	Notes payable to banks-unsecured	0
Listed securities-add schedule	$45,553,103 see schedule 3	Notes payable to relatives	($21,969) see schedule 10
Unlisted securities--add schedule	$147,166,987 see schedule 4	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	0
Real estate owned-add schedule	$3,446,300 see schedule 5	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	0
Autos and other personal property	$162,869 see schedule 6		
Cash value-life insurance	$1,771,744 see schedule 7		
Other assets itemize:	$2,359,852 see schedule 8		
		Total liabilities	($21,969)
		Net Worth	$205,110,066 see schedule 11
Total Assets	$205,110,066 see schedule 9	Total liabilities and net worth	$205,088,097 see schedule 11
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule)	No
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		

Schedule 1: Cash on hand and in banks

1. Assets owned by Patti B. Saris and/or her husband	**$767,749**
U.S. Dollars	$69,864
Canadian Dollars (value in USD)	$697,885

Schedule 2: U.S. Government securities

1. Assets owned by Patti B. Saris and/or her husband	**$3,881,462**
TINT DUE 02/15/11 TRSY INTEREST PAYMENT (Cusip: 912833CZ1)	$99,703
U.S. Treasury TIPS	$3,781,759
2. Assets held in collective investment vehicles that are owned by Patti B. Saris's husband and/or for the benefit her children (note that these are not additional assets, but rather reflect the assets of MECM Investments, LLC and MECM Associates II, LLC, ownership interests in which are listed as unlisted securities on Schedule 4)	**$525,287**
U.S. Treasury TIPS	$525,287

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Schedule 3: Listed securities

1. Assets owned by Patti B. Saris and/or her husband	**$38,193,899**
MASACHUSETTS PORT AUTH RV REF BDS SER 98A BE/R/ 5.750 070112 DTD 011598 CUSIP (575895XR3)	$55,172
MASS TPK AU METRO HWY RV SER A SENIOR NPFG BE/R/ 5.000 010113 DTD 090197 CUSIP (576018AD7)	$50,115
MASS WTR POLL ABATEMENT RV OID@99.2465 BE/R/ 6.375 020115 DTD 100194 CUSIP (576047WB6)	$5,025
MASS WTR POLL ABATEMENT SER A OID@97.7429 BE /R/ 5.250 080114 DTD 111596 CUSIP (576047XF6)	$30,116
MASSACHUSETTS CMNWLTH CONSL LN SER 03D B/E /R/ 5.000 100127 DTD 102303 CUSIP (57582NSS5)	$195,825
MASSACHUSETTS HEFA REV-C SER C REV B/E/R/ 5.750 070112 DTD 040101 CUSIP (57585KQE1)	$58,231
MASSACHUSETTS ST DEV FIN AGY REV SER C B/E/R/ 5.750 070133 DTD 020103 CUSIP (57583FM65)	$86,330
MASSACHUSETTS ST PORT 5.625 070112 DTD 040173 CUSIP (575895DH7)	$10,663
MASACHUSETTS PORT AUTH RV REF BDS SER 98A BE/R/ 5.750 070112 DTD 011598 CUSIP (575895XR3)	$22,069
MASSACHUSETTS BAY TRANS AU GEN 98C RF FGIC BE/R/ 5.500 030112 DTD 110198 CUSIP (575567LN0)	$48,801
CREF Money Market	$253,012
PIMCO DEVELOPING LOCAL MKT FD-IN	$3,104,468
FEDERATED US TRES CASH RSV-I	$1,826,704
SPDR GOLD TRUST	$6,773,487
VANGUARD INFLAT PROTECTED-AD	$4,106,749
ZOOM INFORMATION INC - SERIES B	$3,655
GOVERNMENT OF CANADA SERIES XY54 DUE 09/01/2010 4.0%	$504,421
GOVERNMENT OF CANADA SERIES YW89 DUE 09/01/2011 1.0%	$176,394
CANADA HOUSING TRUST NO.1 CDA MTGE BONDS SER-15 DUE 12/15/2011 3.95%	$229,490
PKG GOVERNMENT OF CANADA INTEREST ONLY PKG 1.7% SEMI DUE 12/01/2012 1.7%	$305,877
CANADA HOUSING TRUST NO.1 CANADA MORTGAGE BONDS SER-22 DUE 09/15/2013 3.55%	$318,134
PROVINCE OF ONTARIO EURO MED TERM NOTE DUE 07/27/2011 4.75%	$240,357
PKG PROVINCE OF BRITISH COLUMBIA 3.7% SEMI-ANNUAL PACKAGE DUE 01/09/2012 3.7%	$318,921
PROVINCE OF QUEBEC DUE 10/01/2013 5.25%	$333,720
PKG HYDRO QUEBEC INTEREST ONLY PACKAGE 2.75% SEMI 8/15/09 DUE 02/15/2014 2.75%	$303,990
PROVINCE OF ONTARIO 3.25% NOTES DUE 09/08/2014 3.25%	$310,011
PROVINCE OF ONTARIO DUE 09/08/2015 3.15%	$193,258
ROYAL BANK OF CANADA 3.18% COVERED BOND DUE 03/16/2015 3.18%	$289,991
BANK OF MONTREAL ADVISORS ADVAN. GIC- ANNUAL DUE 08/08/2011 1.85%	$98,735
RBC MORTGAGE CORP GIC- ANNUAL COMPOUND DUE 12/12/2011 1.65%	$99,355
HSBC BANK GIC- ANNUAL DUE 08/07/2012 2.9%	$98,735
ROYAL BANK OF CANADA GIC- ANNUAL DUE 08/06/2013 3.15%	$98,735
NATIONAL BANK OF CANADA GIC- ANNUAL DUE 08/06/2014 3.65%	$98,735
ROYAL TRUST COMPANY GIC - DUE JUL 16 2012 2.37%	$395,231
ROYAL BANK OF CANADA GIC DUE JUL 16 2010 .54%	$395,231

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ROYAL BANK MORTGAGE CORPORATION GIC DUE JUL 18 2011 1.71%	$395,231
ROYAL TRUST COMPANY GIC - DUE OCT 2012 2.37%	$133,333
ROYAL BANK OF CANADA GIC DUE OCT 2010 .54%	$133,333
ROYAL BANK MORTGAGE CORPORATION GIC DUE OCT 18 2011 1.71%	$133,333
ANCHORAGE ALASKA WTR REV 3% 05-01-2017REG (033285TT4)	$328,699
AUBURNDALE FLA WTR & SWR REV 5.25% 12-01-2019 BEO CUSIP : 050683CJ8	$413,986
BERKELEY CNTY S C WTR & SWR REV 5% 06-01-2022 BEO CUSIP : 084219FW9	$411,071
BIRMINGHAM ALA 5% 12-01-2032 BEO CUSIP : 09088RMQ6	$220,236
CALIFORNIA ST ECONOMIC RECOVERY 5% 07-01-2017 CUSIP : 13067JBW0	$208,198
CHATHAM CNTY GA SCH DIST 5.25%08-01-2010 REG CUSIP: 162042GA7	$149,206
GREENVILLE CNTY S C SCH DIST INSTMT BLDGEQTY SOONER TOMORROW 6 12-1-20 BEO CUSIP : 396066AT9	$227,512
HAWAII ST 5% 02-01-2019 BEO CUSIP: 419791YD4	$345,288
HAWAII ST 5% 08-01-2020 REG CUSIP: 419791WS3	$88,683
HAWAII ST 5% 08-01-2020 REG CUSIP: 419791WL8	$174,321
ILLINOIS ST 5% 08-01-2020 BEO CUSIP : 452150Y82	$389,333
INTERMOUNTAIN PWR AGY UTAH PWR SUPPLY REV 4.25% 07-01-2019 REG CUSIP: 45884AYW7	$362,138
LOWER COLO RIV AUTH TEX REV 5%05-15-2015 REG CUSIP: 54810CQ45	$424,789
LOWER MAKEFIELD TWP PA 3% 06-15-2019 BEO CUSIP: 548210MA8	$325,055
MARICOPA CNTY ARIZ UNI SCH DIST NO 48 SCOTTSDALE 4.75% 07-01-2025 BEO CUSIP : 567288PW9	$257,825
MASSACHUSETTS ST COLLEGE BLDG AUTH PROJREV 3.5% 05-01-2020 REG CUSIP: 575832TC4	$427,393
MET TRANSN AUTH N Y SVC CONTRACT REF-SERA 5.75 DUE 07-01-2018 BEO CUSIP : 592597U55	$409,910
MI ST BLDG AUTH REV REF-FACS PROG-SER III 5 DUE 10-15-2026 BEO CUSIP : 594614SS9	$136,828
MINNESOTA PUB FACS AUTH CLEAN WTR REV 5 DUE 03-01-2019 REG CUSIP : 60411KBG6	$174,923
NEW JERSEY ECONOMIC DEV AUTH REV 5.25% 03-01-2015 BEO CUSIP : 645918AR4	$168,458
NEW MEXICO FIN AUTH ST TRANSN REV 5.25% 06-15-2015 BEP CUSIP: 64711RAY2	$377,260
NEW YORK ST 3% 02-01-2016 REG CUSIP: 649791AH3	$412,504
NJ ENV INFRASTRUCTURE-A 5.5 DUE 09-01-2010 BEO CUSIP : 645788LZ1	$152,711
NORTHERN ARIZ UNIV REVS 5.5% 06-01-2020 BEO CUSIP : 664754YY8	$348,450
PHOENIX ARIZ CIVIC IMPT CORP WTR SYS REV5.5 07-01-2014 REG CUSIP : 71883REQ2	$463,773
SAN ANTONIO TEX WTR REV 5% 05-15-2023 BEO CUSIP : 796422J95	$362,817
SWEETWATER CNTY WYO IMPT PROJS JT PWRS BRD LEASE REV 5% 06-15-2013 BEO CUSIP : 870482AP1	$155,522
TEXAS MUN PWR AGY REV 4% 09-01-2013 BEO CUSIP : 882555WT8	$400,864
UNIVERSITY IDAHO UNIV REVS VAR RT 4.5% 04-01-2041 BEO CUSIP : 914318A67	$156,426
WALLED LAKE MICH CONS SCH DIST 5.25% 05-01-2016 BEO CUSIP : 932423MS2	$155,784
WASHINGTON ST 5.25% 01-01-2019 BEO CUSIP : 93974AAT1	$155,024
USD - MFB NORTHERN FUNDS MUN MONEY MKT FD	$124,938
Van Eck Intl Invest Gold-A	$7,049,006
2. Assets held in trust for the benefit of Patti B. Saris's children	**$3,284,724**
FEDERATED US TRES CASH RSV-I*	$762,334
Manulife Financial Corp	$13,995
ISHARES MSCI BRAZIL INDEX FUND	$91,345
SPDR GOLD TRUST	$722,284
BOSTON MASS SER A B/E/R/ 5.000 010120 DTD 013106 CUSIP (100853BP4)	$74,887
CHILMARK MASS GO B/Q FSA B/E/R/ 3.375 121511 DTD 121504	

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CUSIP (169256BC7)	$104,256
MASS HLTH EDUC FAC AUTH SER G REV B/E/R/ 4.250 070116 DTD 062807	
CUSIP (57586CYQ2)	$137,517
MASS ST PORT AU REV SER SER C REV AMBAC B/E/R/ 5.000 070126 DTD 051205	
CUSIP (575896BH7)	$79,095
MASS TPK AU METRO HWY RV SER A SENIOR NPFG BE/R/ 5.000 010113 DTD 090197	
CUSIP (576018AD7)	$110,252
MASSACHUSETTS BAY TRANS AU SR.SALE TAX 03A BE/R/ 5.250 070112 DTD 012903	
CUSIP (575579CN5)	$109,610
MASSACHUSETTS CMNWLTH SR A FSA OID99.2487BE/R/ 5.000 010121 DTD 010101	
CUSIP (575827T83)	$170,097
MASSACHUSETTS COMMWLTH SER B REV B/E/R/ 4.800 061514 DTD 111598	
CUSIP (57583PCC1)	$50,130
MASSACHUSETTS WTR POLLTN SER 7 REV B/E PREF/R/ 5.000 020119 DTD 071501	
CUSIP (57604PUM4)	$58,043
MASSACHUSETTS WTR POLLTN SER 8 REV B/E PREF/R/ 5.000 080116 DTD 111502	
CUSIP (57604PVE1)	$54,287
NORWOOD MASS G.O. ULT B/E/R/ 5.000 011515 DTD 011501	
CUSIP (669555HR8)	$255,052
UNIVERSITY MASS BLDG SER 2 REV AMBAC B/E /R/ 5.000 110119 DTD 080305	
CUSIP (914437PF9)	$339,035
MASSACHUSETTS ST HEFA RV NPFG B/E OID@96.9659A/R/ 5.000 070119 DTD 060198	
CUSIP (57585JX63)	$83,129
NEW BEDFORD MASS FGIC BE/R/ 5.500 050116 DTD 050101	
CUSIP (642169W44)	$47,746
TOWN OF FOXBOROUGH, MA G.O. NPFG B/E/R/ 5.000 061520 DTD 061504	
CUSIP (351640MS3)	$16,383
MASSACHUSETTS WTR POLLTN SER 7 REV B/E/R/ 5.000 020119 DTD 071501	
CUSIP (57604PUX0)	$5,248

*$170,180 of total is held by immediate member of household rather than in trust

3. Assets held in collective investment vehicles that are owned by Patti B. Saris's husband and/or for the benefit her children (note that these are not additional assets, but rather reflect the assets of MECM Investments, LLC and MECM Associates II, LLC, ownership interests in which are listed as unlisted securities on Schedule 4)	**$17,545,221**
ANCHORAGE ALASKA WTR REV 3% 05-01-2017REG (033285TT4)	$176,992
AUBURNDALE FLA WTR & SWR REV 5.25% 12-01-2019 BEO	$223,776
CUSIP : 050683CJ8	
BERKELEY CNTY S C WTR & SWR REV 5% 06-01-2022 BEO	$246,643
CUSIP : 084219FW9	
CHATHAM CNTY GA SCH DIST 5.25%08-01-2010 REG CUSIP: 162042GA7	$238,730
CLEARWATER FLA WTR & SWR REV 5% 12-01-2017 BEO CUSIP: 185328HT1	$188,545
EASLEY S C UTIL REV 5% 12-01-2034 BEO CUSIP : 270371FC6	$227,606
HAWAII ST 5% 02-01-2019 BEO CUSIP: 419791YD4	$230,192
ILLINOIS ST FIRST SER 5.375% DUE 07-01-2015/07-01-2012 BEO	$246,971
CUSIP : 452151AR4	
INTERMOUNTAIN PWR AGY UTAH PWR SUPPLY REV 4.25% 07-01-2019 REG	$206,936
CUSIP: 45884AYW7	
KENTUCKY ASSET/LIABILITY COMMN AGY FDREV 5% 09-01-2016 BEO	$277,005
CUSIP: 49118NB78	
LOUDOUN CNTY VA SANTN AUTH WTR & SWR REV 4% 01-01-2022 BEO	$261,853
CUSIP: 5459D4HT4	
LOWER COLO RIV AUTH TEX REV 5%05-15-2015 REG CUSIP: 54810CQ45	$226,554

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LOWER MAKEFIELD TWP PA 3% 06-15-2019 BEO CUSIP: 548210MA8	$200,034
MAINE ST 5% 05-15-2017 BEO CUSIP : 56052AUM6	$231,460
MASSACHUSETTS ST COLLEGE BLDG AUTH PROJREV 4% 05-01-2015 REG CUSIP: 575832SX9	$244,305
MET TRANSN AUTH N Y SVC CONTRACT REF-SERA 5.75 DUE 07-01-2018 BEO CUSIP : 592597U55	$234,234
MISSISSIPPI ST 5.5% 12-01-2016 BEO CUSIP : 6055794M0	$236,478
NEW MEXICO FIN AUTH ST TRANSN REV 5.25% 06-15-2015 BEP CUSIP: 64711RAY2	$232,160
NEW YORK ST 3% 02-01-2016 REG CUSIP: 649791AH3	$257,815
NEW YORK ST DORM AUTH REVS ST SUPPORTED DEBT 5% DUE 02-15-2017 BEO N/C CUSIP : 64983MH27	$223,974
OSCEOLA CNTY FLA SALES TAX REV 3% 10-01-20100 BEO CUSIP: 6879D9DH1	$257,118
REGIONAL TRANSN DIST COLO SALES TAX REV 5% 11-01-2012 BEO CUSIP : 759136QA5	$219,664
USD - MFB NORTHERN FUNDS MUN MONEY MKT FD	$453,400
FEDERATED US TRES CASH RSV-I	$191,795
ISHARES MSCI BRAZIL INDEX FUND	$194,109
SPDR GOLD TRUST	$3,379,178
PIMCO DEVELOPING LOCAL MKT FD-IN	$2,541,978
PIMCO FOREIGN BOND FUND IN	$4,315,124
VANGUARD INFLAT PROTECTED-AD	$746,238
MA COMMWLTH GO CONS LN OID@99.115 2002 E BE/R/ 4.000 010114 DTD 110102 (Cusip: 57582NJU0)	$64,265
MASACHUSETTS PORT AUTH RV REF BDS SER 98A BE/R/ 5.750 070112 DTD 011598 (Cusip: 575895XR3)	$88,274
MASSACHUSETTS CMNWLTH SR A FSA OID99.2487BE/R/ 5.000 010121 DTD 010101 (Cusip: 575827T83)	$15,463
MASSACHUSETTS WTR POLLTN SER 8 REV B/E PREF /R/ 5.000 080116 DTD 111502 (Cusip: 57604PVE1)	$54,287
NORTHAMPTON MASS GO FGIC B/E OID@96.7616 /R/ 5.250 061519 DTD 101500 (Cusip: 663617RM2)	$127,079
UBS RMA TAX FREE FUND	$284,987
4. Assets held in a private charitable foundation controlled by Patti B. Saris and her husband	**$4,074,481**
FEDERATED US TRES CASH RSV-I	$5,847
Dodge & Cox Income Fd	$980,555
PIMCO DEVELOPING LOCAL MKT FD-IN	$502,953
Van Eck Intl Invest Gold-A	$1,174,834
Vanguard S/T Invest Gr-Inv	$1,410,292

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Schedule 4: Unlisted securities

1. Assets owned by Patti B. Saris and/or her husband	**$116,531,856**
Abrams Capital Partners II LP	$4,935,574
Baupost Value Partners LP II	14,845,169
Brookside Cap Partners Fd LP	6,436,500
Kensico Associates LP	$6,912,073
Battery Ventures VI LP	$99,227
Buenos Aires Res Co II LLC	$31,000
Centerbridge Capital Partners, L. P.	$1,975,979
Chilton Global Natural Res Partners LP	$1,127,173
CX Partners Fd Ltd	$160,254
Elliott Associates LP	4,895,637
Europa Fund II US LP	$376,945
Friends of Lime Rock II LP	$163,197
Friends of Lime Rock III LP	$755,672
Hephaestion II LP	$1,372,596
Hephaestion III LP	$83,573
Hephaestion Retail LP	$115,861
Highfields Capital II LP	$1,435,300
Highland Capital Partners VIII LP	$10,000
Hony Capital Fund 2008 LP	$119,304
Lime Rock Partners IV, L.P.	$647,644
Lime Rock Partners V, L.P.	$557,714
Liveprocess Corp Ser A PFD	$10,000
Local Motors Series A PFD	$10,000
Local Motors Series B PFD	$249,999
Lone Star Europe Holdings	$396,745
Lone Star Fund VI	$2,466,026
Lone Star Real Estate Fund	$883,346
Meridia Capital	$425,105
Meta4 Group Limited	$10,000
Millgate Partners II LP	$3,179,443
MW Special Situations LP	$208,650
Neurophage Pharmls Inc Ser A CV PFD	$10,000
Orion European Real Estate Fund II CV	$266,147
Orion European Real Estate Fund III CV	$221,456
Park St Capl Nat Res Fd II LP	$712,152
Park St Capl Natl Res Fd II AIV	$62,868
Park St Capl Natl Res Fd III AIV	$10,253
Park St Capl Natl Res Fd III LP	$885,934
Park St Capl Natl Res Fd LP	$465,643
Park St Capl Priv Eq Fd V LP	$875,440
Park St Capl Priv Eq Fd VI LP	$691,718
Park St Capl Priv Eq Fd VII A LP	$292,021
Patron Capital LP I	$503,157
Patron Capital LP II	$1,009,885
Penta Asia Domestic Partners LP	$2,341,447
Perry Partners	$51,990
Plymouth Rock Co Inc Oc-CL A	$9,816,210
Polaris Vent Part Entrep Fd V LP	$594,666
Portland Capital LLP	$80,027
Portland Glob Real Est Sec Fund L.P.	$827,430

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PSC Luxembourg Holdings LLC	$28,765
Summit Partners Priv Equity Fd VII-A	$559,915
TA Realty Corp	$10,000
TA X LP	$1,353,125
Tucker Anthony Private Equity Fund I	$70,236
Tucker Anthony Private Equity Fund II	$194,846
Tucker Anthony Private Equity Fund III	$207,563
Tucker Anthony Private Equity Fund IV	$309,959
Tucker Anthony Private Equity Technology Fd	$110,757
US Wertheim LLC	$150,000
U S Dublin LLC (Kildare Village)	$75,000
US Fidenza LLC	$50,000
Wavemark Inc Ser A PFD	$270,344
Wavemark Inc Ser B PFD	$223,888
Weston Presidio V LP	$298,292
WMD L P	$30,000
Mondrian Intl Fixed Income Fd LP	$7,865,502
K-1 Realty Associates Fund V LLC	$12,652,453
K-1 TA Conference LLC	$2,388,479
Venture Investors Fund L.P.(Updated semiannually)	$14,016
REIT - AIS Realty Assoc Fund V	$264
REIT - PBS The Realty Assoc Fund V	$264
MECM Associates II, LLC (approximately 86.84% interest)	$8,467,375
Hephaestion Co Invest I LP	$1,179,313
Hephaestion LP	$4,564,650
Porus Invt Hldg Co Ltd	$274,541
Xander Master Fund LLC	$568,159
2. Assets held in trust for the benefit of Patti B. Saris's children	**$23,926,426**
MECM INVESTMENTS, LLC - 98.58% INTEREST	$23,926,426
3. Assets held in collective investment vehicles that are owned by Patti B. Saris's husband and/or for the benefit her children (note that these are not additional assets, but rather reflect the assets of MECM Investments, LLC and MECM Associates II, LLC, ownership interests in which are listed as unlisted securities on this Schedule 4)	**$12,906,222**
Baupost Val Partners LP II	$3,611,261
Chilton Global Natural Resource Partners LP	$1,656,780
Elliott Associates LP	$2,448,570
HighVista I LP	$1,546,491
Penta Asia Long Short Fund LTD	$1,862,530
SCP Atlantic Fund LP	$1,500,000
X Investment Holding Ltd	$280,590
4. Assets held in a private charitable foundation controlled by Patti B. Saris and her husband	**$6,708,705**
Baupost Val Partners LP I	$3,088,628
Global Fixed Inc Brandywine Inv Tr	$654,863
Kensico Offshore Fd Ltd	$2,965,214

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Schedule 5: Real estate owned

1. Assets owned by Patti B. Saris and/or her husband	**$3,446,300**
Primary residence	$2,380,800
Vacation residence	$1,065,500

Schedule 6: Autos and other personal property

1. Assets owned by Patti B. Saris and/or her husband	**$162,869**

Schedule 7: Cash value-life insurance

1. Assets held in trust for the benefit of Patti B. Saris's children	**$1,771,744**

Schedule 8: Other assets itemize

1. Assets owned by Patti B. Saris and/or her husband	**$2,359,852**
Gold bullion	$2,359,852
2. Assets held in collective investment vehicles that are owned by Patti B. Saris's husband and/or for the benefit her children (note that these are not additional assets, but rather reflect the assets of MECM Investments, LLC and MECM Associates II, LLC, ownership interests in which are listed as unlisted securities on this Schedule 4)	**$2,022,730**
Gold bullion	$2,022,730

AFFIDAVIT

I, Patti B. Saris, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/27/10
(DATE)

(NAME)

My Commission expires 8/25/11
(NOTARY)

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STATEMENT OF STACIA A. HYLTON, NOMINEE TO BE THE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE

Ms. HYLTON. I do, Mr. Chairman. First, thank you for your introduction and the opportunity to appear here today to address your questions.

I would also like to thank President Obama and the attorney general for their confidence in me through this nomination.

If I could, I'd like to introduce my husband of almost 25 years, Ike Hylton, who is here with me today. And I regret that your son, who is in a very rigid academic program, much to our pleasure, is unable to be here today due to some exams, but he has assured me that he will use his technical skills gained through video gaming to watch it on Webcast tonight with the rest of our family. So I look forward to that.

Chairman LEAHY. We have a similar thing that we say when a fellow Senator is about to give a long and important—all speeches being important, of course—on the floor of the Senate as we are leaving. We say, do not worry, we will read it in the *Congressional Record*. But I imagine in your son's case, he probably will actually watch it.

Ms. HYLTON. Yes. It would be a good opportunity for him. And I'd also like to thank both Senator Webb and Senator Warner for their support and their letter for the record today.

Chairman LEAHY. Thank you. Let me ask, Ms. Leonhart, you spent almost 30 years in the Drug Enforcement Administration, including as deputy administrator. You were nominated to that position by President Bush.

I have always felt that being in law enforcement was a very special calling. I know I enjoyed my time there. But what did you learn from your experience at DEA that you think will stand you in the best stand, if you are confirmed to be the agency's administrator? I am sure you must have given it a lot of thought.

[The biographical information follows.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Stacia Hylton
   Former names: Stacie Hylton, Stacia Kirk, Stacie Kirk

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

   Director, United States Marshals Service

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.

   Arlington, VA.

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

   Red Bank, NJ (1960)

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.

   Northeastern University 1978-1983, Bachelor of Science, Criminal Justice – 1983

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.

   President/Sole owner (3/10 to Present)
   Hylton Kirk & Associates, LLC. Arlington, VA.

   Federal Detention Trustee (6/04 to 2/10)
   Department of Justice, 950 Pennsylvania Ave. NW, Washington, D.C.

   Highlands Swim and Tennis Club, Bryan Branch Rd. Mclean, VA.
   Swim Team Representative and Assistant Treasurer for the Board of Directors, 2007 to Present.

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Department of Justice, United States Marshals Service 1980 to 2004 (break in Service 1997-1998 for the birth of my son) 1735 Crystal Drive, Arlington, VA.

a)	Assistant Director, Prisoner Operations Division, USMS	(09/03 – 06/04)
b)	Acting Deputy Director, USMS	(01/01 – 06/01)
c)	Chief Deputy for the District of South Carolina, USMS	(11/99 – 09/03)
d)	Detail, Special Assistant to the Director, USMS	(2000)
e)	Chief of Judicial Programs, Judicial Security, USMS	(10/93 – 11/99)
	(Break in Federal Service)	(06/97 – 10/98)
f)	Witness Security Inspector, WITSEC, USMS	(10/90 – 10/93)
g)	Program Manager, Employee Development Division, USMS	(04/89 – 10/90)
h)	USMS Instructor, Training Academy, Glynco, GA	(10/86 – 04/89)
i)	Deputy U.S. Marshal (DUSM) position	(01/80 – 10/86)

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 am not required to register.

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.

   2010 Attorney General Edmund J. Randolph Award for Distinguished Service
   2007 Presidential Rank Award for Outstanding Service
   2006 Attorney General Special Commendation Award
   2006 Recognition Award from Blount County Sherriff, for Training
   2005 – 2009 Deputy Attorney General Outstanding Performance Awards
   2000 – 2003 Special Achievement Award Emergency Response Team, Incident Commander Ground Zero after 9/11 attacks; Incident Commander for Vieques Puerto Rico Operation,
   1999-03 Outstanding Performance Award, Chief Deputy District of South Carolina
   1999 USMS Director's Special Commendation for Chairman the Financial Management Working Group
   1996 Special Achievement Award for the development of the operational plan for the McVeigh/Nichols trial
   1996 Special Achievement Award for the creation of first nationwide automated Distance Learning Training Program for Court Security Officers
   1995 Letter of Commendation from President of the United States, the Attorney General for leading DOJ Vulnerability Assessment Study and Recommendations . Also received a Special Achievement Award from the Director of the USMS
   1995 Attorney General's Award for the development of nationwide security standards and staffing formula for the Court Security Officer Program
   1993-96 Outstanding Performance Awards for Judicial Security
   1992 USMS Director Fitness-in-Total Award
   1989 USMS Directors Special Achievement Recognition for Special Operations mission to secure the Virgin Islands due to civil unrest during Hurricane Hugo, VI

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1988-1989 Outstanding Performance and Special Achievement Award Instructor Federal Law Enforcement Center
1988 Certification of Appreciation from Director, USMS (Special Operations)
1987 Letter of Commendation from USMS Director, International Protective Training seminars
1987 Letter of Commendation from the United States Marine Corps Major Commanding Officer for training exercises
1986 Letter of Commendation from the SOG Commander for the Macheteros Detail
1986 Letter of Commendation from Robert R. Merhige, Jr., United States District Judge for Court Security
1986 Letter of Commendation from the USMS Director 1985 – 1993 World Policy and Fire Olympics (Gold and Silver medalist)
1985 Letter of Commendation from the Director, USMS for excellent performance in Special Operations
1985 F.I.S.T. 8 (Fugitive Investigative Strike Team), Southern District of Florida
1985 Letter of Appreciation from the Attorney General for Protective Services
1985 Certificate of Commendation from the Metro Police Department
1985 Certificate of Appreciation from the Director, USMS , D.C. Sting Operation
1984 Letter of Commendation from the Chief of Enforcement Division, for arrest of Top 15 Fugitive Karl Byers
1981 Letter of Commendation from Maryland and D.C. U.S. Marshals for investigation and arrest of John Milton Anthony
Full Athletic Scholarship, Northeastern University
"Who's Who" Among American High School students

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.

I am not an attorney.

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.

I am not an attorney.

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.

I am not an attorney.

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

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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.

Highlands Swim and Tennis Club – Swim Team Representative; Assistant Treasurer for The Board of Directors – 2007 to present.

Highlands Swim and Tennis Club is a member of the Northern Virginia Swim League (NVSL) – I serve as a member of the NVSL Rules Committee , 5/2010 to present.

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

To the best of my knowledge, the Highlands Swim and Tennis Club does not currently (nor did it formerly) discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies; therefore, no corrective action was required, nor taken, by me.

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

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

None

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

None.

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

As a component head in the Department of Justice I was required to testify orally and in writing in support of annual budget requests for the Department's Detention Programs.
Attachments:

i. Statement of Stacia Hylton, Federal Detention Trustee, Department of Justice Before the U.S. House of Representatives Committee on Appropriations Subcommittee on Commerce, Justice, Science and related Science Agencies, March 27, 2007.
ii. Statement of Stacia Hylton, Federal Detention Trustee, Department of Justice Before the U.S. House of Representatives Committee on Appropriations

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Subcommittee on Commerce, Justice, Science and related Science Agencies, March 12, 2008.
Testimony and questions for the record are attached.

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 career I have delivered a number of speeches, remarks, lectures, participated on panel discussions and spoke at a number of conferences, all have been within the Federal, State and Local government arenas. I did not retain copies of the presentations.

2009	
Presenter:	The Judicial Conference of the United States
Location:	Washington, DC
Attended by:	Judicial Conference members
Summary:	Presentation on a study and proposed resolutions for areas experiencing issues related to the distance of detention facilities from the court locations
2009	
Presenter:	U.S. Chief Judges Conference
Location:	Washington, DC
Attended by:	Chief Judges from across the country
Summary:	Demonstration of newly developed website as a result of a study of issues related to the distance of detention facilities from the court locations
2008	
Panel Member:	Pretrial and Misdemeanor Sentencing Institute
Location:	San Diego, CA
Attended by:	U.S. Magistrate Judges, U.S. Pretrial and Probation Officers
Summary:	Best Practices for medical competency, transportation and alternative to detention programs
2007	
Presenter:	Southwest Border Chief Judges Conference
Location:	Albuquerque, NM
Attended by:	Southwest Chief Judges, Probation, Pretrial, Bureau of Prisons and U.S. Marshals
Summary:	Demonstration on newly developed interagency post sentencing processing technology, question and answer session on detention issues along the Border
2007	
Panel Member:	Ninth Circuit Judicial Chief Judges Conference

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Location:	Whitefish, Montana
Attended by:	Ninth Circuit Chief Judges Administrative Office of the U.S. Courts
Summary:	Detention post sentencing process, transportation system and detention space within the court cities

2007

Presenter:	American Correctional Association
Location:	Dallas, TX
Attended by:	Association members, such as, private correctional providers, State and local governments and federal agencies
Summary:	Office of the Federal Detention Trustee Roles and Responsibilities, doing business with the Federal government

2007

Presenter:	National Sheriff's Association Annual Conference
Location:	Denver, CO
Attended by:	Association members, such as, Sheriffs and personnel from across the country, Federal agencies, private industry
Summary:	Introduction to Office of the Federal Detention Trustee, doing business with the Federal government, detention standards and intergovernmental agreements

2006

Presenter:	Association of Private Correctional & Treatment Organizations
Location:	Washington, DC
Attended by:	Private correctional/detention providers
Summary:	Federal Detention operations, challenges and costs

2006

Presenter	U.S. Marshals Service Retired Association
Location:	Las Vegas, Nevada
Attended by;	U.S. Marshals Service retired employees
Summary:	Overview of Office of the Federal Detention Trustee, demonstration of new technology for processing prisoners and intergovernmental agreements

2006

Presenter	U.S. Marshals Service Management Conference
Locations:	Nashville TN and Seattle, WA
Attended by:	U.S. Marshals and Chief Deputies across the country, Headquarters Managers
Summary:	Detention operations, transportation system, technology and budget

2005

Presenter	U.S. Attorney's Annual Conference
Location:	Phoenix, AZ
Attended by:	U.S. Attorneys from across the country
Summary:	Role of the Office of the Federal DetentionTrustee Overview, Detention operations, transportation system and alternatives to detention

2000

Remarks:	Oklahoma City Bombing Fifth Anniversary, Day of Remembrance
Location:	Oklahoma City, OK.
Attended by:	Federal Agencies and family members
Summary:	Recalling the day's events in April 1995, the accomplishments achieved through the DOJ's Vulnerability Assessment Study, implementing security standards nationwide
1995	
Presenter:	The Interagency Committee on Security
Location:	Washington, DC
Attended by:	Security Personnel and Managers from Treasury, Justice, State Department, DOD
Summary:	DOJ Vulnerability Assessment and Security Standards
1995	
Presenter:	The Judicial Conference of The United States
Location:	Washington, DC
Attended by:	Judicial Conference members
Summary:	Court Security Standards and Staffing Formulation
1993 – 1996	
Presenter:	The Judicial Committee for Security Space and Facilities
Locations:	Aspen, Colorado; Chicago IL; West Palm Beach FL
Attended by:	Judicial Committee members and staff from the Office of Administrative Office of the U.S. Courts
Summary:	Court Security Officers and Security Systems Contracts, Budget, operations and procedures.

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

None

13. <u>Public Office, Political Activities and Affiliations</u>:

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.

None

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political

campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None

14. Legal Career: Answer each part separately.

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

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

I am not an attorney.

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

I am not an attorney.

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.

President/Sole owner (3/10 to Present)
Hylton Kirk & Associates, LLC. Arlington, VA.

Federal Detention Trustee (6/04 to 2/10)
Department of Justice, 950 Pennsylvania Ave. NW, Washington D.C.

Department of Justice, United States Marshals Service 1980 to 2004 (break in Service 1997-1998 for the birth of my son) 1735 Crystal Drive, Arlington VA.

a) Assistant Director, Prisoner Operations Division, USMS	(09/03 – 06/04)
b) Acting Deputy Director, USMS	(01/01 – 06/01)
c) Chief Deputy for the District of South Carolina, USMS	(11/99 – 09/03)
d) Detail, Special Assistant to the Director, USMS	(2000)
e) Chief of Judicial Programs, Judicial Security, USMS	(10/93 – 11/99)
(Break in Federal Service)	(06/97 – 10/98)
f) Witness Security Inspector, WITSEC, USMS	(10/90 – 10/93)
g) Program Manager, Employee Development Division, USMS	(04/89 – 10/90)
h) USMS Instructor, Training Academy, Glynco, GA	(10/86 – 04/89)
i) Deputy U.S. Marshal (DUSM) position	(01/80 – 10/86)

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 am not an attorney.

b. Describe:

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

I am not an attorney.

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

I am not an attorney.

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;
2. state courts of record;
3. other courts;
4. administrative agencies.

I am not an attorney.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. criminal proceedings.

I am not an attorney.

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. What percentage of these trials were:
1. jury;
2. non-jury.

I am not an attorney.

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 am not an attorney.

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

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

a. the date of representation;

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

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

I am not an attorney, however I am providing an professional reputation list for your reference:

Honorable Michael S. Kanne, U.S. Court of Appeals for the Seventh Circuit,
Chairman of the Judicial Security Committee of the Judicial Conference
Telephone: 312-435-5850
Honorable Stephen McNamee, Former Chief Judge, U.S. District Court for The District of Arizona
Telephone: 602-322-7555
Honorable Sandra Beckwith, Chief Judge, U.S. District Court for The Southern District of Ohio
Telephone: 513-564-7610
Honorable Henry Hudson, U.S. District Judge, U.S. District Court fro The Eastern District of Virginia
Telephone: 804-916-9920
Honorable Rod Rosenstein, U.S. Attorney for the District of Maryland
Telephone: 410-209-4800
Honorable Harley Lappin, Director, Federal Bureau of Prisons
Telephone: 202-307-3106
Honorable Johnny Mack Brown, Former President of the National Sheriff's Association and U.S. Marshal for the District of South Carolina
Telephone: 864- 483-4927
Louie McKinney, Former Acting Director, U.S. Marshals Service
Telephone: 703-517-3335
Strom Thurmond, Jr., Former U.S. Attorney, District of South Carolina
Telephone: 803-643-1737
Shannon Brown, Former Employee, Federal Detention Trustee (2005- 2010)
Telephone: 202-532-3479

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

I would consider the privilege of becoming Director of the United States Marshals Service (USMS) and leading the outstanding men and women of the country's oldest federal law enforcement entity to be the greatest honor and certainly the pinnacle of any law enforcement

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career. My extensive work within the Department of Justice and the various positions I have held in USMS' district operations, program management, special operations and leadership positions has provided me with a strong foundation operationally and administratively from entry-level Deputy to executive management.

Securing the integrity of the judicial process is at the core of our democracy and the heart of the USMS. For almost thirty years, everything I have worked on has been connected with the Agency's five major areas of responsibility: Judicial Protection, Investigative Operations, Witness Security, Prisoners Operations, and Asset Forfeiture.

I have worked at every level of Judicial Protection, but established a cornerstone in security when I became the Chief of Judicial Security Programs during the first World Trade Center Bombing trials. Throughout those years, the agency faced significant security concerns that we navigated successfully. The Oklahoma City Bombing, the McVeigh and Nichols trials were a few of the many high-security trials requiring my involvement on many levels, including operational planning, staffing and funding requirements. I worked closely with the Judicial Security Committee of the Judicial Conference on many issues, including developing the first governmental security staffing formula for federal courthouses. Later, I was asked to lead the President's request to assess the vulnerability of all Federal Buildings in the aftermath of the Oklahoma City Bombing. The results were a White House report and security standards for all federal facilities. Nearly fifteen years later these staffing formulas and facility standards are still in use today across the country.

As a Chief Deputy, I was able to use what I gained as the head of the Judicial Security Programs and merge it with my knowledge from my earlier positions as a Deputy, Witness Security Inspector, Inspector at The Training Academy and in Special Operations. I successfully led a large District that spanned the State of South Carolina, managing all five missions and the administrative responsibilities along with one of the oldest joint Federal and State fugitive task forces, Operation Intercept, which has been recognized nationally as being one of the most successful task forces in the country due to the tireless dedication of the USMS men and women and the state and local law enforcement agencies that participate.

Taking the benefit of these experiences into executive positions, such as Assistant Director for Prisoner Operations, Acting Deputy Director, Chairman of the Merit Selection Board, Agency's Deciding Official on discipline matters and Incident Commander for Ground Zero, I was able to hone my leadership qualities. However, six years ago when DOJ Leadership asked me to head a new organization within the Department, the Office of The Federal Detention Trustee, (OFDT) I refined my skills even further by having the opportunity to see a new and broader view of security and detention matters outside the USMS.

As Trustee, I was able to utilize my past USMS experience and my knowledge of the intricate workings of the Judicial process and combine it with administrative management of budgeting, procurement, technology and personnel. I successfully directed and coordinated all detention matters for the Department and provided solutions across governmental lines. I worked with several federal agencies, including, USMS, Bureau of Prisons, Immigration and Customs Enforcement as well as the U.S. Courts and local governments. For example, I was responsible for developing and executing a $1.5 billion dollar budget, multiyear fiscal planning and long-term procurements, interagency data systems actions and policy matters.

Each experience and person I worked for or with, students I have taught or mentored, interagency committees that I have chaired or participated on, state and local government agencies that I have interfaced with, high-visibility law enforcement details I commanded, allowed me to build upon my experience in order to successfully tackle the next challenge.

I have worked these jobs from the ground up and understand the great commitment that the men and women of the USMS have made, both operationally and administratively. They have dedicated their lives to the Marshals Service and represent to me, the mortar that keeps the foundation strong. Having all these pieces come together to bring back to the agency I began with during college years provides a wonderful opportunity.

If confirmed as the next Director of the United States Marshals Service, I would be able to utilize fully my talents, energy, and expertise to ensure that the Agency's mission is carried out with good judgment and sound decision-making skills. I will address the infrastructure challenges with a perseverance and tenacity honed from years of law enforcement and executive knowledge and skills in the best interest of the organization and the people that work within.

