

**CONFIRMATION HEARINGS ON FEDERAL
APPOINTMENTS**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED THIRTEENTH CONGRESS
FIRST SESSION

—————
JANUARY 23, FEBRUARY 13, FEBRUARY 27, AND MARCH 19, 2013
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Serial No. J-113-1

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PART 1
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CONTENTS

WEDNESDAY, JANUARY 23, 2013

STATEMENTS OF COMMITTEE MEMBERS

	Page
Coons, Hon. Christopher A., a U.S. Senator from the State of Delaware	8

PRESENTERS

Udall, Hon. Mark, a U.S. Senator from the State of Colorado presenting Raymond P. Moore, Nominee to be District Judge for the District of Colorado	2
Bennett, Hon. Michael, a U.S. Senator from the State of Colorado presenting Raymond P. Moore, Nominee to be District Judge for the District of Colorado	3
Gillibrand, Hon. Kirsten E., a U.S. Senator from the State of New York presenting Nelson Stephen Roman, Nominee to be District Judge for the Southern District of New York, Analisa Torres, Nominee to be District Judge for the Southern District of New York, and Claire R. Kelly, Nominee to be a Judge of the Court of International Trade	5
Schatz, Hon. Brian, a U.S. Senator from the State of Hawaii presenting Derrick Kahala Watson, Nominee to be District Judge for the District of Hawaii	7
Hirono, Hon. Mazie K., a U.S. Senator from the State of Hawaii presenting Derrick Kahala Watson, Nominee to be District Judge for the District of Hawaii	8

STATEMENT OF THE NOMINEES

Roman, Nelson Stephen, Nominee to be District Judge for the Southern District of New York	9
Update Letter to Questionnaire	76
Questionnaire	11
Moore, Raymond P., Nominee to be District Judge for the District of Colorado	78
Update Letter to Questionnaire	108
Questionnaire	79
Torres, Analisa, Nominee to be District Judge for the Southern District of New York	116
Update Letter to Questionnaire	169
Questionnaire	117
Watson, Derrick Kahala, Nominee to be District Judge for the District of Hawaii	184
Update Letter to Questionnaire	218
Questionnaire	185
Kelly, Claire R., Nominee to be a Judge of the Court of International Trade ..	228
Update Letter to Questionnaire	288
Questionnaire	229

QUESTIONS

Questions for all nominees submitted by Senator Klobuchar	313
Questions for Nelson Stephen Roman submitted by Senator Grassley	314
Questions for Raymond P. Moore submitted by Senator Grassley	316
Questions for Analisa Torres submitted by Senator Grassley	318
Questions for Derrick Kahala Watson submitted by Senator Grassley	320

IV

	Page
Questions for Claire R. Kelly submitted by Senator Grassley	322
Questions for all nominees submitted by Senator Cruz	324
Questions for Nelson Stephen Roman submitted by Senator Flake	325
Questions for Raymond P. Moore submitted by Senator Flake	326
Questions for Analisa Torres submitted by Senator Flake	327
Questions for Derrick Kahala Watson submitted by Senator Flake	328

ANSWERS

Responses of Claire R. Kelly to questions submitted by Senators Grassley and Klobuchar	329
Responses of Derrick Kahala Watson to questions submitted by Senators Grassley, Cruz, Flake and Klobuchar	334
Responses of Analisa Torres to questions submitted by Senators Grassley, Cruz, Flake and Klobuchar	343
Responses of Nelson Stephen Roman to questions submitted by Senators Grassley, Cruz, Flake and Klobuchar	354
Responses of Raymond P. Moore to questions submitted by Senators Grassley, Cruz, Flake and Klobuchar	365

SUBMISSIONS FOR THE RECORD

American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Claire R. Kelly, November 15, 2012, letter	376
Customs & International Trade Bar Association (citba.org), James R. Cannon, Jr., President, and Elizabeth J. Drake, Chairman, Judicial Selection Committee, New York, New York, March 20, 2013, letter	388
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Raymond P. Moore, November 15, 2012, letter	390
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Nelson S. Roman, September 21, 2012, letter	392
Quirk, Dennis W., President, New York State Court Officers Association, New York, New York, September 21, 2012, letter	393
Vance, Cyrus R., Jr., District Attorney, New York, New York, September 25, 2012, letter	395
Velazquez, Elena Goldberg, Esq., President, Puerto Rican Bar Association, New York, New York, September 27, 2012, letter	397
Kaye, Judith S., New York, New York, September 27, 2012, letter	398
Marinaccio, Michael A., President, Bronx County Bar Association, Bronx, New York, October 1, 2012, letter	400
Cusanelli, Thomas W., Esq., Deer Park, New York, October 17, 2012, letter	402
Friedman, Robert S., Sheppard Mullin Richter & Hampton LLP, New York, New York, October 23, 2012	404
Robles, Richard R., President, Puerto Rican Bar Association of Florida, Miami, Florida, November 9, 2012, letter	405
Perez-Vega, Bianka, President, Dominican Bar Association, Inc., New York, New York, November 21, 2012, letter	407
Abbene, Vincent, Retired New York Police Department Captain, New York, New York, January 15, 2013, letter	408
Castro-Blanco, James F., Esq., Yonkers, New York, January 3, 2013, letter	410
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Analisa N. Torres, November 15, 2012, letter	412
Hispanic National Bar Association (HNBA), Peter M. Reyes, Jr., National President, and Robert Raben, Chair, Washington, DC, February 13, 2013, letter	414
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Derrick K. Watson, November 15, 2012, letter	416
National Asian Pacific American Bar Association (NAPABA), Wendy C. Shiba, President, and Tina R. Matsuoka, Executive Director, Washington, DC, January 22, 2013, letter	418
Fox, Hugh, Jr., Yonkers, New York, January 15, 2013	418

WEDNESDAY, FEBRUARY 13, 2013**STATEMENTS OF COMMITTEE MEMBERS**

Hirono, Hon. Mazie, a U.S. Senator from the State of Hawaii	420
Lee, Hon. Michael S., a U.S. Senator from the State of Utah	428

PRESENTERS

Wyden, Hon. Ron, a U.S. Senator from the State of Oregon presenting Michael J. McShane, Nominee to be U.S. District Judge for the District of Oregon	421
prepared statement	780
Merkley, Hon. Jeff, a U.S. Senator from the State of Oregon presenting Michael J. McShane, Nominee to be U.S. District Judge for the District of Oregon	422
Casey, Hon. Robert, Jr., a U.S. Senator from the State of Pennsylvania presenting Nitza I. Quiñones Alejandro, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania; Luis Felipe Restrepo, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania, and Jeffrey L. Schmehl, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	422
Toomey, Hon. Patrick, a U.S. Senator from the State of Pennsylvania presenting Nitza I. Quiñones Alejandro, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania; Luis Felipe Restrepo, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania, and Jeffrey L. Schmehl, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	424
Udall, Hon. Tom, a U.S. Senator from the State of New Mexico presenting Kenneth John Gonzales, Nominee to be U.S. District Judge for the District of New Mexico	425
Heinrich, Hon. Martin, a U.S. Senator from the State of New Mexico presenting Kenneth John Gonzales, Nominee to be U.S. District Judge for the District of New Mexico	426

STATEMENT OF THE NOMINEES

Gonzales, Kenneth John, Nominee to be U.S. District Judge for the District of New Mexico	429
McShane, Michael J., Nominee to be U.S. District Judge for the District of Oregon	488
Alejandro, Nitza I. Quiñones, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	527
Restrepo, Luis Felipe, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	587
Schmehl, Jeffrey L., Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	650

QUESTIONS

Questions for all nominees submitted by Senator Cruz	716
Questions for Kenneth John Gonzales submitted by Senator Grassley	717
Questions for Michael J. McShane submitted by Senator Grassley	720
Questions for Nitza I. Quiñones Alejandro submitted by Senator Grassley	722
Questions for Luis Felipe Restrepo submitted by Senator Grassley	724
Questions for Jeffrey L. Schmehl submitted by Senator Grassley	727

ANSWERS

Responses of Kenneth John Gonzales to questions submitted by Senators Grassley and Cruz	729
Responses of Michael M. McShane to questions submitted by Senators Grassley and Cruz	738
Responses of Nitza I. Quiñones Alejandro to questions submitted by Senators Grassley and Cruz	744
Responses of Luis Felipe Restrepo to questions submitted by Senators Grassley and Cruz	752

VI

	Page
Responses of Jeffrey L. Schmehl to questions submitted by Senators Grassley and Cruz	761

SUBMISSIONS FOR THE RECORD

American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Kenneth J. Gonzales, November 15, 2012, letter	768
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Michael J. McShane, September 20, 2012, letter	770
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Nitza I. Quiñones Alejandro, November 27, 2012, letter	772
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Luis Felipe Restrepo, November 27, 2012, letter	774
National Employment Lawyers Association (NELA), Patricia A. Barasch, President: Luis Felipe Restrepo, February 11, 2013, letter	776
American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Jeffrey L. Schmehl, November 27, 2012, letter	778

FEBRUARY 27, 2013

STATEMENTS OF COMMITTEE MEMBERS

Klobuchar, Hon. Amy, a U.S. Senator from the State of Minnesota	784
Grassley, Hon. Chuck, a U.S. Senator from the State of Iowa	786
prepared statement	823

PRESENTERS

Harkin, Hon. Tom, a U.S. Senator from the State of Iowa presenting Jane Kelly, Nominee to be Circuit Judge for the Eighth Circuit	784
---	-----

STATEMENT OF THE NOMINEES

Kelly, Jane, of Iowa, Nominee to be Circuit Judge for the Eighth Circuit	788
Questionnaire	789

QUESTIONS

Questions for Jane Kelly submitted by Senator Grassley	833
--	-----

ANSWERS

Responses of Jane Kelly to questions submitted by Senator Grassley	835
--	-----

SUBMISSIONS FOR THE RECORD

American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Jane Kelly, January 31, 2013, letter	839
--	-----

MARCH 19, 2013

STATEMENTS OF COMMITTEE MEMBERS

Blumenthal, Hon. Richard, a U.S. Senator from the State of Connecticut	841
Lee, Hon. Michael S., a U.S. Senator from the State of Utah	844
Leahy, Hon. Patrick, a U.S. Senator from the State of Vermont, prepared statement	925

PRESENTERS

Enzi, Hon. Michael B., a U.S. Senator from the State of Wyoming presenting Gregory Alan Phillips, Nominee to be Circuit Judge for the Tenth Circuit ...	841
Barrasso, Hon. John, a U.S. Senator from the State of Wyoming presenting Gregory Alan Phillips, Nominee to be Circuit Judge for the Tenth Circuit ...	843

VII

	Page
Chambliss, Hon. Saxby, and Isakson, Hon. Johnny, U.S. Senators from the State of Georgia presenting Karol Virginia Mason, Nominee to be an Assistant Attorney General, prepared statement	991

STATEMENT OF THE NOMINEES

Phillips, Gregory Alan, Nominee to be Circuit Judge for the Tenth Circuit	845
Questionnaire	846
Mason, Karol Virginia, Nominee to be an Assistant Attorney General	893
Questionnaire	894

QUESTIONS

Questions for Gregory Phillips submitted by Senator Cruz	926
Questions for Karol Virginia Mason submitted by Senator Grassley	927
Questions for Gregory Phillips submitted by Senator Grassley	930
Questions for Karol Virginia Mason submitted by Senator Klobuchar	934
Questions for Gregory Phillips submitted by Senator Klobuchar	925

ANSWERS

Responses of Gregory Alan Phillips to questions submitted by Senator Cruz ...	936
Responses of Gregory Alan Phillips to questions submitted by Senator Grassley	939
Responses of Gregory Alan Phillips to questions submitted by Senator Klobuchar	949
Responses of Karol Virginia Mason to questions submitted by Senator Klobuchar	950
Responses of Karol Virginia Mason to questions submitted by Senator Grassley	951

SUBMISSIONS FOR THE RECORD

American Bar Association, Judy Perry Martinez, Chair, Washington, DC: Gregory A. Phillips, January 31, 2013, letter	958
Letter supporting Gregory Phillips to Senators Reid, McConnell, Leahy, and Grassley from the State Attorneys General of: Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Guam, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin; March 18, 2013	960
Matthew H. Mead, Governor, State of Wyoming: Gregory Phillips, March 14, 2013, letter	964
Alan B. Johnson, United States District Judge, State of Wyoming: Gregory Phillips, March 18, 2013, letter	965
Hon. G.K. Butterfield, United States House of Representatives, State of North Carolina: Karol Virginia Mason, February 26, 2013, letter	967
Hon. Robert J. Dole, Alston and Bird, L.L.P., Washington, DC: Karol Virginia Mason, February 27, 2013, letter	969
Robert D. McCallum, Jr., Atlanta, Georgia: Karol Virginia Mason, February 28, 2013, email and fax	971
Rodney Monroe, Chief of Police, Charlotte, North Carolina: Karol Virginia Mason, undated letter	973
Hon. Blanche L. Lincoln, United States Senate, State of Arkansas: Karol Virginia Mason, March 1, 2013, letter	974
Laurie O. Robinson, Clarence J. Robinson Professor of Criminology, Law, and Society, George Mason University, Burke, Virginia: Karol Virginia Mason, March 2, 2013, letter	975
Richard H. Deane, Jr., Atlanta, Georgia: Karol Virginia Mason, March 4, 2013, letter	977
Larry D. Thompson, Greenwich, Connecticut: Karol Virginia Mason, March 4, 2013, letter	979
Randy Byrd, President, North Carolina Police Benevolent Association, Inc., McDonough, Georgia: Karol Virginia Mason, March 5, 2013, letter	981
Roy Cooper, Attorney General, State of North Carolina, Raleigh, North Carolina: Karol Virginia Mason, March 7, 2013, letter	982