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

Blount County Sheriff's Office, TN. (2003-2009)
Court Security Officers Training, 2003
Non -Verbal Communications and Kinesic Interviewing Techniques for Deputy Sheriffs, 2006-09

Federal Law Enforcement Training Center, U. S. Marshals Service: (1986-1989)
These courses were presented to USMS basic Deputies, Advanced Deputies and Managers, State and Local Law enforcement.

Non-Verbal Communication and Kinesic Interviewing
Court Security
Prisoners Handling and Prisoners in Court
Long weapons
Physical Fitness and Self Defense
Felony Vehicle Stops
Basic Administrative Courses, such as writing investigative reports, travel vouchers and time attendance

Special Operations Group Training Center, USMS (1983-1986)
Water Safety and Survival Training – Basic and advanced Special Operations Members
Officer Safety and Survival Training – U.S. Marshals, State and local governments

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

I am currently collecting federal retirement ($105,000 annually) which will cease upon appointment.

I am the sole proprietor of a consulting business, Hylton Kirk & Associates, LLC. Upon confirmation, Hylton Kirk and Associates, LLC, will remain dormant, except to comply with any requirements involving legal filings, taxes, and fees that are necessary to maintain the business while it is in an inactive status. If confirmed, all amounts owed by any clients will be resolved prior to my appointment.

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

None

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

Please see attached Financial Disclosure Report

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

Please see attached financial net worth statement

22. **Potential Conflicts of Interest**:

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

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

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

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

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or

professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have been actively involved in the Northern Virginia Swimming League (NVSL) as a volunteer for the past three years. The NVSL (a summer swim league) is comprised of 102 teams, consisting of 15,000 swimmers throughout the Northern Virginia area. From 2007 through 2009, I served on a leadership committee that was mandated to identify, build, and successfully transition a new data system into the League. Further, I designed a training curriculum and led a team of trainers to implement the new system across the league. In 2009, I was appointed to a Sportsmanship Committee that was responsible for proposing, presenting, and incorporating new rule changes as well as developing a code of conduct for the League. In 2010, I was appointed to the Rules Committee (which reports directly to the Board of Directors) with responsibility for reviewing proposed rules and any violations, which may occur.

I have served as The Highlands Swim and Tennis Swim Team Representative for the past four years in a volunteer position. As Team Representative, I am responsible for managing 275 swimmers, 15 coaches, parent volunteers, officials, and for managing and regulating the meets. As the Team Representative, I establish activities and fund-raising efforts for such charitable causes as *The American Cancer Society* and obtain college scholarships for young swimmers. The most important function of the position, however, is that of establishing an environment that is developmental for the participating children with a strong focus on fostering good sportsmanship, mentoring youth, and developing an appreciation for the sport of swimming.

I also serve as an official at U.S.S. swim meets throughout the winter as a Chief Timer volunteer. Through this league, I participate in charitable causes, such as *Feed the Hungry* and *Mothers against Drunk Drivers*.

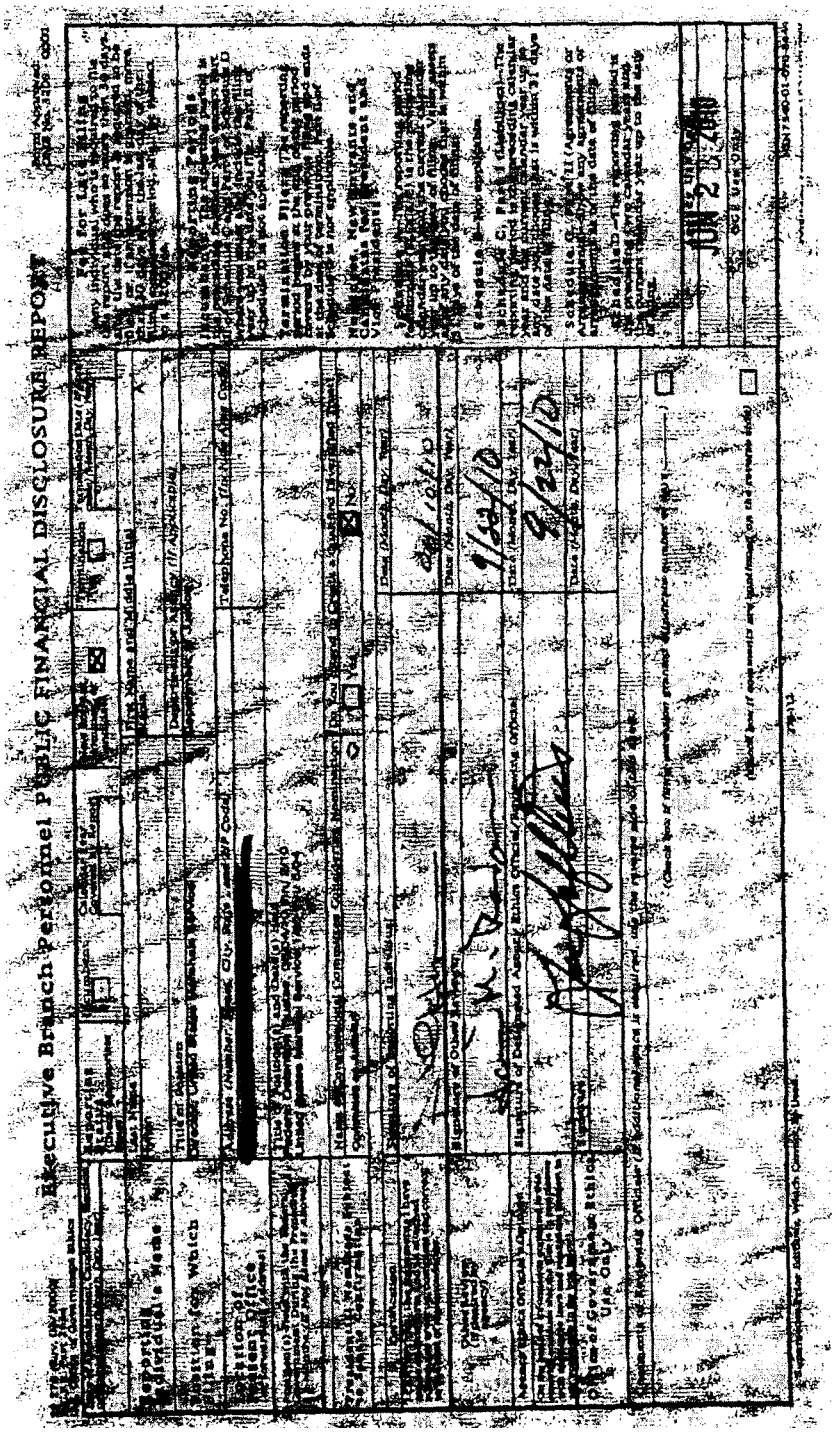
I have been a volunteer coach throughout my life for different swim teams and for the YMCA where I taught swimming to underprivileged children and those with disabilities. I have coached youth basketball in church leagues for elementary school-age girls and middle-school boys.

Finally, I serve in a volunteer position as the Assistant Treasurer on the Highlands Swim and Tennis Club's Board of Directors.

FINANCIAL STATEMENT Stacia Hylton

NET WORTH SCHEDULES

U.S. Government Securities		
Series I Bonds (son)		$2,500
Real Estate Owned		
Personal Residence	$1,100,000	
Real Estate Mortgages Payable		
Personal residence		$705,000


Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT
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Reporting Individual's Name	SCHEDULE A	Page Number
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Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

		Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Rent and Royalties	Interest	Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common			x													x						x									
	Doe Jones & Smith, Hometown, State			x																											Law Partnership Income $1 95,000	
	Keystone Equity Fund					x								x										x								
	IRA: Heartland 500 Index Fund							x						x											x							
1	Wachovia - Various Savings and Checking Accounts					X													X			X										
2	United States Savings Bonds (DC)		X																X		X											
3	Hylton, Kirk and Associates, LLC Arlington, VA	X																													$112,500 Consulting Services for	
4																															Retention matters, federal relations, and	
5																															acquisitions and mergers, March thru July, 2010	
6																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name	SCHEDULE B	Page Number
Hylton, Stacia		3 of 5

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)													
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	$1,000,001 - $5,000,000	Over $5,000,000*	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of Divestiture
	Example: Central Airlines Common	x			2/1/99			x											
1	Not Applicable																		
2																			
3																			
4																			
5																			

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See Instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	Not Applicable		
2			
3			
4			
5			

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Reporting Individual's Name	SCHEDULE C	Page Number
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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☒

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to a contractural agreement, will receive funds for services prior to re-entering government service, but	The Geo Group, Boca Raton, FL	08/10
2	not after.		
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law Firm	Partner	7/85	1/00
1	Hylton, Kirk & Associates, Arlington, VA	Consulting firm	Owner	03/2010	Present
2	Highlands Swim and Tennis Club, McLean VA	Private recreational association	Board of Directors	09/2007	Present
3	(Fees waived due to Board position, $575 annually)				
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Hylton, Kirk & Associates, Arlington, VA	Consulting services on acquisitions, detention/prison expertise and federal relations
2	The Geo Group, Boca Raton, FL (client of Hylton, Kirk & Associates)	Consulting services on acquisitions, detention/prison expertise and federal relations
3		
4		
5		
6		

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AFFIDAVIT

I, Stacia A. Hylton, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10-06-10
(DATE)

(NAME)

David Kaumeier 10/6/10
(NOTARY)

DAVID JOHN KAUMEIER
NOTARY PUBLIC
REGISTRATION # 7322723
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
JULY 31, 2014

Ms. LEONHART. Thank you, Chairman, for that question. It's a great question. It all comes down to serving the public. You're a public servant and you've got to put the public first.

It's about public safety and it's about everything that you do remembering your impact on communities, your impact on this country, and, with DEA, actually, your impact on the world.

Chairman LEAHY. Well, I have held Senate Judiciary Committee hearings, I have had them here, of course, but I have also gone into cities like Rutland and St. Albans and Perry, Vermont. Now, these are small cities, a lot of blue collar, very hardworking cities where people tend to know each other.

Up to a few years ago, I do not think anybody locked their doors. You never worried about anything. But we heard about not only the scourge of drugs, but prescription drug abuse in each one of these places and the devastating effect it has on communities. A lot of it was prescription drug abuse, more and more people becoming addicted to prescription pain killers, such as OxyContin.

What I found most interesting in these hearings is that the whole community came together. You had law enforcement, educators, clergy, physicians, parents.

It was also quite an eyeopener to some of the parents there. It is obvious there was no automatic answer. You cannot do it just by education or just by law enforcement. You are not going to do it just in the schools.

Do you see that kind of a growing problem nationwide on the abuse of prescription drugs, and what would you suggest?

Ms. LEONHART. Absolutely, Chairman. And I know that recently you were at or helped sponsor a summit there in Vermont on prescription drugs.

It is a growing problem. It's an epidemic in this country, and it concerns me and the DEA very much. About 7 million Americans are abusing prescription drugs and what really concerns me is that every day, about 2,500 teenagers abuse prescription drugs for the first time.

And we all have something to do about it, because it affects all of our families and all of our communities. One is education, and DEA has done a good job, especially this year with the Take Back program in September, of getting the word out.

We have talked to kids. We have looked at every survey there is to find out where are they getting these prescription drugs, and over 60 percent of these teens will tell you that they get it from a family member, a friend, or from the family medicine cabinet.

So education is key, but enforcement, especially enforcement by our State, local and Federal agencies, is also very important and oftentimes it's the only way to get some of these abusers of prescription drugs to seek treatment.

So it's a whole of government approach. It's a community approach. It concerns me. And if I have the privilege of being confirmed, it is one of my three focus points for the Drug Enforcement Administration.

Chairman LEAHY. But you also have people who have actually gone into the business of supplying this, are looking for—it is one thing that you have a kid in high school break in the neighbor's home, steal the drugs. I am not excusing that, but it is a little bit

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different than somebody who comes into town and it is almost a stereotype of, "Hey, kid, guess what I've got here in my briefcase."

Are these two different things?

Ms. LEONHART. Well, we are traditionally involved in cocaine and heroin and methamphetamine trafficking organizations and what we have found is that some of the organizations that are behind the supply of pharmaceutical drugs not only to teens, but adults, as well, are organized crime groups, are in it to make money, and we attack those organizations the same way we attack those trafficking groups.

So you are correct. The problem is the teen user, the young drug user, the first-time abuser, but there is also organized crime and organizations that are peddling this poison. They make money off of it, and they often will peddle pills alongside peddling cocaine or marijuana.

Chairman LEAHY. They have got to be stopped. And they have to be stopped.

Ms. LEONHART. That's correct.

Chairman LEAHY. I am not leaving because of your response, which I happen to agree with, but there is a roll call vote on and we are playing tag-team here.

Senator WHITEHOUSE [presiding]. I very much appreciate the Chairman coming back to allow this so that the hearing can go on uninterrupted. When you do two votes side-by-side, you have to do rather an elaborate back-and-forth hallway race in order to keep that going, and I appreciate very much that Chairman Leahy was willing to do that. And I am delighted that Senator Kohl has joined us, as well as Senator Franken.

Since I am likely to be here until the end, why do I not defer to—who is in order? Senator Franken?

Senator FRANKEN. Yes.

Senator WHITEHOUSE. You have 5 minutes, sir.

Senator FRANKEN. Thank you. Judge Saris, welcome. We were talking—I noticed you were sitting back there when we had the nominees for the Federal judgeships, and we were talking about sentencing guidelines. And you have spoken about them and how they are valuable tools, but that they are not infallible.

Can you tell me your basic approach to sentencing guidelines, after 24 years on the bench, and both how valuable they are and when they are not infallible? Speak to that.

Judge SARIS. Yes. Well, I was on the Senate—a staff member on the Judiciary Committee when the guidelines first started getting considered, and, at the time, the big policy was why should a bank robber in Texas get a different sentence from a bank robber in California; why should it matter what judge that you get.

And so the underpinning policy of the guidelines is still very important today, which is to avoid unwarranted disparities between similarly situated defendants.

So essentially, that pervasive theme is still very important today. However, as many people know, the Supreme Court has issued, I think, as many as five opinions recently talking about the guidelines and the importance of the fact that you also need to consider all of the statutory factors under 3553(a).

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So you start with the guidelines as your benchmark, as your anchor, if you will. And then sometimes, though, the individual characteristics of a defendant may be worth considering, aren't properly considered in just doing a mathematical calculation, and you are permitted to consider those factors in calculating a sentence.

Senator FRANKEN. So those factors were the ones that one of the nominees referred to that that is the law.

Judge SARIS. Yes. The 3553(a) factors, yes.

Senator FRANKEN. I got it, I got it, I think.

Ms. Leonhart, a lot of people from Minnesota are proud of you and your nomination. And your first posting was in Minneapolis and you never had to deal with me, right?

Ms. LEONHART. No.

Senator FRANKEN. I just wanted to make that clear. Can you tell us what you learned on the job in Minneapolis?

Ms. LEONHART. Thank you for that question, Senator. I want to, first, thank you for the very kind introduction. That was actually unexpected this morning. So thank you very much.

My first 5.5 years on the job were in Minnesota. I had a choice. I was being assigned to Miami, but I graduated No. 1 in my agent class and you get to pick where you want to go, and it was my only chance to go back home. So I picked Minneapolis and, for that 5.5 years, felt I made a difference and I cleaned up my neighborhood and I cleaned up the community.

I learned the basics of the job. I learned that it's all about working with your State and local counterparts. And I learned from working the small cases up to the big cases that at the end of the day, it is about identifying those most responsible, those organizations that are peddling the poison on our streets and putting them in jail.

My partners, we go back 30 years and they were five Minneapolis police sergeants that really taught me the streets.

Senator FRANKEN. Ms. Hylton, several human rights groups have expressed concern with your nomination on the grounds that you may face a conflict of interest in your new position. You set up a consulting company while you were the Federal detention trustee and the head of the office that awards contracts to private correctional facilities.

Once you left your position, your company received a $112,000 contract from one of the Nation's largest for—profit prison companies.

These groups say that you may face a conflict of interest in your new position in matters that affect your consulting company or the company who received the contract from the GEO Group.

Now, I understand you worked with the ethics officials both before and after this work to make sure you acted appropriately, but I think it is important to get this out in the open so that you have an opportunity to address it.

So could you please speak to these allegations?

Ms. HYLTON. Yes. Thank you, Senator Franken, for that question. I welcome that opportunity. I'd like to assure the entire members of the Committee that I did follow all ethics requirements and regulations and worked closely with the ethics office both before retirement and subsequently after.

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I incorporated the consulting business about a month before I retired just simply so I could begin the paperwork and begin to set up the office; so that when I did retire February 28, I could—the company would no longer be dormant and it could stand up and operate March 1, and I followed within those guidance that were provided by the ethics office.

While serving in the capacity of the Federal detention trustee, the contract awards actually happen at the assistant trustee level for procurement, and so, therefore, I had no direct involvement with contract awards. I had recused myself early on in even any conversations about private industry.

My focus was in the best interest of the government always, to ensure that hundreds of State and local intergovernmental agreements would be in place, along with the Federal detention centers, along with private prisons.

Senator FRANKEN. Well, thank you. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Kohl?

Senator KOHL. Thank you very much. I would like to talk with you, Ms. Leonhart. I would like to thank you for appearing before the Committee today and I would like to commend you for the success of the National Drug Take—Back Day that allowed people to safely dispose of their unwanted prescription drugs.

In my home State of Wisconsin, 84 law enforcement agencies collected nearly 4,500 pounds of prescription drugs. We made great progress, but I believe that more could be done to facilitate additional take-back programs and prevent excess medication from being prescribed in the first place, and I am looking forward to working with you on this issue.

However, Ms. Leonhart, I am disappointed with the DEA's lack of progress on an issue that was the subject of an Aging Committee hearing earlier this year. At that hearing, we heard serious concerns about the effects of changes to DEA's enforcement policies for controlled substances in long-term care settings.

The changes have resulted in nursing homes being unable to administer pain medications to ailing residents in a timely manner. The time that it takes for a nursing home to comply with the new DEA enforcement policy can be an eternity to an elderly patient who is agonizing pain.

At that hearing, the deputy assistant administrator of the DEA assured me that your agency would act quickly to solve this problem. And when I met with you in early May, you assured me that this was a priority and that you, also, would address the problem swiftly.

In August, I requested joint comments from DEA and HHS on draft legislation that I prepared and submitted to you that would facilitate more timely access to pain medication for ailing nursing home residents, and I received no response.

Now, I do appreciate the DEA's statement of policy issued last month, which clarifies how nurses at long—term care facilities can administer some controlled substances. However, that fails to provide a solution for Schedule II drugs, such as morphine, which are also necessary in certain situations.

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From the vantage point of nursing homes, there are practical problems with implementing the policy in its current form. So while it is a step in the right direction, more needs to be done.

As I explained, it appears that the DEA is putting paperwork before pain relief. I would like to see much more progress made on this issue before you are confirmed.

When will DEA provide comments on my draft legislation?

Ms. LEONHART. Thank you, Senator Kohl, first, for your leadership on that issue, and I know we have worked with you and the Committee on those very serious issues.

I do want you to know that it is of utmost importance to me and the DEA that we do have resolution to those issues. We don't take lightly our responsibility to not only prevent diversion and do our regulatory business, but we are very concerned about those patients in need, and that's why, in the interim, while we're finding long-term solutions, we have come up with a couple of short-term changes, short-term policy statements, clarifications that, in many ways, have helped, but we need to do more.

And I agree with you, it is a serious issue and, if confirmed, I will tell you that we will continue to work through the process with the Department of Justice and with HHS and I am quite confident that we will be able to get back to you with some dialogue and with some solutions that will be favorable to you and the Committee.

It does take time to do that. I can't put a timeframe on it, but know that we are taking that very, very seriously.

Senator KOHL. Well, I said in my statement that I would like to see much more progress made on this issue before you are confirmed. As I indicated, I did submit some legislation to you and I have not heard back from you or your department.

Now, I know, in the best of all worlds, you would like to take care of it and take care of it immediately, but things are not all that simple. On the other hand, this legislation that I submitted to you is not all that complicated.

So I would like to repeat that it is an issue that has been out there now for quite a long time. It is not all that complicated. How we are going to see to it that patients in long-term care settings get the medicine that they need at the time that they need it, I think we agree on that principle. And how to get it to them is not all that complicated, and that is what my legislation addresses.

So in the most gentle but clear way, I would like you to know that I intend to insist that we see some progress on this issue as a condition of your confirmation. And I know we can do it. I mean, I am not trying to put some impossible roadblocks, because I think we have discussed this now, and your department and my office are aware of what we can do and should do and need to do, and it can be done in a timely way.

So I am here to request of you that we work a little harder together to try and get some progress. Is that reasonable?

Ms. LEONHART. Thank you, Senator. I will bring that back to the Department of Justice and let them know your concern, and I'm hoping that we are able to get back to you.

Senator KOHL. I do appreciate that very much. Thank you.

Senator WHITEHOUSE. Let me chime in and thank Senator Kohl for his leadership on this issue. Let me first say, Ms. Leonhart,

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that I am very supportive of your candidacy. I am very proud of the way you have served our country in this organization.

As you know, we have a common friend who is a DEA agent, who I worked with very closely when I was U.S. attorney, somebody who I am extremely proud of, who was willing to put herself into harm's way in very significant ways in very important circumstances, and she speaks very highly of you and your record speaks very highly of you.

I do not think I should use her name, because she is undercover frequently, but we understand what we are talking about here.

So I am extremely favorably disposed toward your nomination, but there are these institutional problems that need to be addressed. And I could not echo Senator Kohl more clearly than to say that the purpose of medicine is to take care of the sick and when that purpose is not being met because the safety regime to keep the medicine from being abused is interfering with it, then a secondary purpose is interfering with a primary purpose.

We cannot have elderly people lying alone, racked with pain, when medicine to cure that and to solve that is at hand, because of bureaucracy.

So I will back Senator Kohl in whatever he chooses to do to get a resolution to that point. We are backwards on that issue. I am a former U.S. attorney. I am a former attorney general. I have prosecuted drug dealers, I have prosecuted diversion cases, I get that. It is a priority. But it cannot be a priority that bureaucratically interferes with the ability of an elderly, lonely patient in grave, grave pain to have access to the relief that she may need.

So I emphasize there, and I would have another concern that we are working our way through, but I would like to see more progress on, and that is in the area of e-prescribing.

You and I have talked about this before, but I very deeply believe that the only way that America avoids a true catastrophe in health care, which is coming at us, because the costs are out of control, is to make a delivery system that improves the quality of care and lowers the cost of care in ways that makes the system more accessible to Americans, that makes it more intelligent, that eliminates waste, that provides for better prevention, and avoids medical errors.

All of that will stand on a better health information technology infrastructure. That is the sort of gateway into what is a vital primary national mission and, very often, the gateway to health information technology is electronic prescribing.

And it makes absolutely no sense for a doctor to engage in electronic prescribing unless they can go to an electronic prescribing system. And for a long time, DEA was insisting that they go to an electronic prescribing system; for any scheduled pharmaceuticals, they had to stay with the paper system, which, from a prosecutor's point of view, I thought was nonsense, because there is so much investigative advantage to having the electronic data to cull through, to look for anomalies, to see where investigative resources should be dedicated, but that was your position.

Senator Coburn, who agrees with me on very little, and I had a very tough hearing with representatives of your administration

more than 2 years ago on this subject, and we are still watching this drag on and on and on.

It is a matter of the president's priority to get this built out. He has put $20 billion behind it. It is the Department of Health and Human Services' priority to get this built out. And why, for the life of me, DEA cannot get out of the way when it has, to my opinion, no legitimate stake in interfering with this, because from my law enforcement perspective, we advance the cause by moving to e-prescribing for schedule narcotics. We do not hold it back.

Clearly, there are some issues that need to be resolved, but on balance, I think it is a huge plus, step forward from a pure drug diversion and investigation point of view.

So I know I have spoken with some enthusiasm and passion about these subjects, but I feel very strongly about them. And as strongly as I feel about your capabilities, we simply have to get a message into your organization that status quo on these issues and the progress that we have seen on them just is not good enough.

Ms. LEONHART. Thank you for your leadership, Senator, on e-prescribing. And I would like to note that I did sign, in March, e-prescribing interim rule. It did go into effect in June, and we have done a lot of outreach and are continuing to talk to industry about it. We have been promoting it.

We share your concerns and we think that that interim rule was our way of moving forward with what we believe, for all the same reasons you have mentioned, will help. And I will do, if confirmed——

Senator WHITEHOUSE. And admittedly, it will. It was a step in the right direction.

Ms. LEONHART. It is a step and, if confirmed, I tell you, I will continue to prioritize e-prescribing and make sure that we continue to do what we can do at DEA to move that along.

Senator WHITEHOUSE. We believe that—at least I believe that the urgency of getting the United States of America onto a robust and secure health information infrastructure so that we can provide Americans with the health care system of the future is a primary national goal and of real urgency.

And we are very eager to work with you to work through any problems, but I appreciate very much your sentiment that you will make sure that your organization, in turn, works with a keen awareness not just for its own concerns in this process, but for the larger concerns of the country, and I appreciate that.

Judge Saris, I just want to very briefly let you know that both a former boss of mine when I was U.S. attorney, Jamie Gorelick, and the chief judge of my district—Ms. Gorelick is a former boss, so she does not have much sway with me any longer. But Judge Lisi is our chief judge on our United States District Court and we came through the Committee together and we were both appointees or recommended by Claiborne Pell and appointed by President Clinton, and they speak very, very highly of you and of the work that you have done.

And I just wanted to have it be a matter of record that the former deputy attorney general of the United States and a chief United States district judge, who has the occasion to work with you very closely from a neighboring state, both feel that the quality of

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your work, the quality of your scholarship, the quality of your leadership all merit that kind of commendation.

So I am delighted that you are here and look forward, I hope, to a speedy confirmation for you.

Judge SARIS. Thank you.

Senator WHITEHOUSE. And wish you well in your job of keeping the sentencing guidelines current and appropriate.

And, finally, Ms. Hylton, I look forward to working with you. As you may know, we have a detention facility in Rhode Island that has experienced some setbacks. It is a matter of great importance to the Rhode Island delegation that that be all set right and that we work with you to make sure that to the extent that the facility is properly complying with all of the various laws and administrative requirements of the Marshals Service, that it continues to be seen by you as a valuable resource.

I want to also take a moment to recognize Marshal O'Donnell, who I worked with for many, many years as a state police officer. I knew him first when he was an undercover officer and I was prosecuting cases that he was the primary agent and witness in. He went on to become the No. 2 in the Rhode Island State Police and run it as the top administrator.

So he combines both great courage and initiative in the field, great experience in putting cases together for successful prosecution, and considerable administrative skills in law enforcement, and I am delighted that you will be working with him.

So thank you very much for being here. We wish you well.

Ms. HYLTON. Thank you, Senator. I look forward to working with you and the district of Rhode Island and the office of the Federal detention trustee on that detention facility in your area. As you know, it's critical for that district to have housing within a reasonable distance from the court. So I look forward to working with you.

Senator WHITEHOUSE. All right. At this point, Senator Sessions is not present, but I do believe that he wishes to have a chance to ask questions of the witnesses. So we will not adjourn the hearing at this point. We will recess the hearing until 3 p.m. so that he has the chance at 3 to return and re-engage with you, and I think that is an important courtesy, since Senator Sessions is extremely busy, and I am very pleased that he has the interest in this panel to come back and ask these questions.

So we are eager and delighted to have the chance to do that. I hope that it does not disturb your schedules too much, but I think it is important.

So without further ado, the hearing will recess until 3 p.m.

[Recess.]

Senator SESSIONS. [presiding] We will return to session. I used to have a show called "In Session with Jeff Sessions." It did not break any rating record numbers, you can be sure of that.

It is great to have each of you. We thank you for your willingness to serve. I appreciate so very much Chairman Leahy allowing me to have an opportunity to ask some questions. We have just had so many conflicts here at this late part of the year with so many things happening.

Let me get onto the right page here. Is it Leonhart?

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Ms. LEONHART. Leonhart.

Senator SESSIONS. Leonhart. Very good. I am a big fan of the DEA, having spent much of my 2.5 years as an Assistant United States Attorney prosecuting their cases, and then, later, being United States Attorney for 12 years, and we worked with some of the big international smuggling cases to other kinds of cases.

And I do believe that law enforcement does make a difference in the safety of our streets and the health of our children, and would first ask you, do you have a view and have you expressed one with regard to legalization of marijuana and some of these latest ideas of that nature that have been floating up in states and cities, and what is that position?

Ms. LEONHART. Thank you, Senator. A 30-year veteran DEA agent, I have seen what marijuana use has done to young people. I've seen the addiction. I've seen the family breakups. I've seen the bad.

I am extremely concerned about legalization of any drugs. We already have problems with the other—with prescription drugs which are legal. And it is of concern and it's of concern to DEA and we enforce Federal drug laws. So if confirmed as administrator of the DEA, we would continue to enforce the laws, the Federal drug laws.

Senator SESSIONS. In previous years, DEA administrators have spoken out against the legalization measures. Have you done so and do you expect to do so if these referenda continue to be afoot?

Ms. LEONHART. DEA and I have spoken out. DEA will enforce Federal drug laws. Right now, in all 50 states, marijuana is illegal. In all 50 states, we have DEA agents that bring cases and we focus on resources on major traffickers and the organizations who are supplying drugs, no matter which drugs, marijuana, meth, cocaine, heroin.

Senator SESSIONS. Well, I know you have the responsibility to enforce the law, but chiefs of police, state directors of public safety, and heads of the Drug Enforcement Administration many times, in my experience, have understood the danger of these legalization efforts. And it sounds good to people. It sounds like, well, we can just end the problem of drugs if we just make it legal, which any country that has tried that, Alaska and other places have tried it, it does not work and it is a very dangerous failed policy, and we need mature, effective public officials who are willing to say that.

Ms. LEONHART. You are absolutely——

Senator SESSIONS. Are you willing to say that?

Ms. LEONHART. Yes. I've said that, Senator. You're absolutely correct. The social costs from drug abuse in all of the—especially from marijuana, all of the recent reasons that legalizers say it should be legalized, it will help the Mexican cartel situation, it won't. It will allow states to balance budgets, it won't.

Nobody is looking at the social costs to society when we are talking about legalizing drugs. And what worries me the most is we have seen, after years of stabilization of drug use, especially among teens, we have seen a spike, and I believe that that spike is directly related to all the conversation we are now hearing about the legalization of drugs.

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Senator SESSIONS. I would have no doubt of that. In fact, having been involved as United States Attorney in the early 1980s and the spontaneous grassroots effort, the Reagan Administration effort to crack down on drugs, drug use did go down.

As a matter of fact, a University of Michigan study showed that half the high school seniors in 1980 admitted to having used an illegal drug and the numbers went well below 25 a decade later.

So the effort that we undertook as a Nation to counsel young people, send clear messages about what is acceptable and what is not had a positive influence on the health and welfare of our country. The military's drug testing, for example, one of my United States attorney friends in Hawaii had a large portion of his office doing murders and assaults and thefts and burglaries from the military bases after they tested for drugs and eliminated drugs in the military, he said those all just plummeted; not just drug cases, but assaults and thefts and burglaries went down.

So I hope that this administration will send a very clear message on this. I know that a lot of people, like you said, have the idea that drug cartels will be all nice if we just made it legal, and a lot of them think that.

So I am glad to hear you say that and I encourage you to speak out on that. I may ask you some written questions about the Mexican situation.

For my two cents' worth, the best way we can help the Mexican leadership, who is standing courageously against drug cartels, because their lives are on the line—as we know, those who stand up to them put their lives at risk—is to demolish the gangs in our country who are selling drugs, collecting the money, and taking it back to fund these entities of power and strength.

Have you given any thought to enhancing our ability to focus on the Mexican drug cartels that are the primary distribution network for cocaine in America?

Ms. LEONHART. Yes, Senator. A lot of the focus for DEA these days is on Mexico. And now that we have these courageous Mexican partners with President Calderone at the head, we have had great successes in Mexico in breaking the power and the impunity of these cartels.

But we can do more and, if confirmed, what we will do is continue our partnership in Mexico and expand, because now we're collecting so much more intelligence that we're sharing with them and we've got that intelligence to share with our state and local partners here so that we can effectively go after those domestic cells that are working for those cartels, transporting, distributing drugs and collecting the money and bringing it back south.

Senator SESSIONS. Well, if you look at it as the tree of the criminal enterprise in Mexico, the roots are the distribution networks in the United States that bring in the money and the wealth that goes up to do it. And as our responsibility in our country, we need to be after those folks, and they will be facing substantial prison sentences. But we need to work on that and, hopefully, DEA will continue to do that.

Judge Saris, it is good to have you.

Judge SARIS. Thank you.

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Senator SESSIONS. I was United States attorney when we did not have the sentencing guidelines and I was there when they were passed, and I was there when they were implemented. And they were implemented with clarity, without equivocation, and it, I think, was another one of the factors in the decline in drug use in America.

The murder rate in America is half what it was in the late 1970s, early 1980s, and a lot of good things have happened. And although we do not want anyone in jail a day longer than it is smart to have them there, I have no doubt that because we have a substantial prison population, that has reduced crime in America.

If you go out and did a survey of 100 people, how many of them are likely to be an armed robber, not many; or a burglar or a rapist. And the extent to which more of those are in jail, you have less armed robberies, murders and rapes. That is just a fact.

A lot of people want to get out of it, they do not want to talk about that. They want to say that there are too many people in prison. So we have got to get them out of prison. So we need to be smart about it is what I would say to you.

Yours is an August position. The sentencing guidelines have been damaged inexplicably for me by the Supreme Court decisions. But that is the Supreme Court and we are stuck with that.

So I wanted to ask a number of things. I would like to inquire about how you personally have dealt with the guidelines in your court and the judges with which you served in Massachusetts, because according to the Sentencing Commission, of which you would be the head, in 2009, 56.8 percent, 57 percent, nationwide, sentences were rendered within the guideline range, but in Massachusetts, only 35 percent of the cases resulted in sentences within the guideline range.

Nationwide, only 11.8 percent of the cases resulted in below range sentences and cited *Booker*, the *Booker* case to justify that decision. In Massachusetts, that same category accounted for 33 percent of all cases.

Why do you think Massachusetts is that far out of the mainstream of the United States? Because you will be sentencing commissioner for the United States, not just for Massachusetts.

Judge SARIS. Thank you, Senator. It's a great question, and let me back up by saying I was here as a young staff person putting together the sentencing guidelines back in the early 1980s. So I am firmly committed to the principle of eliminating unwarranted disparities.

One of the big differences in Massachusetts is our high proportion of crack cases. And I want to thank the Congress for passing the Fair Sentencing Act. I think that makes a huge difference. I know approximately 66 percent of the drug cases that I personally sat on involved crack, in contrast to the Nation's about 19 percent, and it's been a high priority in our U.S. attorney's office to go into, let's say, the housing projects——

Senator SESSIONS. Where do you get that number of 19 percent nationwide?

Judge SARIS. Is crack? I asked somebody to calculate it and that's what someone told me.

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Senator SESSIONS. I do not think it is that low in the districts where I practiced and what is happening in Alabama today. I think it is higher.

Judge SARIS. I asked somebody to look it up and that is what they came up with.

Senator SESSIONS. Well, we will check it. Maybe you are right, I do not know.

Judge SARIS. But in any event, I do know my personal caseload has had a high number of crack cases, and I believe that is true across the district of Massachusetts.

Senator SESSIONS. Well, it was in Alabama when I was there, that is for sure. That is true.

Judge SARIS. So I believe that the concerns about the crack/powder ratio did actually cause a lot of disparity across the United States and I'm hoping now that you've fixed it through this new statute, which I fully support and I think is a wonderful compromise, I think a lot of that will go away.

Senator SESSIONS. To what extent do you feel would be the responsibility of the Chairman to advocate that judges follow the guidelines, that this is important, that they not lose discipline, that every judge start more and more, year after year, less and less find any binding authority in the guidelines?

Judge SARIS. I think right now with the guidelines, it's a very important transitional moment for exactly the reason you just pinpointed, which is the chair of the Sentencing Commission—I think Judge Sessions has done it. I think Judge Hinajosa has done it—needs to go out, needs to make sure that the guidelines are persuasive and evidence-based, and they need to go out to the judges and really advocate and ensure that they understand how important it is and what an important Congressional principle it is to avoid unwarranted disparity, and it shouldn't just be within a district, whether is your luck of the judicial draw.

It should be the differences between Texas and Massachusetts or between California and Georgia, let's say. It should be nationwide and it should be within a district.

Senator SESSIONS. Well, that certainly was the idea, and I think it was followed pretty closely for quite a number of years.

With regard to your personal sentencing, which I think would reflect your approach to the guidelines, do you think your sentences would be the range of Massachusetts' sentences as far as departures are concerned or would be more in line with the national numbers?

Judge SARIS. Well, across the 5 years, averaging, I believe they're consistent nationally with the number within guidelines. It's gone up and down depending on the year, because of—largely because of the crack cases. Sometimes I was below Massachusetts. Once I think I was above Massachusetts.

But primarily, I—we have 47 percent, I think, of our caseload is drug-driven, and I think that in those situations, as I said, on crack, most of us in the last couple of years departed down.

Senator SESSIONS. Well, I do not think you should have. I think there are too many departures downward, and I do not think the *Booker* case really authorized or suggested that judges should break free and just impose their own personal views.

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I know some judges have done that. So it worries me a little bit that we would have somebody named to be the Chairman of the commission who has one of the higher rates of departures, frankly, in that way. I may follow it up and give you a chance to respond to that some.

Would you be willing to provide the Committee a list of cases in which you departed downward from the guidelines, with some sort of brief description of those cases?

Judge SARIS. Sure.

Senator SESSIONS. I appreciate that. In a 2002 speech to the Massachusetts State Sentencing Committee, which is the important thing, the sentencing guidelines, the Federal experience, you said, "I believe that a guideline system is better than one based on mandatory minimums and one that is purely discretion-based. However, the states should be careful to avoid the rigidity of the Federal system and preserve the discretion of the trial court judge to render a principled sentencing decision. When all is said and done, our system has not eliminated disparity in sentencing."

Well, it may well be your view, but I would hope it would not be the view of the Chairman of the United States Sentencing Commission, who should believe and strive to achieve consistency in sentencing to eliminate disparity.

And the idea that a guideline system, you are talking in Massachusetts, is better than one based on mandatory minimums, is it not true that what you meant in that statement was that you would prefer a system that just had guidelines and had no mandatory requirement on a judge as opposed to one that has mandatory minimums or a mandatory sentence for certain crimes?

Judge SARIS. Yes. I testified before the legislature to urge them to adopt a guideline system.

Senator SESSIONS. Guidelines as opposed to mandatory. We have a mixed guideline/mandatory system. And do you oppose that? Would you like to see Federal sentencing minimum mandatories eliminated?

Judge SARIS. I believe that the Sentencing Commission will be studying mandatory minimums as part of its mandate. I am not—I remember sitting over there as a staff member. I certainly understand why Congress wants mandatory minimums, because there are certain crimes they feel carry a certain sentence.

Senator SESSIONS. All right.

Judge SARIS. I believe the guidelines are the best approach. Once you've made sure that they are followed by the judges, that they're persuasive, that they're evidence-based, I think that gives judges the flexibility on those few occasions——

Senator SESSIONS. Well, but Massachusetts, at a much higher degree than anybody else, thought they knew better than the guidelines. They set these guidelines, but I know better; I do not have to follow them, because the guidelines are in error, right?

Judge SARIS. I know that's not my practice. As I said, that is, as far as I'm concerned——

Senator SESSIONS. Well, there is a little bit of that in all of this.

Judge SARIS. Well, no. I've actually followed the guidelines. I would say the one big exception was the crack guidelines and I

think that now that that is fixed, I think that you're not going to see that anymore or certainly you won't with me.

Senator SESSIONS. Because you did not like the crack sentences. Judges did not like them, so they did not want to follow them.

Judge SARIS. Now I like them. No. I think what happened is that the Supreme Court in two cases actually told us that we should—and the Sentencing Commission itself said. And so I think across the country, what was happening—as I said, I think it's the single greatest source of unwarranted disparity, is that once the Supreme Court spoke and said you should consider lower sentences, I think a lot of people, including myself, did.

Senator SESSIONS. In a 2007 speech to the Federal Bar Association, you stated, "Sentencing has become harder and more challenging now that judges can finally think again beyond the strict sentencing guidelines." Do you think there is a greater potential for disparate or erroneous sentences now that the sentencing has become harder and more challenging?

Judge SARIS. Absolutely, and that's why I think it's important. The Supreme Court has said, as you know, that you start with the guidelines. They're your benchmark, they're your anchor, but you must consider the individual characteristics of the offender and other of the factors in 3553(a). And so I think that's why the commission is all the more important right now; not only to make sure that the guidelines are persuasive, but to go out there and persuade judges to follow those guidelines.

Senator SESSIONS. Well, I think the leadership from the commission should encourage and you should be confident that your guidelines consider the proper factors. As a matter of fact, they do. There are very few factors that I am aware of that are not included. If you carry a gun, if you had a previous offense, if you threaten the witnesses, how much drugs that you have, whether or not you took advantage of a child, or factors that all allow increase, and there are factors, such as cooperation and other factors that allow some reduction.

We added a little more in this crack bill that I worked on for many years, essentially the same bill I offered in 2000, it finally got passed this year. But those numbers are—so I just think that you really need to have this in your head; that you are trying to craft guidelines that properly consider the circumstances of the case.

Otherwise, you are back there just like we used to see when I first started prosecuting, the preacher there talking, the momma crying, the brother talking, the boss pleading, and the judge, with very little guidance, letting his conscience or empathy of the moment decide what a sentence should be, and they were very aberrational. Some judges were very aberrational themselves and some—and on the same floor, you get dramatically different sentences for the same offense.

Do you agree that the leadership from your side needs to be clear that you believe the guidelines have inculcated as much of the relevant data as realistically achievable and that normally you would expect people to follow that?

Judge SARIS. I absolutely promise to do that and I also believe that. I was persuaded of it when I was back here 25 years ago, and I still believe it.

Senator SESSIONS. The commission listed 14 priorities for implementing the Fair Sentencing Act of 2010, which I cosponsored; continuing to study the impact of the *Booker* case; implementing portions of the health care bill, among others.

On that same day, the commission published its proposed temporary emergency amendment to implement the Fair Sentencing Act of 2010—that is our bill—for public comment and that amendment took effect November 1.

Do you agree that developing appropriate permanent rules to implement the Fair Sentencing Act should be a high priority for the commission?

Judge SARIS. Absolutely. I think it should be one of the first things we do is to make sure that everybody is heard from and that we get statistics and that we implement permanent amendments.

I was not involved, obviously, in the crafting of the temporary ones, but that's one of my first orders of priority.

Senator SESSIONS. And would you agree that it would be important for the commission to allow this Fair Sentencing Act time to be implemented before it produces any additional policy recommendations or conclusions about the crack and powder cocaine issue?

Judge SARIS. Well, this may be something I'd have to check on. I had thought we were required to do a permanent amendment by May 1. I may be wrong about that, Senator. But I think that if that's not the case, the way you propose it makes the most sense of all.

If, in fact, we have to do something by May 1, then I imagine we go with the data that we've got and then be open to changing it.

Senator SESSIONS. The rules of the commission allow the chair a good bit of power to call meetings, to convene a public hearing, "on any matter involving the promulgation of sentencing guidelines or any other matter affecting the commission's business."

If confirmed, what issue do you have, in your mind, that you might want to have hearings on?

Judge SARIS. Thank you. I was hoping to have the opportunity to do that. I think one of the big problems that I've been worried about is the high rate of recidivism after people get out of jail, either on supervised release or after they have left all together.

Overall, the people on supervised release, about 30 percent of them end up in revocations. However, 30 percent doesn't really capture it, because that means all criminals across all categories.

In contrast, about 60 percent of all people in the highest criminal history categories are getting revoked; high, high numbers. In our district in Massachusetts, we've been experimenting with a drug court program, as well as with reentry programs and various probation supervision techniques.

What I'd really like to do is bring down that rate of recidivism. I think it's an important public safety issue and I believe that we should be much more aggressive in dealing with treatment, as well as being smarter, if you will, on trying to stop people from

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recidivating and then if they do, perhaps tougher, because at the end of it, this is both a rehabilitation issue, but, very importantly, a public safety issue, and I would like to hold hearings on that issue.

Senator SESSIONS. Yes. But you do not need—you have been involved in this at least 25 years, apparently. I think I am probably a little longer, and tried to follow it, read writings and keep up with it over the years. It has just been an interest of mine.

Ninety-nine percent, I was stunned to see recently, I think it is 99 percent of the criminal cases end in pleas.

Judge SARIS. Yes.

Senator SESSIONS. Is that about right, Judge Saris?

Judge SARIS. I had sort of thought it was 92 or 93, but certainly over 90.

Senator SESSIONS. The numbers were higher than that that I heard. But at any rate, if it is 90 percent, the point is overwhelmingly, the question is how much time or whether the person will serve time; if so, how much.

So I do think it is worth spending a considerable amount of time in the system on trying to identify what kind of sentence ought to be imposed, and the system should be consistent, from a moral point of view, but it also should reflect reality.

And I would just say to you that recidivism has been the big deal for a long time. And has there been any program that has dramatically reduced the recidivism rate, to your knowledge?

Judge SARIS. To my knowledge, at least preliminary statistics from our drug court is that we've started to reduce the recidivism, but I can't say that that's going to be a long-term fix. I believe that we should be following offenders intensively. I believe we should be making sure they have job opportunities, and I think that we should be a hammer when they fail to comply.

Senator SESSIONS. I agree with that and I would just say that that is true. But I want to make the point that ever since I have been in law enforcement, starting out in 1975, people have had all kinds of plans to fix the recidivist rate. And in the early 1980s, right after Miami started the first drug court, we invited the judge to Mobile, Alabama. I was at the meeting. And we started one there. And he was claiming this dramatic rate.

Well, it is not that dramatic. Maybe it looked like it for a while. I think it was better, but we have just got to understand, mature people, that small incremental gains are significant; not that you are going to reduce by half or 60 percent recidivist rates, I do not think it has ever been achieved anywhere, and every idea that has ever been thought up.

You have education in prisons, you have drug prisons, you can get them in physical condition in prison, you have them cut grass in prison, all these things have not been as effective as we wish they were or we would be glad to do them anywhere anytime, if we could prove it worked.

So I am glad you are looking at that, and will not harass you with any more questions.

Judge SARIS. Thank you, sir.

Senator SESSIONS. You answered well, I give you credit.

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Now, Ms. Hylton, you are going to run the U.S. Marshals Service.

Ms. HYLTON. Yes, sir.

Senator SESSIONS. Back in the 1800s, they had this guy, kind of like David Koresh, I think, up in rural Alabama and he killed a bunch of people and they called the marshal. He had to get on a steamboat and a train to come up and catch the man. But that was the only Federal presence that existed. There was not any DEA, sorry, at the time, just the U.S. Marshals Service, and it has a great heritage and great history, and you have had a pretty long, professional career in service.

But it is a very important job you are undertaking. Do you have any thoughts about what you would like to accomplish?

Ms. HYLTON. Yes, Senator, thank you. And thank you for the acknowledgment to the women and men in the Marshals Service that pride themselves in the long tradition of the agency and their accomplishments.

I've been away from the Marshals Service now for about 7 years and like many law enforcement nationwide, I'm sure they face significant challenges with the growing demands that are on them.

I know that we share that our National security and the protection of our judicial process is at the center of our democracy, and, therefore, I would look forward, if confirmed, to take on those challenges so that we can ensure the protection of the integrity of the judicial process; that we address the issues on our border districts; that we keep our streets safe by apprehending dangerous fugitives; and, that we protect our children through the mandates in the Adam Walsh Act.

So I look to, in order to achieve that, I look to ensure that our resources and the support of this Committee and Congress and through their appropriations are used wisely and effectively. I look to ensure that there's a sound and effective operating infrastructure for the employees of the Marshals Service to meet those mission requirements; and, I look to be innovative and creative in leveraging information technology and technical solutions in order to enhance our protective services and investigations.

And I think, also, that it's important to always kind of look to the future in law enforcement as you know you need to stand ready and be prepared for the future, and, in law enforcement, the demands shift often on us.

Senator SESSIONS. You will be the leader of this important service, and it is my observation that the FBI, the DEA, Customs, all the Federal agencies, including the Marshals Service, create organizational structure. You give people special duties that are critically important maybe at one time, but a decade later, they may not be so important.

And make no mistake, you are going to be asked to do more for less, because this country does not have the money. We do not have the money to continue to spend like we have, and every agency—I just proposed to my Republican colleagues that we all reduce our expenditures 15 percent. I will assure you, the U.S. Senate will not fail if we reduced spending 15 percent and neither would the United States Marshals Service, if it had good leadership.

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But hopefully you will not be asked to take that kind of reduction. But I guess I am saying, are you prepared to rigorously examine all the positions that you have, the special duties that you have, the clerical positions that you have, and make sure that more personnel are focused on the actual responsibilities of the Marshals Service?

For example, the Department of Defense did a good job of moving more people to be military deployable and less doing support positions, because the whole purpose of the military was to deploy and execute the policy of the Congress and the President.

Are you willing to do that, even if it shakes up and causes some people to complain that you are being mean to them?

Ms. HYLTON. Senator, I actually pride myself on my fiscal responsibility in my career. Certainly, I embraced it as Federal detention trustee. I believe that we can always look to ensure that we are meeting the demands that are in front of us by reassessing and realigning as necessary.

Senator SESSIONS. I believe both sides of the aisle here would back you up on that, if you have done it in the right way and you have got good plans that make the service more productive.

Gosh, you have got some talent, you have got good talent in the Marshals Service, and sometimes their duties are not as broad as they need to be to fully utilize their talents or sometimes within the agency itself, the service itself, the job descriptions contain the ability to be productive.

So I hope you will look at that as you seek to be more productive for the service.

Ms. HYLTON. Yes, sir.

Senator SESSIONS. Good luck.

Ms. HYLTON. Thank you very much.

Senator SESSIONS. It is an important job.

Thank all of you. I have enjoyed this exchange. Each one of you are being asked to head very important agencies of the United States, very important agencies, and we will be reviewing your record, background.

Ms. Hylton, I did want to say that I do think there is a role for private prisons in the American system. I do not think you would have a blanket refusal to consider that and if anybody is critical of you for that, I do not think that would be justified.

If you improperly made decisions about who to hire and how to manage a contract—but the idea that somehow this should never be contracted out, in ceratin circumstances, I think it would be wrong.

What is your view about private prisons?

Ms. HYLTON. Thank you, Senator, for that question, because I think you know we took great pride at the office of the Federal detention trustee to meet the growing population, and always the first approach is—the best approach is always a balanced approach.

And the first step in the process is Federal detention beds availability. That's the first assessment. That is done with keeping in mind the best interest of the government, but also the best interest of the detainee.

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We want to ensure that they are within a reasonable distance of their court proceedings, that they are supported by counsel, and that they have access to family.

So if we cannot meet the Federal detention space, there are no beds available in the Federal detention centers, we then turn to our partners and state and local facilities. Because we have a need within the department, again, location close to the courthouses, we partner often with the state and local governments and actually enjoy 1,800 intergovernmental agreements nationwide.

When sometimes there are pressing fiscal problems for the state, they are not able to share those beds. They have their own needs. And at those points is when, we've exhausted all alternatives, we then turn and have to rely on private industry.

Done rarely, but it is done, and it's allowed us to provide housing for detainees within a reasonable distance to the court, and I think that's a good thing.

Senator SESSIONS. I do, too. You stated that well.

Thank you so much.

Ms. HYLTON. Thank you, Senator.

Senator SESSIONS. Let me say that the record will remain open for additional questions and comments for one week. Thank you so much.

[Whereupon, at 3:44 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

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QUESTIONS AND ANSWERS

Responses of Max O. Cogburn. Jr.
Nominee to be United States District Judge for the Western District of North Carolina
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 which can only be modified by amendment.

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: Constitutional interpretation should take into account the text of the Constitution, the intent of the framers, and the precedent established by the Supreme Court and Courts of Appeal.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: A judge should follow the text of the Constitution, the intent of the framers, and the precedent established by the Supreme Court and Courts of Appeal.

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. A judge must apply the law to the facts.

5. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

   Response: No. The Supreme Court has set limitations and identified guidelines for determining Congress' authority in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). As a district judge I will follow the law as held by the Supreme Court.

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6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: The Supreme Court has held in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) that there is an individual right to bear arms with certain limitations. I will follow the law as determined by the Supreme Court in regard to those limitations.

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 questions about what limitations there are on individuals continue to be litigated. I will follow whatever precedent the Supreme Court or the Fourth Circuit Court of Appeals set on these matters.

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 district court judge I am bound to follow current 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: The decisions of the Supreme Court will determine what punishment constitutes cruel and unusual punishment. I will follow that precedent.

b. **How would you determine what the evolving standards of decency are?**

Response: I would follow the law of the Supreme Court and Fourth Circuit Court of Appeals. As a district judge I would not determine "evolving" standards of decency.

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?**

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Response: No. The Supreme Court has ruled 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: In the unlikely event I had to conduct such an analysis I would use the factors determined by the Supreme Court.

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 required to do so by the Supreme Court or the Fourth Circuit Court of Appeals.

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: There are no circumstances under which I would use foreign law to interpret the United States 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.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

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Responses of Max Oliver Cogburn, Jr.
Nominee to be United States District Judge
for the Western District of North Carolina
to the Written Questions of Senator Jeff Sessions

1. **In 2008, President Obama said,**

> **"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."**

Do you agree with the President's statement?

Response: Judges are to make decisions without regard to bias, prejudice, or sympathy. Decisions must be based on the law and the facts. Empathy for a litigant or a position should play no role in deciding a case.

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." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Decisions should be based solely on the law and facts presented. A decision based on a judge's desired outcome would be improper.

3. **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: I agree with Justice Sotomayor's statement.

4. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory. Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

Response: The Supreme Court in *Gall v. United States* 552 U.S. 38 (2007) has ruled on how the district courts are to handle this issue. After determining the applicable sentencing guideline, the court must consider the factors in 18 U.S.C. 3553(a). Most of the time this analysis will lead to a sentence within the guideline range. But on occasion the analysis might lead to a departure upward or downward. These occasional departures must be explained and are subject to appellate review.

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5. **According to an October 28, 2010 article in the *Legal Intelligence,* there is a recent trend among federal judges to reject the sentencing guidelines for child pornography crimes as "too harsh." What are your views with respect to these particular guidelines?**

Response: The sentencing guidelines for child pornography crimes have been subject to the same careful consideration in their formulation as the guidelines for other offenses and are due the same great deference in the sentencing process.

6. **In 2009, you represented a former teacher and retired Air Force major for soliciting sex over the Internet from someone he believed to be an 11-year old girl. He was sentenced to 11 years in prison. You were quoted by the *Asheville Citizen-Times as* stating:**

> **"We've got 57 years of exemplary conduct against a very brief period of time. There is no child victim in this case. This is a good man who's done a bad thing, and it's his first offense."**

a. **Did the *Asheville Citizen-Times* accurately report your statement?**

Response: Although I do not have a transcript of the sentencing hearing, I believe the *Asheville Citizen-Times* correctly quoted a portion of my sentencing argument in that case.

b. **Is it your view that, in cases such as this, where there is no child victim but rather a law enforcement officer on the other end of an Internet communication, a defendant should receive a lesser sentence?**

Response: It is unlikely that any one factor at sentencing would bring about a lesser sentence. As an advocate for my client I argued a number of factors including the degree of victim impact. I was representing my client to the best of my ability. During my years as a federal prosecutor I gave the same degree of representation to the United States on occasion getting an upward departure. As a district court judge my role will not be as an advocate, but to apply the sentencing factors in a way that is fair and just, follows the laws set by Congress and avoids unwarranted sentencing disparity.

7. **Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: I do not believe that I have publically expressed an opinion on this matter.

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8. Do you have a personal view regarding whether the death penalty is constitutional?

Response: The Supreme Court has determined that the death penalty is a constitutional and acceptable form of punishment. If confirmed I will follow that precedent.

9. Do you believe that the death penalty is an acceptable form of punishment?

Response: Yes.

10. Do you hold any personal views that would preclude you from enforcing the death penalty?

Response: No.

11. At your hearing, Senator Whitehouse asked for your comments on the following:

"It is my belief that judges must do a number of things. One is to respect the role of Congress as the duly elected representatives of the American people in our system of American democracy. Two is to decide cases based on the facts and the law, nothing else. Three is to not prejudge any case, but listen to every party that comes before you, powerful or weak, rich or poor, irrespective of station or position; to respect the precedent that the Supreme Court and the circuit courts for your districts have laid down and the precedent that exists within your own district; and, finally, to limit yourself in your decisions to the issues that the court must decide that are properly presented before it. It is my belief that those disciplines, which must be self-imposed by judges, are key to the successful operation of the carefully balanced system of government that the Founding Fathers created and that we all honor and enjoy the fruits of.

You responded:

"Senator, I agree with everything you said, absolutely. That is what a judge is - that is exactly what a judge has to do, be impartial, be fair, and follow the law."

Do you also agree that when Congress, in its role as the legislative branch, enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an "as applied" basis?

Response: Yes.

12. Please describe with particularity the process by which these questions were answered.

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Response: I received these questions on November 23, 2010 from the Department of Justice's Office of Legal Policy. I prepared a draft of these answers which I sent to OLP on November 24, 2010. I then discussed that draft with OLP on November 27, 2010 and submitted my final draft on November 27, 2010 for transmission to the Committee.

13. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Marco A. Hernandez
Nominee to be United States District Judge for the District of Oregon
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 would not describe the Constitution as a "living" document.

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 agree that the Constitution's purpose is transformative.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: Judicial doctrine should limit the interpretation of the Constitution using precedent and the language of the document for guidance. It is Congress's role to determine how social views should be incorporated into law.

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: Not all transactions involving the exchange of money are subject to Congress's Commerce Clause power. The Supreme Court recognized in *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000) that Congress has broad but not unlimited power to regulate commerce.

6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

   Response: There are some limitations on the Second Amendment. For example, the limitation on felons possessing firearms was not affected by the decisions in *District of Columbia* v. *Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, 561 U.S. ____ (2010). Future cases will determine what other limitations remain.

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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 left open the question of what limitations remain. Future cases will help answer this question. If confirmed as a District Court judge, I would follow the Supreme Court's rulings.

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 have not considered Justice Kennedy's analysis. However, the Supreme Court has spoken on this subject. If confirmed, I will follow the law.

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 Supreme Court has stated that the death penalty is constitutional. If confirmed, I will follow all relevant precedent on this issue.

b. How would you determine what the evolving standards of decency are?

Response: I would look to the Supreme Court's analysis on death penalty challenges.

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: The judge should carefully consider the Supreme Court's 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: No.

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 cannot think of an example when it would be correct to use foreign law to interpret our Constitution. I would only consider foreign law if required by 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 cannot think of situations where a foreign nation's ideas and solutions would inform interpretation of our laws.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

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Responses of Marco A. Hernandez
Nominee to be United States District Judge for the District of Oregon
to the Written Questions of Senator Jeff Sessions

1. **In 2008, President Obama said,**

> **"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."**

Do you agree with the President's statement?

Response: I do not know what criteria the President used in making his nominations. In reaching decisions in cases, judges should avoid using bias, sympathy or prejudice.

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." Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should make decisions based on the facts and the law.

3. **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. **Under the Supreme Court's decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.**

   a. **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.

   b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

   Response: Departure sentences are provided for in the sentencing guidelines. The Supreme Court has provided guidance regarding departure sentences. *Gall v. United States*, 552 U.S. 38 (2007). If confirmed as a District Court judge, I would follow the Supreme Court's guidance.

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5. **According to an October 28, 2010 article in the *Legal Intelligencer*, there is a recent trend among federal judges to reject the sentencing guidelines for child pornography crimes as "too harsh." What are your views with respect to these guidelines?**

Response: I do not believe the sentencing guidelines are "too harsh."

6. **Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: I have never expressed such an opinion.

7. **Do you have a personal view regarding whether the death penalty is constitutional?**

Response: I do not have a personal view on this. The Supreme Court has stated the death penalty is constitutional.

8. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: Yes.

9. **Do you hold any personal views that would preclude you from enforcing the death penalty?**

Response: No.

10. **At your hearing, Senator Whitehouse asked for your comments on the following:**

"It is my belief that judges must do a number of things. One is to respect the role of Congress as the duly elected representatives of the American people in our system of American democracy. Two is to decide cases based on the facts and the law, nothing else. Three is to not prejudge any case, but listen to every party that comes before you, powerful or weak, rich or poor, irrespective of station or position; to respect the precedent that the Supreme Court and the circuit courts for your districts have laid down and the precedent that exists within your own district; and, finally, to limit yourself in your decisions to the issues that the court must decide that are properly presented before it. It is my belief that those disciplines, which must be self-imposed by judges, are key to the successful operation of the carefully balanced system of government that the Founding Fathers created and that we all honor and enjoy the fruits of.

You responded:

"I agree, as well. I think that I would add to the mixture that it is important for judges to do all of those things with a great deal of judicial temperament and

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evenness so that the parties that are appearing before you trust that you are judging these cases in a fair and just way."

Do you also agree that when Congress, in its role as the legislative branch, enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an "as applied" basis?

Response: Yes.

11. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on November 23, 2010. I also consulted with representatives of the Department of Justice regarding my responses, and then finalized them before authorizing their transmittal to the Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

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Senator Jeff Sessions
Questions for the Record
Stacia A. Hylton

1. The Marshals Service has the primary responsibility for compliance with the Adam Walsh Act in locating unregistered sex offenders. Based on your experience, what legal tools does the Service need to enforce the Adam Walsh Act?

First and foremost, our most valuable asset in enforcing the Adam Walsh Act is a highly-trained investigative workforce to ensure sex offenders comply with the Act. The Marshals Service is fortunate to have received enhanced resources to enforce the Act in recent years. The Marshals Service has used these resources to open its Sex Offender Targeting Center and to hire and train over 175 dedicated sex offender investigators.

Additional tools, such as the ability of the Marshals Service to secure its own administrative subpoena authority to obtain records, could help make sex offender investigations more productive. The Department and the Marshals Service fully support the mandates of the Adam Walsh Act and appreciates its importance to this Committee. I understand and appreciate that Senator Sessions recently introduced, and passed through this Committee, an amendment that would provide the Marshals Service with administrative subpoena authority for sex offender investigations. I understand that the Administration has not issued a position on the Sessions amendment. The Department of Justice, however, has expressed significant concerns about expanding the use of administrative subpoenas to obtain testimony. I support the aspect of the legislation that provides the Marshal Service with the authority to subpoena records. Should the Marshals Service be provided administrative subpoena authority to obtain records, it would join other federal agencies, such as the DEA and FBI, in having access to this useful investigative tool. In the case of the Marshals Service, administrative subpoena authority for records would be used to locate and apprehend fugitives. Some fugitives, including sex offenders, can be particularly difficult to locate, and additional timely access to their location information through, for example, subpoenaing records from service providers, can be critical to effecting a successful apprehension. The ability to use administrative subpoenas could directly and positively address this concern.

If confirmed, I will work within the Department of Justice and with Congress to ensure that we responsibly provide all the tools necessary to keep children safe. I will stand ready to use all available resources, both monetary and non-monetary, to meet this critically important objective.

2. Earlier this year, I spearheaded an initiative to enable the Marshals Service to pursue administrative subpoenas to locate such offenders and, in September, the Committee passed legislation including a provision to that effect.

a. How would administrative subpoena authority enable you to enforce the law more effectively?

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The Marshals Service could potentially save valuable time in locating fugitives by being able to use an administrative subpoena to obtain records to ascertain location information.

Fugitives who know that federal law enforcement agents could be looking for them often change identities frequently and move from one place to another to avoid detection. Timely access to documents from service providers, such as motels, rental car companies, and communications providers, could keep these dangerous fugitives from being one step ahead of detection.

b. Do you believe that the Marshals Service can responsibly utilize administrative subpoenas?

If confirmed as the Director of the Marshals Service, I assure you that I would put the proper mechanisms in place to responsibly execute administrative subpoena authority for records. I would consult with law enforcement agencies that currently have this authority to establish best practices. I would ensure that the Marshals Service's Office of General Counsel participates in setting up a framework to ensure legal compliance, and I would direct appropriate training for any Deputy Marshal who would be authorized to use this authority. Finally, I would ensure that a senior level manager in the Marshals Service would be involved in every decision regarding individual requests to exercise this authority.

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Responses of Steve C. Jones
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 Constitution is a fixed document, unless amended.

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 think that the Constitution should be interpreted by looking to the text of the Constitution, the historical record, and applicable precedent of the United States Supreme Court and 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: It is my belief that judicial doctrine is derived from the text of the Constitution and applicable precedent of the United States Supreme Court and appellate 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: The United States Supreme Court has held that the scope of the Commerce Clause power is not unlimited. If I am confirmed and presented with a case involving application of the Commerce Clause, I would consider the statute at issue and apply applicable Supreme Court and Eleventh Circuit precedent, including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

6. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

   Response: Through its holdings in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), the United States Supreme

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Court has left open the question of what limitations on the Second Amendment right 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: In reviewing these two cases, it appears that the United States Supreme Court has expressly noted that some limitations exist on the scope of the Second Amendment right; however, whether additional limitations apply has been left for resolution through 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: If confirmed as a district judge, I would be bound by the precedent of the United States Supreme Court.

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 interpreting the embodiment of the Constitution's prohibition on cruel and unusual punishment, I would follow the precedent of the United States Supreme Court and Eleventh Circuit.

b. How would you determine what the evolving standards of decency are?

Response: I would determine standards by looking to applicable United States Supreme Court and Eleventh Circuit precedent.

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 United States Supreme Court has found that capital punishment is constitutional; therefore, under present binding authority, I cannot see how a judge can make such a finding.

d. What factors do you believe would be relevant to the judge's analysis?

Response: The factors set forth in the precedent of the United States Supreme Court and Eleventh Circuit precedent would be relevant to the judge's 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?

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Response: It would not be proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the United States Constitution, unless binding precedent provides for review of foreign law.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: In the absence of binding authority providing for consideration of foreign law, I do not think that looking to foreign law would be appropriate.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Foreign law should only be looked to when there is binding statutory and/or United States Supreme Court or Eleventh Circuit precedent, which provides for review of foreign law.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: In the absence of direct authority providing for consideration of foreign law, I do not think that looking to foreign law would be appropriate for proper interpretation of the laws of the United States.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No. In the absence of direct authority providing for consideration of foreign law, I do not think that looking to foreign law would be appropriate for proper interpretation of the Constitution of the United States.

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Responses of Steve CarMichael Jones
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. **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.

   b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

      Response: The sentencing guidelines should be the starting point in any sentencing proceeding and should be downwardly departed from by the sentencing judge only when supported by statutory factors as set by Congress, factual circumstances, and applicable Supreme Court and Eleventh Circuit precedent.

2. **According to an October 28, 2010 article in the *Legal Intelligencer*, there is a recent trend among federal judges to reject the sentencing guidelines for child pornography crimes as "too harsh." What are your views with respect to these guidelines?**

   Response: The sentencing guidelines are designed to enhance uniformity and consistency in issuing reasonable sentences and should be given substantial deference by a federal judge.

3. **In 2008, President Obama said,**

   > **"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."**

   Do you agree with the President's statement?

   Response: Empathy is defined as the ability to understand another person's feelings. I think that a trial judge should have the ability to understand the feelings of other persons; however, in terms of judicial decision-making, empathy has no role. A judge should be impartial and decide cases based solely upon the law and the facts presented – not upon feelings or emotions.

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4. **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: Judges should base their decisions solely on the law and the facts.

5. **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.

6. **Have you ever expressed an opinion regarding whether the death penalty constitutes cruel and unusual punishment under the Constitution? If so, what opinion did you express?**

Response: I have presided over three death penalty cases as a Superior Court judge. In each case, the constitutionality of the death penalty was challenged on cruel and unusual punishment grounds. In deciding each challenge, I reviewed applicable United States Supreme Court and Georgia Supreme Court precedent, upholding the constitutionality of the death penalty in Georgia. I thereafter denied the challenges.

7. **Do you have a personal view regarding whether the death penalty is constitutional?**

Response: While I believe that the death penalty is constitutional, my judicial decisions on the constitutionality of the death penalty will be based upon the precedent of the United States Supreme Court and the Eleventh Circuit.

8. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: Yes, I believe that the death penalty is an acceptable form of punishment. I will follow applicable law in deciding death penalty cases.

9. **Do you hold any personal views that would preclude you from enforcing the death penalty?**

Response: No.

10. **At your hearing, Senator Whitehouse asked for your comments on the following:**

"It is my belief that judges must do a number of things. One is to respect the role of Congress as the duly elected representatives of the American people in our system of American democracy. Two is to decide cases based on the facts and the law, nothing else. Three is to not prejudge any case, but listen to every party that comes before you, powerful or weak, rich or poor, irrespective of station or position; to respect

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the precedent that the Supreme Court and the circuit courts for your districts have laid down and the precedent that exists within your own district; and, finally, to limit yourself in your decisions to the issues that the court must decide that are properly presented before it. It is my belief that those disciplines, which must be self-imposed by judges, are key to the successful operation of the carefully balanced system of government that the Founding Fathers created and that we all honor and enjoy the fruits of.

You responded:

"Senator Whitehouse, I agree with what you said and it is important, because if we fail to do that, then the communities we serve or preside over lose confidence in our courts and, as judges, we will not have credibility."

Do you also agree that when Congress, in its role as the legislative branch, enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an "as applied" basis?

Response: Yes.

11. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from the Department of Justice on Tuesday, November 23, 2010 and carefully drafted my answers. I reviewed those answers with representatives from the Department of Justice and requested that the Department of Justice submit my final answers to the Senate Judiciary Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

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U.S. SENATE, COMMITTEE ON THE JUDICIARY

Executive Nominations Hearing
WEDNESDAY NOVEMBER 17, 2010

Questions for the Record from
SENATOR CHARLES E. GRASSLEY to

Michele Leonhart to be Administrator
U.S. Drug Enforcement Administration

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1. **Methamphetamine**

Methamphetamine continues to plague states across the country, particularly in rural areas in the Midwest that were hit hard by the spike in meth labs in the 1990's. However, because tough laws such as the Combat Meth Enforcement Act were enacted at both the state and federal level, there has been a dramatic decrease in the amount of domestically produced methamphetamine. This drop in production is largely attributed to the reduction in available precursor chemicals such as Pseudoephedrine or PSE.

However, recent trends indicate meth cooks are circumventing the law by going store to store to buy legal amounts of precursors until they obtain a large enough quantity to make meth. This new trend, commonly known as "smurfing," illustrates that more work remains to remove meth from our streets. One alternative to combat "smurfing" is to make precursor chemicals controlled substances. However, there is concern that this action would result in increased costs and burdens for legitimate consumers. Another alternative is to expand the use of electronic, interoperable log book systems that will more effectively track questionable purchases of precursors while allowing legitimate consumers minimal burdens to obtain cold medicine.

a) Do you believe that electronic, interoperable log book systems are necessary to help crack down on meth cooks that "smurf" between stores to buy meth precursors?

At the federal level, DEA is committed to exploring all options, including legislative changes to place pseudoephedrine, ephedrine and their analogues in Schedule V, as prescription only substances.

The use of log books as an investigative tool has proven to be problematic and ineffective at eliminating or even reducing domestic clandestine meth labs. Log books, regardless of their form, can only identify some smurfing activity that has already taken place; they do not prevent these products from reaching clandestine laboratories. The majority of enforcement successes that can be attributed to log books have been regulatory, through administrative sanctions and fines, and not criminal prosecutions. The information contained in commercially available log book monitoring systems is deemed not sufficiently reliable for purposes of identifying and prosecuting criminals. As a result, many federal and state prosecutors have questioned the

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reliability of log book data. This is due to the use of multiple fictitious identification cards by some individuals involved in smurfing activity. In order to develop prosecutable cases, investigators must follow smurfers from store to store, as they use multiple false identification documents to purchase ephedrine-based products without interruption, even though they have clearly exceeded federal purchase thresholds. Since log books are a reactive tool rather than a proactive tool, states are reporting increases in the number of meth labs within their state.

Compared with other drugs of abuse, meth is arguably the most devastating. The collateral damage left in the wake of this drug, from purchase of the precursor material, through the manufacturing and distribution process to the ultimate drug seeker/abuser is enormous. Clandestine methamphetamine labs are frequently the cause of fires or explosions; they generate toxic waste; those exposed to lab material, including children and law enforcement officials, require chemical decontamination; clandestine labs seized within a neighborhood/community contribute to reduced real estate values; and the identification, dismantling and cleanup/disposal of these labs drain precious law enforcement, public safety and social service resources.

Although there is disagreement about what legislative course of action needs to be pursued, there is no disagreement with the general principle that the key to stopping these labs is limiting the access to precursor chemicals by the individuals manufacturing methamphetamine. If confirmed, I will support continued evaluation of all potential options and solutions to ending this ongoing public health and safety issue.

b) Do you believe scheduling precursors is the most effective way to crack down on "smurfing?"

As a Special Agent, Deputy Administrator and Acting Administrator, I have seen the devastating effects of methamphetamine use, the power of precursor chemical control, and the unfortunate resurgence of clandestine laboratory production here in the U.S. DEA is supportive of efforts by state, county, and municipal jurisdictions to control access to the precursor chemicals from which methamphetamine can be manufactured, while at the same time, ensuring that such substances remain available for legitimate medical purposes. At the federal level, DEA is committed to exploring all options, including legislative changes to place pseudoephedrine, ephedrine and their analogues in Schedule V, as prescription only substances.

As noted in the President's 2010 National Drug Control Strategy, "Effective July 1, 2006, the State of Oregon returned pseudoephedrine to a prescription drug, as it was prior to 1976. There was extensive debate in Oregon as to whether this law would prevent smurfing and meth labs and whether there would be public outcry or other adverse consequences. More than 3 years later, smurfing within the State of Oregon has been virtually eliminated, meth labs have been nearly eradicated, and local officials report little or no public outcry or other adverse consequences." Since 2006, Oregon has been able to sustain a more than 90 percent reduction in meth labs within their state. I believe that the success in combating methamphetamine labs in Oregon makes a compelling argument for scheduling as we continue the debate on what further legislative controls are needed to put an end to this public health and safety nightmare.

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Unfortunately, cartels outside the country have also filled the void for domestic meth, and now a significant amount of this drug is imported from outside the U.S. Although Mexico took drastic actions to ban PSE in that country in 2006, the National Drug Intelligence Center (NDIC) has stated in the 2010 Drug Threat Assessment that methamphetamine availability increased in the U.S. as a result of higher production in Mexico because cartels are using alternative, less efficient precursors to manufacture meth.

c) If you are confirmed as DEA Administrator, how will you prioritize efforts to combat the manufacture, distribution and importation/smuggling of methamphetamine?

If I am confirmed, methamphetamine will remain a top priority for DEA. Mexican drug cartels continue to be the predominant source of supply for methamphetamine available in the U.S. Disrupting and dismantling the cartels in Mexico is one of my top three priorities, in addition to Afghanistan and prescription drug abuse.

DEA has worked and will continue to work with federal partners and its state and local counterparts in protecting the public health and safety against the scourge of methamphetamine. DEA is committed to working with the Department of Health and Human Services and other federal agencies to find a solution that best balances the goals of law enforcement and legitimate access to products that provide health benefits.

d) In light of the fact that Mexico still struggles with methamphetamine production despite its actions to ban precursor chemicals would similar actions to ban precursor chemicals in the U.S. yield a similar result?

First, DEA does not support a ban of the methamphetamine precursor chemicals pseudoephedrine or ephedrine.

It should be noted that although there is still reported clandestine laboratory production of methamphetamine in Mexico, it appears that the ban is causing a shift in precursor starting material from pseudoephedrine (PSE)/ephedrine (EPH) to phenylacetic acid (PAA)/phenyl-2-propanone (P2P) and derivative chemicals. An increasing number of samples obtained from seizures that originated from Mexican organizations provide evidence that the PAA/P2P method is now being utilized in addition to pseudoephedrine/ephedrine. In the U.S., the vast majority of clandestine laboratories are driven by PSE and to a lesser extent, EPH. The "one-pot" method, "Nazi" (Birch Reduction) method and other similar small quantity manufacturing processes require the use of PSE/EPH. Methamphetamine could not be manufactured in these types of small domestic labs without PSE/EPH.

Therefore, a total ban on PSE/EPH products would eliminate the vast majority of small domestic lab production. Similar to what has happened in Mexico, I would anticipate that we would see an increase in larger labs potentially driven by chemicals such as PAA/P2P and their derivatives. However, the PAA/P2P method

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of synthesizing methamphetamine was utilized in the U.S. in the 1970s and 80s and law enforcement agencies in the U.S. are familiar with these types of labs. It also should be noted that PAA is a listed chemical in the U.S. and domestic sales are closely monitored. P2P is a schedule II controlled substance in the U.S. and the commercially available product is rarely encountered in domestic labs.

2. Prescription Drug and Over the Counter Drug Abuse

Another dangerous trend in drug abuse is the use of prescription drugs and over the counter (OTC) medicines for recreational purposes. The 2009 National Survey on Drug Use and Health states that prescription drug abuse has increased by 12% in the past year. Given that prescription drugs and OTC medications are easy to obtain from virtually any home medicine cabinet or convenience store, this trend threatens to create an explosion of new drug users. Moreover, many users of these kinds of drugs think that they are safe because they are prescribed by doctors or are readily available over the counter.

The DEA Office of Diversion Control is responsible for overseeing the wholesale and retail diversion of prescription drugs, but cannot generally enforce the laws against those who abuse these types of drugs taken from someone with a lawful prescription. This is a tricky situation that requires a multi-faceted approach. I recently joined Senators Klobuchar and Cornyn in cosponsoring the Secure and Responsible Drug Disposal Act of 2010, which will make it easier for communities to establish drug take back sites so consumers can dispose of old medicines and reduce the potential for these drugs to be illegally diverted.

a) Given the increase in abuse of prescription drugs and OTC medications, do you believe DEA should devote additional resources to combat this trend? Why or why not?

The diversion of pharmaceutical controlled substances is a significant problem in the United States, as all reliable studies indicate that the abuse (non-medical use) of these drugs has reached alarming levels in recent years.

Prescription drug abuse is one of my top three priorities, in addition to Mexico and Afghanistan. I support an increase in resources to the Diversion Control Program to address the alarming increases in prescription drug abuse., and in particular I support the President's FY 2011 Budget request for $291.8 million dollars, including funding for 1,373 positions for DEA's Diversion Control Program.

b) What other actions can DEA take DEA [sic] to help stop this abuse from increasing every year?

I fully support the President's 2010 National Drug Control Strategy, which recognizes the significant problem with prescription drug abuse and sets forth several action items to address this problem. These items include:

- **Educating Physicians About Opiate Painkiller Prescribing**

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- Expanding Prescription Drug Monitoring Programs and Promoting Links among State Systems and to Electronic Health Records
- Increasing Prescription Return/Take-back and Disposal Programs
- Assisting States Address Doctor Shopping and Pill Mills
- Driving Illegal Internet Pharmacies Out of Business, and
- Cracking Down on Rogue Pain Clinics

The DEA is working on a two-pronged approach to address the problem of prescription drug abuse. First, DEA is retraining its Diversion Investigators to refocus on enhanced regulatory oversight of the more than 1.3 million DEA registrants. The purpose of this approach is to be proactive and ensure that DEA registrants adhere to their responsibilities under the Controlled Substances Act and its implementing regulations. This approach has resulted in record-breaking civil fines and resulted in registrants implementing more effective control designed to detect and prevent the diversion of controlled substance pharmaceuticals for non-medical purposes.

DEA is also expanding the use of Tactical Diversion Squads (TDS). These enforcement groups combine the skill sets of Diversion Investigators, Special Agents, state and local law enforcement officers, and other federal agencies whose sole mission is dedicated to investigating the criminal diversion of controlled substance pharmaceuticals and listed chemicals. With only 4 operational TDS groups at the beginning of FY-2009, I authorized a plan to expand the number of TDS groups to 65 in two phases. DEA now has 37 TDS groups operational across the United States. Since implementation, these groups have conducted several significant investigations. In FY-2010 alone, TDS groups have seized more than $70 million in drug proceeds and assets derived from the diversion of controlled substance pharmaceuticals.

DEA's Office of Diversion Control, in concert with field elements, continues to work with industry, the medical community, and grassroots coalition groups to identify, develop and implement effective strategies that are designed to curb the growing problem of prescription drug abuse.

Another potential factor that contributes to the increase in abuse is the availability of these drugs in household medicine cabinets. In many cases, dispensed controlled substances remain in household medicine cabinets well after medication therapy has been completed, thus providing easy access to non-medical users for abuse or accidental ingestion. At this time, most U.S. communities do not routinely offer opportunities to properly dispose of unused, unwanted, or expired pharmaceutical controlled substances. As a result, many people keep the drugs because they do not know how to dispose of them.

I thank you and the other members of Congress for your leadership in passing the Secure and Responsible Drug Disposal Act of 2010. The need for this legislation was clearly confirmed by the results of the DEA coordinated National Drug Take-Back

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initiative in September 2010. During this one-day initiative, DEA, in partnership with its state and local law enforcement counterparts, collected more than 121 tons of unwanted or expired medications that had accumulated in homes all across the United States.

We are in the process of drafting regulations based on the authority granted to DEA in the Secure and Responsible Drug Disposal Act of 2010, but this will take at least 12 months to complete. Therefore, we will conduct another National Drug Take Back day in the spring of 2011 to provide the public with an avenue to dispose of unused and unwanted pharmaceuticals.

3. K2/Spice

I am increasingly concerned about a growing trend among youth smoking incense laced with currently legal synthetic compounds that supposedly mimic the effects of marijuana. Popular brand names for these products are "K2" and "Spice." This past June, David Rozga, an 18 year old recent high school graduate from Indianola, Iowa committed suicide shortly after smoking a package of "K2" with some of his friends. There have been numerous reports across the country of K2 users committing crimes while under the influence of K2, having to visit the emergency room as a result of smoking K2, and even some dying as a result of K2 use. Calls into poison control centers concerning these products have also dramatically increased in the past year.

a) Do you share my concern about the growing use of these products?

I share your concern about the growing use of synthetic marijuana. I utilized DEA's emergency scheduling authority to temporarily control five chemicals (JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol) used to make "fake pot" products. This authority, contained in 21 USC 811(h), allows DEA to temporarily schedule substances if necessary to avoid an imminent hazard to the public safety. Except as authorized by law, this action will make possessing and distributing these chemicals or the products that contain them illegal in the U.S. for at least one year while the DEA and the United States Department of Health and Human Services (DHHS) further study whether these chemicals and products should be permanently controlled.

DEA's Notice of Intent to Temporarily Control was published in the *Federal Register* on November 24, 2010, to alert the public to this action. Any comments submitted by DHHS will be considered. After no fewer than 30 days (as required by statute), DEA will publish in the *Federal Register* a Final Rule to Temporarily Control these chemicals for at least 12 months with the possibility of a six-month extension. They will be designated as Schedule I substances, the most restrictive category under the Controlled Substances Act, which is reserved for unsafe, highly abused substances with no medical usage.

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b) If confirmed, what actions will be taken by the DEA to limit or eliminate use of these products among young people?

I am committed to pursuing the statutory scheduling process for these substances, which includes a substantive research-gathering phase to make determinations on how best to proceed. I also welcome the opportunity to work with Congress to limit or eliminate the use of these substances for an illicit purpose.