VIII

	Page
Joseph C. Akers, Jr., Interim Executive Director, National Organization of Black Law Enforcement Executives, Alexandria, Virginia: Karol Virginia Mason, March 13, 2013, letter	983
W. Ron Allen, Tribal Chairman/CEO, Jamestown S'Klallam Tribe, Jamestown, Virginia: Karol Virginia Mason, March 18, 2013, letter	984
Timothy Ballew, II, Chairman, Lummi Indian Business Council, Bellingham, Washington: Karol Virginia Mason, March 14, 2013, fax	985
Bob Kelly, Chairman, Nooksack Indian Tribe, Deming, Washington: Karol Virginia Mason, March 15, 2013, letter	986
Dave Lopeman, Chairman, Squaxin Island Tribe, Shelton, Washington: Karol Virginia Mason, March 15, 2013, fax	987
George Thurman, Chief, Sac and Fox Nation, Stroud, Oklahoma: Karol Virginia Mason, March 15, 2013, fax	988
Gregory E. Pyle, Chief, Choctaw Nation of Oklahoma, Durant, Oklahoma: Karol Virginia Mason, March 15, 2013, fax	989
Joseph P. Torre, Chairman, Joe Torre Safe at Home Foundation, New York, New York: Karol Virginia Mason, March 28, 2013, letter	990

ALPHABETICAL LIST OF NOMINEES

Alejandro, Nitza I. Quiñones, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	527
Gonzales, Kenneth John, Nominee to be U.S. District Judge for the District of New Mexico	429
Kelly, Claire R., Nominee to be a Judge of the Court of International Trade ...	228
Kelly, Jane, of Iowa, Nominee to be Circuit Judge for the Eighth Circuit	788
Mason, Karol Virginia, Nominee to be an Assistant Attorney General	893
Moore, Raymond P., Nominee to be District Judge for the District of Colorado	78
McShane, Michael J., Nominee to be U.S. District Judge for the District of Oregon	488
Phillips, Gregory Alan, Nominee to be Circuit Judge for the Tenth Circuit	845
Restrepo, Luis Felipe, Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	587
Roman, Nelson Stephen, Nominee to be District Judge for the Southern District of New York	9
Schmehl, Jeffrey L., Nominee to be U.S. District Judge for the Eastern District of Pennsylvania	650
Torres, Analisa, Nominee to be District Judge for the Southern District of New York	116
Watson, Derrick Kahala, Nominee to be District Judge for the District of Hawaii	184

NOMINATION OF HON. NELSON STEPHEN ROMAN, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; RAYMOND P. MOORE, OF COLORADO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO; HON. ANALISA TORRES, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; DERRICK KAHALA WATSON, OF HAWAII, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF HAWAII; AND CLAIRE R. KELLY, OF NEW YORK, NOMINEE TO BE A JUDGE OF THE COURT OF INTERNATIONAL TRADE

WEDNESDAY, JANUARY 23, 2013

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:01 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Christopher Coons, presiding.

Present: Senators Coons, Whitehouse, Blumenthal, Hirono, Grassley, and Lee.

Senator WHITEHOUSE [presiding]. The hearing will come to order. I am Senator Sheldon Whitehouse of Rhode Island. I am filling in briefly for my friend, Senator Coons of Delaware, who is in the Benghazi hearings right now. I am doing this as a favor to him, and when he arrives, I will depart. So if anybody is speaking when I get up and depart, do not take it personally. It is nothing you said.

We are here for the nomination hearings of Justice Nelson Stephen Roman, to be United States District Judge for the Southern District of New York; Raymond P. Moore, to be United States District Judge for the District of Colorado; Justice Analisa Torres, to be United States District Judge for the Southern District of New York; Derrick Kahala Watson, to be United States District Judge for the District of Hawaii; and Claire R. Kelly, to be Judge of the United States Court of International Trade.

We have a tradition in the Senate of Senators' recommending to the President nominees for these judicial offices, and so we will begin this hearing with the statements of Senators who have nominees for whom they wish to say a word. We will lead with—the order will be, first, Senator Mark Udall; then Senator Michael Bennet; then Senator Kirsten Gillibrand, if she is here; then Senators Brian Schatz and Mazie Hirono.

So that is the order of proceeding, and, Senator Udall, you have the floor.

PRESENTATION OF RAYMOND P. MOORE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, BY HON. MARK UDALL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator UDALL. Senator Whitehouse, good morning. Thank you for that kind introduction. I also want to thank Chairman Leahy and Ranking Member Grassley and the Judiciary Committee for providing a few minutes for me to speak, as well as my wonderful colleague, Senator Bennet.

We are here to introduce our nominee to be a federal district court judge for the District of Colorado, Raymond Paul Moore. My belief, and I know Senator Bennet's belief, is that Raymond Moore is exceptionally well qualified to fill this judicial vacancy, and I would urge his confirmation.

The President nominated Raymond Moore to fill a vacant seat on the federal district court of Colorado, which was recently declared a judicial emergency due to a very heavy caseload. Mr. Moore, who was recommended by a bipartisan judicial selection panel, I know stands ready and able to fill that vacancy.

Based in part on Mr. Moore's broad experience as a public defender for Colorado and Wyoming, I have no doubt that he will serve with distinction. Quite simply, he has the right temperament, commitment to service, and belief in our Nation's judicial system—qualities I know that we all look for in a federal judge.

Mr. Moore is currently the federal public defender for Colorado and Wyoming where he has served for nearly 20 years, first as an assistant federal public defender in the trial unit, where he represented clients charged with federal criminal offenses who could not afford their own legal representation. Today, as the leader of that office, he is responsible for supervising attorneys and managing the operation of that office.

Prior to his service at the public defender's office, Mr. Moore spent a total of 10 years with the distinguished Denver-based law firm of Davis, Graham & Stubbs. During his time in private practice, Mr. Moore worked in general litigation covering a broad range of practice fields, including real estate, water, and oil and gas. He was appointed as partner in 1987.

Originally from Boston, Massachusetts, Ray Moore was raised in public housing projects. Ray was able to overcome the adversity and obstacles that he faced in growing up in poverty and excelled academically. He was the first member of his family to attend college, graduating cum laude from Yale, where he met his wife, Reine. Mr. Moore also received his law degree from Yale in 1975.

Shortly before graduating from law school, he headed to Denver, where he completed a summer associate position at Davis, Graham & Stubbs, launching his decades-long connection to Colorado.

Mr. Chairman, Senator Bennet and I enlisted a bipartisan judicial selection advisory panel to help us make recommendations to the President for court vacancies in Colorado. Former Colorado Supreme Court Justice Rebecca Kourlis, a Republican, co-chaired the advisory committee with Hal Haddon, a prominent Denver lawyer and Democrat.

When this process began, we knew that Chief Judge Daniel would take senior status at the beginning of 2013. However, with the quick work of our advisory panel, we were able to make recommendations to the President, and he was able to nominate Mr. Moore nearly two months before the vacancy came open. What made that possible was our advisory panel working tirelessly to interview and put forward the most qualified candidates.

While we were presented with truly impressive and qualified candidates, it was clear then and it is even clearer now that Ray Moore will make an excellent judge for Colorado. So I was not surprised when I learned that the American Bar Association unanimously rated Raymond Moore well qualified, their highest rating to serve as a federal district judge.

Mr. Chairman, as I mentioned a moment ago, Colorado's federal district court was just rated a judicial emergency by the Administrative Office of the U.S. Courts due to its caseload. In addition, the Judicial Conference of the United States recommended the creation of an eighth judgeship on the district court. Suffice it to say we need to fill this vacancy, and Ray Moore is the right man for the job.

Senator Coons, Senator Grassley, Senator Hirono, I want to thank you and the Committee for affording me time this afternoon to introduce Ray Moore.

Senator COONS [presiding]. Thank you, Senator Udall.

I would now like to invite Senator Bennet to also speak in support of Raymond Moore.

PRESENTATION OF RAYMOND P. MOORE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, BY HON. MICHAEL BENNET, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator BENNET. Thank you, and I cannot tell you, Mr. Chairman, what joy I have sitting here addressing you as "Mr. Chairman." I am delighted to see you and the Ranking Member, Senator Grassley, and Members of the Committee.

I would like to associate myself with everything my senior Senator said and join him in this really incredible opportunity for our State to speak on behalf of Raymond Moore to serve on the U.S. district court for the District of Colorado. I would also like to welcome his wife, Reine, and his children, Miles and Rachel.

As Senator Udall mentioned, Mr. Moore was selected from an outstanding pool of Colorado candidates through a bipartisan committee of highly respected leaders and thinkers in Colorado's legal community. And I want to thank Senator Udall, in particular, for

his leadership in approaching what should be, and was, in our case, a bipartisan effort to find the very best person for this vacancy.

As he mentioned, we face an emergency in Colorado in terms of the number of judges. We do not view this as a partisan effort. We believe this is a nonpartisan effort, and I think the process that Senator Udall established to fill this vacancy is one that could be a model for the entire country, so I want to thank him for that and for his work. I am incredibly proud of the seriousness, resolve, and efficiency of the committee in its approach to its work, and it ensured a fair and accountable selection process.

I wholeheartedly support Mr. Moore's nomination to serve on the U.S. district court. Ray grew up in the projects of Boston in a community that struggled with violence and poverty. He was part of a working-class family. Neither of his parents ever completed high school. With determination and drive, Ray rose from those humble beginnings to eventually graduate from Yale Law School, as the Chairman did, and became an attorney with an outstanding career, as Senator Udall said, that spanned 34 years. He has earned a reputation as being a thoughtful and tireless worker among his peers. His collegiality and quick wit have earned him many friends along the way. We could use a little more of the quick wit around here, I think.

He currently served as a federal public defender for Colorado and Wyoming. He has previously served in the U.S. Attorney's Office in Colorado and worked as a litigator, as Senator Udall said, at one of our most respected law firms.

His colleagues from across Colorado's legal community speak passionately of his work ethic, even temperament, and commitment to our legal system. Prosecutors talk of Ray's zeal for ensuring that criminals and wrongdoers are brought to justice. And public defenders who work closely with Ray praise his capacity for impartial and apolitical decision making.

As a federal public defender, Ray has seen firsthand how our broader judicial system is strengthened when a defendant has access to quality representation. He has also witnessed the unique challenges that low-income communities often encounter in our federal courts. Thirty-four years' worth of co-workers, colleagues, and occasional adversaries praise Ray as a nominee who goes through life with an open mind. But he has also demonstrated a passion for those core principles he knows to be right.

The District of Colorado is one of the busiest federal judicial district in the Mountain West with a rising number of total case filings. So I hope that the Senate will act quickly to fill this vacancy. This will help avoid delays and backlogs that will affect Colorado's legal system in the months to come.

Raymond Moore truly is an exemplary nominee, a true legal scholar with a sharp mind, a deep sense of purpose, and a commitment to the rule of law. He will make a first-rate federal district judge, and I urge this Committee and my colleagues to support his confirmation.

Thank you, Mr. Chairman, for your time and for your consideration of Raymond Moore.

Senator COONS. Thank you, Senator Bennet. I am grateful to both the Senators from Colorado for contributing to this introduc-

tion. Recognizing your busy schedules, I encourage any Members who are here for introduction who need to do so to feel comfortable excusing yourselves.

We now turn to Senator Gillibrand, who will speak in support of Analisa Torres, nominee to be district court judge for the Southern District of New York.

PRESENTATION OF HON. NELSON STEPHEN ROMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; HON. ANALISA TORRES, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; AND CLAIRE R. KELLY, NOMINEE TO BE A JUDGE OF THE COURT OF INTERNATIONAL TRADE, BY HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. I will also speak on behalf of Claire Kelly and Judge Nelson Roman as well since Senator Schumer will not attend today.

Thank you, Mr. Chairman and distinguished Members of the Committee. I appreciate your being here today. I am very honored to be able to introduce Analisa Torres, and I am pleased to offer my strong support for her nomination to the United States district court for the Southern District of New York.

Today she is joined by her husband, Mr. Stephen Whitter, along with her father, the Honorable Frank Torres, former New York State Supreme Court Justice, and her mother, Mrs. Yolanda Torres, as well as a number of other family members.

I also want to thank President Obama for acting on my recommendation in nominating another superbly qualified female jurist to the federal bench.

My experience with Judge Torres has shown her to be fair-minded, a woman of great integrity. Her lifetime of public service and legal experience serving as a jurist, an attorney, and serving her community has earned her the respect of her colleagues, and her body of work demonstrates her qualifications to serve on the federal bench.

Ms. Torres currently serves as a justice on the New York County Supreme Court. Previously she served on the New York County Supreme Court as an acting justice for almost 10 years. In her current role, she exemplified pragmatism and has demonstrated consistent commitment to thoughtful, sound, and fair reasoning. Judge Torres received her J.D. from Columbia University School of Law and graduated from Harvard College.

In addition to her professional work, she has shown an enduring commitment to her community. She currently chairs the Women's Housing and Economic Development Corporation, a role she has served in since 2007, after serving as a director there for almost a decade.

There is no question that Judge Torres is extremely well qualified and well suited to serve as a federal court judge. I strongly believe this country needs more women like her serving in the federal judiciary, an institution that I believe needs more exceptional women.

Over the last several years, the number of women in the federal judiciary has stagnated, hovering at roughly 500, less than a third of the federal bench. According to the National Women's Law Center, there are currently 82 vacancies on the federal district and appellate courts. The nonpartisan Congressional Research Service recently determined that we are in the longest period of historically high vacancy rates in 35 years. Accordingly, jurists across the country, including Supreme Court Chief Justice John Roberts, have urged the U.S. Senate to act expeditiously on pending judicial nominations. With greater diversity of gender, ethnicity, and professional backgrounds, we can ensure our judiciary more closely resembles the great country we live in. And these are not just ideals that we should aspire to, but steps we should take to have a more diverse judicial system.

I have no doubt that having Judge Torres serving in the federal judiciary will bring us closer to that goal. I was honored to recommend her for this position, and I urge swift approval of her confirmation.

I am also pleased to introduce to the committee Nelson Stephen Roman to be United States district judge for the Southern District of New York, and Claire R. Kelly to be a judge in the United States Court of International Trade. They are joined by their family members, and I would like to take this opportunity to publicly recognize, acknowledge, and thank the wonderful and supportive families of all of our nominees.

First, Judge Nelson Roman, currently an associate justice for the New York State Supreme Court Appellate Division, a position he has held since 2009. He previously served as a justice of the New York State Supreme Court, as a judge for the New York City civil court, and as a judge of the housing part of the New York City civil court. Prior to becoming a judge, he was assistant district attorney in Kings County as well as a special narcotics assistant district attorney.

As a native New Yorker, Justice Roman received his B.A. from Fordham University and his J.D. from Brooklyn Law School, where he attended at night while serving as a New York City police officer.

Claire R. Kelly has been nominated to the U.S. Court of International Trade. Ms. Kelly is a professor at Brooklyn Law School where she teaches classes on international trade, international business law, and administrative law. Before this, she spent four years as an associate and three years as a consultant specializing in customs and trade law at Coudert Brothers in New York City. A native New Yorker, Professor Kelly received her J.D. from Brooklyn Law School and her B.A. from Barnard College.

While it is true that we live in a more diverse world and we have come a long way in filling the ranks of the legal world, we still have a long way to go to achieve full equality. Confirming these three exceptional nominees quickly would be a great step in the right direction.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Gillibrand.

I will now turn to Senator Schatz to offer an introduction of Derrick Watson, nominee to be district court judge for the District of Hawaii.

PRESENTATION OF DERRICK KAHALA WATSON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF HAWAII, BY HON. BRIAN SCHATZ, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator SCHATZ. Thank you, Mr. Chair, Ranking Member Grassley, and my great colleague, Senator Hirono. I am honored to introduce Derrick Kahala Watson for consideration as the next United States district court judge for the District of Hawaii.

In Mr. Watson's distinguished career, he has displayed exemplary legal skills, a strong work ethic, and acted with integrity and fairness in his decade as a federal prosecutor and attorney in Northern California and Hawaii. He has also served in the Judge Advocate General's Corps, United States Army, where he assisted in mobilizing soldiers with their legal affairs.

In over 10 years of private practice, Mr. Watson specialized in product liability, toxic tort and environmental cost recovery litigation, and principally operated in the federal court.

From 1995 to 2000 and again from 2000 to the present, Mr. Watson served as Assistant United States Attorney in the Northern District of California and now in the District of Hawaii. His work has covered all manner of civil litigation at the trial and appellate court levels, including claims under the *Federal Tort Claims Act*, employment discrimination and harassment actions, individual capacity claims brought against government employees for alleged constitutional violations, programmatic challenges under the Administrative Procedures Act, and privacy and information claims under the *Privacy Act* and *Freedom of Information Act*.

In addition to his professional responsibilities, while in private practice, Mr. Watson has been active in the community, representing pro bono clients, bringing human-trafficking, common law tort, and wage and hour claims on behalf of Mexican nationals in the San Francisco Bay area. He also worked with the San Francisco Lawyers Committee for Civil Rights to successfully challenge the Hanford Union High School District's electoral system, which had prevented the election of a Hispanic member for decades, despite Hispanics' constituting a majority of residents in the district, and assisted other residents with landlord-tenant and credit problems.

If confirmed, Mr. Watson will be only the fourth person of Native Hawaiian ancestry to serve and the only Native Hawaiian serving as an Article III judge. Mr. Watson's nomination is an important step in promoting diversity in the federal judiciary by experienced and qualified individuals.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Schatz.

And I would now like to offer a very special welcome to Senator Mazie Hirono from Hawaii. Today is Senator Hirono's first hearing as a Member of the Senate Judiciary Committee, and it is an honor to welcome you to it. Senator Hirono will also introduce Derrick Kahala Watson.

**PRESENTATION OF DERRICK KAHALA WATSON, NOMINEE TO
BE DISTRICT JUDGE FOR THE DISTRICT OF HAWAII, BY
HON. MAZIE K. HIRONO, A U.S. SENATOR FROM THE STATE
OF HAWAII**

Senator HIRONO. Thank you, Mr. Chairman, and I also want to thank Chairman Leahy and Ranking Member Grassley for scheduling this hearing and, in particular, for including Derrick Watson, the nominee to fill the district court vacancy in my State. And I would also like to thank Mr. Watson for presenting my colleague, Senator Brian Schatz, and myself with these beautiful lei. You can always tell we are from Hawaii because we are the ones with the leis. Aloha to you.

My colleague, Senator Schatz, has done a great job of outlining Mr. Watson's qualifications, so I will keep my comments brief.

Mr. Watson had a distinguished career in the private sector during two tenures in the United States Attorney's Office and in the United States Army Reserve JAG Corps. He was born in Hawaii and moved back in 2007, and we are glad to have him back home, and I am happy that he is here today.

I want to acknowledge his family members in the audience because I know that all of our nominees would not be here without the support of their family, and in Mr. Watson's case, most of them have traveled from Hawaii to be with him today. And if you could just wave, because you have come a long way: his wife, Gloriann; his two sons, Cade and Daly, ages six and three; his father-in-law and mother-in-law, Frank and Gwen Dalere; his sister-in-law, Kimberley Holkup; and his two nieces, Saige and Saber Holkup, ages eight and two. Welcome. Aloha to all of you. And, of course, Mr. Watson, welcome. I wish you a very speedy confirmation.

Thank you, Mr. Chairman.

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

Senator COONS. Thank you, Senator Hirono, and welcome again to the Committee.

Today, as we begin the 113th Congress, there are 83 vacancies in our judiciary. This is a historically high number for the beginning of a President's second term, nearly three times the number of vacancies at a comparable time in the previous administration.

As most of these vacancies are in the district courts, the courts Americans most need to be fully staffed so they can receive their day in court, I am pleased we have been able to move so quickly in this new Congress to convene this hearing today.

Now, this hearing is an important step in the process of filling some of these many vacancies and ensuring the courts are there to do the work our people expect of them. We will hear from our four district court needs today, and I look forward to the Senate's swift action on the President's nominations of those four nominees and our additional nominee for the Court of International Trade.

Before we—excuse me. Senator Grassley, have you already had a chance to make your opening statement?

Senator GRASSLEY. I am going to put it in the record.

Senator COONS. You will put it in the record.

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

Senator COONS. So, Senator Grassley, having completed the introduction of the nominees, I will now swear in our nominees today. Would the five nominees please approach and stand, if you would, at your respective chairs? Please stand and raise your right hands. Do you solemnly swear that the testimony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Justice ROMAN. I do.

Mr. MOORE. I do.

Justice TORRES. I do.

Mr. WATSON. I do.

Ms. KELLY. I do.

Senator COONS. Please be seated. Thank you. Let the record show the nominees have answered in the affirmative.

I would now like to invite each of our five nominees today to give an opening statement, and I welcome your recognition of loved ones and supporters who may be with you and very much look forward to hearing from you.

We might start with the Honorable Nelson Roman.

STATEMENT OF HON. NELSON STEPHEN ROMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Justice ROMAN. Thank you, Senator. Good morning.

Senator COONS. Good morning.

Justice ROMAN. Thank you for this opportunity to appear before you and present my credentials. I would like to take this opportunity to thank some very special individuals. I would like to start off with thanking President Obama for his most humbling nomination; Senator Schumer for his support and for his longstanding commitment to a strong and independent judiciary; to Senator Gillibrand for her gracious introduction. To the Senate Committee Members, thank you for hosting this hearing.

I would like to take this opportunity now to introduce my family members, if I can, beginning with my lovely wife of 22 years, Carol Robles-Roman. We met approximately 30 years ago while we were attending Fordham College. I think it was an international law class. She was trying to get the notes off me.

[Laughter.]

Justice ROMAN. She is an attorney. She is the deputy mayor and counsel to the mayor of the city of New York. More importantly, she is the mother of our two children: my oldest, Ariana Roman, 15 years old and a first-year student in high school; Andres Roman, who is seven years old and happens to be a budding soccer star. And I am proud to say that I am his coach.

My parents, who flew in from Florida: My father, Nelson Roman, who is a retired New York City fireman, and I am proud to say he was one of the first firemen to serve with the FDNY. My mother, Aurea Roman, she is very special because she instilled in our family a deep Christian faith.

And my two sisters are here with me. My sisters Elizabeth and Esther, thank you for traveling here to support me.

I would like to acknowledge a family friend, Carlos Ortiz, who is a former President of the Hispanic National Bar Association.

And, last, I would like to acknowledge my court family back in New York State, beginning with Chief Judge Jonathan Lippman, who graciously appointed me to my first judicial post; my colleagues on the Appellate Division First Department; and my court staff.

Thank you, Senator.

[The biographical information of Justice Roman follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

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

United States District Judge for the Southern District of New York
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.

New York State Supreme Court
Appellate Division, First Department
27 Madison Avenue
New York, New York 10010
4. **Birthplace:** State year and place of birth.

1960; New York, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1985 – 1989, Brooklyn Law School; J.D., 1989

1982 – 1984, Fordham School of General Studies, Fordham University; B.A., 1984

1978 – 1981, Fordham College, Fordham University; no degree
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2009 – Present
New York State Supreme Court

Appellate Division, First Department
27 Madison Avenue
New York, New York 10010
Associate Justice

2003 – 2009
New York State Supreme Court
Civil Term, Bronx County
851 Grand Concourse
Bronx, New York 10451
Justice

2003 – 2005
City University of New York at Lehman College
250 Bedford Park Boulevard West
Bronx, New York 10468
Adjunct Professor

2004
Monroe College
One Monroe College Way
Bronx, New York 10468
Adjunct Professor

2001 – 2002
New York City Civil Court, Bronx County
851 Grand Concourse
Bronx, New York 10451
Judge

1998 – 2000
New York City Civil Court, Bronx Housing Court
1118 Grand Concourse
Bronx, New York 10451
Judge of the Housing Part

1995 – 1998
New York City Civil Court, New York County
111 Centre Street
New York, New York 10013
Law Clerk to Honorable Jose A. Padilla, Jr.

1994 – 1995; 1989 – 1991
Kings County District Attorney's Office
350 Jay Street

Brooklyn, New York 11201
Assistant District Attorney

1992 – 1994
Office of the Special Narcotics Prosecutor for the City of New York
80 Centre Street, 6th Floor
New York, New York 10013
Special Narcotics Assistant District Attorney

1986 – 1989
New York City Police Department
Office of the Deputy Commissioner for Legal Matters
One Police Plaza
New York, New York 10013
Police Officer

1988
United States Attorney's Office for the Southern District of New York
One Saint Andrews Place
New York, New York 10007
Litigation Clinic Legal Intern

Summer 1988
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Honors Program Legal Intern

1986
Hawkins, Delafield & Wood LLP
One Chase Manhattan Plaza
New York, New York 10005
Law Clerk

1982 – 1986
New York City Police Department, 44th Precinct
1287 Sedgwick Avenue
Bronx, New York 10453
Patrol Officer

1981
Freeman Check Cashing
94 Eighth Avenue
New York, New York 10011
Check Cashier

Other Affiliations (uncompensated):

2003 – 2009
Riverdale Neighborhood House
5521 Mosholu Avenue
Bronx, New York 10471
Board Member

1992 – 1994; 1996 – 1998
Puerto Rican Bar Association
303 Park Avenue South, #1405
New York, New York 10010
President (1997 – 1998)
President Elect (1996 – 1997)
Treasurer (1992 – 1994)

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

I have not served in the U.S. military. I have 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.