Unfortunately, unscrupulous chemists and criminal groups often stay one step ahead of law enforcement by manipulating the molecular structure of controlled substances to create new drugs that are not specifically restricted by the CSA, thereby circumventing the provisions of the CSA.

DEA will continue to work with state, local and tribal officials, coalition groups, and community groups to help educate America's youth on the dangers of these and other substances.

4. Marijuana

According to the 2009 National Survey on Drug Use and Health marijuana remains the most abused illicit drug in America. Even more concerning is the growing evidence that use and abuse of marijuana among teens is increasing after years of declining. I am concerned that the DEA is facing growing challenges to enforce the nation's laws against marijuana due to state efforts to legitimize the drug for medical reasons.

On October 19, 2009, the Department of Justice issued a new memorandum for United States Attorneys regarding the investigation and prosecution of marijuana crimes in states that authorize the use of medical marijuana. This policy seemed to imply that federal law would not be enforced in certain instances.

a) Do you support efforts to decriminalize or legalize the use, production, or distribution of marijuana, for medical purposes or otherwise?

I support the Administration in its clear and steadfast opposition to legalization of marijuana.

b) Do you agree that federal law should be enforced for all violations of the Controlled Substance Act?

I support the Administration's commitment to enforce the CSA in all states. The CSA provides for classifying substances based on careful study and a sound scientific foundation. As the Acting Administrator, I remain concerned with any state actions that attempt to legalize schedule I controlled substances and believe that state legalization efforts lead to increased substance abuse.

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c) Do you believe that this policy creates a conflict for the DEA to complete its mission?

I welcomed the issuance of the Department of Justice's October 2009 clarifying guidelines pertaining to the use of federal investigative and prosecutorial resources in states that have enacted laws authorizing the use of marijuana for medical purposes.

These guidelines do not legalize marijuana, which remains illegal under the federal law. As these guidelines point out, marijuana remains a top revenue source for the Mexican drug cartels that are wreaking havoc in Mexico and along the Southwest Border. Consistent with the DOJ guidelines, if confirmed, under my leadership, DEA will continue to identify and investigate illegal drug traffickers, including those that use "dispensaries" as a front. It has never been the policy of DEA to focus resources on individuals with serious medical conditions who comply with state laws authorizing the use of marijuana for "medical" purposes.

d) Do you believe that additional federal resources are needed to stop the growing use of marijuana?

The illegal distribution and sale of marijuana is a serious crime, and it provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. I assure this Committee that I will utilize DEA's limited resources wisely to get the maximum impact on disrupting and dismantling violent criminal organizations and significant drug traffickers. If confirmed, I will continue to assess resource needs and advocate for necessary resources in the budget process.

e) Will the DEA ramp up efforts to crack down on marijuana cultivation, trafficking, and use?

Consistent with the DOJ guidelines, if confirmed, under my leadership, DEA will continue enforcement activities against those who attempt to mask drug trafficking activities in the guise of marijuana for medical use and against those who would unlawfully market and sell marijuana for profit. I assure this Committee that I will utilize DEA's limited resources wisely to get the maximum impact on disrupting and dismantling violent criminal organizations and significant drug traffickers.

5. Money Laundering

The financing of drug cartels and terrorist organizations remains a top priority. I believe that more work needs to be done to reform our Nation's anti-money laundering laws to ensure we cut off the life blood of criminals, DTOs, and terrorist organizations—their financing. We need wide ranging reforms to curb abuses of our financial system that hide and transfer money from ill gotten gains. I plan to reintroduce comprehensive legislation to target the weaknesses in our current anti-money laundering laws. This legislation will restructure our anti-money laundering laws to stop new trends such as bulk cash smuggling and use of monetary instruments in blank or

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bearer form. It also prohibits unlicensed money transmitting businesses, and brings stored value instruments within the money laundering statutes.

a) Do you believe that efforts to combat illegal money laundering operations and bulk cash smuggling are integral to efforts to combat DTOs? Why or why not?

Yes. As the National Drug Control Strategy appropriately states: "Attacking the drug-trafficking organizations' profits, assets, and money laundering operations is a critical component of a comprehensive strategy."

Bulk cash smuggling is not a new trend. Cash wealth is the goal of drug trafficking organizations; however, the movement of cash also is vulnerable to strategic law enforcement efforts. The principal challenge to law enforcement is identifying illicit drug proceeds in the form of cash once it is no longer immediately identifiable as being from an illicit drug transaction. A major part of DEA's strategy is to trace the flow of this bulk drug cash to the command and control of international sources of supply.

If I am confirmed, targeting drug proceeds in the form of bulk cash and investigating to identify the source of the same will remain a top priority for DEA; however, DEA is not limiting its attack on illegal drug proceeds to just bulk drug cash. We recognize that the majority of illegal drug proceeds are not confiscated at their source and make it to the money laundering stage. To counter this threat, DEA is continuing to develop its anti-money laundering enforcement programs to identify and target the money managers of major international DTOs and the sophisticated money laundering organizations that service them

b) If you are confirmed, how will you coordinate with other government agencies to address money laundering and bulk cash smuggling?

If confirmed, I will continue DEA's history of coordinating and collaborating with other government agencies to address money laundering and bulk cash smuggling. I strongly support the interagency efforts of the DEA Special Operations Division, the Organized Crime and Drug Enforcement Task Force Fusion Center, and the El Paso Intelligence Center to specifically target the lifeblood of drug trafficking organizations—their illicit proceeds. Each of these entities is deeply involved in all of DEA's bulk cash and anti-money laundering initiatives and make the pursuit of illegal drug proceeds an integral part of every investigation or intelligence analytical package that they produce. To that end, I am fully committed to minimizing any duplication of effort and maximizing the use of the finite resources of the USG to achieve this objective.

c) Will you pledge to work cooperatively with Congress to ensure that our anti-money laundering laws are strengthened?

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If confirmed, I pledge to work cooperatively with Congress in coordination with the Department of Justice to ensure that our anti-money laundering laws and Bank Secrecy Act regulations are strong. DEA has considerable experience and insight into the methodologies utilized by drug trafficking organizations and their money laundering operations.

6. DEA Budget

In the midst of this economic downturn, our country will face difficult budget decisions.

a) What programs at DEA would you fight to keep funded or seek increased funding?

DEA is a single mission agency; our job is to disrupt and dismantle the world's largest drug trafficking organizations and prevent them from bringing their drugs into the United States. DEA's workforce makes this possible. Our workforce is made up of people with a wide variety of responsibilities, specialties and skills; each is necessary and each makes an important contribution. DEA's Special Agents are on the front lines and, without their dedication and hard work, we simply could not accomplish our mission; therefore, they must be our highest priority. But to be effective, these agents need the support of intelligence analysts, chemists, tech specialists and others who provide IT support, buy equipment, execute our budgets and perform a number of other critically important support activities. It's important that all of the critical functions performed by DEA's workforce be performed if our front-line agents are to be effective. However, if faced with significant budget cuts, I would prioritize funding for our agents, analysts and other core positions and look for opportunities to find savings in the support areas of our budget.

b) What programs would you cut or deemphasize? Would these corresponding reductions in funding hinder the ability of DEA to complete its mission?

DEA has been experiencing tight budgets for a number of years and we have found ways to adjust to them as best we could. The primary tool we use to do this is Zero Based Budgeting (ZBB), a model for allocating resources that DEA adopted about four years ago. ZBB ensures that every year, every program and every expenditure is examined to ensure that it is necessary and that we are getting what we should from it. ZBB allows us to move money from one program to another, so that our highest priorities can be funded.

It is difficult to answer your question specifically about what programs we might cut without knowing the size of the budget cut you have in mind. However, I can tell you that I would be guided by the principle expressed above, i.e., that virtually all programs in DEA contribute to our core mission in one way or another. While believing this to be true, however, it is clear that some programs contribute more directly to our mission than others. If we have to make major budget cuts in the future, I will preserve funding for those programs that most directly contribute to our core mission and look for

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opportunities to reduce spending in the supporting programs wherever possible. I would use ZBB to help me prioritize funding and understand the unique contribution of each program to the agency so we could identify the programs that could sustain a reduction without making a major, adverse impact on our core mission.

7. Performance-Enhancing Drugs/Steroids

I am concerned about a growing practice of steroids and other performance-enhancing drugs being masked as legitimate products. A popular trend among steroid dealers is to mask steroids as dietary supplements in order to avoid legal scrutiny and sell them over the internet. This practice is problematic for the DEA considering the limited ability of the agency to regulate dietary supplements and the time consuming process it takes to determine whether a new chemical falls under the jurisdiction of the Controlled Substances Act. Unfortunately, this practice can lead to dangerous consequences for legitimate supplement consumers who may be unaware that they are ingesting steroids.

a) What can DEA do to more effectively disrupt this practice?

If confirmed, I will continue in my commitment to protecting the health and welfare of the American people and pledge to work with Congress in coordination with the Department of Justice to ensure DEA has the proper tools to counter this threat. DEA continues to investigate and uncover dietary supplement products that contain either controlled anabolic steroids or designer steroids that are structurally similar to testosterone. Once found, DEA initiates a scientific review and analysis to determine if the substance meets the criteria for an administrative scheduling action. Depending on the substance, the administrative scheduling process may take many months and possibly years to complete. However, unscrupulous chemists take advantage of this lengthy administrative scheduling process as they continue to create and market products that contain chemicals which have never been adequately tested on humans. These substances may remain on the market for extended periods of time before government agencies become aware of the product and its associated adverse effects.

b) What can Congress do to help DEA in this effort?

With the passage of the Anabolic Steroid Control Act of 2004, Congress refined the definition in the original 1990 law (21 U.S.C. 802(41)(A)) to allow DEA to administratively classify additional steroids as schedule III anabolic steroids. The statute defines an anabolic steroid as a substance that is both chemically and pharmacologically related to testosterone; is not an estrogen, progestin or corticosteroid; and is not dihydroepiandrosterone (DHEA). Using this provision, DEA identifies substances marketed as anabolic products in the dietary supplement market and then conducts a chemical and pharmacologic analysis of the substance to determine if it is related to testosterone, conducts a comprehensive review of existing peer reviewed scientific literature and if necessary, conducts additional

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pharmacologic testing to ultimately determine if the substance meets the criteria for a schedule III anabolic steroid. The scheduling process requires an interagency review, the publication of a Notice of Proposed Rulemaking, a review of public comments, and the publication of a Final Rule in the *Federal Register* that provides notice to the public and industry that the substance will be designated as a schedule III anabolic steroid. This process is conducted in accordance with the Administrative procedures Act and takes many months and possibly years to complete. There is no method, under the current statute, to expedite the scheduling process.

8. Heroin

According to the NDIC's 2010 Drug threat Assessment heroin production estimates from Mexico have increased 342% from 2004 through 2008. Accordingly, this increased production has led to an increase in heroin abuse and increases in heroin overdoses and overdose deaths in the U.S. There is also evidence that some prescription drug abusers are switching to heroin due to the drug's increased purity and lower prices.

a) Do you believe this increase in heroin production and use in the U.S. is a sign of Mexican cartels expanding operations into new drug markets?

Mexican drug trafficking organizations (DTOs) continue to dominate the U.S. drug market. Mexican drug trafficking organizations (DTOs) are polydrug and have long been involved in heroin trafficking, as well as with marijuana, methamphetamine, and cocaine trafficking. Mexican drug cartels have expanded their criminal enterprise by diversifying drug production and distribution operations, and their organizations distribute both significant quantities of South American heroin and domestically-produced heroin. South America continues to be the primary source of heroin shipped to the United States. Mexican heroin remains, for the most part, confined to markets west of the Mississippi River, and South American-source heroin is increasingly smuggled via the US-Mexico border. However, over the past five years, Mexican DTOs have begun to produce high quality heroin at competitive prices and assume a greater share of the US heroin market. The uptick in heroin overdoses and overdose deaths could also be explained by fluctuating purities, relapses by recovering addicts, and heroin use in conjunction with other illicit substances.

b) Do you believe any such expansion is a result of the cartels strengthening or weakening? Why or why not?

Mexican drug trafficking organizations (DTOs) are in a unique position to dominate the U.S. drug market due to their ready access to all major drugs of abuse. The polydrug nature of Mexican cartels is one reason why they are a dangerous and pernicious threat. With increasing heroin production in Mexico and the involvement of major Mexican DTOs in heroin trafficking, the amount of Mexican

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heroin in the United States may well increase. In the late 1970s, heroin from Mexico dominated the US market but was then supplanted by Southwest Asian-origin heroin, then with heroin from Southeast Asia and, more recently, in the mid-1990s, by heroin from Colombia. Mexican DTOs have demonstrated their ability to effectively diversify drug operations and to develop new production and smuggling methods; they can be expected to increase control over the wholesale drug trade in the United States. Opium poppy eradication in Mexico declined between 2006 and 2009 due in part to the government of Mexico's use of military resources and personnel to combat the DTOs, provide security and enforcement in "hot spots" throughout the country, and identify and dismantle clandestine methamphetamine laboratories.

c) What actions would you take, if confirmed, to crack down on this increased production?

If confirmed, I will continue to direct DEA's resources and enforcement efforts toward disrupting and dismantling the command and control elements of major Mexican drug trafficking organizations that significantly impact the United States. Mexican Consolidated Priority Organization Targets (CPOTs) are closely linked with active priority target heroin investigations, with the Sinaloa Cartel accounting for approximately one-third of these cases.

Targeting CPOTs has proven to be effective. For example, Operation Xcellerator was a 21-month investigation targeting members of the Sinaloa Cartel that culminated in February 2009, had a significant destabilizing effect on the organization. Targeting of Mexican DTOs involved in heroin trafficking will continue. For example, an ongoing operation is targeting a Michoacán, Mexico-based DTO involved in the production of black tar heroin in Mexico, as well as the importation and distribution of the drugs from Mexico into the United States, with distribution networks in a variety of locations in the United States, including California, Washington, Texas and Illinois. To date, there have been 157 subjects arrested, 743 pounds of heroin and nearly $6.2 million seized under this operation.

I also will continue to work closely with Mexican counterparts to further develop the Drug Flow Attack Strategy in Mexico to focus on the criminal organizations, their communications and logistics related to the production, manufacture, transportation and distribution of heroin. DEA will provide training and resources and exchange information under the provisions of the Merida Initiative which has proven successful for the transfer of critical law enforcement investigative information within and between regional governments.

9. Southwest Border

Drug trafficking and violence along the Southwest Border continues to threaten the security of both the United States and Mexico. As a result, the governments of both countries continue to

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work for the expansion of coordinated intelligence sharing and joint strategic, intelligence-driven plans.

a) What do you believe have been the most productive programs and/or steps taken by the U.S. Government to expand intelligence sharing?

Currently, DEA has several programs to address intelligence sharing that I believe are most productive:

- **The Southwest Border Intelligence Collection Plan (SWBICP), provides operational, tactical, strategic, and policy-level intelligence used to support investigations, regional planning, and resource decision-making.**

- **The DEA Special Operations Division (SOD) facilitates coordination and communication amongst law enforcement entities and ensures that tactical and operational intelligence is shared.**

- **DEA Task Forces, OCDETF Strike Forces and HIDTA Task Forces have had enormous success dismantling major Mexican drug trafficking organizations linked to Mexico-based cartels.**

- **The OCDETF Fusion Center (OFC) provides investigative and operational intelligence support to OCDETF investigations through the development of organizational target profiles and the development of specific investigative leads.**

- **DEA's Drug Flow Attack Strategy (DFAS) is an innovative, multi-agency strategy, designed to disrupt significantly the flow of drugs, money, and chemicals between source zones and the United States by attacking vulnerabilities in the supply chains, transportation systems, and financial infrastructure of major drug trafficking organizations.**

- **The El Paso Intelligence Center (EPIC) is a national tactical intelligence center that focuses its efforts on supporting law enforcement efforts in the Western Hemisphere, with a significant emphasis on the SWB.**

b) What problems has the DEA encountered in coordinating these and other programs designed to combat violence and narcotics trafficking? What do you see as the most effective steps needed to resolve these problems?

I am committed to working within the U.S. Government and with the Government of Mexico (GOM) to overcome any challenges to ensure DEA and Mexican law enforcement officials work cooperatively and seamlessly to disrupt and dismantle drug trafficking organizations. DEA currently enjoys an excellent working relationship with the current Mexican administration of President Calderon. Through the Merida Initiative, DEA, partnering with

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the Department of State, along with other federal law enforcement components of the United States Government, provide much needed assistance to the Mexican Government in its fight against the powerful drug cartels.

Although a variety of challenges exist in establishing a streamlined system, several important steps have been taken to enhance bilateral intelligence sharing capabilities. For example, the Mexican Fusion Center (led by DNI with DEA) is a US interagency center responsible for developing intelligence relating to high value targets for action by the GOM. This platform was critical in targeting and apprehending several key Mexican drug trafficking organizations during the past year.

DEA and the U.S. interagency is challenged by corruption and the limited capacity of the GOM to investigate and prosecute the major DTOs in Mexico. However, programs such as the DEA Sensitive Investigative Unit (SIU) program and other Plan Merida initiatives will provide the foundation for building strong and trustworthy security forces in Mexico.

10. Mexican Drug Related Violence

In Mexico, the rise in violence and the need to dedicate government personnel and assets to curbing the violence, has led to a rise in drug cultivation in unsecured areas of that country over the past few years.

a) What programs are being implemented by the DEA to address this rise in drug production and cultivation?

DEA works closely with the Government of Mexico (GOM) to target illegal drug cultivation and production in Mexico. During the past year, GOM police and security forces have increased their seizures of clandestine laboratories utilized to manufacture large quantities of methamphetamine and confiscated large shipments of precursor chemicals, solvents and derivatives utilized to produce meth.

GOM Marijuana eradication efforts were reduced as the result of the Mexican military's involvement in restoring public security at various hot spots throughout the country. This mission required that forces traditionally involved in the eradication effort be reassigned to support public security functions.

b) What additional programs do you think should be implemented to best address this situation?

DEA will continue to provide clandestine laboratory and chemical recognition training to the Government of Mexico (GOM) and increase the detection and eradication capabilities of the GOM. DEA also will continue to work closely with the GOM and U.S. interagency partners to ensure that the

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objectives of the Merida Initiative are achieved and together, we build strong and effective institutions to support the rule of law throughout Mexico.

11. Corruption in Mexico

Corruption among Mexican officers and government officials has been a serious problem and has been an impediment to reform in the past. The Government of Mexico has been active in instituting judicial and institutional reforms to help fight corruption and I commend them for their efforts.

a) What is the status of these reforms and are they making a difference?

In April 2009, in response to a request by the Government of Mexico (GOM), DEA provided a list of recommendations to the Attorney General of Mexico (PGR)/ Assistant Attorney General for Special Investigations and Organized Crime (SIEDO) focusing on; internal security, operational security, physical security, organizational efficiency, process efficiency and reinforced productivity. SIEDO instituted many of the recommendations, including the improvement of the case management system in an effort to reduce corruption and improve the integrity of its criminal justice system.

Furthermore, the GOM passed new judicial reforms to address organized crime and corruption to include;

- **wire communication intercept authority to the Federal Police (SSP) in order to conduct judicial and intelligence wire intercepts to investigate and address all types of federal crimes, including drug trafficking,**
- **legislation to control the sale of Phenyl Acidic Acid, Pseudoephedrine, and other precursor chemicals utilized in the manufacture of methamphetamine and other illicit drugs,**
- **formal authorization to GOM Armed Forces to assist GOM law enforcement in operations targeting DTOs and to provide security to states,**
- **money laundering legislation (SARS for financial institutions and the mandatory sharing of property records by states to Federal Government.**

These are newly instituted reforms that will take some time before any measurable outcomes can be assessed.

b) What programs have been provided by your agency to help reduce corruption among Mexican officials?

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Our ability to operate in these challenging environments is made possible principally through our Sensitive Investigative Unit (SIU) programs. The mission of the SIU program is to cooperatively train, equip, and support specialized units within host nation police forces and military commands with law enforcement authority, in order to develop and share intelligence to target, disrupt, dismantle and prosecute major international drug trafficking organizations impacting the United States. SIU members undergo robust background investigations and polygraph examinations.

c) What additional programs are being implemented in the future to help the Government of Mexico implement the reforms?

The SIU program is the foundation for building an effective and trustworthy unit capable of conducting complex investigations targeting major Mexican DTO's. The additional programs, funded by Merida, facilitate anti-corruption and police professionalization efforts on a broader context. For example, development of basic and complex narcotics investigations curriculum for all Mexican police, and establishing an effective internal affairs and police integrity program are examples of key reform programs which DEA is currently supporting.

12. Afghanistan

Afghanistan produces approximately 90 percent of the world's opium with an estimated value of over 3 billion dollars. The DEA plays a vital role in the U.S. effort to combat drug trafficking in that country and recently executed a series of major heroin drug and clandestine lab seizures in Afghanistan.

a) What do you believe were the most effective aspects of this operation that should be replicated for successful future operations?

If confirmed, I will continue to identify and replicate best enforcement practices. In Afghanistan, DEA works bi-laterally with our Afghan counterparts and in coordination with International Security Assistance Force (ISAF) to identify, target, and disrupt/dismantle the most significant Drug Trafficking Organizations (DTOs) by attacking the vulnerabilities in the leadership, the production, the transportation, the communications, the finances, and by driving a wedge between the insurgency/Taliban and DTOs based in Afghanistan and the region. One of the most important keys to successful operations is the capabilities of our host nation partners. DEA was instrumental in the initial and continued development of three specialized units of the Counter-Narcotics Police – Afghanistan (CNP-A); the National Interdiction Unit (NIU), the Sensitive Investigative Unit (SIU), and the Technical Investigative Unit (TIU). DEA will continue to guide, mentor, and develop these specialized units. The DEA is also committed to increase the integration and synchronization of intelligence-driven targeting operations through participation in such vehicles as the Northern Route

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Working Group, the Major Crimes Task Force (MCTF) and the Interagency Operations Coordination Center (IOCC).

b) What are some of the biggest impediments to conducting effective interdiction operations? What programs would be the most helpful in addressing these impediments?

Since 2008, DEA has expanded the staff of its Kabul Country Office from 13 permanent positions to 82 permanent positions. This expansion effort was funded through supplemental appropriations and transfer funding from the Department of State (DoS). These personnel are forward-deployed throughout Afghanistan, to include Kabul, Helmand, Kandahar, Herat and Konduz.

Some impediments to joint interdiction operations include aviation support. Although the U.S Military (USMIL) and Department of State have provided significant assistance with airlift, these aircraft are already heavily committed. This has delayed past DEA/NIU enforcement operations for several months due to the lack of rotary wing support. Currently, DEA, specifically the Foreign-deployed Advisory Support Teams (FAST), rely heavily on USMIL/ISAF for air support. With the anticipated draw down of USMIL forces next year, aviation support will likely diminish.

By way of background, in June 2010, DEA requested $92 million to purchase and equip six Sikorsky S-61 helicopters. This decision was based on prior discussions between DEA and the DoS's Bureau of International Narcotics and Law Enforcement Affairs/Aviation (INL/A) that concluded the S-61s are the best option for meeting DEA's long-term operational requirements in Afghanistan.

In August 2010, DEA transferred $33 million to DoS for two S-61 helicopters. Each S-61 costs approximately $15 million and the remaining $3 million was used for spare parts. DoS ordered the two aircraft and plans to have them operational in Afghanistan within 12 months.

During recent testimony before the U.S. Senate Committee on the Judiciary, Attorney General Holder firmly acknowledged the lack of adequate helicopter air lift capacity afforded DEA in Afghanistan and the paralyzing effect this has on counternarcotics operations.

Another impediment to effective enforcement operations is the lack of an extradition treaty or some other judicial mechanism to prosecute and incarcerate the highest level international drug traffickers operating throughout Afghanistan. In fact, extradition to the United States is the biggest fear of most High Value Targets.

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Currently, the government of Afghanistan has a draft extradition law under review by their parliament. This draft extradition law has several fundamental flaws which are not complimentary to DEA's mission. The international community, to include the United States (DOJ, DoS and DoD), is in negotiations with the Government of Afghanistan to amend and change these provisions before passage but the end result is still unclear as of February 2009.

In an effort to leverage the unique extraterritorial powers of Title 21 U.S.C. sections 959 and 960a, DEA's Special Operations Division (SOD) created two field enforcement groups - the Bilateral Investigations Unit and the Terrorism Investigations Unit, as fully functioning field groups housed at SOD, collectively referred to as SOD's Field Enforcement Section (OSN).

The unique nature of these investigative groups stems from their mission to bring indictments against significant foreign-based drug traffickers, narco-terrorists, and transnational criminals based on these powerful extraterritorial laws. Practically, this mission differentiates the OSN enforcement groups from most other DEA field groups in that it requires extensive foreign temporary duty and regularly brings complex U.S. indictments against foreign based targets that are not vulnerable to traditional drug conspiracy charges.

Additionally, the Afghan Sensitive Investigative Unit (SIU) requires enhancements to the current Judicial Wire Intercept Program (JWIP) system to further exploit the vulnerabilities of the Drug Trafficking Organizations operating throughout Afghanistan and the region.

Further, the continued successes of the Afghan Counter Narcotics Police – Afghanistan (CNP-A) units are dependent upon thorough initial security and integrity polygraph testing, combined with periodic retesting of personnel. It is important that the CNP-A develop its own capacity for conducting polygraphs. The programs developed for the CNP-A will mirror the training and standards followed by all of U.S. Federal law enforcement agencies, including DEA.

13. West Africa

Due to porous borders and weak governments, West Africa is increasingly being used as a transshipment point by Central and South American Drug Trafficking Organizations. Members of these organizations are able to move around freely, with little fear of having their operations disrupted. This is leading to further to further destabilization and insecurity in the region.

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a) What assistance and programs are currently in place or are being considered that will help the countries address the rise in drug trafficking in their countries?

I share the concern that West Africa is increasingly being used as a transshipment point by Central and South American drug trafficking organizations. Under my leadership, DEA recently expanded its presence in West African and now maintains offices in four offices established on the continent of Africa (Nigeria, Ghana, Egypt & South Africa), and is anticipating opening an office in Kenya in FY 2011. Since August 2010, DEA senior leadership has traveled to West Africa on multiple occasions and met with Liberian President Ellen Johnson-Sirleaf and National Security Advisor Fomba Sirleaf as well as Ghanian Minister of Justice and Attorney General Betty Mould-Iddrisu. Discussions centered on continued collaboration and commitment on behalf of the DEA as well as the implementation and expansion of existing programs, such as information sharing, training and vetted units. In addition, in September, I met with General William" Kip" Ward, Commander, U.S. Africa Command, to discuss various issues of mutual interest, to include assigning a DEA liaison officer to AFRICOM. While DEA is increasing its presence in Africa, a critical part of DEA's overall Africa strategy calls for broad interagency support from U.S. government partners for assistance in capacity building and mentoring programs with African law enforcement counterparts.

For DEA's part, several recent initiatives are noteworthy:

- **In July 2010, DEA established the first law enforcement vetted unit in Africa. The Accra, Ghana-based vetted unit is already identifying and targeting the most significant DTOs operating in West Africa and will serve as a model for other countries in the region.**

- **In the last two years, DEA has led multilateral investigations in Senegal, Liberia, Sierra Leone, Ghana, Togo and Nigeria, which have resulted in the expulsion of over a dozen high-level South American and West African drug trafficking operatives, to include three suspected members of the terrorist group Al Qaeda in the Islamic Magreb, to face drug charges in the U.S.**

- **DEA has leveraged its leadership role in global counternarcotics efforts to encourage and facilitate increased intelligence-sharing and operational planning between African and South American law enforcement counterparts.**

b) What are some of the biggest impediments to conducting effective interdiction operations designed to stop drug shipments from reaching Africa?

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The versatility of transnational criminal organizations is well-known, as is their penchant for finding and exploiting vulnerable regions of the world to further their illicit activities. Unfortunately, Africa is such a place, with its strategic geographic location, and, in many instances, weak governments, endemic corruption, and ill-equipped law enforcement agencies.

As such, the biggest impediments are:

- **the geographic scope of Africa, which presents a daunting challenge in that it is beyond a single government's capacity to monitor the vast Atlantic coastline**
- **endemic corruption throughout West African nations presents a crucial challenge in the development of prosecutable criminal cases**
- **West African law enforcement agencies are under-staffed, poorly-trained and poorly-equipped**
- **many West African central governments are dealing with significant social issues and civil conflicts, and as such, drug law enforcement is often not a priority issue for government leaders.**

If confirmed, I will ensure that DEA works cooperatively to leverage the resources and expertise of our interagency partners. At present, DEA works closely with its U.S. law enforcement, military, intelligence, and diplomatic counterparts to counteract the wave of drug-related crime impacting many African nations.

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Senator Kohl's Questions for Michele Leonhart, Nominee for the Administrator of the Drug Enforcement Agency

1. The October 6, 2010 policy allowing a physician to appoint a nurse in a nursing home as his agent to prepare and transmit certain prescriptions to the pharmacy requires that the physician appoint specific individuals within the nursing home to act as his or her agent. We have received feedback from physicians and from nursing homes suggesting that the new policy is unworkable because of both the number of prescribers and staffing patterns within nursing homes. In 1995, DEA's policy (as stated in a letter to the Missouri Board of Pharmacy) actually recommended that an agent designation be to a position, (i.e., licensed nursing staff) rather than to an individual due to "different shifts and staff turnover." Would DEA oppose going back to its position in 1995? If so, please explain your rationale and whether it is based on legal or policy considerations, or both.

DEA recognizes that the timely ordering and dispensing of controlled substances to patients who reside in LTCFs presents unique challenges. DEA hoped that the policy statement published on October 6, 2010 would alleviate these challenges, and we are concerned if physicians and nursing homes are not finding the policy helpful. The Director of Policy and Advocacy at the American Society of Consultant Pharmacists stated that the policy statement should, "expedite in many cases getting the prescription processed and dispensed by the pharmacist, delivering it to the ultimate user and decreasing the potential for a patient to be in pain or discomfort longer than necessary." And, the Executive Director for the North Dakota Board of Pharmacy also commented on the policy statement by saying that, "This is exactly what we asked DEA to do when we commented during their request for comments on the LTCF issue,..."

With regard to the above-referenced 1995 letter, that letter dealt only with oral prescriptions for Schedule III and IV controlled substances. In the letter, DEA explained that physicians could designate individuals at LTCFs to act as their agent for purposes of communicating Schedule III and IV oral prescriptions to pharmacies, but discouraged physicians from designating multiple positions or "LTCF staff as a group" as agents. The 1995 letter also suggested that physicians could consider designating a specific position, rather than an individual, as their agent, but DEA issued a subsequent letter in 2002 to the Missouri Department of Health, clarifying that for legal purposes, LTCF nurses could be designated agents of physicians for purposes of communicating Schedule III and IV oral prescriptions only if such nurses were directly responsible to the physician. The 2002 letter is consistent with DEA's October 2010 statement of policy, which outlines the DEA's existing statutory and regulatory requirements as to the proper role of duly authorized agents of individual practitioners with respect to Schedule III and IV controlled substances.

With respect to Schedule II controlled substances, DEA is interested in working with the Congress to explore the circumstances under which a valid agency

relationship may be established to take into account the uniqueness of long term care settings.

2. Under the October 6 policy, agents may not call in prescriptions for CIIs, even in emergency situations. This means that even if the needed medication is in the nursing home in an emergency kit, the patient will have to wait until the doctor is able to speak directly to the pharmacist and the nurse in the nursing home is able to confirm that this communication has taken place. We understand that this process can delay medication administration in an emergency situation for hours. Why is DEA prohibiting a physician's agent to call in prescriptions for CII's in an emergency situation? Please identify whether the rationale is based upon legal or policy considerations, or both.

   Prohibiting a physician's agent from calling in prescriptions for Schedule II controlled substances is based on statute. The Controlled Substances Act (CSA) requires that schedule II controlled substances be dispensed pursuant to a written prescription except in emergency situations as specified by the Department of Health and Human Services (21 U.S.C. §829(a) & 21 CFR 1306.11 et seq). In qualifying emergency situations, these substances may be dispensed pursuant to a practitioner's oral prescription. (21 CFR 1306.11 et seq).

   DEA recognizes that there may be circumstances unique to the Long Term Care Facility (LTCF) setting that warrant special accommodations. Accordingly, DEA has promulgated many regulations to accommodate the special medical needs of LTCF residents. For example, although schedule II controlled substance prescriptions must be written, a practitioner, *or a practitioner's agent*, may fax a schedule II controlled substance prescription directly to the pharmacy. And, in addition to the emergency kits referenced in your question, DEA registered pharmacies may also install automated dispensing machines in LTCFs. Other DEA regulations may also assist LTCFs to provide necessary controlled substances to their residents, such as the ability of pharmacies to partially fill schedule II controlled substance prescriptions, and the recently promulgated regulations for the use of electronic prescriptions that allow practitioners to electronically transmit prescriptions for controlled substances (regardless of the controlled substance schedule) instantaneously to a pharmacy.

3. As you know, a state-by-state approach to this situation will take years and we don't have that kind of time when nursing home patients are suffering every day. Excluding that option, what will it take for nursing facilities to become DEA registrants?

   Under the Controlled Substances Act (CSA), "[t]he Attorney General shall register practitioners... to dispense... controlled substances... if the applicant is authorized to dispense... controlled substances under the laws of the State in which he practices." 21 U.S.C. § 823(f). Thus, current law provides no latitude to DEA for granting a controlled substance registration to applicants seeking federal authority to handle controlled substances unless those applicants have been authorized in their own state to dispense them.

4. Under what circumstances would DEA be willing to permit dispensing of controlled medications in long-term care facilities based upon a "chart order" rather than a prescription?

A chart order is a method used in hospitals to authorize the dispensing and administering of controlled substances to a patient, as authorized by a practitioner's order written in a patient's chart or file. This practice is specifically authorized for institutional practitioners such as hospitals. This is permissible under the CSA because in hospitals, *all* of the participants in the prescribing, dispensing, and administering process (the prescribing physician, the dispensing on-site pharmacy, and the administering nurse) are acting collectively as one entity pursuant to the authority of a single DEA registration: the hospital. In other words, because the state has granted the hospital authority to prescribe, administer, and dispense controlled substances to resident patients, DEA may register the hospital as an "institutional practitioner." The hospital's employees/agents can dispense the drugs directly to the patient from the authority of a chart order, provided that all of the hospital personnel are acting within the scope of their professional practice.

In contrast to a chart order, a prescription is issued by a practitioner under his/her own DEA registration and must contain particular information (including the signature of the prescriber, the date of issuance, the name of the prescribed drug, strength, dosage form, quantity prescribed, and directions for use). Accordingly, outside of the institutional practitioner setting (where a practitioner is acting under the DEA registration of the institution rather that his own DEA registration), chart orders presently cannot substitute for a valid prescription.

As a result, under current law, unregistered LTCFs may *not* use chart orders to provide controlled substances to residents. This is because some states have *not* granted LTCFs the authority to prescribe, administer, and dispense controlled substances like hospitals; thus, LTCFs cannot register with DEA as institutional practitioners to directly dispense controlled substances to patients. This is in part because most LTCFs do not employ their own physicians and do not have on-site pharmacies under their control. This means that LTCFs cannot preserve the CSA's "closed system of distribution" in the same way as hospitals. Thus, they must rely on valid prescriptions, not merely chart orders, to provide controlled substances to residents.

We are interested in exploring whether there are circumstances in the LTCF setting in which a doctor's instructions with the required elements in a form similar to a "chart order" could be considered a valid prescription and still ensure that controlled substances are administered safely to patients.

5. Before a registrant appoints an agent, he or she must understand his or her potential liability for acts of the agent under the CSA. What liability does the registrant have for

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the agent's acts that were not authorized by the registrant? What are the potential civil and criminal penalties that could be levied against a physician? Please provide examples.

If an agent acts with the express or implied authority of a principal, and that act proves to be a violation of the CSA, the principal/physician would be liable to the same extent as if he or she acted personally. The penalties imposed upon a principal/physician would depend on the conduct and would range from suspension or revocation of the principal's DEA registration to handle controlled substances to imprisonment for an illegal distribution of controlled substances under Title 21.

6. Can you provide the Committee with an assessment of the DEA's national drug take back day on September 25, 2010?

On September 25, 2010, DEA and approximately 3,000 state and local law enforcement agencies participated in the first nation-wide effort to collect unused, unwanted, and expired pharmaceuticals. Approximately 4,000 collection sites were available to the general public in all 50 states. This important health and safety initiative was provided free of charge to the public. Each of the collection sites had a "no questions asked" policy in place to assure the public that they could dispose of their medications without fear of law enforcement action. More than 242,000 pounds of prescription drugs were removed from our nation's homes for safe and proper disposal. DEA received overwhelming positive feed-back from our law enforcement partners and members of the public.

In addition to our state and local law enforcement counterparts, the White House Office of National Drug Control Policy; the Partnership for a Drug-Free America; the International Association of Chiefs of Police; the National Association of Attorneys General; the National Association of Boards of Pharmacy; the Federation of State Medical Boards; and the National District Attorneys Association partnered with DEA in this initiative.

DEA anticipates a second National Take Back Day in the spring of 2011 and will specifically include Long Term Care Facilities in its efforts at that time.

7. Does the Secure and Responsible Drug Disposal Act of 2010, S. 3397, adequately eliminate the legal barriers that have prevented similar initiatives in the past?

DEA would like to thank Congress for its leadership in passing The Secure and Responsible Drug Disposal Act of 2010. As evidenced by the National Take-Back Initiative conducted in September 2010, far too many unwanted or expired medications accumulate in residences throughout the United States. This accumulation of pharmaceuticals is an opportunity for tragedy as medicine cabinets provide unrestricted access to pharmaceuticals that can be diverted for illicit use. This legislation provides DEA with the authority to promulgate implementing regulations that will allow an "ultimate user" and LTCF to transfer controlled substance medication to an authorized entity for destruction, thus eliminating the

legal barriers that have prohibited these initiatives from moving forward in the past.

a. When can we expect these regulations to be issued?

On October 12, the Secure and Responsible Drug Disposal Act of 2010 was signed into law and amended the Controlled Substances Act to provide for ultimate user disposal of controlled substances. DEA has been directed to establish regulations to facilitate this process and will engage in notice and comment rulemaking via Federal Register publication. Interested parties can provide comment to the record that will be considered during finalization of the rule.

DEA is currently working on the draft notice and proposed regulations. We understand the significance of the disposal issues and are working expeditiously on the rulemaking. DEA expects to have the notice completed as soon as possible.

b. Assuming that DEA will work closely with the Attorney General on developing these guidelines, will local law enforcement entities, long-term care facilities and other relevant stakeholders be consulted in the process?

In January 2009, DEA issued an Advance Notice of Proposed Rulemaking (ANPRM) in response to concerns raised by individuals, public and private organizations, the healthcare industry, and the law enforcement community to solicit information on the disposal of controlled substances dispensed to ultimate users, as well as long term care facilities. DEA received more than 150 comments on this issue and will utilize information gained from its ANPRM to address this matter.

DEA will engage all stakeholders regarding this issue as provided by the rulemaking process. In addition to public comment solicited during a published Notice of Proposed Rulemaking, DEA anticipates holding a public meeting in early 2011 to provide an additional avenue to take comment from interested parties.

8. Is DEA coordinating with EPA and other relevant federal agencies in developing guidance for health care facilities on how to address unused drugs?

DEA recognizes that disposal of controlled substances affects not only individual consumers but also health care facilities. DEA registered facilities, such as hospitals, under current law and regulation may utilize the services of a DEA registered reverse distributor to destroy stock controlled substances. Controlled substances dispensed to residents at a Long Term Care Facility, however, belong to the individual, not the facility. DEA will consider varied settings and intends to provide multiple and flexible avenues for proper disposal of controlled substances.

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During its rulemaking, DEA will consult with the Environmental Protection Agency and other federal agencies as appropriate concerning this issue.

9. There is high demand for drug take-back programs in my home state of Wisconsin. Prompted by a rise in overdose deaths, the Madison Police Department recently instituted a program to collect unused prescription drugs even though it lacked the resources to do so. Has your agency heard about financial or other challenges from other jurisdictions?

Many law enforcement agencies have limited staffing and financial resources available to coordinate the collection and disposal of pharmaceuticals. In some cases, the competing interests of enforcement activities may limit an agency's ability to provide sworn officers to staff collection sites or the funding necessary to properly dispose of collected materials. Although law enforcement has been the principal point of contact for controlled substance pharmaceutical collection and disposal programs throughout the country, generally speaking, the resources needed to regularly conduct these initiatives hinder many agencies from pursuing such programs.

10. Will DEA share "best practices" with state and local entities on how to implement successful take-back programs?

On October 28, DEA participants in the National Take Back Day met at DEA headquarters to discuss the unique challenges and success of this initiative. The meeting provided a forum for a "lessons learned" evaluation regarding planning, organization, and execution. DEA is willing to share its experiences and findings relative to this matter and looks forward to the opportunity to add to the base of knowledge regarding this issue.

DEA actively endorses state and local take back programs. For approximately three years, DEA has provided written confirmation of specific programs based on written requests by state and local law enforcement agencies through its local Special Agents in Charge.

Senator Jeff Sessions
Questions for the Record
Michele Leonhart

1. As you are well aware, drug-related violence in Mexico is continuing to escalate. In March 2009, you testified you "could not label [the DEA's strategy in Mexico] a failure."[1] Do you still hold that view, in light of the ever-increasing violence south of the border and its spill-over into adjacent areas of this country?

   While it may seem counterintuitive, the extraordinary level of violence in Mexico is a signpost of successful law-and-order campaigns by military and law enforcement officials in Mexico. Most of the violence in Mexico can be organized into three broad categories: intra-cartel violence that occurs among and between members of the same criminal syndicate, inter-cartel violence that occurs between rival groups, and cartel-versus-government violence. It is important to note that intra- and inter-cartel violence have always been associated with the Mexican drug trade. It is my belief that with continued DEA support and cooperation, our brave counterparts in Mexico can be successful in their fight against these dangerous criminal organizations.