President's Award for Outstanding Judicial Service, Bronx County Bar Association (2010)

Outstanding (Destacado) Gentlemen, El Diario La Prensa El Awards (2009)

Latino Law Student's Association Alumni Award, Brooklyn Law School (2001)

Outstanding Service Award, Puerto Rican Bar Association (1998)

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

Bronx County Bar Association

First Judicial Department Judicial Hearing Officer Advisory Committee, New York State Unified Court System

Hispanic National Bar Association

New York City Bar Association
Committee on Minorities in the Courts, Chairperson (2002 – 2005)

New York State Bar Association
Committee on Attorney Professionalism, Member (2010 – 2012)

New York State Task Force on Mandatory Retirement of Judges

Puerto Rican Bar Association
President (1997 – 1998)
President Elect (1996 – 1997)
Treasurer (1992 – 1994)

Special Commission on the Future of the New York State Courts

10. **Bar and Court Admission:**

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

New Jersey, 1989
New York, 1990
Connecticut, 1990

I am retired in New Jersey and Connecticut. Otherwise, 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 Southern District of New York, 1992

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.

Cervantes Society, Fraternal Organization of the New York State Unified Court System, Co-founder and Member (1995 – Present)

Monroe College Criminal Justice Advisory Board (2009 – Present)

Riverdale Neighborhood House
Board Member (2003 – 2009)

Schuyler Hill Beach Club (Summer 2008)

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

To the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

Cultivating Leadership for the 21st Century..., NUESTRA VOZ (Puerto Rican Bar Ass'n), Spring 1998. Copy supplied.

White House Officials, PRBA and National Latino Bar Leaders Meet in Washington, D.C., NUESTRA VOZ (Puerto Rican Bar Ass'n), Winter 1997. Copy supplied.

PRBA Advocacy on the Federal Front, NUESTRA VOZ (Puerto Rican Bar Ass'n), Fall 1997. Copy supplied.

PRBA Poised for Action, NUESTRA VOZ (Puerto Rican Bar Ass'n), Summer 1997. Copy supplied.

Puerto Rican Bar Association & the Association of Judges of Hispanic Heritage Sponsor Three Kings Day Celebration in Honor of Newly Elected and Appointed Judges, NUESTRA VOZ (Puerto Rican Bar Ass'n), Spring 1997. Copy supplied.

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

Justice Most Local: The Future of Town and Village Courts in New York State, Special Commission on the Future of the New York State Courts (Sept. 2008). Copy supplied.

A Court System for the Future: The Promise of Court Restructuring in New York State, Special Commission on the Future of the New York State Courts (Feb. 2007). Copy supplied.

Report of the Task Force on Mandatory Retirement of Judges (June 1999). Copy supplied.

Between 2003 and 2008, during the time that I was on the Board of Directors, the Riverdale Neighborhood House issued annual reports. I did not contribute to these reports, but did vote to approve them. 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 interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

September 20, 1996: Letter and policy statement to the White House from the Puerto Rican Bar Association regarding H.R. 123, prepared while I was President Elect of the Puerto Rican Bar Association. I had no role in drafting or approving the statement, but list it here in an abundance of caution. Copy supplied.

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

February 29, 2012: Participant in How to Become a Judge panel held at Brooklyn Law School and sponsored by the Dominican Bar Association. I have no notes, transcript, or recording. The address of the Dominican Bar Association is Canal Street Station, P.O. Box 203, New York, NY 10013.

May 11, 2011: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

April 28, 2010: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

March 24, 2010: Annual Dinner of the Bronx County Bar Association. I gave brief remarks when accepting an award from the Bronx County Bar Association. I have no notes, transcript, or recording. The address of the Bronx County Bar Association is Bronx Supreme Court, 851 Grand Concourse, Room 124, Bronx, NY 10451.

January 12, 2010: Participant in Ethics, Dealing with Mentally Incapacitated Clients panel held at the Bronx County Court House and sponsored by the Bronx County Bar Association. I have no notes, transcript, or recording. The address of the Bronx County Bar Association is Bronx Supreme Court, 851 Grand Concourse, Room 124, Bronx, NY 10451.

April 29, 2009: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

April 2, 2009: Remarks at Monroe College in the Bronx, New York. I discussed my career and law school. I have no notes, transcript, or recording, but Monroe College coverage is supplied. The address of Monroe College is 2501 Jerome Avenue, Bronx, NY 10468.

April 30, 2008: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording, but Cardinal Hayes coverage is supplied. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

February 13, 2008: Panelist at Trying Your First Case, held at the New York State Trial Lawyers Association and sponsored by the New York State Trial Lawyers Institute of the New York State Trial Lawyers Association. I was asked to respond to hypothetical questions related to civil trial practice, including how to prepare for trial, jury selection, direct and cross-examination of witnesses, opening and closing statements, and effective trial techniques. I have no notes, transcript, or recording. The address of the New York State Trial Lawyers Association is 123 Nassau Street, 2nd Floor, New York, NY 10038.

May 3, 2007: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

May 4, 2006: Panelist at Law Day/Career Day at Cardinal Hayes High School in the Bronx, New York. I participated in a discussion with high school students on various legal and law enforcement career opportunities. I have no notes, transcript, or recording. The address of Cardinal Hayes High School is 650 Grand Concourse, Bronx, NY 10451.

June 10, 1997: As President of the Puerto Rican Bar Association, I spoke during a ceremony to mark the publication of the Franklin H. Williams Judicial Commission on Minorities Five-Year Report. I have no notes, transcript, or recording. The address of the Franklin H. Williams Judicial Commission on Minorities is 25 Beaver Street, New York, New York 10004.

- 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.

Chana Garcia, *Hispanic Power Couples*, DIVERSITY & THE BAR (Minority Corp. Counsel Ass'n), Sept./Oct. 2010. Copy supplied.

El Diario La Prensa El Awards 2009 Outstanding (Destacado) Gentlemen: Hon. Nelson S. Román, EL DIARIO LA PRENSA, Oct. 25, 2009. Copy supplied.

Hispanic Heritage Week: Puerto Rican Bar Association Set to Celebrate 50 years, NY1 NEWS, Oct. 3, 2006. Article and video available at <http://tinyurl.com/prbaarticle>.

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 June 1998, I was appointed to be a Judge of the Housing Part of the New York City Civil Court, Bronx Housing Court by the Chief Administrative Judge and served in that capacity until December 2000. The Housing Court handles matters of summary nonpayment and holdover proceedings, and actions commenced by governmental agencies relating to residential premises located within New York City.

In November 2000, I was elected to be a Judge of the New York City Civil Court, Bronx County and served in that capacity from January 2001 until December 2002. The Civil Court of the City of New York has jurisdiction over civil cases involving amounts up to \$25,000 and other civil matters referred to it by the Supreme Court. It includes a small claims part for informal dispositions of matters not exceeding \$5,000 and a landlord and tenant/housing part for landlord-tenant matters of unlimited amounts and housing code violations.

In November 2002, I was elected to be a Justice of the New York State Supreme Court, Civil Term, Bronx County and served in that capacity from January 2003 until October 2009. The Bronx Supreme Court handles civil and criminal cases in Bronx County. Although the Supreme Courts in New York have unlimited general jurisdiction over civil matters, they do not generally hear cases with lower monetary claims that are within the powers of a New York state trial court of limited jurisdiction.

On October 9, 2009, I was appointed to be an Associate Justice of the New York State Supreme Court, Appellate Division, First Department by Governor David A. Paterson. The Appellate Division of the Supreme Court, First Judicial Department, is one of four intermediate appellate courts in the State and holds jurisdiction over the Counties of New York and the Bronx. Appeals are taken to the Appellate Division, as a matter of right, in civil and criminal cases, from the Supreme Court, Surrogate's Court, Family Court, and Court of Claims. As a branch of the Supreme Court, the Appellate Division has broad powers to review questions of law and fact, and to make new findings of fact. It serves as the court of original jurisdiction in certain types of matters; other cases reach the Appellate Division after they have been reviewed by the Appellate Term, a lower appellate court. Since appeals to the Court of Appeals, the State's highest court, are by permission only (with few exceptions), the Appellate Division is the court of last resort in the majority of cases.

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

Throughout my entire career I presided over approximately 400 trials of which approximately 45%, or 185 cases, went to verdict.

As a judge on the New York State Supreme Court, Appellate Division, I have not presided over any trials.

Over the course of seven years as a judge in New York State Supreme Court, Bronx County, Civil Term I presided over in excess of 200 jury trials.

Approximately 50% resulted in a judgment and 50% were settled. I also presided over fifty bench trials, including guardianship proceedings. Approximately 70% of the proceedings went to verdict and 30% settled.

As a New York City Civil Court Judge, I presided over in excess of 150 jury and bench trials, including small claims actions and commercial tenancy proceedings. Approximately 50 went to verdict and the remainder were settled prior to verdict.

As a judge of the New York City Civil Court, Housing Part, I presided over several bench trials and all resulted in a settlement.

i. Of these, approximately what percent were:

jury trials:	60%
bench trials:	40%
civil proceedings:	100%
criminal proceedings:	0%

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

During my two and one half years tenure as a Judge of the Housing Part of the New York City Civil Court, I issued in excess of 500 decisions on submitted motions and in resolution of bench trials. These decisions are maintained by the Clerk of the Court but are not generally published. Thus, there are no citations available.

During my two-year tenure as a Judge of the New York City Civil Court, I issued in excess of 800 decisions on motions and in resolution of bench trials. These decisions are maintained by the Clerk of the Court but are generally not published.

During my seven-year tenure as a Judge of the New York State Supreme Court, I issued in excess of 6,950 decisions on motions, hearings, and in resolution of bench trials. These decisions are maintained by the Clerk of the Court but are generally not published. Thus, with the exceptions of the decisions that are listed below, there are no citations available.

All opinions that I have written that were published in an official reporter or that are available on electronic databases are provided in the attached list.

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. Gomez v. Brill Sec., Inc., 95 A.D.3d 32 (N.Y. App. Div. 2012). The plaintiffs in this case, brokers in the securities industry, brought a class action suit against their employers alleging a host of wage violations. The defendants moved to dismiss the action as barred by an agreement between the parties that required all claims arising out of the employment relationship to be submitted to arbitration and on grounds that the claims were barred by the doctrine of res judicata. The defendants also sought an order compelling arbitration. The court affirmed the trial court's denial of the motion to compel arbitration, because the very agreement between the parties precluded arbitration when claims were brought via a class action suit. The court also found that the res judicata claim, premised on a prior and discontinued action between the parties, lacked merit insofar as the prior case never reached the merits of the action.

Counsel for Appellants:

Robert S. Goodman, Esq.
Mound Cotton Wollan & Greengrass
One Battery Park Plaza
24 Whitehall Street
New York, New York 10004
(212) 804-4200

Counsel for Respondents:

Michael D. Palmer, Esq.
Joseph, Herzfeld, Hester & Kirschenbaum LLP
233 Broadway, 5th Floor
New York, New York 10279
(212) 688-5640

2. People v. Encarnacion, 87 A.D.3d 81 (N.Y. App. Div. 2011). The defendant, who was convicted of murder, attempted murder, and assault in the second degree, appealed his conviction on grounds that the prosecution's use of a witness's grand jury testimony in its case in-chief, without having that witness testify, violated his constitutional right to confront the witness. The defendant also argued that his confrontation clause rights were similarly violated by the prosecution's use of expert testimony linking the defendant to the crime scene notwithstanding that the expert did not personally test all the evidence about which she testified. The court held that the conviction should stand. With respect to the use of a witness's grand jury testimony, the court held that the defendant waived his right to confront the witness when he procured her absence at trial through intimidation. With respect to the expert testimony, the court held that that the reports merely contained raw data that was not

accusatory in nature, and therefore the reports did not implicate the Confrontation Clause of the United States Constitution.

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3. Rhodes v. Herz, 84 A.D.3d 1 (N.Y. App. Div. 2011). The plaintiff, a nationally syndicated radio talk show host, sued her prior agents and managers, alleging, inter alia, that in acting as unlicensed employment agents on her behalf, they violated Article 11 of New York State's General Business Law. The plaintiff thus sought to void her contract with the defendants and to recover all fees paid to them during the contract's term. The defendants moved to dismiss all causes of action premised on violations of Article 11 of the General Business Law, claiming that this law did not give rise to a private right of action. The court affirmed the trial court's decision dismissing any causes of action premised upon Article 11 of the General Business Law.

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4. Matter of Wyche, Index No. 251956/08 (N.Y. Sup. Ct. 2009). In this case, the petitioner sought an order annulling respondent's decision to revoke his parole. The petitioner claimed that his parole revocation hearing was held in his absence and that he had not waived his right to be present. The respondent opposed the relief requested, arguing that petitioner had waived his right to be present by feigning illness. The administrative law judge agreed with the respondent and found that the petitioner had waived his right to be present. I found that determination by the administrative law judge was arbitrary and capricious. In particular, I found that the administrative law judge's conclusion that the petitioner's illness was feigned and pretextual, and thus designed to avoid the hearing, was unsupported by the record at the hearing. Opinion supplied.

The Petitioner was pro se.

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5. Tray Wrap, Inc. v. Pacific Tomato Growers, Ltd., 18 Misc.3d 1122A (N.Y. Sup. Ct. 2008). Prior to the commencement of this suit, several United States Department of Agriculture (USDA) inspectors and an employee of the plaintiff, a produce wholesaler in New York, were indicted and convicted for accepting bribes in order to downgrade the quality of produce shipped by the defendant, an agricultural trade organization, thereby causing a downward price adjustment of the defendant's produce. The defendant commenced an action against the plaintiff USDA, seeking to recover money lost when the price of its tomatoes was adjusted downward. The defendant ultimately discontinued the action before the USDA against the plaintiff, who filed the instant suit in New York claiming malicious prosecution and abuse of process. The defendant moved for summary judgment on grounds that the proceeding it initiated before the USDA was not a proceeding upon which a claim for malicious prosecution could be premised and that it nonetheless had ample probable cause to commence the suit. With regard to plaintiff's abuse of process claim, the defendant argued that it had in no way perverted the USDA process to obtain a collateral advantage. The action, it argued, was commenced solely to recover money it felt it was owed. I found that defendant established entitlement to summary judgment and granted its motion.

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6. Greenberg v. Corpina, Index No. 18142/07 (N.Y. Sup. Ct. 2008). The plaintiff sued defendants, a law firm and its employees, for legal malpractice, alleging that he retained the defendants to determine his legal rights related to brain injury caused by vaccinations he was given when he was an infant. The plaintiff alleged that defendants' failure to initiate a timely action pursuant to the National Vaccine Injury Compensation Act of 1986 was legal malpractice, deprived him of any recovery under the Act and, more importantly, precluded a plenary action against the doctors who administered the vaccine and the vaccine manufacturers. The defendants moved to dismiss the action, arguing that the failure to initiate a timely action under the Act did not deprive plaintiff of any recovery nor did it preclude a plenary action against others. I denied the defendants' motion on grounds that they failed to establish that they committed no legal malpractice nor did they demonstrate, as required, that despite the malpractice, the plaintiff would not have succeeded in an action pursuant to the Act or in a plenary action. Opinion supplied.

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7. Rodriguez v. E&P Associates, 20 Misc.3d 1129A (N.Y. Sup. Ct. 2008). The plaintiff sustained injuries while employed at a sporting goods store when an interior window sill upon which he stood collapsed. He sued his employer, the store's lessee, the lessor of the premises within which the store was located, and all contractors involved in the store's construction prior to its occupancy. The plaintiff alleged that all defendants were liable insofar as they failed to build the window sill to bear his weight. This failure, he argued, created a dangerous condition that was the proximate cause of his accident and his resulting injuries. The defendants moved for summary judgment on a host of different grounds. I granted summary judgment to all defendants except plaintiff's employer, reasoning that the failure to build the window sill to bear the plaintiff's weight only constituted a dangerous condition if the defendants were on notice at the time the window sill was being built that it would be stood upon. Here, the record was bereft of any evidence on this point. I denied summary judgment to the plaintiff's employer because the record demonstrated that the employer allowed plaintiff to stand on the window sill knowing that it was not built to support the weight of a person.

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8. Haynes v. Estate of Goldman, 16 Misc.3d 1134A (N.Y. Sup. Ct. 2007). The plaintiff sued for injuries sustained while within premises owned, managed, and maintained by defendants. While within those premises, the plaintiff became involved in a physical altercation with another person. During the scuffle on the fourth floor, the plaintiff was thrust against closed elevator doors. The doors gave way and the plaintiff plunged four stories down the elevator shaft. He alleged that the elevator and, in particular, the fourth floor doors were improperly maintained, that they were defective, and that defendants were aware of the defect. The defendants moved for summary judgment, arguing that while they were on notice about other defects with respect to the elevator, there was no prior notice that the fourth floor doors were defective. I concluded that defendants established an absence of the requisite notice and granted summary judgment in favor of the defendants.

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9. Shea v. Spellman, 4 Misc.3d 1008A (N.Y. Sup. Ct. 2004). The plaintiff sued for injuries she sustained while undergoing ambulatory foot surgery within the defendants' hospital. She alleged that her doctors committed malpractice by improperly performing surgery that necessitated another improperly performed surgery. During the course of discovery, the defendants failed to exchange certain medical records, claiming that they were lost. The plaintiff then moved to strike the defendants' answer on grounds of spoliation. I held that, with respect to the evidence that the defendants could not produce, the sanction of preclusion was warranted. I declined to strike the defendants' answer, however, as the missing evidence did not render the plaintiff incapable of establishing her cause of action.

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10. Drury v. Lucak, Index No. 15105/04 (N.Y. Sup. Ct. 2004). In this medical malpractice case, the plaintiff alleged that her doctor committed malpractice that resulted in the perforation of her colon during a colonoscopy. The plaintiff asserted that the doctor departed from accepted medical standards when she performed the medical procedure and that the doctor did not properly inform her of the risk associated with procedure. The jury returned a defense verdict.

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

1. Gomez v. Brill Securities, Inc., 95 A.D.3d 32 (N.Y. App. Div. 2012).

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2. People v. Encarnacion, 87 A.D.3d 81 (N.Y. App. Div. 2011).

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3. Rhodes v. Herz, 84 A.D.3d 1 (N.Y. App. Div. 2011).

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4. Matter of Wyche, Index No. 251956/08 (N.Y. Sup. Ct. 2009). Opinion supplied in response to Question 13(c).

The Petitioner was pro se.

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5. Tray Wrap, Inc. v. Pacific Tomato Growers, Ltd., 18 Misc.3d 1122A (N.Y. Sup. Ct. 2008).

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6. Greenberg v. Corpina, Index No. 18142/07 (N.Y. Sup. Ct. 2008). Opinion supplied in response to Question 13(c).

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7. Rodriguez v. E&P Associates, 20 Misc.3d 1129A (N.Y. Sup. Ct. 2008).

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8. Gilson v. Westchester Square Medical Center, Inc., Index No. 7757/03
(N.Y. Sup. Ct. 2007). Opinion supplied.

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9. Haynes v. Estate of Goldman, 16 Misc.3d 1134A (N.Y. Sup. Ct. 2007).

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10. Shea v. Spellman, 4 Misc.3d 1008A (N.Y. Sup. Ct. 2004).

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- 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.

New York Supreme Court Appellate Division reversals wherein I sat as a judicial panel member:

Mirvish v. Mott, 75 A.D.3d 269 (N.Y. App. Div. 2010), rev'd, 18 N.Y.3d 510 (N.Y. 2012). The Appellate Division held that a conversion claim asserted by the petitioner was time barred and that, in any event, evidence vesting ownership of a sculpture with the petitioner was barred by the Dead Man's Statute. The Court of Appeals reversed, holding that the agreement between the parties to have the motion court determine ownership of the sculpture was independent of the time-barred conversion claim. The Court of Appeals also held that the Dead Man's Statute did not bar documentary evidence establishing that the petitioner, by inter vivos gift, had acquired ownership of the sculpture.

Cadichon v. Facelle, 71 A.D.3d 520 (N.Y. App. Div. 2010), rev'd, 18 N.Y.3d 230 (N.Y. 2011). The Appellate Division held that the plaintiff failed to meet her burden of proof with regard to her motion seeking vacatur of a dismissal of her action for failure to prosecute. The Court of Appeals reversed, holding that dismissal of plaintiff's case was never warranted in the first place.

People v. Johnson, 74 A.D.3d 427 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 752 (N.Y. 2011). The Appellate Division concluded that a new trial was unwarranted on grounds that the trial court failed to grant the defendant's cause challenge to a juror. The Court of Appeals reversed, holding that the juror's response expressing a bias against the defense should have prompted more questioning from the trial court and warranted granting defendant's cause challenge.

People v. Acevedo, 75 A.D.3d 255 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 297 (N.Y. 2011); People v. Collado, 73 A.D.3d 608 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 297 (N.Y. 2011). The defendants in both cases sought resentencing of a predicate offense to correct an error in their favor. The Appellate Division held that, because the resentencing took place after the defendants had re-offended, the predicate offense could no longer be used as a sentence enhancement. The Court

of Appeals reversed, holding that a resentencing sought by a defendant to correct an illegally lenient sentence is not effective to alter the underlying conviction's utility as a predicate for enhanced sentencing.

People v. Paulin, 74 A.D.3d 685 (N.Y. App. Div. 2010), rev'd, 17 N.Y.3d 238 (N.Y. 2011). The Appellate Division held that only those who were in prison on their original sentence could be resentenced under the Drug Law Reform Act of 2009 and that as such, those defendants who were re-incarcerated for parole violations could not apply for resentencing. The Court of Appeals reversed on grounds that the intent of the statute was to benefit those who had been sentenced under the previous Rockefeller Drug Laws and that a defendant incarcerated under a parole violation should benefit from the Drug Law Reform Act.

New York State Supreme Court trial level reversals and modifications:

Tourain v. Bah, Index No. 15637/06 (N.Y. Sup. Ct. 2009), modified, 78 A.D.3d 588 (N.Y. App. Div. 2010). The Appellate Division modified my order granting summary judgment for the defendant and dismissing the complaint on the ground that the plaintiff did not sustain a serious injury as defined by the relevant Insurance Law. The Appellate Division determined that summary judgment was inappropriate because the plaintiff raised a triable issue of fact. My unpublished decision is supplied.

Agosto v. 30th Place Holding, LLC, Index No. 18408/06 (N.Y. Sup. Ct. 2009), rev'd, 73 A.D.3d 492 (N.Y. App. Div. 2010). I denied summary judgment in favor of the defendant, a contractor hired by the owner of a premises to perform work therein, concluding that there existed a question of fact with respect to whether the defendant created a dangerous condition that caused the plaintiff's accident. The Appellate Division reversed, holding that the condition that the defendant created was exactly that for which it was hired and thus did not breach any duty to the plaintiff. My unpublished decision is supplied.

Fofana v. 41 West 34th Street, LLC, Index No. 1186/06 (N.Y. Sup. Ct. 2009), rev'd, 71 A.D.3d 445 (N.Y. App. Div. 2010). I denied the defendants' motion for summary judgment on the grounds that it was untimely and that no good cause had been shown warranting its consideration. The Appellate Division reversed, holding that good cause had been shown and that the defendants' decision not to file the motion earlier was reasonable. The Appellate Division considered the motion and granted summary judgment in favor of defendants. My unpublished decision is supplied.

Caba v. Rai, Index No. 25866/99 (N.Y. Sup. Ct. 2007); 2008 WL 7825580 (N.Y. Sup. Ct. 2008), rev'd, 63 A.D.3d 578 (N.Y. App. Div. 2009). I granted the defendant's motion to vacate a default judgment upon proof that the defendant had never been served with process and had a meritorious defense. The Appellate

Division reversed, holding that the defendant's delay in moving to vacate his default judgment was inexcusable. My unpublished decision is supplied.

DeJesus v. Alba, Index No. 23568/06 (N.Y. Sup. Ct. 2008), rev'd, 63 A.D.3d 460 (N.Y. App. Div. 2009). I denied summary judgment to the defendant in a personal injury action stemming from the negligent operation of a motor vehicle, finding that conflicting versions of the events created issues of fact such that summary judgment was unwarranted. The Appellate Division reversed, holding that the defendant could not be found negligent under any version of the facts. My unpublished decision is supplied.

Krochta v. On Time Delivery Service, Inc., Index no. 301273/07 (N.Y. Sup. Ct. 2008), rev'd, 62 A.D.3d 579 (N.Y. App. Div. 2009). The defendant sought to change the venue of this action from Bronx County to Nassau County as a matter of right and, alternatively, as a matter of discretion. I denied the request as a matter of right, but granted a discretionary venue change insofar as the action did not have ties to Bronx County. The Appellate Division reversed, holding that a discretionary change of venue was unwarranted. My unpublished decision is supplied.

Burgos v. 205 E.D. Food Corp., Index No. 15760/06 (N.Y. Sup. Ct. 2008), modified, 61 A.D.3d 403 (N.Y. App. Div. 2009). The Appellate Division modified my order denying the defendants' motion for summary judgment. The Appellate Division found that the plaintiff had failed to raise an issue of fact as to whether the defendant, an out-of-possession landlord, had a contractual obligation to make repairs or maintain the premises. My unpublished decision is supplied.

Elias v. Mahlah, Index No. 24780/06 (N.Y. Sup. Ct. 2008), modified, 58 A.D.3d 434 (N.Y. App. Div. 2009). In this case, I granted in part and denied in part the defendant's motion for summary judgment and dismissed part of the complaint on the ground that the plaintiffs had failed to establish that they suffered "serious injuries" as defined by the relevant Insurance Laws. The Appellate Division modified my ruling and found that some of the complaint that survived my ruling should have been dismissed. My unpublished decision is supplied.

Espinosa v. Azure Holdings II, LP, Index No. 29562/02 (N.Y. Sup. Ct. 2005), modified, 58 A.D.3d 287 (N.Y. App. Div. 2008). The Appellate Division modified my order granting summary judgment to defendants on all of plaintiff's claims except for one, determining that, consistent with a recent decision, neither side was entitled to summary judgment on the Labor Law § 241(1) claim. The Appellate Division also held that summary disposition of the Labor Law § 200 and common-law negligence claims was inappropriate. My unpublished decision is supplied.

Porree v. Bvnum, 2007 WL 6782292 (N.Y. Sup. Ct. 2007), rev'd, 56 A.D.3d 261 (N.Y. App. Div. 2008). I dismissed the plaintiff's action on grounds that he failed

to establish service of process by a preponderance of the evidence. The Appellate Division reversed, holding that defendant's denial of service was uncorroborated and that the testimony of the process server was sufficient to establish service.