2. What do you think the United States can do to better assist Mexico in its efforts to end drug cartels and the accompanying violence?

   I recognize that interagency and international collaboration and coordination is fundamental to our success. It is imperative that we sustain the positive momentum by supporting the Mexican government's heroic efforts against the drug cartels. We must manage expectations, as we anticipate that the gruesome violence in Mexico may get worse before it gets better. We must recognize that we are witnessing acts of true desperation: the actions of wounded, vulnerable, and dangerous criminal organizations. DEA and other law enforcement agencies must strive to increase cooperation and must remain committed to working to stem the flow of bulk cash and weapons south, while also working to sustain the disruption of drug transportation routes northward. If confirmed, I will continue to improve DEA's already outstanding relationships with our state/local/international counterparts as we continue to indict, arrest, and extradite Mexico's "most wanted" drug traffickers.

   a. Do you agree that strengthening our border security would help to alleviate that problem?

      The Southwest Border (SWB) of the United States is the principal arrival zone for most of the illicit drugs smuggled into the United States, as well as, the predominant staging area for the drugs' subsequent distribution throughout the country. The Department of Justice Southwest Border Strategy, led by the

[1] Testimony before the House Committee on Appropriations, Subcommittee on Commerce, Justice, Science and Related Agencies, March 26, 2009.

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Deputy Attorney General, uses federal prosecutor-led task forces that bring together all law enforcement components to identify, disrupt and dismantle the Mexican drug cartels through investigation, prosecution and extradition of their key leaders and facilitators, and seizure and forfeiture of their assets. As part of this strategy, DEA is already working closely on the SWB with ATF, FBI, ICE, CBP and other federal, state, local, and foreign counterparts to secure the border and prevent drug, money and weapons smuggling. Any actions which would result in strengthening our border security would assist DEA and other law enforcement agencies as we tackle the problem of crime along the SWB.

b. Will you work to strengthen border security efforts to control the flow of drugs in this country?

If confirmed, DEA's ongoing efforts along the SWB will continue to be a priority, and we will work with our federal/state/local partners to increase border security. Approximately 30% of domestic DEA Special Agent personnel are assigned to SWB Field Divisions. DEA will also continue to work with our law enforcement partners in the United States and overseas to target, dismantle, and prosecute Mexican drug trafficking organizations wherever they are operating. Additionally, the enhancement of law enforcement information collection and dissemination is a priority, to which the El Paso Intelligence Center will grow and continue its essential support and assistance to all law enforcement in the U.S. and Mexico.

3. If a state elects to legalize a banned substance under the Controlled Substances Act, will you commit to working within the Administration to enforce federal law notwithstanding the state's action?

I support the Administration's commitment to enforce the CSA in all states. The CSA provides for classifying substances based on careful study and a sound scientific foundation. As the Acting Administrator, I remain concerned with any state actions that attempt to legalize controlled substances and believe that state legalization efforts lead to increased substance abuse.

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Senator Jeff Sessions
Questions for the Record
Judge Patti B. Saris

1. At your hearing, I asked you about the United States Sentencing Commission's Fiscal Year 2009 report. That report states that 56.8% of all cases nationwide resulted in sentences within the guidelines range, but only 34.9% of cases in Massachusetts resulted in a within-guideline-range sentence. Nationwide, only 11.8% of all cases ended with below-range sentences and cited *Booker* to justify the decision. In Massachusetts, that same category accounted for 33.5% of all cases. You stated that, considering all five years since *Booker*, your sentences have been consistent with the national average; however, you said your own percentage of out-of-guideline-range sentences may have been above or below that of the District of Massachusetts as a whole. I appreciated your candor as to that fact, and I also appreciated the fact that you expressed your willingness to provide the Committee with a list of your out-of-guideline sentences.

   a. Please provide a list of those cases in which you imposed an out-of-guideline-range sentence (excluding cases in which the prosecution sought an out-of-guideline-range sentence) and include a description of the nature of the case, the sentence you imposed, the sentence called for by the guidelines, and the reasons for your departure.

   See Attachment A.

   b. Please provide the statistics regarding what percentage of your sentencing decisions have been within the guideline range for the past five years, as well as the percentage of your sentencing decisions that were below-range based on your discretion post-*Booker* rather than, for example, a motion by the prosecution or a guideline-sanctioned departure.

   According to statistics from the United States Sentencing Commission, the percentage of defendants I sentenced within the Guideline range over this period was 56.4 percent. Nationally, the statistic was 59.4 percent. According to the Commission, the percentage of cases where I imposed a non-government sponsored below range sentence and "cited Booker/18 U.S.C. § 3553" was 13.6 percent. In contrast, nationally judges imposed non-government sponsored below guideline range sentences based on Booker/18 U.S.C. § 3553 in 8.7 percent of cases, and my colleagues in Massachusetts did so in 21.6 percent of cases.

   According to my own calculations, excluding the cases where the government moved for a below-guideline sentence, I downwardly varied in 33 out of 271 cases. In other words I varied downward based on 18 U.S.C. § 3553 without government motion in 12.2 percent of cases during the relevant period. Once again, these figures (13.6 percent and 12.2 percent) do not include cases where I imposed a below-range sentence based on a guideline sponsored departure, including motions pursuant to U.S.S.G. § 5K1.1.

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2. At your hearing, you stated that a major reason the percentage of within-guideline-range sentences imposed in the District of Massachusetts was far lower than the national percentage was due to the law regarding sentences for crack-cocaine possession. You made it clear that, after the Supreme Court's decisions allowing courts to deviate from the guidelines, you and other judges deviated from the guidelines in cases involving crack-cocaine possession. It seemed you were saying that judges deviated from the guidelines based on the severity of sentences imposed under the guidelines and statutory minimums for crack-cocaine possession, as opposed to the sentences imposed for powder cocaine possession.

   a. Do you acknowledge that the mandatory minimums and guideline sentences for crack-cocaine possession offenses were uniform as to similarly-situated offenders convicted of crack-cocaine possession?

      Yes, the mandatory minimums and guideline sentences for crack-cocaine possession offenses were uniform as to similarly-situated offenders.

   b. Do you agree that there must be uniformity among sentences in drug possession cases, regardless of the controlled substance in question?

      Yes, the offense levels should be uniform among all drug offenders who violate the same laws. Sentences may vary, however, depending on all the other factors a court must consider.

   c. Do you believe it is proper for judges to deviate from the sentencing guidelines based on their own determination that a mandatory minimum sentence is unjustified or has a disproportionate impact on one racial group?

      No. Judges should not deviate on these grounds.

   d. The statistics we discussed at the hearing that informed your answers were from Fiscal Year 2009. The United States Sentencing Guidelines were amended effective November 1, 2007, to substantially reduce the guideline sentencing disparity between powder and crack-cocaine. Despite this change in the guideline sentencing levels for crack-cocaine, the *Booker*-based below guideline sentencing rate for the District of Massachusetts *increased* significantly from 18.9% in Fiscal Year 2007 (before the Guidelines were changed) to 33.5% in Fiscal Year 2009. How do you explain this increase in *Booker*-based below range sentences within your District given that the crack-cocaine sentencing guideline were lower in 2009 than 2007?

      In FY 2009, according to Commission statistics, 22.1 percent of drug sentences nationally were related to crack. By contrast, 39.6 percent of drug sentences in the District of Massachusetts were related to crack. According to the Probation Department in the District of Massachusetts, and in my own experience, many judges varied below the Guidelines in crack cases in particular, especially after

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the Supreme Court's pronouncements in Kimbrough v. United States, 552 U.S. 85 (2007).

e. To the extent that your *Booker*-based below range sentencing rate in crack-cocaine cases was higher in 2009 than it was in 2007 when the guidelines were higher, please reconcile your increased sentencing rate with your testimony regarding concerns with crack-cocaine sentencing levels within the guidelines.

Although the amendments made a two level reduction in the offense levels, many of the people who appeared before me sold small amounts of crack, sometimes even less than a gram. In many crack cases the government recommended a below Guideline range, or did not object to a below Guideline sentence. In these cases, I typically only varied to a modest degree and often substituted community confinement in a half-way house or in-patient drug treatment after the term of incarceration.

3. According to the United States Sentencing Commission's 2009 Annual Report, the offense type with the highest within-guideline sentencing range was simple drug possession, with 90% of such cases resulting in a within-guidelines sentence. Manslaughter had the highest rate of above-range sentences based on *Booker*, at 11.9%. Conversely, child pornography and prostitution offenses had the highest rate of below-range sentences, at 32.5%.

a. I understand that many of these cases may have involved a government-sponsored departure, but do you think it is possible that the beliefs of judges about the nature and seriousness of particular offenses might be playing a role in the rates of above and below range sentencing, post-*Booker*?

Yes, it is possible that some judges believe that the Guidelines are too high in certain areas and too low in areas; therefore they vary. The Sentencing Commission must study those areas where there are high rates of variances and, where appropriate, address those concerns by amendments, which are, of course, reviewable by Congress. The role of the Chair must be to ensure that Guidelines are evidence-based and credible so that variances are minimized.

b. If not, what do you think explains this variance by offense?

See above.

4. A May 26, 2008 editorial in the *Worcester Telegram & Gazette* reported that you made a disturbing statement during a sentencing hearing. The case involved a man who sent a threatening email to a teenager that contained ethnic slurs. According to the editorial, you

> "properly declined to make community service part of the sentence. At the same time, she revealed a troubling bias that raises doubts about her ability to treat

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some defendants fairly. Noting his military discharge, she mused, 'I mean, I thought you couldn't be too violent for the military. I thought that's what they did.'"[1]

The newspaper's editors believed your statement displayed bias against members of the Military.

a. Did that article accurately report your comments at that sentencing hearing?

The remark was taken out of context. The defendant was charged with making false statements to a government agent in violation of 18 USC § 1001, but the underlying factual charges involved assaulting and making anti-Semitic comments to a man who was dating the defendant's girlfriend. Defendant had been discharged from the Marine boot camp because he had failed to disclose his anger management problems. I was deeply concerned that his violent background made him ineligible for the recommended community service. By the statement, I meant that if defendant was so violent that the military, which trains people to engage in combat, discharged him, he shouldn't be permitted/required to work in the community because he was inappropriately violent. I accepted the plea agreement, which was consistent with the Guidelines, and imposed a term of six months of home confinement, anger management classes, a stay-away order from the victim, an apology to the victim and a requirement that defendant visit the Holocaust Museum and write a three page report. I deeply regret any misunderstanding about the comment, and did not mean to imply that members of the military are violent people, except when required to be so in war.

b. If yes, do you think your feelings about members of the military will impact any policy judgments you make as a member of the sentencing commission?

I am strongly supportive of the men and women who serve in our military. My father and father-in-law both served in the military. My friends' children serve. I have only the most positive and respectful feelings toward the men and women who serve in the military.

5. Legal scholars generally recognize four purposes for imposing criminal sentences: retribution, incapacitation, rehabilitation and deterrence. Sometimes, these purposes may contradict one another. When such situations arise, the different purposes must be prioritized.

a. If the two were in conflict such that both could not be emphasized equally, would you emphasize deterrence or rehabilitation in determining an appropriate sentencing range?

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[1] *Injudicious Slap: Judge's Remark Defames Servicemen and Women*, WORCESTER TELEGRAM & GAZETTE, May 26, 2008, at A8.

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I would never emphasize defendants' interests in rehabilitation over the need to deter future criminal conduct, whether by the defendant or others. That said, once the deterrence function has been factored into a sentence, the court should consider rehabilitation when determining the conditions of supervised release after incarceration. However, rehabilitation must never be a substitute for deterrence. The most important purpose of the criminal justice system, including sentencing, is to deter criminal activity and protect public safety.

b. If you would emphasize rehabilitation, what effect do you think that emphasis might have on potential future offenders?

As noted above, I would not emphasize rehabilitation over deterrence. Nonetheless, rehabilitative tools often can serve a deterrence function. Courts should strive to prevent recidivism after a sentence of incarceration is complete by imposing strict conditions of supervised release and treatment through programs like drug courts and reentry programs. If a defendant fails to comply, he must be revoked.

6. Do you believe that mandatory minimum sentences are more likely to deter certain types of crime than discretionary or indeterminate sentencing?

Yes, mandatory minimums are more likely to deter certain kinds of crime than discretionary sentencing. However, Sentencing Guidelines are preferable to both indeterminate sentencing regimes and mandatory minimums because they anchor the sentence in a range that will typically be followed, but provide the court with needed flexibility for the extraordinary case.

7. Please describe with particularity the process by which these questions were answered.

With the help of my law clerks and staff, I reviewed all the criminal cases for the last five years, prepared the attached chart, and relied on statistics from the Sentencing Commission and my Probation Department.

8. Do these answers reflect your true and personal views?

Yes.

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ATTACHMENT A – Judge Patti B. Saris – Non-Government Sponsored Departures and Variances 2005-2010*

Case Name	Date of Judgment	Charges Convicted of/Plead to	Guideline Range	Sentence Imposed	Reason for Departure
U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Objio	3/31/2005	Passport Fraud (18 U.S.C. § 1542); Social Security Number Fraud (42 U.S.C. § 408(a)(7)(B))	6-12 months	12 months probation	Downward departure based on U.S.S.G. § 5H1.6 (Family Ties and Responsibilities). Defendant was a single mother with four children, one of whom was very ill.
U.S. v. Rodriguez de Reznde	4/6/2005	Production, Transfer or Possession of a Document Making Implement (18 U.S.C. § 1028(a)(5))	4-10 months	3 months	Downward variance of one month to take into account characteristics of the defendant, an illegal alien who had no prior record. He was working two menial jobs to send money back to his wife and child in Brazil. While in this country, he went to school and volunteered as a peer instructor to help other immigrants improve their English.
U.S. v. Nothmann	5/9/2005	Corruptly Obstruct & Impede the Due Administration of the Internal Revenue Service (26 U.S.C. § 7212); Use of False Social Security Number (42 U.S.C. § 408)	18-24 months	24 months home confinement	Downward departure based on U.S.S.G. § 5H1.4 (Extraordinary Physical Impairment). Government agreed.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005 2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Dinkins	11/14/2005	Mail Fraud (18 U.S.C. § 1341)	12-18 months	60 months probation (including 12 months community confinement)	Downward variance. I placed the defendant in a half-way house for 12 months because she is currently working three jobs (about 70 hours a week). This placement would enable her to work and pay back the restitution to the victim. If I had incarcerated her, she would have lost all three jobs and future gainful employment would have been unlikely.
U.S. v. Talbert	12/15/2005	Racketeering (18 U.S.C. § 1962(c)); Racketeering Conspiracy (18 U.S.C. § 1962(d)); Conspiracy to Murder in Aid of Racketeering (18 U.S.C. § 1959(a)(5))	135-168 months	57 months (giving credit for 78 months already served on state sentence)	Downward departure based on U.S.S.G. § 5G1.3(b)(1) (from the 1998 manual). I subtracted the time defendant already served on the state sentence, and pursuant to U.S.S.G. § 5G1.3(e), I had the sentence run concurrently with the remainder of the state sentence.
U.S. v. Singh	4/5/2006	Conspiracy (18 U.S.C. § 371); Obstruction of Justice (18 U.S.C. § 1505); Destruction of Evidence (18 U.S.C § 1519)	12-18 months	2 months	Downward variance based on multiple factors, including the fact that many others involved in the same conduct were either not prosecuted or received probation, and a sentence of 2 months incarceration was consistent with what other judges have sentenced similar defendants in other jurisdictions.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Solorio	6/16/2006	Conspiracy to Possess with Intent to Distribute Cocaine (21 U.S.C. § 846); Possession with Intent to Distibute Five Kilograms or More of Cocaine (21 U.S.C. § 841(a)(1))	151-188 months	120 months	Downward variance. The government agreed that a 120 month sentence (the mandatory minimum) was appropriate and did not oppose a variance.
U.S. v. Turner	7/17/2006	Felon in Possession of a Firearm (18 U.S.C. § 922(g)(1))	235-293 months	211 months	Downward variance by one offense level when case was remanded in light of Booker. Guideline range seemed disproportionately high given the nature and circumstances of the underlying offense. Due to the defendant's serious criminal history, I did not vary much.
U.S. v. Astoro	9/22/2006	Felon in Possession of a Firearm and Ammunition (18 U.S.C. § 922(g)(1)); Possession of Cocaine Base with Intent to Distribute (21 U.S.C. § 841(a)(1)); Possession of Heroin with Intent to Distribute (21 U.S.C. § 841(a)(1))	100-125 months	88 months	Downward departure based on U.S.S.G. § 5K2.0 (Aggravating or Mitigating Circumstances). The defendant had demonstrated extraordinary pre-sentence rehabilitation.
U.S. v. Hoffens	10/11/2006	Conspiracy to Distribute Five Kilograms or More of Cocaine (21 U.S.C. § 846)	33-41 months	33 months	Downward departure based on U.S.S.G. § 4A1.3 (Criminal History Inadequacy).
U.S. v. Rantz	10/12/2006	Filing False and Fraudulent Returns (26 U.S.C. § 7206(1))	18-24 months	15 months	Downward variance of three months below the Guideline range to reflect defendant's charitable acts prior to being informed of the tax investigation, particularly his role as a Big Brother.

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ATTACHMENT A --Judge Patti B. Saris – Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Brandao	12/8/2006	Racketeering (18 U.S.C. §1962(c)); Racketeering Conspiracy (18 U.S.C. 1962(d)); Assault in Aid of Racketeering (18 U.S.C. § 1959(a)(3)); Use of Firearm in Relation to a Crime of Violence (18 U.S.C. 924(c))	Effectively life sentence if sentences run consecutively.	333 months (with sentences running concurrently)	Downward variance based on time served in state custody by agreement of the government. The Court ran the sentences concurrently because his involvement in the crime was less substantial than a co-defendant's who was sentenced to 72 months as a result of a plea agreement, but who the government believed was actually the one who pulled the trigger.
U.S. v. Wade	1/8/2007	Manufacturing Counterfeit Obligations or Securities (18 U.S.C. § 471); Transfer and Delivery of Counterfeit Obligations or Securities (18 U.S.C. § 473)	15-21 months	7 months (followed by 3 months in-patient drug treatment)	Downward departure based on U.S.S.G. §§ 4A1.3 (Criminal History Inadequacy), 5K2.0 (Aggravating or Mitigating Circumstances). I gave defendant credit for time spent in an in-patient facility during pretrial release and the mandatory additional time in in-patient drug treatment I gave him on supervised release.
U.S. v. Herrera-Martinez	4/5/2007	Aggravated Identity Theft (18 U.S.C. § 1028(A)); Knowingly Converting Public Money, Property (18 U.S.C. § 641); Use of Another's Social Security Number (42 U.S.C. § 408(a)(7)(B))	30-37 months	24 months (the mandatory minimum)	Downward departure based on U.S.S.G. § 2B1.1 Application Note (19)(A)(vi)(III) (Downward Departure Consideration). Defendant used another's identity to get subsidized housing for herself and her son. I found that the economic loss overstated the seriousness of the offense.

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ATTACHMENT A - -Judge Patti B. Saris -- Non Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Evelyn Diaz	4/27/2007	Transporting a Minor to Engage in Prostitution (18 U.S.C. § 2423(a)); Sex Trafficking of Children (18 U.S.C. § 1951)	151-188 months	108 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity). Downward variance based on defendant's horrific personal history. Defendant's father sexually abused her from the age of four; intercourse began when she was nine; when she was ten, she was diagnosed with a sexually transmitted
U.S. v. Conway	5/7/2007	Mail Fraud (18 U.S.C. § 1341)	121-151 months	84 months	Downward departure based on U.S.S.G. § 5H1.4 (Physical Condition). I departed downward because, among other things, defendant's incurable tumor created an extraordinary physical condition.
U.S. v. Guerrero	5/9/2007	Illegal Re-entry of a Deported Alien (8 U.S.C. § 1326(a)(b)(2))	41-51 months	40 months	Downward variance to reflect one month credit for defendant's time in ICE custody.
U.S. v. Lara	6/19/2007	Illegal Re-entry of Deported Alien (8 U.S.C. § 1326)	46-57 months	45 months	Downward variance to reflect one month credit for defendant's time in ICE custody.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Berrios	7/18/2007	Conspiracy to Distribute Cocaine (21 U.S.C. § 846); Distribution of Cocaine (21 U.S.C. § 841(a)(1))	151-188 months	145 months (followed by 12 months community confinement)	Downward variance. I gave the defendant a six month variance based upon his pre-indictment effort at rehabilitation by joining the Strive Program. Instead, I substituted as a condition of supervised release that he remain 12 months in a community confinement center so that he would have no contact with gangs, and would get drug treatment, psychiatric counseling to deal with his abuse as a child, anger management counseling, and vocational training.
U.S. v. Da Silva	10/31/2007	Transfer of False Identification Documents (18 U.S.C. § 1028(a)(2))	4-10 months	2 months	Downward departure under U.S.S.G. § 5K2.0 (Aggravating or Mitigating Circumstances). I gave defendant credit for two months, which the parties agreed she was likely to spend in ICE custody while awaiting deportation.
U.S. v. Badgett	11/19/2007	Distribution of Cocaine Base (21 U.S.C. §§ 841(a)(1), 860)	46-57 months	43 months (followed by 6 months community confinement)	Downward variance of three months. I imposed, instead, a condition of supervised release that defendant spend 6 months in a community confinement center in Lawrence, Mass. Both parties agreed with the variance because the time in the half

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ATTACHMENT A – Judge Patti B. Saris – Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity)
U.S. v. Serrano	11/20/2007	Distribution of Cocaine Base (21 U.S.C. § 841(a)(1))	37-46 months	31 months	Downward variance, without objection of the government, based on the fact that defendant promptly told the government he planned to plead guilty at the detention proceeding.
U.S. v. Rivera	1/4/2008	Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine (21 U.S.C. § 846); Possession of Cocaine with Intent to Distribute (21 U.S.C. § 841(a)(1))	46-57 months	40 months	Downward variance by six months because of defendant's characteristics. Although defendant had an extremely troubled youth bouncing between homes in foster care, at the time of sentencing he had had steady employment and had diligently paid his child support. He had no serious adult convictions.
U.S. v. Allen	1/7/2008	Distribution of Cocaine Base (21 U.S.C. §§ 841(a)(1), 860)	188-235 months	84 months	Downward departure based on U.S.S.G. §§ 4A1.3 (Criminal History Inadequacy), 5H1.3 (Mental and Emotional Condition).
U.S. v. Diaz	5/28/2008	Conspiracy to Commit Offenses Against the United States (18 U.S.C. § 371; 18 U.S.C. § 1591)	57-71 months	51 months	Downward variance based on the fact that defendant would be deported. He had lived here since he was 2 years old and was a lawful resident.
U.S. v. Charlton	6/9/2008	Felon in Possession of Firearm and Ammunition (18 U.S.C. § 922(g)(1))	235-293 months	204 months	Downward departure based on U.S.S.G. § 5K2.10 (Victim's Conduct). The defendant was attacked while he was sitting in his car. He told the police he procured the gun to protect himself.

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ATTACHMENT A - Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Deas	6/23/2008	Distribution of Cocaine Base (21 U.S.C. § 841(a)(1))	151-188 months	72 months	Downward variance based on the fact that defendant was convicted of one sale of 0.17 to 0.35 grams of crack.
U.S. v. Nguyen	9/24/2008	Distribution of More than 50 Grams of MDMA and Methamphetamine (21 U.S.C. § 841(a)(1)); Conspiracy to Distribute and Possession with Intent to Distribute MDMA and Methamphetamine (21 U.S.C. § 846); Felon in Possession of a Firearm and Ammunition (18 U.S.C. § 922(g)(1))	262-327 months	226 months	Downward variance based on defendant's childhood deprivation and trauma as a Vietnamese "boat person," as documented by two psychologists. Still, I did not sentence at the statutory minimum as requested by defense counsel because defendant's history as a career offender involved in drugs, guns, and violence demonstrated a likelihood of recidivism. I imposed a life term of supervised release.
U.S. v. DeLeon	10/14/2008	Possession with Intent to Distribute and Distribution of Cocaine Base (21 U.S.C. § 841(a)(1))	78-97 months	66 months	Downward variance based on defense motion for a sentence outside guidelines to which the government did not object. I rejected the plea to Count 1 entered pursuant to Fed. R. Crim. P. 11(C)(1)(c) because the drug amount was too low. I calculated the guideline range based on relevant conduct, and sentenced based on the remaining counts. The Government agreed to drop Count 1, the conspiracy count, and agreed to this sentence.

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ATTACHMENT A -- Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Chavez-Vargas	11/3/2008	Unlawful Reentry of Deported Alien (8 U.S.C. § 1326)	10-16 months	8 months	Downward variance to give defendant credit for the one month that the defendant served in administrative ICE custody.
U.S. v. Mendez	11/26/2008	Conspiracy to Possess with Intent to Distribute and to Distribute at Least 500 Grams of Cocaine (21 U.S.C. § 846); Possession with Intent to Distribute and Distribution of at Least 500 Grams of Cocaine (21 U.S.C. § 841(a)(1))	46-57 months	36 months	Downward departure based on U.S.S.G. § 5K2.20 (Aberrant Behavior).
U.S. v. Levasseur	12/15/2008	Unlawful Receipt in Interstate Commerce in the Course of Commercial Activity, Parts of an Endangered Species (16 U.S.C. §§ 1538(a)(1)(E), 1540(b)); Unlawful Purchase of a Marine Mammal or Marine Mammal Product (16 U.S.C. §§ 1372(a)(4)(B), 1375(b))	18-24 months	6 months home confinement with an electronic bracelet + 60 months probation	Downward variance based on defendant's advanced age and poor health, and to avoid unwarranted disparities among defendants; one other defendant received probation. However, straight probation would be inappropriate here because of the need to deter future violations of the Endangered Species Act by selling sperm whale teeth. I imposed a fine at the high end of the fine range ($40,000).

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Kaitting	12/22/2008	Conspiracy (18 U.S.C. § 371)	37-46 months	30 months	Downward variance to reflect the fact that defendant was physically and sexually abused as a child and abused in her marriage. She was not a leader or organizer and was only involved in the conspiracy for 2-3 months.
U.S. v. Goodman	1/20/2009	Distribution of Cocaine Base Within 1000 Feet of a Public Housing Project (21 U.S.C. §§ 841(a)(1), 860); Theft of Public Money (21 U.S.C. § 853)	15-21 months	12 months + 1 day (followed by 8 months community confinement)	Downward variance based on the fact that defendant was convicted of selling less than a gram of crack and had only a juvenile conviction.
U.S. v. Taylor	1/21/2009	Felon in Possession of a Firearm and Ammunition (18 U.S.C. § 922(g)(1))	110-137 months	72 months (followed by 6 months community confinement)	Downward departure based upon U.S.S.G. §§ 4A1.3 (Criminal History Inadequacy), 5K2.0 (Aggravating or Mitigating Circumstances). The defendant exhibited extraordinary rehabilitation by helping to facilitate a ceasefire in gang warfare in the city of Boston. He was supported by the Ten Point Coalition and other community groups.
U.S. v. Johnson	1/28/2009	Distribution of Cocaine Base Within 1000 Feet of Public Housing Project (21 U.S.C. §§ 841(a)(1), 860)	41-51 months	36 months (followed by 6 months community confinement)	Downward variance in order to take into account the requirement that defendant spend six months in a halfway house as a condition of his supervised release and the crack/powder disparity.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Rodriguez	2/2/2009	Conspiracy to Distribute 5 Grams or More of Cocaine Base (21 U.S.C. § 846); Distribution of 5 Grams or More of Cocaine Base (21 U.S.C. § 841(a)(1)); Engaged in the Business of Dealing in Firearms without a	121-151 months	120 months	Downward variance without government objection.
U.S. v. Richard	2/4/2009	Conspiracy to Possess with Intent to Distribute and to Distribute Oxycodone (21 U.S.C. § 846); Possession with Intent to Distribute and Distribution of Oxycodone (21 U.S.C. § 841(a)(1))	180-210 months	168 months (followed by 12 months community confinement)	Downward departure based on U.S.S.G. § 4A1.3 (Criminal History Inadequacy). Downward variance to substitute 12 months in a community confinement center for 12 months in prison in order to reflect defendant's efforts at rehabilitation and provide an opportunity for drug treatment in
U.S. v. Downey	2/23/2009	Bank Robbery (18 U.S.C. § 2113(a))	37-46 months	24 months	Downward departure based on U.S.S.G. § 4A1.3 (Criminal History Inadequacy). Downward variance for defendant's successful drug rehabilitation. I downwardly varied by about the amount of time she spent successfully in the in-patient drug treatment program.
U.S. v. Weeden	2/26/2009	Felon in Possession of a Firearm (18 U.S.C. § 922(g)(1))	10-16 months	Time served (3 weeks) followed by 5 months community confinement	Downward variance. Defendant did not know that his prior conviction in New York, for which he received a suspended sentence, made him a felon. While not a legal defense, it was a mitigating factor.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. McNutt	2/27/2009	Conspiracy (18 U.S.C. § 371)	30-37 months	24 months	Downward departure based on U.S.S.G. § 4A1.3 (Criminal History Inadequacy), and variance based on drug and alcohol rehabilitation. Defendant will participate in drug court program (C.A.R.E.) upon release.
U.S. v. Taylor	3/16/2009	Aiding and Assisting in the Preparation of False Tax Returns (26 U.S.C. § 7206(2))	30-37 months	2 months incarceration (followed by 12 months community confinement)	Downward departure based on U.S.S.G. § 5H1.11 (Charitable Service and Good Works), and 18 U.S.C. § 3553(a) based on multiple factors, including permitting defendant to continue teaching and otherwise working with children in music. Resentenced on remand post-Booker. See United States v. Taylor, 532 F.3d 68 (1st Cir. 2008).
U.S. v. Brown	3/17/2009	Bank Robbery (18 U.S.C. § 2113(a))	151-188 months	120 months (followed by 12 months in-patient drug treatment)	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity), and variance based on 18 U.S.C. § 3553(a) factors.
U.S. v. Kennedy	4/6/2009	Bank Robbery (18 U.S.C. § 2113(a))	151-188 months	96 months (followed by one year in-patient drug treatment program)	Downward departure based on U.S.S.G. § 4A1.3 (Criminal History Inadequacy). Downward variance based on the fact that a co-defendant received 46 months, although the co-defendant was the one who actually committed the robbery.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2 13 (Diminished Capacity).
U.S. v. Perry	4/14/2009	Assault on a Federal Officer (18 U.S.C. § 111(a)(1))	37-46 months	30 months (followed by 6 months in-patient drug and alcohol treatment + next 6 months community confinement)	Downward variance by 7 months and substitution of 12 months of in-patient and community confinement.
U.S. v. Scott	4/16/2009	Possession of More than 5 Grams of Cocaine Base (21 U.S.C. § 844)	77-96 months	66 months (followed by 90 days in-patient drug treatment + 90 days in a sober house)	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Koziol	6/5/2009	Attempted Possession with Intent to Distribute Oxycodone (21 U.S.C. § 846)	57-71 months	48 months	Downward variance to take into account the extra time defendant was likely to spend in detention as a result of his immigration status.
U.S. v. Goncalves	6/22/2009	Conspiracy to Possess Cocaine Base with Intent to Distribute (21 U.S.C. § 846)	46-57 months	28 months (followed by 6 months community confinement)	Downward variance to reduce the disparity between the crack and powder guidelines.
U.S. v. Correno-Lozano	7/13/2009	Unlawful Re-entry of a Deported Alien (8 U.S.C. § 1326)	24-30 months	23 months	Downward variance of one month to reflect time spent in ICE custody.
U.S. v. Vazquez	9/29/2009	Felon in Possession of a Firearm (18 U.S.C. § 922(g)(1))	30-37 months	15 months	Downward variance to reflect the unusual circumstances of the offense. Defendant went to a firing range for target practice. This case was outside the heartland of felon-in-possession cases.

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ATTACHMENT A - Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Bailey	10/29/2009	Possession of a Firearm and Ammunition by a Felon (18 U.S.C. § 922(g)(1))	110-120 months	96 months (followed by one year in a community confinement center)	Downward variance because, among other things, defendant was sentenced for his second predicate conviction only eight days within the 10 year qualifying window under U.S.S.G. § 4A1.2(e)(2).
U.S. v. Cirilo-Munoz	12/9/2009	Conspiracy to Possess with Intent to Distribute Cocaine (21 U.S.C. § 846); Possession of 500 Grams or More of Cocaine with Intent to Distribute (21 U.S.C. § 841(a)(1))	57-71 months	45 months	Downward variance based on defense motion for a sentence outside of the advisory guidelines to which the government did not object.
U.S. v. Katona	12/14/2009	Conspiracy (18 U.S.C. § 371)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.12 (Coercion and Duress). The defendant participated in the conspiracy under duress as a result of debt. The loan sharks threatened him and his family with violence if he did not participate.

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ATTACHMENT A --Judge Patti B. Saris -- Non-Government Sponsored Departures and Variances 2005-2010*

U.S. v. George	2/8/2005	Tax Evasion (26 U.S.C. § 7201)	37-46 months	30 months	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity).
U.S. v. Ciapciak	12/15/2009	Mail Fraud (18 U.S.C. § 1341); Subscribing False Tax Return (18 U.S.C. § 7206(1))	46-57 months	41 months	Downward variance. The defendant, an attorney, stole more than $1.2 million from his client over a six-year period of time. However, before the crime, defendant was a leader in the community and in the Bar, and engaged in charitable works. Moreover, the 2-level enhancement under U.S.S.G.§ 2T1.1(b)(1) seemed like double counting because the fraud grouping adequately took into account the criminal activity.
U.S. v. Ekanem	4/7/2010	Aiding and Assisting in the Preparation of False Tax Returns (26 U.S.C. § 7206(2))	27-33 months	18 months	Downward variance to avoid unwarranted disparities among defendants.
U.S. v. Richard	7/22/2010	Making, Uttering, and Possessing Forged Securities (18 U.S.C. § 513(a))	12-18 months	24 months probation; the first four months to be spent in a community confinement center.	Downward departure based on U.S.S.G. § 5K2.13 (Diminished Capacity), and defense motion to which the government did not object

*This chart does not include the following cases: 1) cases where I departed due to government motion based on the defendant's substantial assistance, see U.S.S.G. § 5K1.1, or where I amended a sentence upon government motion pursuant to Federal Rule of Criminal Procedure 35, which provides for amended judgments in cases of a defendant's post-sentencing substantial assistance. In total, during the relevant time period, I departed based on Section 5K1.1 and Rule 35 in twenty-nine (29) cases; 2) cases where I departed or varied downward after the government moved for a below-guideline-range sentence. In total, there were twenty-two (22) such cases; 3) U.S. v. Zayas, 04-CR-10299, where the defendant waived a pre-sentence report by the Probation Department, which would have calculated sentencing guidelines. The parties agreed to a sentence of time served. The chart also counts only one judgment per defendant, meaning that amended judgments, including cases where a defendant was revoked and resentenced, are not included.

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Responses of Michael H. Simon
Nominee to be United States District Judge for the District of Oregon
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 our written Constitution and the enduring and fundamental principles that its words express do not change over time except by formal amendment ratified in accordance with Article V of the Constitution.

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: Justice Brennan made these comments during a speech at Georgetown University in October 1985 and not in a majority opinion from the Supreme Court. Constitutional interpretation must be faithful to the text of the Constitution and to the enduring and fundamental principles that its words express. It is not the proper role of a federal judge in interpreting the law to make policy decisions, including decisions that may be transformative. That role properly belongs to Congress and the President.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

   Response: The text of our written Constitution does not change except by valid amendment. When a lower federal court employs judicial doctrine to aid in the interpretation of a constitutional provision, the principles of precedent and *stare decisis* require the judge faithfully to follow the understandings of the Constitution that have been directed by the Supreme Court and any other binding appellate courts. If confirmed by the Senate, I will faithfully follow all governing precedent.

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: It is essential for a judge to listen with an open mind and without bias or prejudice to all parties, to treat all parties respectfully and politely, and to understand all of the relevant facts and circumstances. To the extent that empathy assists a judge in fulfilling these responsibilities, it is appropriate. To the extent, however, that empathy may imply that a judge should fail to apply the law to the facts or should fail to be neutral and impartial, that understanding of empathy plays no proper role in the consideration of a case by a judge.

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5. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?

Response: The Supreme Court has held that Congress' power under the Commerce Clause is broad, *see Wickard v. Filburn*, 317 U.S. 111 (1942); *Gonzales v. Raich*, 545 U.S. 1 (2005), but not unlimited. *See United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

6. What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?

Response: The Supreme Court held in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), that the Second Amendment confers on private individuals a right to keep certain firearms, including handguns, at home for self-defense. In *Heller*, the Supreme Court also stated that laws forbidding the possession of firearms by convicted felons and the mentally ill, laws prohibiting the carrying of firearms in sensitive places such as schools and government buildings, and laws imposing conditions and qualifications on the commercial sale of arms are "presumptively lawful regulatory measures." *Heller*, 128 S. Ct. at 2816-17. In *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), the Supreme Court held that the Second Amendment right to keep and bear arms is fully applicable to the States by virtue of the Fourteenth Amendment. In *McDonald*, the Supreme Court left for future decisions the development of what specific limitations remain on that Second Amendment right and what judicial doctrine or level of review should be employed in evaluating future claims of an infringement of that right.

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: In light of the questions left open by the Supreme Court in both *Heller* and *McDonald*, the scope of any remaining limitations on the individual Second Amendment right to keep and bear arms, as well as the development of the judicial doctrine to be employed in evaluating claims of an infringement of that right, are matters that will likely arise in future lawsuits.

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: Under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy delivered the Supreme Court's majority opinion, which is binding on all lower federal courts.

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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 by the Senate, I will faithfully follow all governing precedent.

b. How would you determine what the evolving standards of decency are?

Response: If confirmed by the Senate, I will faithfully follow all governing precedent, including all governing judicial doctrine for making that 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: In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court rejected the argument that the death penalty was unconstitutional in all cases. If confirmed by the Senate, I will faithfully follow all governing precedent.

d. What factors do you believe would be relevant to the judge's analysis?

Response: In *Graham v. Florida*, 130 S. Ct. 2011, 2022 (2010), the Supreme Court stated that 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).

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 the Supreme Court or other governing precedent directs otherwise.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: The primary job of a district court judge is to apply the law, including all governing precedent, to the facts in the case that is properly before the court. Looking to foreign countries for "wise solutions" or "good ideas" appears to involve a search for the best policy responses to a problem, but the selection of a policy is a decision to be made by the legislative or executive branches of government, not by the judicial branch deciding a specific case presented in court.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

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Response: None, unless the Supreme Court or other governing precedent directs 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, unless the Supreme Court or other governing precedent directs otherwise.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless the Supreme Court or other governing precedent directs otherwise.

9. In remarks before a conference sponsored by the Oregon Lawyers Chapter of the American Constitution Society on May 23, 2007, you stated:

> **We also do not have agreement on the relevant history and meaning of the constitutional provisions. . . . The historical record is both sufficiently sparse to not tell us very much and sufficiently rich to provide support for all positions, separationist, antiseparationist, and almost everything in between. There is also support for the conclusion that the Founders did not believe that their intentions and understanding should bind future generations. That may be the only real 'original intent' of the Founders. There is also support for the proposition that the concept of 'separation of church and state' was an 'unfolding and evolving' idea at the time of the Founders . . . ."**

a. Given your statement, do you disagree with originalists who believe the Constitution should be interpreted based on the Founder's original understanding of the meaning of the text at the time it was written?

Response: The Founders' original understanding of the meaning of the text at the time it was written is a very important, but not exclusive, consideration in the interpretation of the Constitution. If confirmed by the Senate, I will faithfully follow all governing precedent.

b. Why do you believe the Founders did not believe their intentions and understanding should bind future generations?

Response: In THE FEDERALIST No. 37 (1788), James Madison wrote: "All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." In certain areas of the Constitution, the Founders used precise and unambiguous words and phrases. In other areas, however, the Founders deliberately used more general words and phrases in order to express fundamental and enduring principles, rather than to dictate specific outcomes in

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specific applications. In addition, concerning the Establishment Clause in particular, the Founders' views concerning the proper relationship between church and state were varied and changing, even within their own lifetimes, a fact of which they were aware.

c. Should judges look to the original meaning?

Response: Yes, judges should look to original meaning, but not as the exclusive method of constitutional interpretation.

d. If not, what method of judicial interpretation should a judge use? And, what method of interpretation would you use, if confirmed?

Response: If confirmed by the Senate, I will faithfully follow all governing precedent. In the absence of such precedent, I would begin with both the text and context and all interpretative judicial doctrines directed by the Supreme Court or other governing precedent. If further interpretive methodology were needed, I would look both to the original meaning (or understanding) of the text and to the fundamental and enduring principles expressed by the text, as well as to history and tradition. I would not, however, substitute my own policy preferences or personal values for the policy preferences, values, or choices determined by the legislative or executive branches.

10. Does the oft-quoted phrase "wall of separation of church and state" appear anywhere in the Constitution?

Response: No, the phrase "wall of separation of church and state" does not appear within the text of the Constitution.

a. To what extent does this phrase, authored by Thomas Jefferson in his letter to the Danbury Baptists, reflect your view of the proper understanding of the Constitution's Establishment Clause?

Response: The phrase "wall of separation between church and state" first appeared in a letter from President Thomas Jefferson to the Danbury Baptist Association in 1802. Since then, the Supreme Court has adopted that language "as an authoritative declaration of the scope and effect" of the Constitution's Establishment Clause. *See Reynolds v. United States*, 98 U.S. 145, 164 (1878); *Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947). If confirmed by the Senate, I will faithfully follow all governing precedent.