Lamanna v. Jankowski, 2007 WL 6623880 (N.Y. Sup. Ct. 2007), rev'd, 52 A.D.3d 340 (N.Y. App. Div. 2008). I denied the plaintiff's motion to set aside a jury verdict as moot and granted defendant's cross-motion for judgment notwithstanding the verdict, finding that plaintiff had not sustained a serious injury as a matter of law. The Appellate Division reversed, finding that the jury verdict was inconsistent and could not stand, thus avoiding the issue of whether plaintiff sustained a serious injury.

Rodriguez v. Killerlane, Index No. 25297/04 (N.Y. Sup. Ct. 2007), modified, 44 A.D.3d 420 (N.Y. App. Div. 2007). In this legal malpractice case, the Appellate Division modified my order denying summary judgment for the defendant attorney and granting plaintiff client's cross-motion for summary judgment on the issue of liability, concluding that the plaintiff's cross-motion should have been denied because a possibility existed that the defendants in the underlying cause of action might have prevailed. My unpublished decision is supplied.

Jimenez v. Hispanic Catholic Charismatic Center of the Archdiocese of New York, 2006 WL 6167050 (N.Y. Sup. Ct. 2006), rev'd, 33 A.D.3d 416 (N.Y. App. Div. 2006). I granted summary judgment in favor of the defendant on the plaintiff's claim that the defendant was negligent in the maintenance of its property by failing to provide a ladder to access bunk beds on the property. I held that a ladder was provided, its presence was uncontroverted, and it was the plaintiff who chose not use the ladder thereby resulting in her accident. The Appellate Division reversed, finding that whether defendant's failure to provide more than one ladder was tantamount to negligence was a question of fact precluding summary judgment.

Mann v. Cooper Tire Co., Index No. 21426/02 (N.Y. Sup. Ct. 2004), modified, 33 A.D.3d 24 (N.Y. App. Div. 2006). In this case, I granted a protective order preventing disclosure of ingredients or components of the defendant's tire formula and the curing process, finding that they were trade secrets and were not discoverable. The Appellate Division modified my ruling, determining that the defendant's conclusory assertions of "irreparable harm" did not satisfy its burden of demonstrating that the information at issue in fact constituted trade secrets. My unpublished decision is supplied.

Velez v. Hunts Point Multi-Service Center, Inc., 24957/02 (N.Y. Sup. Ct. 2004), rev'd, 29 A.D.3d 104 (N.Y. App. Div. 2006). I granted a motion to quash subpoenas served upon non-parties on grounds that the subpoenas failed to provide the notice required under state law. The Appellate Division reversed, holding that notice was provided by the defendants in their opposition to the motion to quash and thus the motion should have been denied. My unpublished decision is supplied.

Spina v. Jack D. Weiler Hospital of the Albert Einstein College of Medicine, Index No. 6787/96 (N.Y. Sup. Ct. 2004), rev'd, 28 A.D.3d 311 (N.Y. App. Div. 2006). I denied defendant's motion for summary judgment dismissing the complaint, or alternatively, for dismissal of the action based upon plaintiff's failure to comply with prior discovery orders. The Appellate Division reversed, holding that because the plaintiff was not a patient of any doctor, no duty of care was owed to her, and her claim of ordinary negligence could not stand. My unpublished decision is supplied.

Villanova Estates, Inc. v. Fieldston Prop. Owners Ass'n, Index No. 24792/03 (N.Y. Sup. Ct. 2004), modified, 23 A.D.3d 160 (N.Y. App. Div. 2005). In this case, the plaintiff developer argued that the defendants, a property owners' association and its members, made false statements about plaintiff during a public hearing. I dismissed eleven of seventeen causes of action asserted in the plaintiff's first amended complaint. The Appellate Division reversed my judgment as to the claim for money damages for the interference with developer's property rights, the claim for interference with sewer rights, and a prima facie tort. My unpublished decision is supplied.

Kasem v. Price-Rite Office and Home Furniture, 2003 WL 25594136 (N.Y. Sup. Ct. 2003), rev'd, 21 A.D.3d 799 (N.Y. App. Div. 2005). I granted summary judgment in favor of the defendant, holding that the plaintiff had failed to controvert the defendant's prima facie showing that the plaintiff was not injured by the defendant's actions. I later denied the plaintiff's request for reconsideration, finding that the evidence submitted in support of that request was untimely. The Appellate Division reversed, holding that the plaintiff's failure to submit previously available records was excusable and warranted renewal. Upon consideration of those records, the Appellate Division concluded that summary judgment should have been denied.

Dickerson v. Health Management Corporation of America, 5 Misc.3d 1011A (N.Y. Sup. Ct. 2004), rev'd, 21 A.D.3d 326 (N.Y. App. Div. 2005). I denied summary judgment on the plaintiff's claim of employment discrimination, finding that questions of fact remained. The Appellate Division reversed, holding that summary judgment should have been granted because defendant proffered nondiscriminatory reasons for the plaintiff's termination and the plaintiff submitted no evidence that those reasons were pretextual.

Colon v. Kempner, Index No. 0022412/02 (Supreme Court, Bronx County 2004), rev'd, 20 A.D.3d 372 (1st Dept. 2005). I denied summary judgment to the defendant on the plaintiff's claim of serious injury as a result of a motor vehicle accident because of the contradictory opinions offered by the plaintiff's doctors. The Appellate Division reversed, holding that, notwithstanding the contradictory medical opinions, plaintiff's substantial gap in medical treatment was fatal to his claims. My unpublished decision is supplied.

DeJesus v. F.J. Sciamè Constr. Co., Index No. 82730/01 (N.Y. Sup. Ct. 2004), modified, 20 A.D.3d 354 (N.Y. App. Div. 2005). In this case, I granted the third-party plaintiff's motion for contractual indemnification and denied the third-party defendant's cross-motion for summary judgment. The Appellate Division modified my ruling, concluding that factual issues existed and thus, it was premature to grant the third-party plaintiff's motion for contractual indemnification. My unpublished decision is supplied.

Reyes v. CSX Transportation, Inc., Index No. 24482/01 (N.Y. Sup. Ct. 2004), rev'd, 19 A.D.3d 193 (N.Y. App. Div. 2005). The defendant, owner of a transportation company and trains used in connection with its business, moved for summary judgment over the plaintiff's claims for personal injuries arising from her fall on property abutting tracks used by, but not owned by, defendant. I granted summary judgment, finding that the defendant had no duty to maintain the property abutting the tracks and therefore was not liable to the plaintiff. I also denied the plaintiff's subsequent motion for renewal that argued for the applicability of a statute imposing liability upon the defendant, holding that the statute existed at the time of the plaintiff's original motion and thus was untimely raised. The Appellate Division reversed, holding that I should have granted renewal and imposing liability on the defendant. The Appellate Division also concluded that the defendant did in fact enjoy a special use of the tracks and that such use made it liable for a defect upon the property abutting those tracks. My unpublished decision is supplied.

Gray v. Jaeger, Index No. 16328/03 (N.Y. Sup. Ct. 2004), modified, 17 A.D.3d 286 (N.Y. App. Div. 2005). In this medical malpractice case, the plaintiff moved to strike the defendant's answer due to the defendant's failure to produce the plaintiff's medical records during discovery. I denied that request, but agreed to apply an adverse inference against the defendant. The Appellate Division determined that the defendant's conduct was negligent, that the lack of medical records deprived the plaintiff of the ability to establish a prima facie case, and thus, the appropriate remedy should have been the striking of defendant's answer. My unpublished decision is supplied.

Vicenty v. Cincinnati Inc., Index No. 16891/02 (N.Y. Sup. Ct. 2004), modified, 14 A.D.3d 392 (N.Y. App. Div. 2005). In this case, two of the plaintiff's fingers were amputated in a workplace accident and subsequently reattached. I granted the third-party defendant's motion for summary judgment in part, and the Appellate Division determined that I should have granted it in its entirety because the plaintiff did not permanently lose the use of his fingers. My unpublished decision is supplied.

New York City Civil Court reversals:

Rodriguez v. Ramos, 1 Misc.3d 128A (N.Y. App. Term 2003). I denied the defendant's motion for summary judgment because the medical evidence he

submitted was neither sworn nor affirmed pursuant to state law. I also denied the defendant's motion for renewal where he sought to remedy his prior failure. The Appellate Term reversed, holding that because the defendant proffered an excuse for failing to submit evidence in an admissible form, renewal was warranted and, upon renewal, defendant was entitled to summary judgment. My unpublished opinion is not available.

Bronx Medical Services, P.C. v. Lumbermans Mutual Casualty Co., 2003 WL 21402045 (N.Y. App. Term 2003). I held that under the no-fault law, the defendant, an insurer, was not obligated to pay the plaintiff, a medical provider, for services rendered to the assignor of those benefits, reasoning that the assignor's failure to comply with requests made by the defendant precluded payment of any benefits to the plaintiff. The Appellate Term reversed, holding that the assignor's noncompliance did not preclude payment to the plaintiff under then-existing laws. My unpublished opinion is not available.

Citiwide Communications, Inc. v. Cantor Real Estate, 2003 WL 1389127 (N.Y. App. Term 2003). I concluded that vacatur of a default judgment was warranted upon the defendant's demonstration that it had not been served with process and upon finding that it had a meritorious defense. The Appellate Term reversed and remanded for a traverse hearing, concluding that whether defendant was served with process remained an issue of fact. My unpublished opinion is not available.

Medical v. Allstate Insurance Co., 2002 WL 576078 (N.Y. App. Term 2002). I held that questions of fact precluded summary judgment, insofar as there were diverging accounts as to whether the defendant, an insurer, received notice of an accident pursuant to which the plaintiff, a medical provider, rendered services to the assignor of no-fault benefits. The Appellate Term reversed, holding that the plaintiff conclusively established that the defendant was provided with timely notice via an application. My unpublished opinion is not available.

NPC Co. Inc. v. South Bronx Human Development, 2001 WL 1682604 (N.Y. App. Term 2001). In this case, I granted the defendant's motion to vacate the default judgment with conditions. The Appellate Term determined that I should have granted the defendant's motion unconditionally without any limitation upon the defendant's right to pursue any jurisdictional challenge. My unpublished opinion is not available.

- 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.

During my tenure as a Judge of the Housing Part of the New York City Civil Court, I issued in excess of 500 decisions on submitted motions, hearings, and in resolution of bench trials. None of those decisions was published. They are maintained by the Clerk of the Court in individual case files.

During my tenure as a Judge of the New York City Civil Court, I issued in excess of 800 decisions on motions, hearings, and in resolution of bench trials. Those decisions are maintained by the Clerk of the Court in individual case files. Less than 1% of those decisions were published.

During my tenure as a Judge of the New York State Supreme Court, I issued nearly 7,000 decisions on motions, hearings, and in resolution of bench trials. Those decisions are maintained by the Clerk of the Court in individual case files. Less than 1% of those decisions were published.

- 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.

People v. Encarnacion, 87 A.D.3d 81 (N.Y. App. Div. 2011).

Jones v. Kreger Truck Renting Co., Inc., Index No. 7139/06 (N.Y. Sup. Ct. 2006).
Copy supplied.

Villanova Estates, Inc. v. The Fieldston Property Owners Ass'n, Index No. 24792/03 (N.Y. Sup. Ct. 2004), modified, 23 A.D.3d 160 (N.Y. App. Div. 2005).
Copy supplied in response to Question 13f.

- 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.

None.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

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

In New York State, recusal is determined pursuant to Judiciary Law § 14, which provides in relevant part that a judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. In the absence of a legal disqualification under Judiciary Law § 14, a judge is the sole arbiter of recusal and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion. In New York State, a judge is also required to comply with 22 NYCRR 100.1, which provides that “an independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part are to be construed and applied to further that objective.” Accordingly, when assessing the necessity or propriety of recusal, I have applied Judiciary Law § 14 and 22 NYCRR 100.1 in reaching a decision.

My wife, Carol Robles-Román, serves as Deputy Mayor for Legal Affairs and Counsel to Mayor Michael Bloomberg for the City of New York. Her term is set to expire on December 31, 2013. I have recused myself sua sponte from the cases listed below wherein the City of New York was a named party to the litigation. Such recusal was made pursuant to New York State Judiciary Law § 14.

Hells Kitchen Neighborhood v. City of New York, et al.
Delgado v. City of New York, et al.
Pagan v. Rhea, NYCHA
Ronga v. Klein
Spencer v. NYCHA
Ruiz v. NYCHA
Simoes v. City of New York
Heim v. The Trustees of Columbia University
Young v. City of New York, et al.
Moreira-Brown v. City of New York, et al.
Batts, et al v. City of New York, et al.
Applewhite v. Accuhealth
Leftenant v. City of New York, et al.
In re March v. Rhea, as Commissioner of the New York City Housing Authority
Chinese Staff and Workers’ Association v. Burden, et al.
Sanchez v. Mattingly, as Commissioner of New York City Administration for
Children’s Services, et al.
Collado v. Riverside Park Management, et al.