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Responses of Michael H. Simon
Nominee to be United States District Judge for the District of Oregon
to the Written Questions of Senator Jeff Sessions

1. **You have been heavily involved with the ACLU of Oregon throughout your legal career, including as a member of the Board of Directors from 1997 to 2004, Vice President for Legislation from 1997 to 1998, and Vice President for Litigation from 2000 to 2004. At your hearing, I asked whether you agreed with the ACLU's positions regarding the legalization of drugs and the death penalty. You responded, in part, by stating: "I have been involved as a volunteer lawyer for the ACLU for a number of years and it certainly is true in my case, as well as, frankly, in almost everyone's that I have interacted with, that we do not necessarily agree with all of the positions taken by the American Civil Liberties Union." Please describe in detail the legal or policy positions advocated by the ACLU with which you disagree.**

   Response: As a member of the Lawyers Committee of the ACLU of Oregon, I participated in meetings to decide whether the ACLU of Oregon would accept or decline requests to provide legal representation in specific matters and whether the ACLU would appear as an *amicus curiae* in specific litigation. The decisions of the Lawyers Committee were made by majority vote, and its deliberations and vote counts were consistently treated as confidential and subject to the attorney-client privilege under Oregon law. Thus, all that I can say in direct response to this question is that on some occasions my vote in the Lawyers Committee was in the minority. In addition, under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts.

2. **At your hearing, you testified that the primary focus of your "activities for the American Civil Liberties Union of Oregon has been involved in First Amendment issues."**

   a. **According to the ACLU, the Pledge of Allegiance is unconstitutional and should not be recited in schools because it includes the words "under God."**

      i. **Do you personally agree with that position? Please explain your answer.**

         Response: Under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent.

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ii. If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain your answer.

Response: Please see my response to 2(a)(i) above.

b. As a result of several lawsuits brought by the ACLU, communities must remove all vestiges of America's history and heritage that include religious symbols on public lands or on city or county seals. This includes Ten Commandments monuments and crosses – even when those symbols honor those who died in service to their country.

i. Do you agree with that position? Please explain your answer.

Response: Under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent. Moreover, I note that the decisions from the Supreme Court in this area show that the constitutional analysis regarding the display of religious symbols on public lands is highly dependent on the specific facts presented in a particular case. For example, in *Van Orden v. Perry*, 545 U.S. 677 (2005), the Supreme Court upheld against constitutional challenge the display of a monument containing the Ten Commandments alongside other monuments on public grounds near the Texas Capitol. In *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005), however, the Supreme Court struck down on constitutional grounds the stand-alone posting of the Ten Commandments in a county courthouse. In addition, in *Lynch v. Donnelly*, 465 U.S. 668 (1984), the Supreme Court upheld against constitutional challenge a Christmas display in a public park that included a nativity scene alongside secular symbols of the Christmas holiday season. In *Allegheny County v. American Civil Liberties Union*, 492 U.S. 573 (1989), however, the Supreme Court struck down on constitutional grounds a Christmas display in a prominent position in a county courthouse that included a nativity scene and a banner reciting in Latin "Glory to God in the Highest," and lacking any secular symbols of the holiday season. Further, in *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753 (1995), the Supreme Court upheld against constitutional challenge the display of a cross placed by the Ku Klux Klan in a state-owned park in front of the Ohio statehouse. If confirmed by the Senate, I will faithfully follow all governing precedent.

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ii. **If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain your answer.**

Response: Please see my response to 2(b)(i) above.

c. **In 2008, the ACLU of Northern California joined an amicus brief that argued that doctors could not refuse to give infertility treatment to gay or lesbian patients on the basis of the doctors' personal religious beliefs.**

i. **Do you agree with that position? Please explain your answer.**

Response: I am not familiar with the amicus brief from the ACLU of Northern California referred to in this question. In addition, under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent.

ii. **If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain your answer.**

Response: Not applicable.

d. **The ACLU has opposed tax exemptions for churches. For example, in 2008, the Alaskan arm of the ACLU argued that it was unconstitutional for the state Legislature to restrict taxing homes owned by a church.**

i. **Do you personally agree with that position? Please explain your answer.**

Response: I am not familiar with the legal position taken by the ACLU of Alaska referred to in this question. In addition, under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, under all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent.

ii. **If you do not agree with the ACLU's position, did you ever express your concern or opposition to their position? Please explain your answer.**

Response: Not applicable.

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3. **In 2007, you spoke before the Oregon Board of Rabbis and expressed concern that Americans' civil liberties have been threatened because of measures undertaken after the terrorist attacks of September 11, 2001. In the speech, you said that "our thinking would be clearer and our solutions more effective if we stop thinking about – and stop calling – terrorism a 'war' or a 'crime.'" You argued that calling military action against terrorism a "war" "implies that a military conquest is the best tool for this fight" and that terminology "may limit more creative and even more successful techniques to promote and protect our security."**

   a. **Please provide examples of the "more creative and even more successful techniques" to which you referred in your speech.**

      Response: In my March 2007 presentation to the Oregon Board of Rabbis, entitled "Preserving Civil Liberties and Security: What We Can Learn from History, Language, and First Principles," I commented that some refer to our response to the threat of global terrorism as a "war on terror" while others speak of terrorist acts as "crimes." I attempted to explain that, in my view, neither a "law enforcement" model nor a "law of war" model was entirely accurate or particularly helpful in responding to what appears to be a *sui generis* problem that presents both a global and a national security threat. I argued that we should not try to formulate legal and policy responses in a framework designed either for domestic criminal activity (which includes, but is not limited to, punishing past criminal acts in the expectation that such punishment or the risk of punishment may serve to deter both the offender and others from future criminal acts) or for traditional wartime activity (against a uniformed enemy serving a foreign sovereign capable of negotiating for peace). I asserted that neither model applied to the global threat of terrorism, and I suggested that the best way both to preserve civil liberties and promote security would be for Congress, working with the President, to develop a new framework or paradigm for responding to and preventing global terrorism. In my speech, I did not offer any specifics for such a framework, which would require difficult and studied policy decisions by elected officials in consultation with others having substantive expertise in various fields that I do not have.

   b. **Do you believe that detainees captured on the battlefield should be tried in Article III courts, subject to all of the typical rules of evidence and procedure?**

      Response: This is not an area in which I have expertise. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent.

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c. If a detainee makes a self incriminating statement on the battlefield, but he is not Mirandized prior to interrogation, should that statement be suppressed?

Response: This is not an area in which I have expertise. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent.

4. At a May 23, 2007 Conference on Religious Freedom and the Law sponsored by the Oregon Lawyers Chapter of the American Constitution Society, you stated: "There is . . . support for the conclusion that the Founders did not believe that their intentions and understandings should bind future generations."

a. Do you equate the originalist understanding of constitutional interpretation with an attempt to discern the framers or ratifiers' "original intent" or "original understanding"?

Response: Yes.

b. Do you reject originalism as a method of interpretation even if it is aimed at determining the original public meaning of the constitutional text (i.e., what the words, in context, would have meant to intelligent, reasonably informed readers at the time the words were enacted)?

Response: No. The Founders' (or ratifiers') original understanding of the meaning of the text at the time it was written (or ratified) is a very important, but not exclusive, consideration in the interpretation of the Constitution. If confirmed by the Senate, I will faithfully follow all governing precedent.

c. Under what circumstances should the text, as written, not control constitutional decision making?

Response: If confirmed by the Senate, I will faithfully follow all governing precedent. In the absence of such precedent, I would begin with both the text and context and all interpretative judicial doctrines directed by the Supreme Court or other governing precedent. If further interpretive methodology were needed, I would look both to the original meaning (or understanding) of the text and to the fundamental and enduring principles expressed by the text, as well as to history and tradition. I would not, however, substitute my own policy preferences or personal values for the policy preferences, values, or choices determined by the legislative or executive branches.

d. Also at that conference, you stated "[t]here is . . . support for the proposition that the concept of 'separation of the state and the

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church' was an 'unfolding and evolving' idea at the time of the Founders . . . ."

i. Do you believe that the meaning of the constitutional text changes over time?

Response: No. The text of our written Constitution and the enduring and fundamental principles that its words express do not change over time except by formal amendment ratified in accordance with Article V of the Constitution.

ii. Please identify the "support" to which you referred.

Response: In THE FEDERALIST No. 37 (1788), James Madison wrote: "All new laws, though penned with the greatest technical skill, and passed on the fullest and most mature deliberation, are considered as more or less obscure and equivocal, until their meaning be liquidated and ascertained by a series of particular discussions and adjudications." In certain areas of the Constitution, the Founders used precise and unambiguous words and phrases. In other areas, however, the Founders deliberately used more general words and phrases in order to express fundamental and enduring principles, rather than to dictate specific outcomes in specific applications. In addition, concerning the Establishment Clause in particular, the Founders' views concerning the proper relationship between church and state were varied and changing, even within their own lifetimes, a fact of which they were aware.

iii. Do you believe the Constitution is a "living" document?

Response: No. The text of our written Constitution and the enduring and fundamental principles that its words express do not change over time except by formal amendment ratified in accordance with Article V of the Constitution.

5. At your hearing, Senator Whitehouse asked for your comments on the following:

"It is my belief that judges must do a number of things. One is to respect the role of Congress as the duly elected representatives of the American people in our system of American democracy. Two is to decide cases based on the facts and the law, nothing else. Three is to not prejudge any case, but listen to every party that comes before you, powerful or weak, rich or poor, irrespective of station or position; to respect the precedent that the Supreme Court and the circuit courts for your districts have laid down and the precedent that exists within your own district; and, finally, to limit yourself in your decisions to the issues that the court must decide that are properly

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presented before it. It is my belief that those disciplines, which must be self-imposed by judges, are key to the successful operation of the carefully balanced system of government that the Founding Fathers created and that we all honor and enjoy the fruits of."

You responded:

"I, too, agree with everything that you have just described as the qualities and character of judging."

Do you also agree that when Congress, in its role as the legislative branch, enacts a law that is contrary to the Constitution or takes action not authorized by some enumerated power therein, a court must either invalidate the Congressional action or, where appropriate, limit its application on an "as applied" basis?

Response: The laws enacted by Congress are entitled to great deference and a presumption of constitutionality in our democratic republic. If, however, Congress (or any other branch of government) exceeds its constitutional authority, and if that question is properly presented before a federal court, and if there is no other appropriate way to avoid a constitutional violation, then the Supreme Court has held that it is the responsibility of the federal courts either to invalidate the Congressional action or, where appropriate, to limit its application on an "as applied" basis.

6. **What, in your view, is the proper role of a judge?**

Response: The rule of law is the cornerstone of our democratic republic. It is the responsibility of the judge to determine the applicable law, to interpret the law when interpretation is required, and to apply the law to the facts presented and fairly determined. In performing these responsibilities, the judge must always recognize the limited role of the court and must always act impartially, neutrally, and fairly, without bias, sympathy, or prejudice for or against any party. The judge must also treat all who appear before the court with courtesy, civility, and respect, recognizing that every matter before the court is important to the parties in that matter and will likely affect how those parties believe they have been treated by their government. The judge must also act with diligence, as well as care, to ensure that decisions are not only correct, well-reasoned, and clearly explained, but also timely delivered. In presiding over trials, a judge must ensure that all parties receive a fair trial under the law and that the time spent by juries, witnesses, and parties are efficiently used. Finally, the judge must at all times exhibit the highest standards of ethics and integrity and ensure that not only is our system of justice under the law fair in fact but also fair in appearance.

7. **In 2008, President Obama said,**

> **"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**

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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."

Do you agree with the President's statement?

Response: It is essential for a judge to listen with an open mind and without bias or prejudice to all parties, to treat all parties respectfully and politely, and to understand all of the relevant facts and circumstances. To the extent that empathy assists a judge in fulfilling these responsibilities, it is appropriate. To the extent, however, that empathy may imply that a judge should fail to apply the law to the facts or should fail to be neutral and impartial, that understanding of empathy plays no proper role in the consideration of a case by a judge.

8. **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: A judge should never base a decision on a desired outcome, but solely on the reasoned and neutral application of law to the facts presented.

9. **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.

10. **Under the Supreme Court's decision in United States v. Booker, the federal sentencing guidelines are now advisory, rather than mandatory.**

    a. **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.

    b. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the sentencing guidelines?**

    Response: If confirmed by the Senate, I would give great deference to the sentencing guidelines. A district court judge should only depart from the sentencing guidelines when such a result is warranted by an application of law to facts. One possible circumstance when a downward departure may be appropriate is when it is part of a plea agreement recommended by the United States with good cause shown.

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11. Please describe with particularity the process by which these questions were answered.

Response: On November 23, 2010, I received a copy of these questions from the U.S. Department of Justice. I then performed research and prepared a draft of my answers. On November 26th, I sent a copy of my draft answers to the Department of Justice, and on November 27th, I spoke by telephone with a representative of the Department of Justice regarding my draft answers. Later that day, I sent my final answers to the Department of Justice for transmission to the Senate Committee on the Judiciary.

12. Do these answers reflect your true and personal views?

Response: Yes.

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Responses of Michael H. Simon
Nominee to be United States District Judge for the District of Oregon
to the Second Set of Written Questions of Senator Jeff Sessions

1. **During your hearing, you stated that "I have been involved as a volunteer lawyer for the ACLU for a number of years and it certainly is true in my case . . . that we do not necessarily agree with all of the positions taken by the American Civil Liberties Union." In follow-up Question 1, you were asked to "describe in detail the legal or policy positions advocated by the ACLU with which you disagree." You responded:**

> **"As a member of the Lawyers Committee of the ACLU of Oregon, I participated in meetings to decide whether the ACLU of Oregon would accept or decline requests to provide legal representation in specific matters and whether the ACLU would appear as an *amicus curiae* in specific litigation. The decisions of the Lawyers Committee were made by majority vote, and its deliberations and vote counts were consistently treated as confidential and subject to the attorney-client privilege under Oregon law. Thus, all that I can say in direct response to this question is that on some occasions my vote in the Lawyers Committee was in the minority."**

While I understand that, in certain cases, you are bound by the attorney-client privilege, the question did not ask you to disclose the advice you provided the ACLU. Rather, it asked you to describe in detail the legal or policy positions advocated by the ACLU with which you disagree, consistent with your testimony. Please take this opportunity to describe such positions.

Response: Rule 4.1 of the ABA Model Code of Judicial Conduct (2007) provides that a judge or judicial candidate shall not "make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court" or "in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office." In light of this rule and its commentary, I am not at liberty to describe the legal or policy positions advocated by the ACLU with which I disagree. I will faithfully follow all governing precedent, and to the best of my recollection I have never publicly discussed any of these matters.

2. **During your hearing, you stated that the primary focus of your "activities for the American Civil Liberties Union of Oregon has been involved in First Amendment issues." In follow-up Questions 2(a)(i) and (ii), you were asked whether you personally agreed with the ACLU's position regarding the Pledge of Allegiance, and whether you have ever expressed an opinion regarding that position. In response, you stated:**

> **"Under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent."**

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While I appreciate your willingness and commitment to follow precedent, your response did not answer either question. Please take this opportunity to answer those questions.

Response: Question 2(a) asks for my personal opinion on whether the Pledge of Allegiance is unconstitutional because it includes the words "under God." This issue was decided earlier this year by the U.S. Court of Appeals for the Ninth Circuit, which held that the Pledge of Allegiance does not violate the Establishment Clause. *Newdow v. Rio Linda Union School District*, 597 F.3d 1007 (9th Cir. 2010). That decision is binding in the Ninth Circuit and entitled to full *stare decisis* effect. I will faithfully follow all governing precedent. In addition, to the best of my recollection, I have never publicly discussed this matter. In light of Rule 4.1 of the ABA Model Code of Judicial Conduct (2007), I am not at liberty to comment further.

3. **In follow-up Questions 2(b)(i) and (ii), you were asked whether you agreed with the ACLU's positions regarding religious displays on public land, and if not, whether you ever expressed your disapproval. In response, you stated:**

> **"Under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent."**

You then cited some of the governing precedent. While I appreciate your willingness and commitment to follow precedent, your response did not answer either question. Please take this opportunity to answer those questions.

Response: Question 2(b) asks for my personal opinion on whether, under the Establishment Clause, "communities must remove all vestiges of America's history and heritage that include religious symbols on public lands or on city or county seals." This issue has been decided by the Supreme Court in a series of opinions that I refer to in my original answer. These decisions are governing precedent, and I will faithfully follow them. In addition, to the best of my recollection, I have produced to the Committee on the Judiciary all of my public statements on this topic, and they are consistent with my response. In light of Rule 4.1 of the ABA Model Code of Judicial Conduct (2007), I am not at liberty to comment further.

4. **In follow-up Question 2(c)(i), you were asked whether you agreed with the positions advocated by the ACLU of Northern California in an *amicus brief* regarding doctors who refused to give infertility treatments to gay or lesbian patients on the basis of the doctors' personal religious beliefs. In response, you stated:**

> **"I am not familiar with the amicus brief from the ACLU of Northern California referred to in this question. In addition, under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, in all cases that came before**

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me I would fairly determine the facts and faithfully apply the law, including all governing precedent."

While I appreciate your willingness and commitment to follow precedent, your response did not answer the question. The brief to which I refer is available at: http://www.aclunc.org/issues/lgbt/asset_upload_file416_6018.pdf. Please familiarize yourself with the brief and take this opportunity to answer the question.

Response: I have reviewed the brief that the ACLU of Northern California submitted to the California Supreme Court in the case of *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*, 81 Cal. Rptr.3d 708, 44 Cal.4th 1145, 189 P.3d 959 (Cal. 2008). I have also reviewed the decision of the California Supreme Court in that case. A decision of a state Supreme Court is not binding on a federal court in questions of federal constitutional law, and the federal questions presented in this case may someday come before a federal court in the District of Oregon. Accordingly, I am not at liberty to comment on the correctness of either the position taken by the ACLU of Northern California or the decision of the California Supreme Court in this case. In addition, to the best of my recollection, I have never publicly discussed the specific questions raised in this case.

5. **In follow-up Question 2(d)(i), you were asked whether you agreed with the ACLU's opposition to tax exemptions for churches, as the ACLU of Alaska has argued. In response, you stated:**

"I am not familiar with the legal position taken by the ACLU of Alaska referred to in this question. In addition, under the rule of law, a judge's personal opinion is not relevant to the decision in a case, which must be based solely on the application of law to facts. If confirmed by the Senate, under all cases that came before me I would fairly determine the facts and faithfully apply the law, including all governing precedent."

While I appreciate your willingness and commitment to follow precedent, your response did not answer the question. The case to which I refer is *Coonrod, Metcalfe, and ACLU of Alaska v. State of Alaska*, No. 3AN-06-8866CI, and the Superior Court's memorandum opinion on the merits is available at: http://www.akclu.org/NewsEvents/CoonrodMemoDecision.pdf. Please familiarize yourself with the ACLU of Alaska's position and take this opportunity to answer the question.

Response: I have reviewed the decision of the Superior Court for the State of Alaska in the case of *Coonrod, Metcalfe, and ACLU of Alaska v. State of Alaska*, Case Nos. 3AN-06-08866 CI and 3AN-06-08943 CI (consolidated). A decision from a state trial court is not binding on a federal court in questions of federal constitutional law, and the federal questions presented in this case may someday come before a federal court in the District of Oregon. Accordingly, I am not at liberty to comment on the correctness of either the position taken by the ACLU of Alaska or the decision of the Alaska Superior Court in this case. In addition, to the best of my recollection, I have never publicly discussed the specific questions raised in this case.

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VIA FACSIMILE AND FIRST CLASS MAIL

July 15, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of the Honorable Steve C. Jones to the United States District Court for the Northern District of Georgia

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of the Honorable Steve C. Jones who has been nominated for a position on the United States District Court for the Northern District of Georgia. As a result of our investigation, the Committee is of the unanimous opinion that Judge Jones is "Well Qualified" for a position on that Court.

A copy of this letter has been provided to Judge Jones.

Sincerely,

Kim J. Askew
Chair

cc: The Honorable Steve C. Jones
The Honorable Robert F. Bauer
Molly J. Moran, Esq.
ABA Standing Committee on the Federal Judiciary
Denise A. Cardman, Esq.

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This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 15, 2010.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Russell D. Feingold
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Benjamin L. Cardin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Edward E. Kaufman
Hon. Arlen Specter
Hon. Al Franken

Minority:

Hon. Jeff Sessions, Ranking Member
Hon. Orrin G. Hatch
Hon. Charles E. Grassley
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Tom Coburn

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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

John Gage
National President

J. David Cox, Sr.
National Secretary-Treasurer

Augusta Y. Thomas
National Vice President for
Women and Fair Practices

November 16, 2010

Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member
Senate Judiciary Committee
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents the federal employees who work at the U.S. Marshals Service, I strongly urge you to oppose the nomination of Ms. Stacia Hylton to be Director of the U.S. Marshals Service.

AFGE opposes Ms. Hylton's nomination to head the U.S. Marshals Service because we believe her close relationship with the GEO Group, the nation's second largest for-profit private prison company – particularly her acceptance of a significant consulting fee from the GEO Group – constitutes a serious conflict of interest that should preclude her confirmation.

Ms. Hylton headed the Office of the Federal Detention Trustee (OFDT) from June 2004 to February 2010. The OFDT was established in September 2001 by Congress to centralize responsibility for detention of federal prisoners and aliens awaiting trial and/or removal from the United States. According to the OFDT website, a key objective of the OFDT is "to address the diminishing detention capacity [of the U.S. Marshals Service, the U.S. Immigration and Customs Enforcement, and the Federal Bureau of Prisons] in an environment of an ever-increasing detention population resulting from aggressive immigration and other law enforcement initiatives." (www.justice.gov/ofdt/about-oftd.htm)

During Ms. Hylton's tenure as Federal Detention Trustee, the GEO Group was awarded a number of lucrative contracts to house federal prisoners, including detainees of the U.S. Marshals Service. These included a sole-source ten-year contract at GEO's Western Region Detention Facility in San Diego, CA, generating approximately $34 million in annual revenue; a 20-year contract to operate the 1,500-bed Rio Grande Detention Center in Laredo, TX, with an estimated $34 million in annual revenue; and 20-year sole-source contract to manage the Robert A. Deyton Detention Facility in Lovejoy, GA, generating $16-20 million in annual revenue.

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On January 13, 2010, more than a month before she retired from her position as Federal Detention Trustee, Ms. Hylton formed a Virginia-based consulting firm Hylton Kirk & Associates LLC. Shortly after her February 2010 retirement, Ms. Hylton's firm received $112,500 from her sole client, GEO Group, for consulting services for detention matters, federal relations, and acquisitions and mergers.

We at AFGE find it troubling that Ms. Hylton was considering consulting work for the GEO Group, a for-profit private prison company she oversaw as the Federal Detention Trustee, while she was still employed by the federal government. While the public record does not disclose the extent to which the $112,500 consulting job with the GEO Group was discussed prior to Ms. Hylton's retirement, we believe this creates a clear conflict of interest that cannot be waived or ignored. Clearly, she wasted no time in securing lucrative consulting work from the very industry that she oversaw as Federal Detention Trustee – **and will be overseeing again should she be confirmed as Director of the U.S. Marshals Service**.

As a labor union that takes seriously its responsibility to foster effective and ethical government service, AFGE strongly urges you to oppose Ms. Hylton's nomination to be Director of the U.S. Marshals Service. She is ill-suited to lead the U.S. Marshals Service because her close relationship with the GEO Group, the nation's second largest for-profit private prison company – particularly her possible consulting before her retirement from the Federal Detention Trustee position and her actual acceptance of a $112,500 consulting fee from the GEO Group soon after her retirement – constitutes a serious conflict of interest that should preclude her confirmation.

Thank you for your consideration of this important request.

Sincerely,

John Gage
National President

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Testimony of Americans for Safe Access
RE: Nomination Hearing, Michele M. Leonhart, Administrator of
Drug Enforcement, Department of Justice
Senate Committee on the Judiciary
Wednesday, November 17, 2010

OPPOSE

Americans for Safe Access (ASA) is the nation's leading non-profit advocacy organization dedicated to advancing safe and legal access to cannabis solely for therapeutic use and research. To advance our mission, ASA employs a multi-faceted strategy that includes public education, impact litigation, grassroots advocacy, and direct lobbying. We work with all levels of government to support policies that create and improve access to medical cannabis for patients and their care providers. ASA has over 30,000 active members with chapters and affiliates in more than 40 states.

On behalf of our members, especially in the states that have adopted Compassionate Use Laws, ASA has prepared this memo to detail some of our concerns about the nomination of Michele Leonhart to head the Drug Enforcement Administration (DEA). During the past 15 years of her service with the DEA, Ms. Leonhart has participated in a gradual and uninterrupted enforcement campaign specifically designed to undermine the effective implementation of state medical cannabis programs. Despite these heavy-handed tactics, fourteen states and the District of Columbia have adopted laws to control and regulate the use and distribution of cannabis to qualified individuals in accordance with state and local laws. More than a quarter of the total population of the United States lives in a state that has adopted a medical marijuana laws.

Negotiating the growing divide between state and federal medical marijuana laws will be among the domestic policy challenges facing the next DEA Administrator. In October of 2009, the Obama Administration's Deputy Attorney General issued a memorandum (DAG Memo) to U.S. Attorneys discouraging the use of federal resources to prosecute individuals who are in "clear and unambiguous" compliance with their state compassionate use law.[1] Unfortunately, ASA has tracked more than 30 federal enforcement raids in California, Colorado, Hawaii, and Nevada, since the DAG Memo was issued.

The DEA should do more to reconcile the conflict between state and federal laws, but ASA questions whether Ms. Leonhart possesses the leadership necessary to facilitate this change. The Senate Judiciary Committee should examine her record and use the hearing process to determine whether she is committed to a process of engagement with Congress and state officials to develop a comprehensive medical marijuana strategy that respects state law and facilitates safe access to marijuana for therapeutic use and research.

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Career Highlights

Ms. Leonhart has a long record of service with the Drug Enforcement Administration. This record includes specific involvement with an aggressive campaign to undermine the implementation of these duly-enacted state laws. Shortly after California voters adopted Proposition 215: The Compassionate Use Act, a ballot measure that received 55% support, Ms. Leonhart was appointed as the Special Agent in Charge (SAC) of the DEA's San Francisco Field Division then the Los Angeles Division where she executed a hand-full of enforcement raids on bona-fide medical marijuana patients in northern California who were using marijuana in strict accordance with state law.

In 2004, Ms. Leonhart was confirmed as the President George W. Bush's choice for Deputy Administrator. As an integral part of the DEA management team, Ms. Leonhart was responsible for the dramatic and unprecedented level of enforcement actions. Under her leadership, the DEA conducted more than 200 raids on medical cannabis patients and caregivers, primarily in California. Many of these raids employed "shock and awe" tactics involving coordinated simultaneous paramilitary assaults on multiple locations with heavily armed agents. These raids have been widely criticized by media, state and local officials, and Members of Congress.

In 2007, shortly after Ms. Leonhart was appointed the Acting Administrator, ASA began tracking new tactics designed to interrupt state programs. The DEA in collaboration with US Attorneys initiated a campaign of intimidation aimed at property owners in California. Hundreds of landlords throughout the state were sent official letters threatening them with criminal prosecution and civil asset forfeiture if they continued to lease commercial property to medical marijuana patient collectives.

As the acting administrator, Ms. Leonhart ignored the opinion and recommendation of the DEA's own administrative law judge and singlehandedly blocked legitimate research efforts designed to meet accepted scientific standards while denying a growing scientific consensus about the medical benefits of marijuana. Worse still, Ms. Leonhart has failed to adequately manage DEA's response to a longstanding petition to reschedule marijuana which was submitted to the agency in 2002.

Background and Context

Clinical research demonstrates that marijuana can safely and effectively alleviate chronic and neuropathic pain, control spasticity in multiple sclerosis, stimulate appetite in wasting syndrome, relieve intraocular pressure in glaucoma, and reduce the nausea associated with chemotherapy.[ii] By and large, the use of cannabis in these clinical trials has been associated with a few mild side-effects, and it is worth noting that an acute lethal overdose of cannabis has never been reported. In fact, it was the finding of a DEA administrative law judge that cannabis is one of the safest therapeutic substances known.[iii]

There are at least two clear results from this emerging data. First, an ever increasing number of physicians are exercising their constitutional right to recommend the use of cannabis to their

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patients. It is estimated that as many as 7,000 physicians have provided oral or written recommendations for the use of cannabis to some 400,000 qualified individuals. Secondly, an increasing number of states are exercising their power to adopt laws that permit the limited use of cannabis for medical purposes.

Since 1996, fourteen states[iv] and the District of Columbia have adopted medical marijuana compassionate use laws. Roughly 90 million Americans or just over one-quarter of the total population of the United States lives in a state that authorizes qualified persons registered with the state to use or provide marijuana for medical purposes. These law offer protection from arrest and prosecution by state authorities, but considerable disparities exist among these state laws.

For example, California's Compassionate Use Act (Proposition 215) leaves determination about the appropriate therapeutic use of cannabis to the professional judgment of board-certified physicians, while other states narrowly restrict the use of cannabis to a specific list of medical conditions. Some state laws provide civil protections for qualified individuals, but in many states individuals who use cannabis for therapeutic purposes suffer pervasive discrimination in healthcare benefits, employment, child custody, housing, health care, public accommodation, and the like. A few states have established production and distribution systems to ensure qualified individuals have access to medical cannabis from licensed distributors, but the majority of states force qualified individuals to acquire or cultivate their own cannabis themselves, or with the assistance of a designated caregiver.

In many states, medical cannabis dispensing collectives or centers have emerged as a community-based response that provides a secure, consistent place for qualified persons to acquire medical cannabis. These facilities are usually regulated by state or local governments and provide a controlled environment for safe distribution. California, Colorado, Oregon, Michigan, Maine, New Mexico, Rhode Island, New Jersey, and the District of Columbia are each working to effectively regulate the distribution of medical cannabis for those individuals qualified to use cannabis.

Some state programs are proving more efficient than others. In many states, doctors and patients remain confused or fearful about the nature and extent of the law, and are particularly concerned with federal enforcement. In other states, local authorities (often bolstered by federal task forces) have resisted the changes in state law and the resulting actions of qualified patients and their designated caregivers. The news media has covered these changes and conflicts with a mix of responsibility and hyperbole, but in none of these states has the sky fallen or public health been compromised. Generally, the medical cannabis "experiment" has been successful when and where it has been properly implemented by state and local governments.

Nonetheless, the possession, production, and distribution of cannabis, even for therapeutic purposes, remain prohibited under federal law. As a result, no matter how scrupulous their compliance with state law and local ordinance, qualified individuals and their providers remain vulnerable to federal enforcement raids, arrest, and prosecution.

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History of Failed Federal Interference and Obstruction

When California voters adopted their compassionate use law in 1996, Ms. Leonhart was at-the-ready when federal officials threatened to revoke the prescribing privileges of any physician who provided a recommendation to their patients for medical use. In response, a group of doctors led by HIV/AIDS specialist Dr. Marcus Conant filed for an injunction in federal court, contending that such a policy violated their freedom of speech. The court agreed, and the government was enjoined from penalizing physicians who recommend the medical use of cannabis. Specifically, the court ruled that physicians have a First Amendment right to make recommendations, but may not aid or abet patients in actually obtaining cannabis.[v] On appeal, the Ninth Circuit Court of Appeals held that federal authorities could not punish, or threaten to punish, a physician merely for recommending cannabis to his or her patients.[vi]

Instead of then working with the states to harmonize state and federal laws, Ms. Leonhart initiated a campaign of intimidation designed to disrupt the operation of valid state and local laws. In 2001, within weeks of the tragedy of September 11, the Department of Justice in conjunction with the DEA launched a series of paramilitary-style enforcement raids on individuals and collectives authorized by the state to use or provide medical cannabis[vii]. Even where local officials and governments were seeking in good faith to regulate access to cannabis, the federal government chose instead to interfere—prosecuting and imprisoning individuals, and seizing their property.

As the raids continued, two women in California filed suit in federal court to prevent further enforcement raids on individuals acting in accordance with their state medical cannabis law. They won an injunction from the Ninth Circuit Court of Appeals, but in 2005, the U.S. Supreme Court reversed that decision in *Gonzales v. Raich*[viii], ruling that federal law enforcement officials can prosecute medical marijuana patients regardless of their compliance with state medical marijuana laws.[ix]

Following the Supreme Court's decision in *Raich*[x], federal agencies intensified their enforcement actions. Between 2007 and 2008, national advocates recorded an unprecedented number of enforcement raids against individuals authorized by state law to use or dispense medical cannabis, and the Department of Justice has prosecuted dozens of these individuals.[xi]

Despite pointed questions from members of the U.S. House Judiciary Committee[xii] and requests from local policymakers[xiii] to halt enforcement raids in deference to local authorities, Ms. Leonhart chose to expand the DEA's efforts to undermine implementation of state law. In 2008, she collaborated with U.S. Attorneys throughout California to threaten hundreds of property owners with prosecution and asset forfeiture if they continued to lease commercial space to medical cannabis dispensing collectives. Specifically, the letters ordered property owners to attend meetings at which the U.S. Attorney delivered an ultimatum: evict the collectives or face imminent federal prosecution and asset forfeiture.

Federal enforcement activity has not been restricted to California, despite public perceptions to the contrary. Federal law enforcement agents raided the offices of a medical cannabis advocacy group in Washington State that was supplying hundreds of authorized individuals with starter

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seedlings.[xiv] The DEA also threatened New Mexico state officials with federal prosecution if they proceeded to implement a state-run medical cannabis distribution program.[xv] And, in an unprecedented effort to interfere with state law, a federal grand jury subpoenaed the confidential medical records of individuals enrolled in the Oregon Medical Marijuana Program. (A federal court later voided the subpoena.)[xvi]

However, these heightened federal enforcement efforts and prosecutions have not deterred the distribution of medical cannabis in California or other states. On the contrary, more state and local governments are adopting regulations to control and regulate medical cannabis dispensing collectives in an effort to ensure safe, consistent access and fully comply with state law.

In the absence of leadership by Congress or administrative agencies, state and local regulations are the key to preventing abuse of state medical cannabis laws and protecting eligible individuals, their care providers, and the local community. Federal enforcement tactics, such as threatening property owners with asset forfeiture and paramilitary raids that place citizens in harm's way, undermine state and local authority and jeopardize the integrity of state law.

New Direction, Same Enforcement

During the 2008 Presidential Campaign medical cannabis patients and activists secured promises from the entire field of Democratic Presidential hopefuls.[xvii] In fact, then-Senator Obama provided statements at numerous Town Hall Meetings and other speaking engagements that he "would not have the Justice Department prosecuting and raiding medical marijuana users. It's not a good use of our resources."[xviii]

Nonetheless, within days of President Obama's inauguration, the DEA, still under the direction of Michele Leonhart, executed a raid on a medical cannabis dispensing collective in California.[xix] Advocates and state policymakers were outraged and demanded an explanation of the broken campaign promise. Within weeks, more DEA raids occurred and the media jumped on the story[xx], enough to prompt a question about the new President's policy from the White House Press Corps and the following response from a White House spokesman:

> "The president believes that federal resources should not be used to circumvent state laws, and as he continues to appoint senior leadership to fill out the ranks of the federal government, he expects them to review their policies with that in mind."[xxi]

Five days after later, the DEA conducted another raid in Ft. Bragg, California.[xxii] Again, advocates, policymakers, and members of the media demanded answers, and in his first press conference, U.S. Attorney General Eric Holder was questioned directly about the raid activity. Attorney General Holder stated that President Obama's campaign promises were "now American policy."[xxiii] However, in August and September, the DEA conducted or participated in dozens of raids across the state of California.[xxiv]

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On October 29, 2009, Deputy Attorney General David Ogden issued a memorandum to U.S. Attorneys entitled "Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana" to provide "guidance on resource allocation and federal priorities..."[xxv] Specifically, the memo discourages the use of federal enforcement resources to investigate individuals who are in "clear and unambiguous compliance with state law" regarding medical cannabis. The memo also notes that the commission of crimes not related to medical cannabis should not to be ignored.

The memo's tacit recognition that cannabis has legitimate medical applications and that allowance should be made for patients whose physicians have advised them to use it marks a significant policy departure from previous administrations. Although the memo does not have the force of law, it did appear to ease the conflict between the federal law enforcement officials and state-authorized individuals who use or provide cannabis for therapeutic use.

In the months that followed, ASA noted a decline in federal enforcement action that undermines state and local law. But to the extent that anyone assumed that the federal government "will not" continue enforcement in medical cannabis states, that was a false sense of security. Another series of DEA raids in Colorado and California were conducted in the weeks surrounding the Obama Administration's decision to nominate Michele Leonhart to head the agency.[xxvi]

In total, ASA has confirmed more than 30 DEA enforcement raids in California, Nevada, Colorado, and Hawaii, since the DAG Memo was issued. More than 20 patients and providers have been arrested and the federal government is currently prosecuting more than a dozen individuals presumed to have been acting in strict compliance with state law.

Reconciling the Conflict

These continued enforcement actions illustrate the problem with the Obama Administration's "easement" policy: the law itself is unchanged and the policy is inconsistently enforced. Worse still, federal policy provides no legal protection to individuals authorized to use or provide cannabis in accordance with state law. Even the most seriously ill individuals are prevented from presenting evidence in federal court about their medical conditions, their doctors' advice, or their compliance with state law—all but guaranteeing conviction.

Yet the intent of the memo appears clear. If you are in compliance with your state's medical cannabis laws, federal resources should not be used to disrupt your activity or to send you to prison. Since compassionate use laws vary among the states, ASA believes that whether an individual is compliant with his or her state's particular law is best determined by local officials and, if necessary, the state courts. Federal preemption of a state's legislative intent, judicial review and interpretation, and local regulation surely falls outside the scope of "an efficient use of limited federal resources," the stated rationale for the DOJ's new policy on medical cannabis cases.

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Regardless of whether you agree or disagree with state law, the status quo is not sustainable and requires change. The next DEA Administrator will be challenged with negotiating the growing divide between state and federal law, and the situation will grow worse as more states adopt regulations to control the cultivation and distribution of marijuana for medical purposes. The science and policy concerning the use of marijuana for medical purposes should no longer be confused or obscured by the separate debate concerning the legalization of marijuana for recreational use. It is important that the next Administrator posses the leadership necessary to facilitate change and the commitment to work with all parties create a national strategy to support safe and legal access to marijuana solely for therapeutic use and research.

Areas of Inquiry for Ms. Michele Leonhart,
Administrator, Drug Enforcement Administration
U.S. Senate Committee on the Judiciary
for Wednesday, November 17, 2010

Negotiating the growing divide between state and federal medical marijuana laws will be among the domestic challenges facing the next DEA Administrator. As the Deputy Director, Ms. Leonhart supervised an unprecedented level of paramilitary-style enforcement raids specifically designed to undermine the effective implementation of state medical cannabis programs. Despite these heavy-handed tactics, fourteen states and the District of Columbia have adopted laws to control and regulate the use and distribution of cannabis to individuals in accordance with state and local laws. More than a quarter of the total population of the United States currently lives in a state that has adopted medical marijuana laws.

1. What are your plans for working to bridge the growing divide between state and federal law concerning the use of marijuana for medical purposes? At what point in this conflict do you think the Administration should commit to working with Congress and legislators in these states to develop a strategy on medical marijuana that embraces state and local law, acknowledges emerging science, and accepts the experiences of patients and physicians concerning the use of cannabis for medical purposes?

2. Medical marijuana advocates like Americans For Safe Access, who track federal raid activity on licensed medical marijuana facilities, have confirmed a decline in raid enforcement activity since the dissemination of the U.S Department of Justice's October 2009 Memo concerning "Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana." Can you explain how the DEA changed its policies and practices to ensure compliance with these new guidelines?

3. Since the Department of Justice issued its memo stating that federal resources should not be used to target individuals in compliance with their state's medical cannabis laws, more than 30 federal enforcement raids have continued to be executed in Colorado, California, Hawaii, and Nevada. These raids have targeted not just medical cannabis patients but also independent

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laboratories tasked with ensuring that the medical cannabis being distributed through state programs is unadulterated and safe for consumption. Can you please clarify how these raids make "efficient and rational use of the Department's limited investigative and enforcement resources?"

4. The Compassionate Use Laws vary among the different states that have adopted medical marijuana policies. With that in mind, are the facts about whether an individual is in "clear and unambiguous" compliance with their state's law a determination best made by Federal authorities or, perhaps, better left to the judicial and regulatory processes established by each state? Why not remand ongoing and pending cases to the individual states to prosecute violations of state and local law?

5. In 2002, a petition to reschedule marijuana was submitted to DEA per the provisions outlined in the Controlled Substances Act (CSA). In 2004, the DEA forwarded that petition to HHS for a scientific and medical evaluation. What is the status of this petition? Has HHS completed its evaluation? It's been nearly a decade; why the delay and when can advocates expect DEA to reach its final determination on this petition?

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[i] *Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana,* David Ogden, Deputy Attorney General. Oct.19, 2009. http://www.justice.gov/opa/documents/medical-marijuana.pdf.

[ii] Center for Medicinal Cannabis Research. (2010). *Report to the Legislature and Governor of the State of California presenting findings pursuant to SB847 which created the CMCR and provided state funding.* San Diego, CA. http://www.cmcr.ucsd.edu/CMCR_REPORT_FEB17.pdf

[iii] US Department of Justice, Drug Enforcement Agency, "In the Matter of Marijuana Rescheduling Petition," Docket #86-22]. Sep. 1988.

[iv] The 14 states include: Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and Washington, DC

[v] *Conant v. McCaffrey*, 172 F.R.D. 681 (N.D. Cal. 1997).
http://www.safeaccessnow.org/downloads/Conant_Ruling.pdf.

[vi] *Conant v. Walters*, 309 F.3d 629 (2002). http://safeaccessnow.org/downloads/conantvwalters.pdf.