Matter of Rasole v. Department of Citywide Administrative Services, et al.
Matter of 108 Realty LLC v. Department of Housing Preservation, et al.
177 Christie, Inc., et al. v. Environmental Control Board, et al.
Cabrera v. Hirth, et al.
Rosado v. Alhati, et al.
Swindell v. Antonelli, et al.
In the Matter of Takia B.
Harbatkin v. NYC Department of Public Records, et al.
McKie v. LaGuardia Community College/CUNY
Melendez v. The City of New York
People of NYS v. Posner, et al.
Matter of Vecchio v. Kelly, et al.
O'Bryan, et al. v. Stark, Commissioner of the NYC Department of Finance, et al.
Guzman, by her m/n/g, Estrella v. The City of New York, et al.
Solano v. The City of New York, et al.
People ex rel. McManus v. Commissioner of the New York City Department of
Corrections
Meacham v. New York City Health & Hosps. Corp.
Allen, as Administratrix of the Estate of Thornton, deceased v. City of New York,
et al.
Lewis v. City of New York, et al.
Whalen v. NYCDEP, et al.
Fleming v. City of New York, et al.
Matter of Ariel Services, Inc. v. New York City Env'tl. Control Board, et al.
Macri v. Kelly, et al.
Andino v. NSPD Associates, LLC, et al.
Goldstein v. The Teachers' Retirement System of the City of New York
Baez v. Ende Realty Corp., et al.
Konstantinov v. Daines
Matter of Breslin Ten. Assoc. v. HPD
Gordy v. City of New York
Inglese v. Limandri
Logan v. Kelly
Miller v. City of New York, et al.
Kamara v. Lambert, et al.
Mendoza v. City of New York
Padilla v. Dep't of Education of the City of New York, et al.
Golia v. The Board of Standards and Appeals, et al.
Lopez v. City of New York
Mendoza v. City of New York
JFK Holding Company, LLC v. City of New York
Perry v. Rhea
M., Natasha v. Michael Devonne M.
Asantewaa v. City of New York et al.
Delakas v. Mintz
330 West 86th Street v. City of New York

Cohen v. Hunter College
In the Matter of the Application of Saunders v. Rhea as the Chairman of the New York City Housing Authority, et al.
Brodsky v. NYC Campaign Finance Board
Clark v. Schriro, et al.
LoDuca Associates, Inc. v. PMS Construction, et al.
Espino v. NYC Board of Education
Furnari v. City of New York, et al.

I also recused myself sua sponte from the case listed below on the basis that in June 2006 I swore in the entire Board of the National Puerto Rican Day Parade. Such recusal was made pursuant to New York State Judiciary Law § 14.

National Puerto Rican Day Parade Inc. v. Lugo, et al.

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.

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.

16. Legal Career: Answer each part separately.

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

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

From 1995 to 1998, I served as a law clerk to the Honorable Jose A. Padilla, Jr., of the New York County Civil Court.

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

I have never practiced alone.

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

1989 – 1991; 1994 – 1995
 Kings County District Attorney's Office
 350 Jay Street
 Brooklyn, New York 11201
 Assistant District Attorney

1992 – 1994
 Office of the Special Narcotics Prosecutor for the City of New York
 80 Centre Street, 6th Floor
 New York, New York 10013
 Special Narcotics 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 served as a Small Claims Arbitrator on a pro bono basis from 1996 to 1998. I have not retained any records of these cases. Although the Clerk of the Small Claims Court maintains a list of cases that were submitted to arbitration, they do not maintain the list of cases submitted to particular arbitrators. Accordingly, I am unable to provide a list of the ten most significant matters in which I was involved as an arbitrator.

b. Describe:

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

Upon graduating from law school, I began my legal career as Assistant District Attorney. From August 1989 to December 1991, I prosecuted criminal cases developed from police initiated arrests. I conducted trials and hearings in criminal court, drafted complaints, motions, and memoranda of law, and presented cases before the grand jury.

From January 1992 to March 1994, I was appointed to serve as a Special Narcotics Assistant District Attorney in the Office of the Special Narcotics Prosecutor. The office has statutory city-wide jurisdiction to prosecute major felony narcotics offenses. I handled cases from initial arrest to final disposition; conducted trials and hearings; drafted complaints, search

warrants, motions, and memoranda of law; presented cases before the grand jury; and supervised long-term narcotics investigations.

From April 1994 to January 1995, I served as a Felony Trial Assistant District Attorney in the Kings County District Attorney's Office and prosecuted felony cases to verdict. I conducted trials and hearings, drafted motions and memoranda of law, and handled one case on appeal to the Appellate Division. I also supervised in-field police officers' post-arrest procedures involving homicides, sex crimes, police shootings, robberies, and high-publicity cases.

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

As a state prosecutor, my clients were the people of the State of New York. I specialized in criminal law.

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

During my tenure as a state prosecutor, from August 1989 to January 1995, my practice was entirely in litigation, and I appeared in court at least once or twice a week. As a trial attorney, I appeared in both the New York City Criminal Court and New York State Supreme Court, Criminal Term.

- i. Indicate the percentage of your practice in:

1. federal courts:	0%
2. state courts of record:	100%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	0%
2. criminal proceedings:	100%

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

As a state prosecutor, I tried approximately 20 cases to verdict. I was sole counsel in approximately ten cases, chief counsel in approximately four cases, and second chair in approximately six cases.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 85% |
| 2. non-jury: | 15% |

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:

- the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- People v. Mace, Indictment No. 06323/90 (N.Y. Sup. Ct.), Hon. Ira Beal; rev'd. 206 A.D.2d 296 (N.Y. App. Div. 1994).

The defendant, along with another individual, was arrested after selling cocaine to a police officer during an undercover drug operation. At a jury trial in 1992, approximately five witnesses, including the defendant, testified. I handled the entire trial, including jury selection, opening statement, examination of witnesses, and summation. During trial, I proved that the defendant was involved in the drug sale by directing customers to the individuals who completed the actual drug transaction. The defendant was convicted and subsequently sentenced. He successfully appealed on speedy trial grounds, claiming errors that occurred before I was assigned to the case.

Defense Counsel:

Natasha Gerisi-Lapiner, Esq.
New York County Defender Service
225 West Broadway, Floor 11
New York, New York 10013
(212) 803-5140

2. People v. Rivera, Indictment No. 0952/92 (N.Y. Sup. Ct.), Hon. Jay Gold.

In this case, the defendant was arrested and charged with the sale of heroin to an undercover police officer. Approximately four witnesses, including the defendant, testified during the course of a jury trial in 1992. At trial, the defense attempted to establish that the defendant was acting as an agent for the buyer (the undercover officer) and he was not criminally liable for the drug sale. I handled all aspects of trial, and established that the defendant played a prominent role in the sale of the drugs to the undercover officer, thereby defeating his defense. The defendant was convicted and subsequently sentenced.

Defense Counsel:

Walter Kenny, Esq.
137 West 25th Street
New York, New York 10001
(212) 633-6875

3. People v. Jones, Indictment No. 04773/92 (N.Y. Sup. Ct.), Hon. Alfred Donati.

The defendant in this case was arrested and charged with selling heroin to an undercover police officer. I handled all aspects of the jury trial in 1993, at which approximately four witnesses testified. Although the undercover officer positively identified the defendant, there were inconsistencies in the officer's paperwork which called into question the officer's credibility. The defendant was acquitted.

Defense Counsel:

Brian Perskin, Esq.
44 Court Street
Brooklyn, New York 11241
(718) 875-7584

4. People v. Rodriguez, Indictment No. 9727/92 (N.Y. Sup. Ct.), Hon. Rene White.

The defendant was observed by a police officer, who was stationed on a roof top with a pair of binoculars, handing a quantity of cocaine to a female buyer in exchange for money, and was subsequently arrested and charged with selling cocaine. I handled all aspects of the jury trial in 1993, during which approximately six witnesses testified, including the defendant. The defense attempted to establish that the distance from the roof top, where the observing

officer was positioned, was too great for anyone to see an actual drug transaction and to accurately identify the alleged participants of the sale. In anticipation of such a defense, I prepared graphs and maps depicting the area of the sale, detailing the distance from the roof top to the site of the sale, and had numerous photographs taken from the roof top to show the officer's line of vision. Based on all the evidence, the defendant was convicted and subsequently sentenced.

Defense Counsel:

Donald Cameron, Esq.
139 Nassau Street
New York, New York 10038
(212) 233-3348

5. People v. Smith, Indictment No. 7672/93 (N.Y. Sup. Ct.), Hon. Murray Mogel.

The defendants in this case were arrested and charged with the sale of cocaine, and with possessing an additional amount with the intent to sell, during an undercover police drug operation. At a jury trial in 1994, approximately six witnesses, including one of the two defendants, testified. The defendant who testified attempted to establish the defense of agency, claiming that he was not criminally liable because he was acting as an agent for the buyer, the undercover officer, and was not part of the drug sale. I established that each defendant played a prominent role in the drug transaction, thereby defeating the defense. Both defendants were convicted and subsequently sentenced. I handled all aspects of the trial.

Defense Counsel for defendant Smith:

Melvyn Reiss, Esq.
305 Broadway
New York, New York 10007
(212) 227-2222

Defense Counsel for defendant Spear:

Stephen Filler, Esq.
Post Office Box 28
New Paltz, New York 12561
(917) 213-0303

6. People v. McDoe, Indictment No. 15253/93 (N.Y. Sup. Ct.), Hon. Lewis L. Douglass.

In this case, an undercover police officer posing as a drug purchaser attempted to buy illegal drugs. The defendants did not recognize the undercover officer and thus refused to sell illegal drugs to him. When the undercover officer persisted in his attempts to buy illegal drugs, the defendants surrounded him and attempted to rob him of his money. The defendants were arrested. One pleaded guilty to possession of a controlled substance and the other proceeded to a jury trial in 1994, at which he was acquitted. I served as co-counsel in this case and handled the questioning of both prosecution and defense witnesses.

Co-counsel:

David Garcia, Esq. (former Assistant District Attorney)
The Law Office of David A. Garcia
101 Stumberg
San Antonio, Texas 78204
(210) 224-4100

Defense Counsel:

Azalia Torres, Esq.
Legal Aid Society
111 Livingston Street
Brooklyn, New York 11201
(718) 243-6803

7. People v. Celestin, Indictment No. 10744/93 (N.Y. Sup. Ct.), Hon. Ira Harkavy.

In this case, the defendant, along with several unidentified individuals fatally shot a seventeen-year-old boy on a Brooklyn street corner and was subsequently arrested and charged with murder. I served as co-counsel at the jury trial in 1994 and conducted direct examination of two of the prosecution's witnesses, including the ballistics expert. I also assisted in securing the whereabouts and testimony of the only witness who could positively identify the defendant. After a lengthy trial, defendant was convicted of murder in the second degree and was sentenced to 25 years to life.

Co-Counsel:

Robert Friedman, Esq. (former Assistant District Attorney)
Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza, Suite 2400
New York, New York 10112
(212) 634-3058

Defense Counsel:

Michael Harrison, Esq.
48 Wall Street, 11th Floor
New York, New York 10005
(917) 378-7631

8. People v. Walston, Indictment No. 5176/94 (N.Y. Sup. Ct.), Hon. Michael Curci.

This case involved a domestic dispute during which the defendant possessed and displayed a handgun. He was arrested and charged with possession of a loaded firearm and with using the gun to menace his live-in girlfriend. During the jury trial in 1994, approximately four witnesses testified, including the defendant. I served as co-counsel and conducted the direct and cross examination of several witnesses. The defendant attempted to establish at trial that the gun was not his, as it was not found on his person but was recovered in a bedroom closet. He was convicted and subsequently sentenced to a term of 6 to 12 years.

Co-Counsel:

Ruth Diaz, Esq. (former Assistant District Attorney)
1820 Cortelyou Road, Apt. 5C
Brooklyn, New York 11226
(718) 431-0688

Defense Counsel:

Martin Goldberg, Esq.
672 Dogwood Avenue, Suite 183
Franklin Square, New York 11010
(516) 292-0380

9. People v. Mack, Indictment No. 15399/93 (N.Y. Sup. Ct.), Hon. Carolyn Demarest.

The defendant, while working with another unknown individual, robbed a pharmacy at gunpoint. At the jury trial in 1994, approximately six witnesses testified. Although there were numerous individuals in the pharmacy at the time of the robbery, only one witness was in a position to identify the defendant. He was convicted and subsequently sentenced to 25 years to life. I served as lead counsel and handled the majority of the trial.

Co-Counsel:

Maria Bukumira, Esq. (former Assistant District Attorney)
5 Millet Street
Dix Hill, New York 11746
(631) 586-8090

Opposing Counsel:

Hon. Robert Collini
Richmond Supreme Court
18 Richmond Terrace
Staten Island, New York 10301
(718) 675-8650

10. People v. Knight, 222 A.D.2d 525, 635 N.Y.S.2d 537 (N.Y. App. Div. 1995); Hon. Thompson, Ritter, and Florio.

Defendant was convicted of manslaughter in the first degree after fatally stabbing a man on a Brooklyn street corner and appealed. On appeal, the defendant alleged that the trial court's instructions to the jury violated his due process rights and his constitutionally protected right not to testify in a criminal trial. In particular, the defendant claimed that the court's instruction to the jury regarding his failure to testify at trial improperly suggested that he was guilty by virtue of his silence. I researched, drafted, and prepared the appellate brief, which argued that the defendant had failed to preserve his objection for appellate review and that the trial court's charge to the jury was substantially correct, not prejudicial, and that, in any event, any error in the charge was harmless. The defendant's conviction was affirmed by the New York Supreme Court, Appellate Division, Second Department, holding that the defendant failed to preserve the issue for appellate review because he did not object to the jury charge at trial.