[vii] On Sep. 28, 2001, DEA agents raided the home and office of California physician Dr Mollie Fry and her husband, attorney Dale Schafer. Agents seized the confidential medical records of her 6000 patients. Fry and Schafer were tried and convicted for growing 100+ plants over three years and sentenced to 5 years mandatory minimum in federal prison. *San Francisco Chronicle*: http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2001/11/13/MN190086.DTL. On Oct. 25, 2001, DEA agents raided the Los Angeles Cannabis Resource Center, which provided services to nearly 1,000 seriously ill people, the majority of whom were living with HIV/AIDS or cancer. The LACRC operated out of a building in West Hollywood that the city had helped buy; the building was seized by the federal government through civil asset forfeiture. *Los Angeles Times*: http://tinyurl.com/2adld7w.

[viii] *Gonzales v. Raich*, 125 S. Ct. 2195 (2005).

[ix] The holding did not, however, invalidate states' medical marijuana laws under the doctrine of preemption. States remain free to provide protection from criminal sanction and access to medical marijuana for critically ill citizens.

[x] *Gonzales v. Raich*, 125 S Ct. 2195 (2005)

[xi] "Photo Essay: Hollywood Medical Marijuana DEA Raid." Zach Behrens, LAist. Photos by Shay Sowden. July 27, 2007. http://laist.com/2007/07/27/medical_marijuana_dea_raids.php.; "Feds Raid L.A. Medical Marijuana Clinics." Keach Hagey, CBS News. July 26, 2007. http://www.cbsnews.com/stories/2007/07/26/national/main3098913.shtml.; "Feds Raid 11 Medical Marijuana Clinics." Dan Collins, CBS News. Jan. 18, 2007. http://www.cbsnews.com/stories/2007/01/18/national/main2369758.shtml; "DEA Raids 10 Los Angeles Medical Marijuana Clinics." Associated Press via Fox News. July 26, 2007. http://www.foxnews.com/story/0,2933,290852,00.html.

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[xiii] Conyers, John. "Letter to DEA Administrator Michele Leonhart." Apr. 29, 2008. Available at, http://www.safeaccessnow.org/downloads/Conyers_DEA_Letter.pdf

[xiii] Conyers. "Letter to DEA."

[xiv] "Agents raid medical marijuana advocacy office," *Seattle Post-Intelligencer*. Jan. 18, 2007. http://www.seattlepi.com/local/300191_potbust18.html .

[xv] "Governor Bill Richardson Urges Bush Administration to End Heartless Medical Marijuana Policy," Press release, New Mexico Governor Bill Richardson. Aug. 17, 2007. http://www.governor.state.nm.us/press/2007/august/081707_02.pdf.

[xvi] "Feds strike medical pot growers". Nick Budnick, *The Portland Tribune*. Aug. 3, 2007. http://www.portlandtribune.com/news/story.php?story_id=118609925649231700. See also, "Ruling protects Pot Patients". Anne Saker, *The Oregonian*. Sept. 5, 2007. http://www.safeaccessnow.org/article.php?id=5010.

[xvii] "Federal Raids Against Medical Marijuana to End if Democrat Elected." Steven Edwards, *Wired Magazine*. Aug. 10, 2007. http://www.wired.com/wiredscience/2007/08/federal-raids-a/

[xviii] Obama Campaign Event, Nashua, NH. Aug. 21, 2007. http://www.youtube.com/watch?v=GUze-oYsswI&feature=player_embedded.

[xix] "DEA Raids Dispensary, Exploits Transition as President Obama Takes Office," ASA Press release. Jan. 22, 2009. http://www.safeaccessnow.org/article.php?id=5654

[xx] "DEA pot raids go on; Obama opposes," *Washington Times*. Feb. 5, 2009. http://www.washingtontimes.com/news/2009/feb/05/dea-led-by-bush-continues-pot-raids/

[xxi] Id.

[22] "DEA Raid Has Pot Clubs Worried," Ryan Grim, *Huffington Post*. Feb. 16, 2010. http://www.huffingtonpost.com/2010/02/16/dea-raid-has-pot-clubs-wo_n_464598.html.

[xxiii] "Ban on medical pot cases quickly lifted" Scott Glover, *Los Angeles Times*. Mar. 07, 2009. http://articles.latimes.com/2009/mar/07/local/me-medpot7/2

[xxiv] "DEA Raid Has Pot Clubs Worried," Grim.

[xxv] *Investigations and Prosecutions In States Authorizing the Medical Use of Marijuana*, David Ogden, Deputy Attorney General. Oct.19, 2009. http://www.justice.gov/opa/documents/medical-marijuana.pdf.

[xxvi] "Owner who bragged of large medical-pot operation jailed in DEA raid," John Ingold, *Denver Post*. Feb. 13, 2010. http://www.denverpost.com/ci_14393797. "Medical-pot advocates riled over federal raid of Denver lab," John Ingold, *Denver Post*. Jan. 29, 2010. http://www.denverpost.com/news/ci_14290771. "Medical marijuana in basement lands man in jail," Jace Larson, KUSA. Feb. 23, 2010. http://www.9news.com/news/article.aspx?storyid=132606&catid=339

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Coalition Against Stacia Hylton's Nomination

November 30, 2010 **SENT VIA FAX ONLY**

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Bldg.
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Bldg.
Washington, DC 20510

RE: Nomination of Stacia A. Hylton, U.S. Marshals Service

Dear Chairman Leahy and Ranking Member Sessions:

As a coalition of human rights, citizens' advocacy and criminal justice-related organizations opposed to the nomination of Stacia A. Hylton to head the U.S. Marshals Service, we are contacting you to express our continued concerns regarding Ms. Hylton following her November 17 hearing, relative to her apparent conflict of interest involving the private prison industry.

Despite Ms. Hylton's assurances that she followed all ethical rules in regard to the formation of her consulting company – Hylton Kirk & Associates, LLC – before retiring from federal service, we remain concerned that she accepted $112,500 in consulting fees from GEO Group, a company she oversaw while employed as Federal Detention Trustee and would be overseeing again should she be confirmed to direct the U.S. Marshals.

Although Ms. Hylton may not be directly involved in the contracting process, the fact remains that thousands of Marshals detainees are housed in privately-operated facilities, including facilities managed by GEO Group. Thus, Ms. Hylton would be in a supervisory role over her former client that paid her to consult on detention-related issues. This presents a clear conflict.

We are not alone in our concerns. In addition to the members of the coalition opposed to Ms. Hylton's nomination (listed below), the National Immigration Forum, American Federation of State, County and Municipal Employees (AFSCME) and American Federation of Government Employees (AFGE) have expressed opposition to Ms. Hylton's nomination. The AFGE's position is particularly notable as they represent members of the U.S. Marshals Service.

We believe that additional information is needed from Ms. Hylton to explain the formation of her consulting company while she was still employed as Federal Detention Trustee; to explain when she first entered into discussions with GEO Group to provide consultancy work and whether those discussions took place while she was employed as Federal Detention Trustee; and to explain her acceptance of $112,500 from GEO Group almost immediately after she retired.

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We further believe that the public deserves to have someone appointed to this important position who does not have such an apparent conflict of interest.

Thank you for your time and attention in this regard. Please contact Alex Friedmann, Associate Editor of Prison Legal News, a project of the Human Rights Defense Center, at [redacted] or at [redacted] should you require any additional information relative to our coalition's opposition to Ms. Hylton's nomination.

Sincerely,

Nan Aron, Alliance for Justice
Andrea Black, Detention Watch Network
Donna Red Wing, Grassroots Leadership
Paul Wright, Human Rights Defense Center
Charlie Sullivan, International CURE
Tracy Velázquez, Justice Policy Institute
Heidi Boghosian, National Lawyers Guild
Ken Kopczynski, Private Corrections Working Group
Craig Holman, Public Citizen

cc: Judiciary Committee Members

Coalition Opposed to the Nomination of Stacia A. Hylton

November 15, 2010

SENT VIA FAX AND EMAIL

FORMAL COMMENT FOR NOMINATION HEARING

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Bldg.
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Bldg.
Washington, DC 20510

RE: Nomination of Stacia A. Hylton, U.S. Marshals Service

Dear Chairman Leahy and Ranking Member Sessions:

As a broad coalition of human rights, citizens' advocacy and criminal justice-related organizations, including Alliance for Justice, Detention Watch Network, Grassroots Leadership, Human Rights Defense Center, International CURE (Citizens United for Rehabilitation of Errants), Justice Policy Institute, Private Corrections Working Group, Public Citizen and the National Lawyers Guild, we are writing to express our opposition to the nomination of Stacia Hylton to head the U.S. Marshals Service due to her conflicts of interest involving the private prison industry.

Initially, we acknowledge Ms. Hylton's lengthy record of federal service in the law enforcement field. Her career, including the time she served as Federal Detention Trustee from 2004 to February 2010, speaks for itself. However, it is her actions while serving as Federal Detention Trustee, and immediately following her retirement earlier this year, which we believe constitutes a conflict of interest that should preclude her appointment.

Specifically, Ms. Hylton developed close relationships with private prison companies that contract with the federal government to house prisoners, including detainees for the U.S. Marshals Service, and she received significant consulting fees from one of those companies.

On January 13, 2010, more than a month before her retirement from federal service, Ms. Hylton formed a consulting company, Hylton Kirk & Associates LLC, based in Virginia. According to her disclosure statement, Ms. Hylton is the sole owner of that company. Shortly after her retirement, Ms. Hylton's firm received $112,500 in consulting fees from its sole client, GEO Group – the nation's

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second-largest private prison firm. GEO Group holds numerous contracts to house federal prisoners, including U.S. Marshals detainees, worth tens of millions of dollars; at least three of those contracts were issued during Ms. Hylton's tenure as Detention Trustee.

We find it troubling that Ms. Hylton was contemplating paid consulting work for one of the private prison firms she oversaw as Federal Detention Trustee while she was still employed by the federal government. While the public record does not disclose the extent to which the $112,500 consulting job with GEO Group was discussed or arranged prior to Ms. Hylton's retirement, we believe this creates a clear conflict of interest that cannot be waived or ignored. Clearly, she wasted no time in securing lucrative consulting work from the very industry that she oversaw as Detention Trustee and will be overseeing again should she be appointed to direct the U.S. Marshals.

We are also concerned about Ms. Hylton's other apparent close connections with private prison companies, evidenced by the president of Corrections Corp. of America (CCA), the nation's largest private prison firm, attending Ms. Hylton's retirement celebration; her objections to limiting the amount of profit earned by jails that house federal detainees; and her presentation for a private prison industry advocacy group. These connections are described in greater detail in the enclosed press release issued by our coalition on November 9.

Based on the above information evidencing Ms. Hylton's close ties with for-profit private prison companies – and particularly her acceptance of $112,500 in consulting fees from GEO Group – we submit that Ms. Hylton has a conflict of interest. If appointed she would oversee contracts with private prison firms, including GEO Group, to house detainees for the U.S. Marshals Service.

The private prison industry has a lengthy track record of influencing government officials through lobbying, hiring former state and federal employees, and making campaign contributions to elected officials. For example, National Public Radio (NPR) recently aired an investigative report linking private prison companies to the introduction of a controversial anti-immigration law in Arizona, SB 1070, which, if upheld, is expected to vastly increase the number of immigration detainees. Many of those prisoners would be held in privately-operated facilities, thus creating additional revenue for the private prison firms that reportedly helped draft SB 1070.

As part of its business model the private prison industry seeks to increase the number of people who are incarcerated – whether that constitutes sound public policy or not. With her documented ties to private prison companies, there are serious concerns that under Ms. Hylton's leadership, in which she would oversee detention services for the U.S. Marshals, there will be an increased reliance on the use of private prisons and a decreased emphasis on reducing levels of incarceration.

While Ms. Hylton indicated she had spoken with the Office of Governmental Ethics to resolve any potential conflicts of interest, the fact remains that she decided to form a consulting firm before she retired as Federal Detention Trustee, and apparently the only company she has consulted for is GEO Group – which has multi-million dollar contracts to house federal prisoners, including those under the jurisdiction of the U.S. Marshals.

Considering that GEO Group is one of the two main companies in the for-profit prison industry – an industry that is a direct beneficiary of official actions taken by the U.S. Marshals Service – it is very unlikely that Ms. Hylton could comply with the letter and spirit of President Obama's ethics policy relative to reining in conflicts of interest among presidential appointees. Executive Order No. 13490 restricts such appointees from taking official actions that directly and substantially affect immediate former clients and employers.

Ms. Hylton's close business relationship with such a major company doing business with the U.S. Marshals would repeatedly raise conflict of interest concerns under the President's executive order. Consequently, it would be very difficult for Ms. Hylton to recuse herself from all official actions impacting GEO Group, which militates against her appointment.

As organizations dedicated to human rights, citizens' advocacy and criminal justice-related issues, the members of the coalition opposed to Ms. Hylton's nomination believe that she is ill-suited to head the U.S. Marshals Service due to her close ties with the private prison industry in general and more specifically her acceptance of $112,500 in consulting fees from GEO Group. The public deserves to have someone appointed to this important position who does not have such conflicts.

Thank you for your time and attention in this regard. Please contact Alex Friedmann, Associate Editor of Prison Legal News, a project of the Human Rights Defense Center, at [redacted] or at [redacted] should you require any additional information relative to our coalition's opposition to Ms. Hylton's nomination.

Sincerely,

Nan Aron, Alliance for Justice
Silky Shah, Detention Watch Network
Donna Red Wing, Grassroots Leadership
Paul Wright, Human Rights Defense Center
Charlie Sullivan, International CURE
Tracy Velázquez, Justice Policy Institute
Heidi Boghosian, National Lawyers Guild
Ken Kopczynski, Private Corrections Working Group
Craig Holman, Public Citizen

cc: Judiciary Committee Members

Chairman Patrick Leahy
224 Dirksen Senate Office Building
202-224-7703
202-224-9516 fax

Stacia Hylton Not Fit for U.S. Marshall

Greetings Chairman Leahy,

As someone concerned about this country's shamefully high rate of incarceration and the revolving door of government workers become highly paid industry lobbyists, I am asking you to oppose Stacia Hylton's name as nominee for U.S. Marshall.

This year, after awarding private prison companies millions of dollars as a top DOJ employee, Ms. Hylton made more than $112,000 as a consultant for the private prison industry -- which stands to gain the most by increasing the number of people imprisoned in our country. We need someone in this important position who is committed to reducing the number of people behind bars in Federal prisons, and someone committed to shrinking the influence of private prison companies.

Please close the "revolving door;" please demonstrate this commitment to both good government and criminal justice reform by rejecting this nomination.

Thank you,

T. Alessandra Bevier-Thiem



NATIONAL NARCOTIC OFFICERS' ASSOCIATIONS COALITION

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National HIDTA Directors Association

National Drug Enforcers Officers' Assn

Nevada Narcotic Officers' Assn.

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Assn. of Oklahoma Narcotic Enforcers

Oregon Narcotics Enforcement Assn.

Pennsylvania Narcotic Officers' Assn.

Puerto Rico Narcotic Officers' Assn. (TERR)

R.I.S.S. Projects

Tennessee Narcotic Officers' Assn.

Texas Narcotic Officers' Assn.

Utah Narcotic Officers' Assn.

Washington State Narcotics Investigators' Assn.

Wisconsin Narcotic Officers' Assn.

October 1, 2010

The Honorable Patrick Leahy
Chairman
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Harry Reid
Majority Leader
The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Dear Leader Reid, Leader McConnell, Chairman Leahy and Ranking Member Sessions,

The Drug Enforcement Administration has been operating without a Senate-confirmed leader since 2007. Deputy Administrator and Acting Administrator Michele Leonhart has proven to be an incredibly capable and effective leader of DEA for the past three years, but asking her to do two difficult jobs simultaneously for three years is too much especially in light of the clear and present threat to U.S. national security posed by drug trafficking organizations on our Southwest border. It is time for the Senate to confirm Ms. Leonhart as Administrator of DEA.

On behalf of the 44 state associations and more than 60,000 law enforcement officers represented by the National Narcotic Officers' Associations' Coalition (NNOAC), I strongly encourage the Senate to confirm Michele Leonhart when Congress returns in November.

In late September Senator Richard Lugar, one of the Senate's foremost national security and foreign affairs leaders, stated that "Transnational drug trafficking organizations operating from Mexico represent the most immediate national security threat faced by the United States in the Western Hemisphere." This extraordinary statement – which we in narcotic enforcement have believed to be true for years – is more reason to have Ms. Leonhart confirmed to lead the U.S. government's primary enforcement and intelligence efforts to counter the threat.

DEA has always been a strong partner with state and local narcotic enforcement officers. Acting Administrator Leonhart has ensured that DEA supports state and local agencies whenever possible. We value our partnership with the outstanding men and women of DEA and we strongly believe that Ms. Leonhart is the right leader to continue that partnership.

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Wisconsin Narcotic Officers' Assn.

We applaud President Obama for nominating Michele Leonhart and appreciate the Attorney General's active support for her confirmation. We are hopeful that the "Acting" can be removed from her title as soon as possible in November with Senate confirmation.

Thank you for your consideration and your continued support for state and local law enforcement.

Sincerely,

Ronald E. Brooks
President, NNOAC

cc: President Barack Obama
cc: Attorney General Eric Holder

NATIONAL NARCOTIC OFFICERS' ASSOCIATIONS COALITION

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November 17, 2010

The Honorable Patrick Leahy
Chairman
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions,

On behalf of the more than 60,000 law enforcement officers represented by the National Narcotic Officers' Associations' Coalition (NNOAC) I write to strongly commend the committee for moving forward with the nomination of Michele Leonhart to be Administrator of the Drug Enforcement Administration. Ms. Leonhart has ably led the DEA as Acting Administrator and Deputy Administrator for the past three years. From the state and local law enforcement perspective, her leadership has led to very productive partnerships. We couldn't have a better partner than Ms. Leonhart in the Administrator position and we are excited that she will finally have the "Acting" removed from her title.

From the time she began working as an agent with DEA in the 1980s Ms. Leonhart has been recognized for her professionalism, focus, and results-oriented leadership. She understands the needs and challenges of the agent in the field, she understands the importance of building partnerships to get things done, and she understands that drug trafficking and abuse are clear and present dangers to national security. Her perspective is extremely valuable as DEA's mission to protect the American people from the dangers of drug trafficking becomes even more urgent.

Thank you on behalf of the NNOAC for moving forward with Michele Leonhart's nomination. We look forward to working closely with her and the outstanding men and women of the DEA.

Sincerely,

Ronald E. Brooks
President

Written Statement for the Record
Senator Scott Brown

Nomination Hearing of Judge Patti Saris to Serve as Chair and Commissioner of the U.S. Sentencing Commission

November 17, 2010

Chairman Leahy, Ranking Member Sessions, distinguished members of the Judiciary Committee, I regret that I am not able to introduce Judge Patti Saris of the U.S. District Court for the District of Massachusetts to the committee this afternoon. I offer my congratulations to Judge Saris on her nomination to serve as Chair and Commissioner of the United States Sentencing Commission.

Recently, I had the chance to meet with Judge Saris. As those who know her well will agree, she is warm and friendly, while conveying her thoughtfulness and seriousness of purpose.

Judge Saris has made significant contributions to the people of Massachusetts as a public servant and we owe her a debt of gratitude. A self professed "local kid" from Massachusetts, Judge Saris grew up in West Roxbury, Massachusetts and attended Boston public schools. She graduated from Radcliffe College, *magna cum laude,* in 1973, and from Harvard Law School, *cum laude*, in 1976.

Prior to her service on the federal bench, Judge Saris served as a Massachusetts Superior Court Judge, a U.S. Magistrate Judge, and an Assistant U.S. Attorney. Earlier in her career she worked for the late Senator Edward Kennedy on the Judiciary Committee.

Judge Saris has been a respected U.S. District Judge since 1994. She has said of her work: "As a judge, you do the best you can to ensure justice is done given the facts of each case. I don't think many people have an opportunity to contribute to justice in some way. When I come to work every day, I know that's what I'm going to do."

If confirmed, Judge Saris will play an integral role in developing sentencing guidelines for the United States federal courts. She will be well served by her considerable experience in the justice system. I was pleased to see a Bay Stater nominated, especially given that there are no commissioners from Massachusetts at this time.

I look forward to a fair and thorough hearing on the nomination of Judge Saris. The importance of the position that she has been nominated for demands no less.

Thank you, Mr. Chairman and Mr. Ranking Member for your service on this committee and in the United States Senate.



AFSCME-LOCAL 810-DISTRICT COUNCIL 47
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES AFL-CIO
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA-COURT OF COMMON PLEAS PROFESSIONAL EMPLOYEES
1606 WALNUT STREET--PHILADELPHIA, PA 19103 (215) 893-3754
Louise Carpino, President · Mario Ferrari, Vice President · Jim McGee, Treasurer · Duane Archie, Secretary

November 16, 2010

Dear Senator:

Local 810 is asking you NOT to support the nomination of Stacia A. Hylton to head the U.S. Marshals Service. She accepted consulting fees of $112,500 from GEO Group shortly after leaving her post as the Federal Detention Trustee. In short, she accepted a substantial sum from the same private prison industry that she was overseeing as the Federal Detention Trustee and will be overseeing again if her nomination is confirmed.

The US has 5% of the worlds' population and 25% of the worlds' prisoners. Mass incarceration for profit in this country is ruining families, fueling crime, and draining the taxpayers' money. Large, for profit companies are making tremendous amounts of money off the backs of incarcerated individuals, many of whom need drug treatment, mental health treatment, and are simply in pre-trial status, not convicted of any crime.

In Philadelphia, judges adjudicate 70% of their cases to county probation/parole with adult and juvenile probation departments that are severely understaffed by around 140 officers, leaving many officers with caseloads of 400-600 offenders. This system is programmed to make probation offenders recidivate.

When they recidivate, large companies, like Aramark make big profits. The average cost to the taxpayer per offender for a year of incarceration in Philadelphia County Jails is $35,000.

Probation is 10 times cheaper and saves lives at the same time. However, the less people in jail, the less money Aramark makes. By the way, Aramark is a private corporation that is hiding information about its stockholders from the public.

It is clear that the profit motive is fueling the behavior of everyone in positions to change the inequities. If it is so apparent to us in Philadelphia that no one wants these people rehabilitated, why don't our leaders in Washington know more about it than we do?

Again, Local 810 is asking you to please NOT support the nomination of Stacia A. Hylton to the U.S. Marshals Service.

Respectfully submitted,
Louise Carpino
AFSCME, Local 810, President
[redacted]

Senator Leahy:

We ask this be included in the record

Your attention is deeply appreciated.

Jerry Epstein
President
Drug Policy Forum of Texas

The Drug Policy Forum of Texas encourages questions of Michelle Leonhart regarding the DEA commitment to communicating scientific facts to the public.

Because the DEA has no mandate regarding alcohol but frequently mentions alcohol in its communications we ask that they help alert the youth of our nation that five out of six cases of drug abuse and dependence involve alcohol use disorders (AUD)[1] and that the path to both alcohol and other substance i use disorders (SUD) is normally marked by heavy alcohol use between the ages of 12 and 17 [2] with problems peaking around age 21.

It would also help the public if they had a firmer basis for comparison. Thus when "drugs and alcohol" are mentioned as problems it would be best to explain the degree to which each of the two contributed to the specific problem and also to emphasize that alcohol is a dangerous drug by using the phrase "alcohol and other drugs" as is generally done by the organs of HHS.

Similarly, the word "gateway" is imbedded in the pubic conscience, particularly in relation to a causal link from marijuana to use of other illegal drugs, inconsistent with science, including the findings of IOM in 1999. [3] The fact that NSDUH estimates over 96 percent of marijuana users have never even tried heroin should become common knowledge.

We are deeply concerned abut the failure to reschedule marijuana for medical use. A common sense assessment of "accepted medical use" has persuaded some 70 percent of the public to support medical use. The failure to do so threatens respect for the law (which also applies to the ban on growth of industrial hemp).

There are similar questions about the logic of scheduling Marinol, first in Schedule II and now moved to III, but not natural marijuana. Amid concerns over increased potency, we have approved Marinol which is about 10 times as potent, as natural marijuana (which need not be smoked where smoke is contra indicated). Moreover, Marinol does not contain any cannabidiol (CBD) which shows great medical promise. Comments by IOM in 1999 are pertinent. [3]

We believe the incoming director should display an openness and sense of immediacy in regard to these subjects. Your attention is deeply appreciated.

Jerry Epstein
President
Drug Policy Forum of Texas

[1] In 2009, an estimated 22.5 million persons aged 12 or older were classified with substance dependence or abuse in the past year (8.9 percent of the population aged 12 or older). Of these, 3.2 million were classified with dependence on or abuse of both alcohol and illicit drugs, 3.9 million were dependent on or abused illicit drugs but not alcohol, and 15.4 million were dependent on or abused alcohol but not illicit drugs.

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[2] Approximately 66 percent of youths who drank alcohol heavily within the past month were also past month users of illicit drugs. [only 4 percent of youths who had not used alcohol]

NSDUH 2009 : "Among the 17.1 million heavy drinkers aged 12 or older, 33.2 percent were current illicit drug users. Persons who were not current alcohol users .. 3.7 percent."

Age and use statistics indicate that young people typically first experiment with tobacco, alcohol, inhalants, and marijuana. The age of initiation for each of these substances is lower than for any other illicit substance. According to the latest data from NHSDA, the mean age at first use of tobacco is 15.4; alcohol, 16.3; inhalants, 16.4; and marijuana, 17.0. This higher onset age for marijuana is consistent with research showing that most youth who initiate marijuana use previously have used tobacco, alcohol, or both, and that some have used inhalants.

[3]

"It is well recognized that Marinol's oral route of administration hampers its effectiveness because of slow absorption and patients' desire for more control over dosing." (IOM pp. 205, 206)

"We acknowledge that there is no clear alternative for people suffering from chronic conditions that might be relieved by smoking marijuana ..." (IOM p.8)

"The critical issue is not whether marijuana or cannabinoid drugs might be superior to the new drugs, but whether some group of patients might obtain added or better relief from marijuana or cannabinoid drugs." (IOM p. 153)

"For patients such as those with AIDS or who are undergoing chemotherapy and who suffer simultaneously from severe pain, nausea, and appetite loss, cannabinoid drugs might offer broad-spectrum relief not found in any other single medication." (IOM p. 177)

"The acute side effects of marijuana use are within the risks tolerated for many medications." (IOM p. 126)

"... mood enhancement, anxiety reduction, and mild sedation can be desirable qualities in medications — particularly for patients suffering pain and anxiety. Thus, although the psychological effects of marijuana are merely side effects in the treatment of some symptoms, they might contribute directly to relief of other symptoms." (IOM p. 84)

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November 15, 2010

The Honorable Patrick J. Leahy, Chairman
The Honorable Jeff Sessions, Ranking Member
Senate Judiciary Committee
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

As the National President of the 26,000 members of the Federal Law Enforcement Officers Association (FLEOA), I am writing to you in support of President Obama's nominations of Stacia A. Hylton as the next Director of the Marshals Service, and Michele Leonhart as the next Administrator of the Drug Enforcement Administration. As we are confronted by an escalating rate in violent crime and drug trafficking, it is essential that both the Marshals Service and the Drug Enforcement Administration have confirmed leaders.

Regarding each candidate's credentials, both possess the essential qualification to lead their respective agencies: outstanding institutional knowledge and leadership experience. As crime doesn't take pause, we need directors who can immediately assume their position and serve as effective leaders. Both candidates have already demonstrated their leadership capabilities as career federal law enforcement officers, and I'm optimistic they will excel if confirmed.

Please don't hesitate to contact me directly should you have any questions regarding our position for either candidate.

Respectfully,
J. Adler
J. Adler
National President

Statement of

The Honorable Dianne Feinstein

United States Senator
California
November 17, 2010

U.S. Senator Dianne Feinstein
November 17, 2010

Introduction of Michele Marie Leonhart
Nominee for
Administrator of the Drug Enforcement Administration
Nominations Hearing, U.S. Senate Judiciary Committee
November 17, 2010

Thank you, Mr. Chairman.
I am very pleased to introduce Michele Leonhart who has been nominated to serve as the Administrator of the Drug Enforcement Administration (DEA).

Ms. Leonhart's distinguished career with the DEA includes several critical roles in my home state of California. In 1997, she became the first woman to head a DEA field division when she was named Special Agent in Charge for San Francisco.

She managed DEA operations in San Francisco until September 1998, when she became the Special Agent in Charge of the Los Angeles Field Division; one of the DEA's largest. She continued in that position until March 2004, when she was confirmed as Deputy Administrator.

She and her family continue to maintain a residence in California, and we are proud to call her one of our own.

Ms. Leonhart has served as the Acting Administrator for the DEA since November 2007, and was unanimously confirmed by the Senate to be the Deputy Administrator in 2004, so the Members of this Committee are already familiar with her outstanding qualifications and excellent work in enforcing the nation's controlled substances laws.

But I would like to briefly highlight some of Ms. Leonhart's most notable accomplishments.

Under her leadership, the DEA has reached record-breaking levels of extraditions, drug and asset seizures, and revenue denied to drug trafficking organizations. She realigned resources to expand the DEA's foreign presence to combat emerging threats, and enhanced intelligence sharing with foreign countries to include Mexico and Colombia.

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Ms. Leonhart also implemented a plan to deploy the first team of DEA agents to conduct counter-narcotics operations in Afghanistan post-911, leading to the investigation and prosecution of Afghan drug lords.

Under her leadership as Acting Administrator, the DEA recently completed one of the most successful joint international drug operations in history – Operation Xcellerator. That 21-month effort, terminating in February 2009, dealt a severe blow to the violent Sinaloa cartel in Mexico, resulting in more than 750 arrests and $59 million seized.

Ms. Leonhart has also worked with law enforcement, community and school leaders, to educate children, parents and teachers about drug prevention. She explained the importance of these efforts at the 18th Annual Drug Abuse Resistance Education (DARE) conference when she said: "Every child you get through to . . . is one less member of a dealer's customer base."

Over the years, Ms. Leonhart has received numerous honors for her achievements, including awards for meritorious service from both President Clinton and President Bush.

There are, and will continue to be, many serious challenges confronting the DEA, as violent drug trafficking organizations and gangs continue to threaten not just our nation, but countries around the world. And the DEA needs a leader who has the talent, experience, and commitment to fight these ruthless criminals.
With her nearly 30 years of dedicated service and longstanding record of success, Acting Administrator Leonhart will continue to provide strong leadership as the DEA fulfills its vital mission, and I urge my colleagues to support her nomination.

LAW ENFORCEMENT AGAINST PROHIBITION
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Senator Patrick Leahy, Chairman
Senate Committee on the Judiciary
Tuesday, November 16, 2010

Statement of
Major Neill Franklin
on behalf of
LAW ENFORCEMENT AGAINST PROHIBITION (LEAP)
in opposition to the nomination of
Ms. Michele Leonhart

Mr. Chairman and distinguished Members of the Committee, thank you for the opportunity to present the views of Law Enforcement Against Prohibition (LEAP) in opposition to the nomination of Michele Leonhart for the position of Director of the U.S. Drug Enforcement Administration (DEA).

After a 33-year career as a police officer, I became the executive director of LEAP, an association of current and former law enforcement officers, prosecutors, judges, and criminal justice professionals at every level of government who are speaking out about the failure of our drug policy.

Our members are deeply concerned about drug abuse and illicit drug market violence, and we have spent our careers fighting the drug war. Several of our members, including Russ Jones of Texas, Matthew Fogg of Washington, D.C., and Richard Amos of Florida, served as DEA agents or on DEA task forces. And as a police officer with the Maryland State Police and the Baltimore Police Department, I too made my share of drug arrests in addition to commanding multi-jurisdictional drug task forces.

We oppose Ms. Leonhart's nomination because her statements and actions demonstrate questionable judgment. Ms. Leonhart held a press conference regarding Mexican drug prohibition violence last year. Since 2006, more than 28,000 people have died in Mexico as a result of the illegal drug market violence. At the press conference, Ms. Leonhart indicated that such violence was a good sign. "Our view is that the violence we have been seeing is a signpost of the success our very courageous Mexican counterparts are having," she said. "The cartels are acting out like caged animals, because they are caged animals."

The tens of thousands of civilian deaths, which have continued to skyrocket since Ms. Leonhart's statement, should not be measured as a sign of success. Former Mexican president Vicente Fox and at least three additional former Latin American presidents have pointed out the failure of the US-led war on drugs and called for drastic change. The situation in Mexico is grave and escalating rapidly, putting US citizens in danger. Before the spillover violence gets any worse, the DEA needs a director who can engage world leaders in this debate and come to a solution.

Ms. Leonhart's judgment in allocating resources is questionable. Since her appointment by President Bush, she has overseen more than 200 federal raids in California and other medical marijuana states. When Ms. Leonhart became interim director, these raids continued even after the issuance of the October 19, 2009 Department of Justice memo which recommended federal officials shift resources away from targeting those individuals and organizations operating in compliance with state laws related to medical marijuana.

As a police officer, I made arrests of drug users because I was held accountable for enforcing the law whether I agreed with it or not. Ms. Leonhart should be held similarly accountable for her actions which were inconsistent with guidance from the Department of Justice, as well as President Obama's clear intentions based on his popular campaign pledges. Under her supervision, a DEA agent raiding a marijuana grower who was operating with the support of the sheriff in Mendocino County, CA, said, "I don't care what the sheriff says." This attitude is counterproductive. Given the grave problems associated with illegal drug market violence, we feel that conducting raids on individuals and caretakers acting in compliance with state and local law may not be the best use of the DEA's limited resources.

The DEA needs a director whose decisions are guided by the best interests of our citizens. Despite calls by the American Medical Association, Ms. Leonhart has failed to respond to a petition calling for hearings to review the scheduling of marijuana. Despite the DEA's own administrative law judge's ruling that the University of Massachusetts should be able to cultivate marijuana for FDA-approved research, Ms. Leonhart has blocked such research. We encourage the nomination of a director who supports engaging in dialogue and the use of research to shape the best possible policies.

Ultimately, we feel Ms. Leonhart is not ready for the job of DEA director and qualified candidates are available. In your confirmation hearings, the members of the Judiciary Committee should ask the difficult questions which will determine how she would intend to handle the changing nature of US drug laws. Voters across the country have created a gap between federal policy and state law that is steadily widening. In fifteen states, plus Washington D.C., the medical use of marijuana has been recognized. Several other states may choose to legalize marijuana in the next few years. The director of the DEA must be able to appropriately bridge this divide without wasting resources or causing unnecessary harm.

In the meantime, the criminal justice professionals of Law Enforcement Against Prohibition urge a no vote on Ms. Leonhart's confirmation as DEA director.

Marijuana Policy Project
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Washington, DC 20002
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info@mpp.org • www.mpp.org

Attention: Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Re: Confirmation hearing for Michele Leonhart
Date: November 16, 2010

VIA FAX:

Senator Leahy: 202-224-9516

Please consider posing the following question to Ms. Leonhart at tomorrow's hearing – or circulate it to others prior to the hearing for their consideration.

Thank you,

Steve Fox
Director of Government Relations

QUESTION:

Earlier this year, under your leadership, the DEA demonstrated a lack of respect for a Mendocino County, California ordinance regulating medical marijuana cultivation by raiding the very first grower to register with the sheriff. Joy Greenfield, 69, had paid more than $1,000 for a permit to cultivate 99 plants in a collective garden that had been inspected and approved by the local sheriff. Informed that Ms. Greenfield had the support of the sheriff, the DEA agent in charge responded by saying, "I don't care what the sheriff says." Not surprisingly, given Department of Justice guidance in such cases, charges have not been filed against Ms. Greenfield. Yet agents under your charge destroyed the medicine she was growing and seized cash and her computer.

Given the Department of Justice memo of October 2009, instructing U.S. Attorneys not to prosecute individuals acting in compliance with state medical marijuana laws, it is hard to understand the logic behind raids like this. **Would you be willing to put in place new procedures, under which your agents would consult with local authorities prior to a raid to determine whether the target is acting in compliance with state law? And if such target were acting in compliance with state law, do you believe that conducting a raid is consistent with the Department of Justice memo of last year?**

Related articles:

http://www.pressdemocrat.com/article/20100709/ARTICLES/100709470/1350?Title=Marijuana-advocacy-group-decries-Covelo-pot-raid

http://www.alternet.org/drugs/147506/feds_raid_legal_marijuana_farm,_destroy_crops/

11/16/2010 3:38PM

FAX 202-224-9516
TO: Senator Patrick Leahy, Chairman, Committee on the Judiciary

FROM: Health Professionals for Responsible Drug Scheduling

RE: 11/17/10 hearing on the nomination of Michele Leonhart as Drug Enforcement

Administration chief

Dear Senator Leahy,

My name is Dr. Sunil Aggarwal, and I am writing on behalf of a group of concerned health professionals to **oppose** the nomination of Ms. Leonhart as chief administrator of the Drug Enforcement Administration (DEA). Our 17-member group, Health Professionals for Responsible Drug Scheduling, is composed of the following health professionals: 7 M.D.s, 1 D.O., 2 N.D.s, 2 allopathic medical students (1 US-based, 1 Ireland-based), 1 osteopathic medical student, 2 pharmacy students, 1 R.N. This group of health professionals also has a number of additional lettered areas of specialization: PhD ((Medical)Geography), MPH (2), MPA (1), Doctoral Student (Environmental and Occupational Hygiene) (1), Certified Midwife (1), M.S. (Physiology) (1), D.Div. (1). We have one health scientist as well who has a PhD in Psychology who specializes in psychiatric epidemiology. Our group has 63 fans on facebook.

The group was formed to challenge irresponsible scheduling that officials at various levels of governance have maintained for naturally occurring drugs or substances and their cogeners on scientific and humanitarian grounds, drawing on the accumulated wealth of knowledge about these drugs and their uses gleaned from all fields of human and biomedical sciences and independent inquiry. The group seeks to identify schedule designations for substances which are judged to be unscientific and unjust in the face of such evidence and to advocate for and educate the public about their responsible rescheduling or de-scheduling by those legally empowered to do so. The group also envisions future scenarios of health and social development that would be possible with responsible drug scheduling.

In a democracy which strives to place "We the People" at the center, we do not deserve to have politically appointed government officials who actively violate the People's wishes. Not only has Ms. Leonhart done this on repeated occasions, she has undermined the dictates of just action and the imperatives of scientific understanding. Now that Arizona and the District of Columbia have become zones in which the electorate has chosen to allow health care providers the ability to use *cannabinoid botanicals* (the scientific term for thinking about cannabis as a medicinal agent, since it acknowledges the previously unknown widespread cannabinoid signaling system in human bodies, which it acts on) in the course of treatment and patient care, 28.57% of the population of the United States currently resides in a state or district that has accepted the medical use of marijuana (to use the slang Schedule I term for this plant) in treatment. Given this fact, how can it be said that cannabis "has no currently accepted medical use in treatment in the United States" or a "lack of accepted safety for use... under medical supervision" as it says, *verbatim*, in the Congressionally-authored scheduling criteria for class I, where cannabis has been placed for 40 years? Ms. Leonhart, despite the meaning of her surname 'Lion-hearted', which implies courage, has acted in cowardice and in dereliction of duty by maintaining the schedule I classification of cannabis in light of these facts. Attorney General Holder has designated his Congressionally-granted authority to re-schedule and de-schedule drugs to the head of the DEA, and the federal law states that these officials are required to frequently review the drug schedules and update them in light of emerging scientific and social understanding. By not choosing to recommend de-scheduling or rescheduling of cannabis, by not choosing to implement the rulings of prior DEA Administrative Law Judges who have, in

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their legal decisions, called for the rescheduling of cannabis and the creation of multiple sources of supply for research, and by continuing to harass and intimidate those who are attempted to act in compliance with state medical cannabis laws, Ms. Leonhart has demonstrated that she represents neither the will of the People nor the basic dictates of democratic due process and thus should never have been nominated to head the DEA, nor should she be confirmed by the Senate to do so.

Whereas the American Medical Association and the American College of Physicians, the two largest groups of physicians in the United States, have called for a review of the Schedule I status of cannabis, Ms. Leonhart has instead only chosen to review the Schedule status of THC, recently calling for its transfer to Schedule III, since drug manufacturers have applications before the FDA to make "generic Marinol®" and in turn generate a handsome profit at the expense of the public who are disempowered by the threat of felony to produce this same medicinal agent themselves in its plant form. This was the logical extension of the DEA ruling in 2007, when Ms. Leonhart's DEA agreed that THC and other cannabinoids can be directly extracted from the federal cannabis supply in Mississippi, developed as drugs by pharmaceutical companies, and marketed to the public. This is nothing more than sheer hypocrisy, cronyism, and deepening injustice, made possible by the continuing lie that cannabis has no accepted medical use in treatment in the United States... but somehow all of the compounds extracted from it do? And somehow, over thirty published clinical trials with the federal supply cannabis, including numerous randomized controlled ones, which overwhelmingly show empirically demonstrable medical utilities of cannabis for the treatment of severe nerve pain (neuropathic pain), appetite loss, and muscle spasm are simply ignored or conveniently forgotten? This is outrageous.

Members of the Committee, I implore you to end the politicization of the drugs issues. On your committee you have a physician member, Dr. Tom Coburn. Dr. Coburn personally knows me, Sunil Aggarwal, as I grew up in the same city that he hails from, Muskogee, Oklahoma. He even came to our high school to teach us sex-ed when I was a teenager. Dr. Coburn will attest to my reputation of being a hard-working, high achieving student. From what I have studied in an NIH-funded Medical Scientist Training Program and an NSF-funded Graduate Research Fellowship, at the top-ranked primary care medical school for over a decade, I can attest that cannabis and other schedule I classified substances DO indeed have bona fide medicinal uses, not to mention longstanding cultural uses in history. It is time to end the lies and let the scientific record guide our drug scheduling, not political posturing and drug 'propaganda'.

Sunil Aggarwal, MD, PhD

Health Professionals for Responsible Drug Scheduling, Founder

[redacted]

JOHNNY ISAKSON
GEORGIA

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United States Senate

WASHINGTON, DC 20510

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SMALL BUSINESS AND ENTREPRENEURSHIP

November 17, 2010

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member
Senate Judiciary Committee
326 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Sessions:

Due to a previously scheduled hearing at the Commerce Committee I am unable to attend today's nomination hearing to consider Steve C. Jones as a United States District Judge for the Northern District of Georgia. Judge Jones currently serves as a Superior Court Judge of the Western Judicial Circuit in my State of Georgia and is a very well respected jurist. I am pleased that the Judiciary Committee is holding a hearing on his nomination.

Judge Jones was appointed to the Superior Court of the Western Judicial Circuit of Georgia in 1995. In addition to his caseload, Judge Jones also presided over the Western Judicial Circuit Felony Drug Court Program, a program that integrates alcohol and substance abuse treatment with court supervision. Prior to his 1994 Superior Court judicial appointment, Judge Jones served as a Municipal Court Judge, as an Assistant District Attorney and as the Director of the Child Support Recovery Unit.

A native of Athens-Clarke County, Georgia, Judge Jones has always demonstrated his commitment to his community and to the State of Georgia. He has won multiple awards for his leadership in community service and volunteerism including being the recipient of the Chief Justice Robert Benham Award for Community Service in 2007, and the Junior League of Athens and Athens First Bank & Trust "Volunteer of the Year Award." Judge Jones is an outstanding leader in Georgia, and I am thankful to both of you for holding this hearing.

Sincerely,

Johnny Isakson
United States Senator

Statement of Senator John F. Kerry
On the Nomination of Judge Patti B. Saris
To be a Member and Chair of the
United States Sentencing Commission
November 17, 2010

Chairman Leahy and Senator Sessions, I am pleased to support the nomination of Judge Patti B. Saris to become Commissioner and Chair of the United States Sentencing Commission. Her many years of service on the state and federal level, as well as her career in both the private and public positions, make her an exceptional candidate. I had the honor of submitting her name to this committee with our dear friend, the late Senator Ted Kennedy in 1993 and I am proud to support her nomination today.

The United States Sentencing Commission plays a vital role in guiding a fair and flexible sentencing process in the federal courts. I'm confident that with her vast knowledge of the judiciary and sentencing, Judge Saris will be an immediate asset to the Commission. She will take pragmatic approach to sentencing procedure developed during her years of experience on the Massachusetts District court..

A native Bostonian, the extensive and distinguished career of Judge Saris has always made the Commonwealth of Massachusetts proud. She graduated *magna cum laude* from Radcliffe College in 1973 and *cum laude* from Harvard Law School in 1976. Judge Saris' legal career would ultimately bring her home to Boston where she has served as District Court Judge for the District of Massachusetts for the past 16 years with distinction

Judge Saris' legal expertise and services have previously placed her in the role of Associate Justice on the Massachusetts Superior Court and Magistrate Judge on the US District Court of Massachusetts. Prior to that, she served as Counsel for Senator Kennedy in between periods of work in the private legal sector. Judge Saris served as Staff Counsel for this very committee during Senator Kennedy's chairmanship from 1979 to 1981.

Massachusetts is proud of the work Judge Saris has done for the Commonwealth and of her already numerous accomplishments. Her nomination to the United States Sentencing Commission is the pinnacle of an impressive lifetime spent tirelessly working in the legal discipline. I offer Judge Saris my full support and I hope that the Judiciary Committee will give her nomination full consideration.

Statement of

The Honorable Amy Klobuchar

United States Senator
Minnesota
November 17, 2010

It is my pleasure to introduce Michele Leonhart to this Committee, and to support her nomination to lead the Drug Enforcement Administration.

Michele grew up in White Bear Lake, Minnesota, and attended Bemidji State University in Bemidji, Minnesota. I am proud that this Minnesota native has been nominated to fill such an important position.

Her career has been filled with "firsts":

• She graduated first in her class from the Baltimore Police Academy in 1978;

• She graduated first in her class at the DEA Training Academy in 1981;

• Then she became the first female agent ever to serve in the DEA's Minneapolis field office, also in 1981;

• And in 1997, she became the first woman to head a DEA field division when she was appointed as Special Agent in Charge in San Francisco.

In fact, the only time the word "second" is used regarding Michele Leonhart is in this context: If confirmed by the Senate, Ms. Leonhart would become the second woman ever to serve as Administrator of the DEA.

Of course, Ms. Leonhart will be familiar with the process of running this very important government institution? she's been the Acting Administrator for the last three years, in addition to continuing to serve as the Deputy Administrator – a position she was unanimously confirmed to by the Senate in 2004.

I hope that she will be confirmed quickly so that she can stop doing double-duty, and focus entirely on the position she has been nominated for now.

Although her resume is impressive, and indicates that she is highly qualified for this job, I also want to mention some other traits of hers.

You see, there are a lot of folks in Minnesota law enforcement who know Ms. Leonhart through her decades with DEA and her early law enforcement career in Minnesota. And when you ask them about Ms. Leonhart and her nomination, they don't talk about her amazing resume? they

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talk about the other irreplaceable skills she has. For example:

• I heard that she has an absolutely tireless work ethic that inspires everyone around her.

• I heard that she embodies the principle of "leading by example."

• I heard that she works well with law enforcement at all levels – federal, state and local – and that she is understands the needs of law enforcement officials in urban and rural areas.

• I heard that throughout her DEA career, even starting out as a field agent, she earned the respect and trust of all the people she worked with because she was honest and a hard worker.

I'm proud to support her nomination, and believe that she is the right woman – the right Minnesotan – the right person for this job.

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
November 17, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial And Executive Nominations
November 17, 2010

Today we will hear from seven well-qualified nominees, four for lifetime appointments to Federal district courts, two for high-level positions in the executive branch, and one to chair the United States Sentencing Commission. I thank Senator Whitehouse for agreeing to chair this important hearing today, and for working with me to move the hearing to this morning. I also thank our Ranking Member, Senator Sessions, for working with me to schedule this hearing. I know that he has a tight schedule this week, and I appreciate his flexibility in accommodating the change in schedule that will allow us to hear from these nominees who have come to town with their families to appear before the Committee today.

It is critical that we continue to make progress considering judicial nominations. There are now 108 vacancies on the Federal courts around the country, including 50 vacancies deemed judicial emergencies by the Administrative Office of the U.S. Courts. More than one out of every eight Federal judgeships is vacant, a crisis that seriously impacts Americans' access to justice. Further, there are 20 future vacancies already announced. The Senate has not acted on the request by the Judicial Conference of the United States to authorize 56 additional judgeships, which will allow the Federal judicial to do its work. Accordingly, the Federal judiciary is currently more than 180 judges short of those needed.

Just yesterday we received a letter from Ninth Circuit Chief Judge Alex Kozinski, an appointee of President Reagan, and the other members of the Judicial Council of the Ninth Circuit, who wrote "to emphasize [the] desperate need for judges." The Ninth Circuit is the Nation's largest Federal circuit. Judge Kozinski and the Judicial Council, including the chief judges of the district courts in that circuit, wrote that "[c]ourts cannot do their work if authorized judicial positions remain vacant" and urge "that the Senate act on judicial nominees without delay."

This letter echoes other recent warnings we have received about the cost of skyrocketing vacancies from individuals and organizations like the Federal Bar Association, the American Bar Association, the Chief Judge of the D.C. District Court, Supreme Court Justices, and even the President of the United States. President Obama wrote to the Majority and Minority Leaders of the Senate that the continuing inaction on judicial nominations "is undermining the ability of our courts to deliver justice to those in need." Justice Kennedy addressing the Ninth Circuit Conference about the cost of judicial vacancies in California and around the country said that "if

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judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled."

As Chairman of the Judiciary Committee, I have taken the same approach to considering the judicial nominees of a Democratic President as I did the nominees of a Republican President. During the 17 months I chaired the Judiciary Committee during President Bush's first two years, I scheduled 26 hearings for judicial nominees and the Judiciary Committee worked diligently to consider them, reporting 100 of them. The Committee today holds its 25th hearing for President Obama's Federal circuit and district court nominees. I have not altered my approach and neither have Senate Democrats.

However, even though we have been able to hold as many hearings as we did for President Bush's nominees, the Senate has fallen far short of the record of progress we established. By this date in President Bush's first term, a Democratic Senate had confirmed 99 of his circuit and district court nominees, reaching 100 in that Congress. In stark contrast, we have so far confirmed only 41 of President Obama's circuit and district court nominations. Last year the Senate confirmed only 12 Federal circuit and district court judges, the lowest total in 50 years. This year we have yet to confirm 30 Federal circuit and district judges.

The work we have done in Committee with the cooperation of Senator Sessions to consider President Obama's nominees has not been matched on the floor. Before the last recess, the Senate had ready for consideration and confirmation 23 judicial nominees of the President, all of whom had hearings before this Committee and all of whom had been reported favorably. Sixteen of these judicial nominees were reported unanimously. However, Republicans refused to allow us to consider and confirm any of those 23 nominations before recess despite the judicial vacancies crisis in our Federal courts. As a result, overall judicial vacancies that were reduced during the Bush years from 110 to 34 are now back up to 108.

In the aftermath of an election where there was talk on all sides about working together, we can do so right now, without further delay, and in the interests of the American people. I hope that as we continue to make progress in Committee considering and reporting judicial nominations the Republican leadership will change course so that we take action on these superbly qualified nominees and begin to address the growing vacancy crisis.

There is no reason the four judicial nominees appearing before the Committee today could not be considered by the Committee and the Senate before the 111th Congress adjourns for the year. Max Cogburn, nominated to the Western District of North Carolina has the support of both home state Senators, Senator Burr, a Republican, and Senator Hagan, a Democrat. Steve Jones, nominated to the Northern District of Georgia, has the support of both of Georgia's Republican Senators, Senator Chambliss and Senator Isakson. The two nominees for the District of Oregon, Marco Hernandez and Michael Simon, have the support of both of Oregon's Senators, Senator Wyden and Senator Merkley. They have all had impressive careers and are at the top of their profession—we should consider and confirm them without delay.

Likewise, there is no reason the Senate cannot consider without delay the other nominees before us. Michele Leonhart has served at the Drug Enforcement Agency for nearly 30 years, the last three as Acting Administrator, and is now nominated to be that agency's administrator. The

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Honorable Patti Saris, a well-respected Federal district court judge for 17 years, has been nominated to chair the U.S. Sentencing Commission. Stacia Hylton has a 24-year career with the U.S. Marshals Service and has now been nominated to run it as Director.

I welcome all of the nominees and their families to the Committee today.

# # # # #

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

17 November 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jefferson B. Sessions III
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Sessions,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for Michele M. Leonhart to be the next Administrator of the Drug Enforcement Administration (DEA).

Michele Leonhart is a career law enforcement officer. She began her career as a Baltimore City Police Officer in 1978, represented by one of the largest and most highly regarded local lodges of the FOP. She left Baltimore City for the DEA and has spent virtually her entire career with this agency. She joined the Special Executive Service (SES) in 1996, leading Special Agent Recruitment efforts at DEA Headquarters. From 1997-98, she served as the Special Agent in Charge of DEA's San Francisco Field Division, and then, in 1998, became the Special Agent in Charge of Los Angeles Field Division, a post she held until she was nominated to be the Deputy Administrator by then-President George W. Bush in 2003.

In March 2004, she was unanimously confirmed by the Senate as Deputy Administrator and was nominated to be the Administrator in 2008 by then-President Bush. President Barack H. Obama II renominated her for the same post in February of this year.

Mr. Chairman and Senator Sessions, this important law enforcement agency has been without a Senate-confirmed leader for three years. She is an eminently qualified nominee who has effectively run this agency since the resignation of former Administrator Tandy in November 2007. No one knows this agency and how to lead it better than Michele Leonhart and it is passed time–long passed time–that she be confirmed by the United States Senate.

Throughout her career at the DEA, she has been a friend to the FOP, a strong advocate for law enforcement and an effective leader in nation's war on illegal drugs. I believe that the President has made a fine choice in Michele M. Leonhart to be the next Administrator of the Drug Enforcement Administration, and I urge you and your Committee to expeditiously confirm her nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—

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NATIONAL SHERIFFS' ASSOCIATION

October 27, 2010

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
Washington, D.C. 20510

The Honorable Jeff Sessions, Ranking Member
Senate Judiciary Committee
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Sheriffs' Association (NSA) and the 3,083 elected sheriffs nationwide, we are writing to express our strong support for the nomination of Stacia A. Hylton to be the Director of the United States Marshals Service (USMS). We respectfully urge you to confirm her nomination without delay.

Perhaps the most important federal/local law enforcement relationship to the nation's sheriffs is the relationship between the U.S. Marshals Service and the local Sheriff's Office. Sheriffs routinely partner with the USMS in the transportation and detainment of federal prisoners, as well as in the execution of federal warrants and fugitive recovery. The individual selected as the Director must not only understand the critical partnerships between sheriffs and the U.S. Marshals Service, but must also continue to encourage, cultivate, and strengthen the partnerships. Ms. Hylton's extraordinary qualifications, experience, and expertise make her the ideal candidate to lead this elite agency.

Throughout her distinguished and extensive career, Ms. Hylton has served in positions which have provided her with a comprehensive and multi-faceted understanding of the U.S. Marshals Service. She has had the privilege of serving in such managerial positions as the Acting Deputy Director for the entire USMS; the Federal Detention Trustee, responsible for overseeing and managing funding for all federal detention programs and the Justice Prisoner and Alien Transportation System (JPATS); the Assistant Director of the Prisoner Operations Division of the USMS; the Chief Deputy for the USMS District of South Carolina; and the USMS Chief of Judicial Programs.

Furthermore, Ms. Hylton's vast experience also extends to the day-to-day "boots on the ground" positions within the U.S. Marshals Service. Serving as both a Deputy U.S. Marshal and an Inspector within the Witness Security Program, this critical experience expands upon Ms. Hylton's thorough and well-rounded knowledge of the agency, enabling her to effectively and successfully lead the U.S. Marshals Service.

The National Sheriffs' Association has had the distinct pleasure to work with Ms. Hylton throughout her thirty-year career in federal law enforcement. During her tenure, she has actively participated with NSA and served as a member of both NSA's Jail, Detention, and Corrections Committee; and Ethics, Standards, and Accreditation Committee. Her participation has been key to ensuring sheriffs' concerns are heard and questions answered regarding detention and transportation partnerships. We are confident that as Director, Ms. Hylton's will continue to

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enhance and reinforce the relationship between the U.S. Marshals Service and sheriffs nationwide.

As one of the largest law enforcement organizations in the nation, the National Sheriffs' Association is calling on the United States Senate to swiftly confirm Stacia A. Hylton to be the next Director of the United States Marshals Service.

Respectfully,

Sheriff B.J. Roberts
President

Aaron D. Kennard
Executive Director

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November 17, 2010

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Nomination of Stacia A. Hylton, U.S. Marshals Service

Dear Chairman Leahy and Ranking Member Sessions,

We write today to express grave concerns about the nomination of Stacia Hylton to head the U.S. Marshals Service. The actions of Ms. Hylton in her former capacity as Federal Detention Trustee and as a private consultant for the GEO Group raise serious questions about conflicts of interest. These troubling questions should be satisfactorily answered prior to the appointment of Ms. Hylton as leader of the U.S. Marshals Service.

Specifically, we are concerned with reports that Ms. Hylton formed a consulting company while still serving as the Federal Detention Trustee. Further, her Public Financial Disclosure Report reveals that this consulting company had as its sole client one of the largest private prison firms in the nation, the GEO Group. Significantly, the GEO Group holds lucrative contracts with the U.S. Marshals Service to house federal prisoners.

If Ms. Hylton were to assume the leadership of the U.S. Marshals Service, we submit that she would be faced with a conflict of interest. Ms. Hylton's very recent acceptance of consulting fees from private prison firms who currently hold contracts with the U.S. Marshals Service creates a clear and unavoidable conflict.

Thank you for your consideration of this letter.

Sincerely,

Ali Noorani
Executive Director
National Immigration Forum

cc: Judiciary Committee Members

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NORML ...working to reform marijuana laws...

National Organization for the Reform of Marijuana Laws

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E-mail norml@norml.org
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Nov 16, 2010

Sen. Patrick Leahy
Senate Judiciary Committee
Washington, DC 20510

Dear Sen. Leahy:

This Wednesday, members of the Senate Judiciary Committee will be considering Michele Leonhart for the position of director of the United States Drug Enforcement Administration (DEA). We have serious concerns regarding Ms. Leonhart's nomination.

As Interim DEA director, Ms. Leonhart has overseen dozens of federal raids on medical marijuana providers, producers, and laboratory facilities that engage in the testing of cannabis potency and quality. These actions took place in states that have enacted laws allowing for the production and distribution of marijuana for medical purposes, and they are inconsistent with an October 19, 2009 Department of Justice memo recommending federal officials no longer *"focus ... resources ... on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."*

It is now 14 years since California voters recognized the medical value of marijuana by amending state law; fifteen other states and the District of Columbia have since acted likewise. Yet under Ms. Leonhart's leadership the DEA has failed to take a single step toward revising its practices in accordance with these changes to state law and administrative policy.

Furthermore, **Ms. Leonhart has actively blocked scientific research that seeks to better identify and quantify marijuana's medicinal properties and efficacy.** These actions contradict this administration's pledge to let science rather than ideology guide public policy.

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Efficacy

In particular, **Ms. Leonhart has neglected to reply to an eight-year-old petition that calls for administrative hearings regarding the rescheduling marijuana for medical use.** Such hearings were called for in 2009 by the American Medical Association, which resolved "that marijuana's status as a federal Schedule I controlled substance be reviewed with the goal of facilitating the conduct of clinical research and development of cannabinoid-based medicines." Moreover, in January 2009, Ms. Leonhart refused to issue a license to the University of Massachusetts for the purpose of cultivating marijuana for FDA-approved research, despite a DEA administrative law judge's ruling that it would be "in the public interest" to grant this request. This single act has prohibited any privately funded medical marijuana research from taking place in the United States.

Finally, **Ms. Leonhart has exhibited questionable judgment when speaking to the subject of escalating drug war violence in Mexico.** In 2009, she described this border violence (which is responsible for over 31,000 deaths since December 2006) as a sign of the "success" of her agency's anti-drug strategies.

"Our view is that the violence we have been seeing is a signpost of the success our very courageous Mexican counterparts are having," Leonhart said. "The cartels are acting out like caged animals, because they are caged animals." This view is out of step with the reality and the gravity of the growing problem on our southern border.

In short, NORML believes that Ms. Leonhart's actions and ambitions are incompatible with state law, public opinion, and with the policies of this administration. At a minimum, NORML requests that Senators ask Ms. Leonhart specific questions regarding her past record and her intentions moving forward. These questions ought to include:

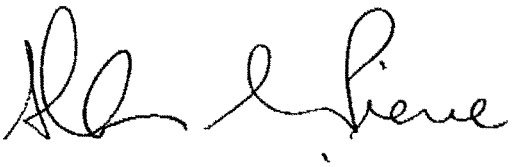
* What are your plans for bridging the growing divide between state and federal law concerning the use of marijuana for medical purposes?

* How has the DEA changed its policies and practices to ensure compliance with the 2009 Department of Justice memo calling on federal law enforcement to no longer target individuals who are in compliance with the medical marijuana laws of their states?

* When will the DEA respond to a 2002 petition to hold hearings on the rescheduling of marijuana, as were called for by the American Medical Association?

Failure of the Senate to engage in a probing dialogue with Ms. Leonhart regarding these matters will continue to give the appearance that Congress and this administration are willing to place politics above science. This administration has specifically pledged to end this practice. It can begin doing so by demanding that careful consideration be given to Michele Leonhart's nomination.

Sincerely,



Allen F. St Pierre
Executive Director
NORML/NORML Foundation

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ATTACHMENT

PRESS RELEASE

Coalition of Human Rights, Criminal Justice Organizations Announces Opposition to Obama Nominee

November 9, 2010 – Private Corrections Working Group & Prison Legal News

For Immediate Release

Washington, DC – A coalition of human rights and criminal justice organizations today announced their opposition to President Obama's nomination of Stacia A. Hylton to head the U.S. Marshals Service.

Hylton, a former Marshal and Acting Deputy Director of the U.S. Marshals Service with a lengthy career in law enforcement, was employed from June 2004 to February 2010 as the Federal Detention Trustee, where she oversaw the detention of federal prisoners awaiting trial or immigration proceedings. Following her retirement she was nominated by President Obama on September 20, 2010 to direct the U.S. Marshals Service.

During Hylton's tenure as Federal Detention Trustee, GEO Group, the nation's second-largest for-profit private prison company, was awarded a number of lucrative contracts to house federal prisoners. These included a sole-source ten-year contract at GEO's Western Region Detention Facility in San Diego, generating approximately $34 million in annual revenue; a 20-year contract to operate the 1,500-bed Rio Grande Detention Center in Laredo, Texas with an estimated $34 million in annual revenue; and a 20-year sole-source contract to manage the Robert A. Deyton Detention Facility in Lovejoy, Georgia, generating $16-20 million in annual revenue.

As reported by the *Washington Times* in an October 25 article, after retiring as Federal Detention Trustee earlier this year, Hylton quickly accepted a consulting job with GEO Group through her Virginia-based company, Hylton Kirk & Associates LLC, of which she is the president and sole owner. In her financial disclosure statement, Hylton reported income of $112,500 for "consulting services for detention matters, federal relations, and acquisitions and mergers." GEO Group is the only company listed in her disclosure statement in connection with such consulting services.

According to the Virginia State Corporation Commission, Hylton's consulting company was formed on Jan. 13, 2010 – more than a month before she retired from her position as Federal Detention Trustee. However, in her questionnaire submitted to the Senate Committee on the Judiciary, she stated she began working for her consulting company in March 2010, the month after her retirement.

"This is a prime example of the revolving door between the public and for-profit private sectors turning full circle," said Alex Friedmann, associate editor of Prison Legal News, a project of the Human Rights Defense Center that reports on criminal justice issues. "After cashing in on her experience in public law enforcement by taking a consulting job with GEO Group, Ms. Hylton has now been nominated for a high-level federal position where she will oversee detention services for the U.S. Marshals – including services provided by private prison firms such as GEO."

"The U.S. Marshals preside over one of the nation's largest privatized federal detention systems," added Bob Libal, with Grassroots Leadership. "Policies that have driven the private prison expansion such as Operation Streamline are carried out by the U.S. Marshals. Ms. Hylton's consulting work with the GEO Group, a troubled company that benefits handsomely from such policies, is a cause for major concern."

Also while Hylton served as Federal Detention Trustee, Corrections Corp. of America (CCA), the nation's largest private prison company, was awarded a 20-year contract to design, build and operate the $80 million 1,072-bed Nevada Southern Detention Center. Further, under Hylton's direction, the Office of the Federal Detention Trustee granted a sole-source 20-year contract to CCA to hold U.S. Marshals prisoners at the company's Leavenworth Detention Center in Kansas, and approved a sole-source contract for CCA to house U.S. Marshals detainees at a prison in Pinal County, Arizona. Approximately 40% of CCA's business comes from the federal government.

According to a February 26, 2010 post on a website for CCA employees (www.the insideCCA.com), current CCA president Damon Hininger attended Hylton's retirement party in Washington, DC. Hininger noted that it "was a nice event and while there, I got the opportunity to speak with various USMS and ICE officials."

Additionally, in her response to a 2007 draft audit report by the Inspector General's Office on oversight of intergovernmental agreements by the U.S. Marshals Service and the Office of the Federal Detention Trustee (OIG report 07-26), Hylton objected to the OIG's recommendation that the Office of the Federal Detention Trustee "limit[] the amount of profit a state or local jail can earn for housing federal prisoners." Since some jails that house federal detainees are privately-operated, Hylton's objections apparently encompassed limitations on profit earned by private jail contractors.

"The primary goal of private prison companies is financial," stated Charlie Sullivan, director of International CURE (Citizens United for Rehabilitation of Errants), a non-profit criminal justice reform organization. "This profit motive over-rides decisions on whether to release a prisoner and whether to provide rehabilitative programs."

In 2006, Hylton gave a presentation to the Association of Private Correctional and Treatment Organizations (APCTO), an industry organization that advocates for private companies that provide correctional services, including prison privatization. APCTO's membership includes Management & Training Corporation, a private prison contractor that houses thousands of federal detainees for the U.S. Bureau of Prisons, ICE and the U.S. Marshals Service.

"It is extremely worrisome that Ms. Hylton is nominated for a position where she would be directly involved with overseeing contracts with private prison companies to house federal detainees, given her cozy relationship with the private prison industry and her acceptance of more than $100,000 from GEO through her consulting work," said Ken Kopczynski, director of the Private Corrections Working Group, a non-profit citizen watchdog organization that opposes prison privatization.

Despite repeated requests to both the White House and GEO Group, neither responded to questions regarding Hylton's consulting relationship with GEO.

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The Alliance for Justice, Human Rights Defense Center, Private Corrections Working Group, Grassroots Leadership, National Lawyers Guild, International CURE, Detention Watch Network and Justice Policy Institute today announced their opposition to Hylton's nomination, based on her close ties to the private prison industry and the conflict those ties would create should she be appointed to direct the U.S. Marshals Service.

"While Ms. Hylton indicated she had spoken with the Office of Governmental Ethics to resolve any potential conflicts, the fact remains that she formed a consulting firm before retiring as Federal Detention Trustee, and apparently the only company she has consulted for is GEO Group – which has received multi-million dollar contracts from the federal government, including the U.S. Marshals," Kopczynski noted. "Given that she accepted money from the very industry she was overseeing as Detention Trustee, and will be overseeing again if appointed to head the Marshals, this is a conflict that cannot simply be waived. It ill serves the public for the Obama administration to nominate Ms. Hylton in light of such an obvious conflict of interest."

"Last year, while states saw their prison populations decline for the first time in years, the federal population continued to rise," added Tracy Velázquez, executive director of the Justice Policy Institute. "As taxpayers, we can't afford increasing rates of incarceration, which we know is a failed public safety strategy that has terrible consequences for communities. The Administration should not be appointing someone working for the industry that most stands to gain by further increasing our country's incarceration rate."

The coalition of organizations opposing Hylton's nomination will be contacting the Senate Committee on the Judiciary and the White House to voice their concerns.

The Private Corrections Working Group (PCWG) is a non-profit Florida-based citizen watchdog organization that works to educate the public about the significant dangers and pitfalls associated with the privatization of correctional services. PCWG maintains an online collection of news reports and other resources related to the private prison industry, and holds the position that for-profit detention facilities have no place in a free and democratic society. (www.privateci.org).

Prison Legal News (PLN), founded in 1990 and based in Brattleboro, Vermont, is a non-profit organization dedicated to protecting human rights in U.S. detention facilities. PLN publishes a monthly magazine that includes reports, reviews and analysis of court rulings and news related to prisoners' rights and criminal justice issues. PLN has almost 7,000 subscribers nationwide and operates a website (www.prisonlegalnews.org) that includes a comprehensive database of prison and jail-related articles, news reports, court rulings, verdicts, settlements and related documents. PLN is a project of the Human Rights Defense Center.

The Alliance for Justice is a national association of over 100 organizations dedicated to advancing justice and democracy. For 30 years, the AFJ has been a leader in the fight for a more equitable society on behalf of a broad constituency of environmental, consumer, civil and women's rights, children's, senior citizens' and other groups. AFJ is

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premised on the belief that all Americans have the right to secure justice in the courts and to have our voices heard when government makes decisions that affect our lives.

Grassroots Leadership is a multi-racial team of organizers who help community, labor, faith and campus organizations think critically, work strategically and take direct action to end social and economic oppression, gain power, and achieve justice and equity. Hundreds of prisons, jails and detention centers in this country are owned and run by for-profit corporations. For these firms, every prisoner is a profit center, every crime a business opportunity, and rehabilitation is bad for business. Our goal is to put an end to abuses of justice and the public trust by working to abolish for-profit incarceration.

The Justice Policy Institute is a Washington, DC-based policy research organization dedicated to reducing the use of incarceration and promoting strategies to increase community well-being.

The National Lawyers Guild, founded in 1937, is the oldest and largest public interest human rights bar organization in the United States. Its headquarters are in New York and it has chapters in every state.

International CURE is a grassroots organization that has two goals. The first is to use prisons only for those who absolutely have to be in them. Second, prisoners should be given all the rehabilitative opportunities they need to turn their lives around. "Private for-profit prisons and detention facilities go against both these goals," noted CURE director Charlie Sullivan.

The Detention Watch Network is a national coalition of organizations and individuals working to educate the public and policy makers about the U.S. immigration detention and deportation system and advocate for humane reform so that all who come to our shores receive fair and humane treatment.

For further information, please contact:

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Senator Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Michele M. Leonhart to be Administrator of the Drug Enforcement Administration

Via fax, email and postal mail

July 23, 2010

Dear Chairman Leahy,

Over the past fifteen years, the Drug Enforcement Administration (DEA) has waged a wasteful and pointless war against farmers and businesses who seek to grow and process industrial hemp, a plant which was grown by American farmers for centuries dating back to the founding of our nation.

Industrial hemp is the non-drug oilseed and fiber varieties of *Cannabis sativa* L. Because they contain 0.3% or less tetrahydrocannabinol (THC), industrial hemp varieties of *Cannabis* have no potential whatsoever to be used as a recreational drug.

Today more than thirty industrialized nations allow their farmers to grow industrial hemp and recognize that industrial hemp and marihuana are distinct. International law also recognizes this distinction by exempting hemp farming in the United Nations Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. In fact, Article 28 states that:

> *"This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes."*

A number of states, including Maine, Maryland, North Dakota, Oregon, Vermont and West Virginia, have passed state laws allowing for hemp farming. A number of other states have passed resolutions urging the DEA to allow farmers to once again grow industrial hemp.

Despite these facts – and overwhelming public support – the DEA has refused to allow farmers to grow industrial hemp.

In addition, the DEA has failed to rule on several state-licensed North Dakota farmer applications – after more than forty-one months now. Farmers Wayne Hauge and Rep. David Monson of North Dakota both received state licenses to grow hemp and applied for DEA licenses on February 12, 2007. As of today, they have not received a decision from the agency.

Michele M. Leonhart, the nominee for Administrator and a lifetime DEA bureaucrat, severely lacks the vision to change policy on hemp farming for the better. From August of 2003 to the present, Leonhart has held the positions of Acting Deputy Administrator, Deputy Administrator and Acting Administrator and has been in a position to help craft and administer the DEA's strategy against the legitimate hemp industry. Under her leadership, the DEA's war on hemp farming has increased and expanded to include attacking manufacturers of hemp products by issuing rules to ban hemp foods. For these reasons and others, Vote Hemp strongly opposes the nomination of Michele Leonhart to be Administrator of the DEA.

The Obama administration has recently directed the DEA to respect state laws regarding the medical use of drug strains of *Cannabis*, yet farmers in the U.S. with state licenses to grow hemp remain at risk of DEA raids, possible jail time and forfeiture of their farms. Why? Because DEA fails to distinguish non-drug industrial hemp, the oilseed and fiber varieties of *Cannabis*, from the drug varieties of *Cannabis*. Hemp is, however, a legitimate, sustainable, profitable and **non-drug crop** that generates a $400+ million retail industry in the U.S. today.

For the last four growing seasons, from 2007-2010, farmers in North Dakota have received licenses from the North Dakota Department of Agriculture to grow industrial hemp. However, despite the state's authorization to grow the crop, these farmers have not been able to grow hemp due to the DEA's refusal to issue federal licenses or to allow the states in general to regulate hemp farming on their own.

In January of 2007, North Dakota's Agriculture Commissioner Roger Johnson accepted the first application from a farmer for a state industrial hemp license. The license went to Representative David Monson, a farmer and state Assistant House Majority Leader, now Speaker of the House, ten years after the first hemp bill was passed and made law in the state. Commissioner Johnson hand-delivered license applications to the DEA on February 13, 2007 from Representative Monson and Wayne Hauge, a farmer from Ray, North Dakota, along with the farmers' **non-refundable $2,300 annual registration fees**, hoping to help them get their DEA licenses in time for Spring planting. After several months of fruitless negotiations between the DEA and North Dakota state officials, the state legislature responded to the federal agency's obstructionism by overwhelmingly passing HB 1020. They added the language "A license required by this section is not conditioned on or subject to review or approval by the United States Drug Enforcement Agency" to the bill, which amended Section 4-41-02 of the North Dakota Century Code, the section containing the industrial hemp licensing and reporting requirements, and it was quickly signed into law by Governor John Hoeven.

Commissioner Johnson spent nearly a year trying to work out an agreement with the DEA, to no avail, and it is now clear that the DEA is never going to act in a reasonable way and acknowledge the practical differences between non-drug industrial hemp and drug varieties of *Cannabis*. It is also clear that the DEA will never accommodate North Dakota's plan to

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commercialize hemp farming, despite the fact that the agency could easily allow the state to regulate hemp farming on its own, just as it now does with those states which regulate medical marihuana.

The misinformation about industrial hemp is prevalent in the public policy of the DEA as well. The agency has publicly claimed that it does not have the authority to change existing federal law and that it is "law enforcement, not lawmaker." It is indeed interesting that the DEA pretends to be purely a law enforcement entity, when it is not. Like many federal agencies, the DEA has been granted broad authority by Congress to interpret the statutes in the United States Code, such as the Controlled Substances Act (CSA). This includes re-scheduling substances and promulgating detailed rules and regulations. It is obvious that the current rules are not set up for farmers to grow an agricultural crop that has no potential for use as a drug. The DEA could easily negotiate industrial hemp farming rules with North Dakota (or any state) under the Administrative Procedures Act, 5 USC § 563. Instead, the agency chooses to interfere in the legislative process by intentionally confusing legislators, reporters and the public with needless and misleading rhetoric. Under U.S. administrative law, "an agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule, if the head of the agency determines that the use of the negotiated rulemaking procedure is in the public interest" (5 USC § 563a). Nominee Leonhart has had ample opportunity to make just such a determination regarding hemp farming, but instead she has chosen to continue and escalate the DEA's war on hemp farmers and manufacturers.

The last commercial hemp crops in the U.S. were grown in Wisconsin in 1957. The primary reason that industrial hemp has not been grown in this country since then is because of its misclassification as a Schedule I drug in the CSA. The Marihuana Tax Act of 1937 had provisions for farmers to grow hemp by paying an annual occupational tax of $1.00. The exemption for hemp products was contained in the definition of marihuana in the Act:

> *"The term 'marihuana' means all parts of the plant Cannabis sativa L. ... but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination."*

The language of the exemption was carried over almost verbatim to the definition of marihuana in the CSA [21 USC § 802(16)], which superseded the 1937 Tax Act, but since there was no active hemp industry at the time, the provisions for hemp farming and processing were overlooked and not included in the new Act.

Christine A. Kolosov, in her Comment "Evaluating the Public Interest: Regulation of Industrial Hemp under the Controlled Substances Act" in the *UCLA Law Review*, notes that the DEA cannot legitimately deny or delay licenses to cultivate industrial hemp, particularly when states have adopted regulatory schemes like the one enacted in North Dakota. She goes on to argue that the DEA has failed to fulfill its obligations under 21 USC § 823(a) which explicitly states that "The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest."

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The DEA's failure to consider each of the six factors required under Section 823(a), along with its failure to act within a reasonable time, leads us to the unavoidable conclusion that Michele Leonhart would not be a good Administrator of the DEA. Vote Hemp therefore opposes her nomination and urges the committee members to vote against her confirmation.

Sincerely,



Eric Steenstra
President

Vote Hemp is a national, single-issue, non-profit organization dedicated to the acceptance of and a free market for industrial hemp, low-THC oilseed and fiber varieties of Cannabis, and to changes in current law to allow U.S. farmers to once again grow the crop. Our ultimate goal is to see hemp grown on a commercial scale in the U.S. in support of a large local processing and value-added infrastructure.

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SENATOR JIM WEBB
INTRODUCTORY STATEMENT FOR STACIA A. HYLTON
NOMINEE FOR DIRECTOR OF THE U.S. MARSHALS SERVICE
SENATE COMMITTEE ON THE JUDICIARY
NOVEMBER 17, 2010

Chairman Leahy, Ranking Member Sessions, and members of the Committee, thank you for convening today's hearing to consider pending nominations. I appreciate being given the opportunity to introduce Stacia Hylton, who has been nominated to fill the important post of Director of the U.S. Marshals Service in the Department of Justice. Ms. Hylton has served honorably in federal law enforcement within the Justice Department for 29 years. The Hylton family has long roots in Virginia and an admirable tradition of public service.

From 2004 through early this year Ms. Hylton served as the Federal Detention Trustee. Prior to serving in this capacity, Ms. Hilton had a distinguished career with the U.S. Marshall Service from 1980 to 2004. She held numerous leadership positions including roles as Acting Deputy Director, Assistant Director Prisoner Operations, Chief Deputy in the District of South Carolina, and Chief Judicial Security Programs. Her long and distinguished career has prepared her for the challenges of serving as the Director of the U.S. Marshall Service. I have every confidence that after the Committee has the opportunity to hear about her service and review her qualifications that her nomination will be broadly supported.

Thank you.

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Senator Ron Wyden
10:00 am, November 17, 2010
Senate Judiciary Committee
Judicial and Executive Nominations hearing

Chairman Leahy, Ranking Member Sessions, and members of the Committee:

I'd like to thank Chairman Leahy and Ranking Member Sessions for scheduling this hearing today and for including two Oregon judicial nominees on the agenda. It is my great honor to introduce two outstanding lawyers and public servants, Judge Marco Hernandez and Michael Simon, to serve as U.S. District Court Judges for the District of Oregon. I have known both of these distinguished Oregonians for many years, and it is a pleasure to be able to introduce them today.

I would first like to welcome the family members and honored guests that are here with both nominees. Judge Hernandez is joined by his wife Mary Beth, daughter Alicia, son Daniel, and his parents Frank and Rosa Hernandez. Oregon's Chief Justice Paul DeMuniz and his wife Mary are also here. Mr. Simon is joined by his wife, Oregon State Senator Suzanne Bonamici, and his daughter Sara. Michael's son Andrew, who was an intern in my Portland office, is overseas and can't be here, but he's streaming the hearing on the internet. Welcome to all of you.

It's not often that a judicial nominee is nominated by two presidents of different parties at the recommendation of two senators of different parties. But that is exactly happened with Judge Marco Hernandez. He was first nominated for the District Court by President Bush in 2008, when Senator Gordon Smith lead the nomination process, and I supported his recommendation of Judge Hernandez. Unfortunately, the 110th Congress was unable to act upon his nomination before adjourning. In the 111th Congress, I recommended Judge Hernandez's nomination to President Obama, with the strong support of Senator Merkley. I was thrilled when President Obama announced that he too had chosen Judge Hernandez to be nominated to the federal bench.

It's no surprise that leaders from both parties are united in supporting Judge Hernandez, because his life story is a testament to the American dream. At age 17, Marco Hernandez moved to Oregon – all alone. Needing to support himself, he took a job as a dishwasher, later found a better job as a janitor, and eventually became a teacher's aide. At that point, Judge Hernandez began taking night classes at a local community college, with the hope of one day attending a four-

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year college. Finally, he was able to enroll at Western Oregon State College, and quickly demonstrated his ability to excel. Judge Hernandez earned the Delmer Dewey Award as the most outstanding male student in his class. Following college, Marco went on to graduate from the University of Washington School of Law.

From the beginning of his legal career, Judge Hernandez demonstrated a strong commitment to public service. After law school, Judge Hernandez worked at Oregon Legal Services representing farm workers. He then served as a Deputy District Attorney and was later appointed to be a state court judge, where he's served for the past 15 years.

Throughout his judicial career, Judge Hernandez has demonstrated a keen eye towards creative solutions. He implemented an innovative domestic violence program to aggressively pursue offenders, and created a new program for mentally ill defendants, which he continues to oversee.

As a nominee for the federal bench, Judge Hernandez has enjoyed the support of both Republicans and Democrats, and broad range of legal organizations. He has received the strong backing of the Hispanic National Bar Association, and would be the first Hispanic Article III judge in Oregon. I offer my whole-hearted endorsement and urge this committee to confirm his nomination.

Let me turn now to Oregon's other outstanding nominee, Michael Simon. Mr. Simon's diverse and impressive legal career includes work as a public servant, litigator, professor, and pro tem judge, just to scratch the surface. Mr. Simon is currently a partner at Perkins Coie in Portland, where's worked since 1986. After graduating *summa cum laude* from UCLA, Mr. Simon attended Harvard Law School, where he graduated *cum laude*. Mr. Simon began his legal career in the Department of Justice's Antitrust Division, where he served as a trial attorney for five years. During this time, he also volunteered for, and served as, a Special Assistant U.S. Attorney for the Eastern District of Virginia.

Throughout his work both in the public sector and in private practice, Mr. Simon has been an active member of his community, taking leadership positions in many legal, professional, and civic groups. Mr. Simon has engaged in extensive *pro bono* work and has volunteered for many local non-profit organizations. He's been an adjunct faculty member at Lewis & Clark Law School, teaching Antitrust Law. And he's served as a *pro tem* judge on the Multnomah County Circuit

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Court. In short, Michael Simon is a pillar of the community, an exemplary member of the bar, and an outstanding nominee for the federal bench.

As a final note, I would add that with two federal judicial vacancies in Oregon, it is imperative to fill these positions promptly. In fact, one of these seats has been vacant for 656 days and is classified as a judicial emergency. The backlog of cases continues to grow. Justice delayed is justice denied. The citizens of Oregon deserve a full federal bench.

I couldn't be more pleased to present to the committee these two extraordinary lawyers for confirmation to the U.S. District Court for Oregon. I urge you to act as promptly as possible to fill the vacancies on Oregon's federal bench by giving your strong support to Judge Marco Hernandez and Michael Simon. Thank you.



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