Co-Counsel:

Dana Robbins, Esq. (former Assistant District Attorney)
 335 Sackett Street
 Brooklyn, New York 11231
 (212) 788-0611

Appellant's Counsel:

Daniel L. Greenberg, Esq.
 Schulte Roth & Zabel LLP
 919 Third Avenue
 New York, New York 10022
 (212) 756-2069

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

Since 2000, I have served as an advisory board member of the Bronx County Thurgood Marshall Junior Mock Trial Program. The Program incorporates an intensive four-month coaching period, in which students meet with their coaches on a weekly basis to learn the fundamental principles of litigating a criminal trial. The students are taught to take on roles as prosecutors, defense attorneys, and witnesses. After the coaching period, the students present their cases before actual judges, who preside over the mock trials. Court officers and stenographers also staff the courtrooms during the competitions. Over the years, in addition to being a member of the advisory board, I have served as a trial judge in early round and semi-final round competitions.

From 1996 to 1998, I served as a volunteer small claims arbitrator for the New York City Civil Court in Bronx County and New York County. As a small claims arbitrator, I volunteered approximately once or twice per month during the evening sessions in Small Claims Court. As an arbitrator, I presided over small claims disputes with the consent of the parties. Each evening session, I presided over three to five cases, conducted hearings, and rendered decisions in accordance with the applicable law. The claims involved disputes having a monetary value of no greater than \$3,000.

During my tenure as a jurist, I have also had the privilege of serving on several state-wide committees that have sought to enhance the state court system. In 2006, I was appointed by New York Chief Judge Judith Kaye to serve on the Special Commission on the Future of the New York State Courts. The commission sought to assess the effectiveness of the state's court structure and to propose appropriate reforms. After conducting a study of

the courts, the committee issued a report in 2007: "A Court System for the Future, The Promise of Court Restructuring in New York State." In its simplest terms, the report proposed the restructuring and consolidation of New York State's existing multi-layered archaic court system into a two-tier structure with a single Supreme Court and a state-wide network of District Courts.

In 1998, I was appointed by then-New York State Chief Administrative Judge Jonathan Lippman to serve on the Task Force on the Mandatory Retirement of Judges. The Task Force was charged with the responsibility of evaluating the adequacy of the existing mandatory retirement scheme for state court judges and suggesting possible alternatives. After completing its study, the Task Force issued its report in 1999, which recommended the continuation of judicial service beyond age 70, but not at the expense of reduced judicial opportunities for individuals seeking entry into the judiciary. The Task Force proposed the establishment of a "senior judge system," similar to the federal courts.

Since 2008, I have served as a member of the Judicial Hearing Officer's (JHO) Selection Advisory Committee, for the First Department. As a member of the committee, I evaluate applicants who seek to serve as judicial hearing officers. Applicants are evaluated based on competence, work ethic, experience and judicial temperament. In New York State, JHOs typically supervise jury selection, attempt to resolve discovery disputes, attempt to resolve attorney fee disputes and conduct settlement conferences. In essence, JHOs help to alleviate some of the judicial responsibilities so that full-time judges to preside over trials and hearings in ongoing cases.

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

I taught as an Adjunct Professor at the City University of New York at Lehman College from 2003 to 2005. I taught a real estate law course, which examined general principles of real estate law, modern real estate transactions, preparation of relevant documents, and legal actions associated with realty. Syllabi from 2004 and 2005 are supplied. I no longer have the syllabus from 2003, but it is substantively identical to the syllabi supplied.

In the Spring of 2004, I taught a juvenile delinquency course as an adjunct professor at Monroe College. The course examined the various theories and causes of delinquent behavior in juveniles and the contemporary political, social, and legal techniques to address and deter delinquent acts. The class discussed and examined the role of the Family Court as well as juvenile detention facilities. Syllabus supplied.

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

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no anticipated receipts from deferred income arrangements nor have I made any arrangements to be compensated in the future for any financial or business interest.

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

I have no intention of pursuing outside employment during any potential service as a United States District Judge, if I am confirmed.

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 serves as Deputy Mayor for Legal Affairs and Counsel to Mayor Michael Bloomberg for the City of New York. Her term is set to expire on December 31, 2013. As a state judge, I have recused myself sua sponte from cases in which the City of New York was a party and would continue to do so if confirmed as a United States District Judge. Otherwise, I am not aware of any potential conflicts of interest if I am confirmed as a United States District Judge for the Southern District of New York. I would address any potential conflict of interest by consulting the Code of Conduct for United States Judges and any other relevant statute, ethical canon, or applicable rule.

- 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 any potential conflict of interest by consulting the Code of Conduct for United States Judges and any other relevant statute, ethical canon, or applicable rule. I would also disclose any and all potential conflict of interest to the respective parties.

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 been involved in various activities and programs which have centered on educating children about the American legal system, encouraging college graduates to pursue a legal education, and mentoring students. From 1990 to 1991, I participated in the Kings County District Attorney's Office Adopt a School Program. Another attorney-volunteer and I were assigned to a public elementary school in Brooklyn, New York. The schools were typically located in underserved communities. I taught the children about the criminal justice system, including basic criminal law and procedure, as well as the role of the police, prosecutor, defense attorney, judge, and corrections department. I visited the school at least once a week every two weeks throughout most of the academic school year.

From 1992 to 1998, I served on the Puerto Rican Bar Association Scholarship Selection Committee. As a member of the committee, I was responsible for ensuring that the scholarship applications were available to law students nationally. In addition, I met with members of the committee to review and rate several hundred applications, and subsequently select the scholarship recipients. Scholarships were awarded based on academic achievements and/or financial need.

From 1992 to 1994 and 1997 to 1998, I served as a board member of the Puerto Rican Bar Association Scholarship Fund. The Fund is a non-profit entity that raises money for Hispanic law students who demonstrate exceptional academic achievements and/or financial need. I was intimately involved in all logistical aspects of planning the annual dinner gala, which is the primary means of raising funds for the scholarships.

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 submitted a Questionnaire to the Judicial Screening Panel for Senator Charles E. Schumer on March 26, 2012. On April 10, 2012, I was interviewed by members of the Judicial Screening Panel. On April 22, 2012, I interviewed with Senator Schumer. Soon thereafter, on April 26, 2012, Senator Schumer announced that he was recommending me to President Obama. Since April 26, 2012, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On June 18, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 20, 2012, 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.

AO 10
Rev. 1/2012

**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) Roman, Nelson S.	2. Court or Organization Federal District Court, Southern District of New York	3. Date of Report 09/20/2012
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 09/20/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 09/07/2012
7. Chambers or Office Address New York State Supreme Court, Appellate Division 1st Dept. 27 Madison Avenue New York, NY 10010		
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. Insert signature on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	
3.	
4.	
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1998	New York State Judicial Retirement Pension at age 65
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Roman, Nelson S.	Date of Report 09/20/2012
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	New York State Judicial Salary	\$144,000.00
2. 2011	New York State Judicial Salary	\$154,000.00
3. 2012	New York State Judicial Salary	\$168,000.00
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 bonuses.)

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2011	New York City Office of the Mayor
2. 2012	New York City Office of the Mayor
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 Roman, Nelson S.	Date of Report 09/20/2012
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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 52-53 of filing instructions.)*

NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Roman, Nelson S.	Date of Report 09/20/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 14-68 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "N" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Vanguard Strategic Equity Fund	A	Dividend	J	T					
2. Vanguard Strategic Equity Fund	A	Dividend	K	T					
3. Vanguard Strategic Equity Fund	A	Dividend	J	T					
4. NY Deferred Compensation Plan-Stable Income Fund	C	Interest	M	T					
5. NY Deferred Compensation Plan-Stable Fund	A	Interest	K	T					
6. NYC Deferred Compensation Plan-Stable Income Fund	C	Interest	M	T					
7. US Treasury Bonds Series EE	A	Interest	K	T					
8. Northwestern Mutual Whole Life Policy	A	Interest	K	T					
9. JP Morgan Chase Savings and Checking	A	Interest	K	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Item Codes (See Columns H1 and I14)
 2. Value Codes (See Columns C1 and D3)
 3. Value Method Codes (See Column E2)

A = \$1,000 or less
 F = \$50,001 - \$100,000
 J = \$15,000 or less
 N = \$250,001 - \$500,000
 P1 = \$25,000,001 - \$50,000,000
 Q = Appraisal
 U = Book Value

B = \$1,001 - \$2,500
 G = \$100,001 - \$1,000,000
 K = \$15,001 - \$50,000
 O = \$500,001 - \$1,000,000
 R = Cost (Real Estate Only)
 V = Other

C = \$2,501 - \$5,000
 H = \$1,000,001 - \$3,000,000
 L = \$50,001 - \$100,000
 P2 = \$1,000,001 - \$5,000,000
 P3 = More than \$50,000,000
 S = Assessment
 W = Estimated

D = \$5,001 - \$15,000
 I1 = \$100,001 - \$3,000,000
 I2 = More than \$3,000,000
 M1 = \$100,000 - \$250,000
 M2 = \$3,000,001 - \$25,000,000
 T = Cash Market

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Roman, Nelson S.	09/20/2012

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Roman, Nelson S.	09/20/2012

IX. CERTIFICATION.

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

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

Signature: *s/ Nelson S. Roman*

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		35	200	Notes payable to banks-secured (auto)		19	816
U.S. Government securities-Series EE bonds		56	800	Notes payable to banks-unsecured			
Listed securities - see schedule		428	778	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			635
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		533	108
Real estate owned - personal residence		875	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		38	000				
Cash value-life insurance		46	012				
Other assets itemize:							
				Total liabilities		533	559
				Net Worth		926	231
Total Assets	1	479	790	Total liabilities and net worth	1	479	790
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner 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

NY Deferred Compensation Plan-Stable Income Fund	\$ 386,981
Vanguard Strategic Equity Fund	41,797
Total Listed Securities	\$ 428,778

Real Estate Mortgages Payable

Personal residence mortgage	\$ 466,108
Home equity line of credit	67,000
Total Real Estate Mortgages Payable	\$ 533,108

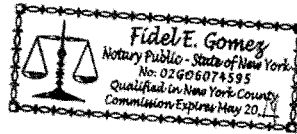
AFFIDAVIT

I, NELSON S. ROMAN,
do swear that the information provided in this statement is, to
the best of my knowledge, true and accurate.

September 20th, 2012
(DATE)

Nelson Roman
(NAME)

[Signature]
(NOTARY)



AO 10
Rev. 1/2012

**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) Roman, Nelson S.	2. Court or Organization Federal District Court, Southern District of New York	3. Date of Report 01/03/2013
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/20/2012
7. Chambers or Office Address New York State Supreme Court Appellate Division 1st Dept. 27 Madison Avenue New York, NY 10010		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1998	New York State Judicial Retirement Pension at age 65
2. _____	_____
3. _____	_____

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Roman, Nelson S.	Date of Report 01/03/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1. 2011	New York State Judicial Salary	\$154,000.00
2. 2012	New York State Judicial Salary	\$168,000.00
3.		
4.		

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

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2012	New York City Office of the Mayor, Salary
2.	
3.	
4.	

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

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Roman, Nelson S.	Date of Report 01/03/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Roman, Nelson S.	Date of Report 01/03/2013
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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		C. Gross value at end of reporting period			D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
		Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
1.	Vanguard Strategic Equity Fund	A	Dividend	J	T						
2.	Vanguard Strategic Equity Fund	A	Dividend	K	T						
3.	Vanguard Strategic Equity Fund	A	Dividend	J	T						
4.	NY Deferred Compensation Plan- Stable Income Fund	A	Interest	M	T						
5.	NY Deferred Compensation Plan- Stable Income Fund	A	Interest	K	T						
6.	NYC Deferred Compensation Plan- Stable Income Fund	A	Interest	M	T						
7.	US Treasury Bonds Series EE	A	Interest	K	T						
8.	Northwestern Mutual Whole Life Policy	A	Interest	K	T						
9.	JP Morgan Chase: Savings and Checking	A	Interest	K	T						
10.											
11.											
12.											
13.											
14.											
15.											
16.											
17.											

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; H=\$1,000,001 - \$5,000,000; I=\$5,000,001 - \$100,000,000
 2. Value Codes: J=\$15,000 or less; K=\$15,001 - \$50,000; L=\$50,001 - \$100,000; M=\$100,001 - \$250,000
 (See Columns C1 and D3) N=\$250,001 - \$500,000; O=\$500,001 - \$1,000,000; P=\$1,000,001 - \$5,000,000; Q=\$5,000,001 - \$25,000,000; R=\$25,000,001 - \$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 5 of 6

Name of Person Reporting	Date of Report
Roman, Nelson S.	01/03/2013

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

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting	Date of Report
Roman, Nelson S.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/ Nelson S. Roman*

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

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

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		44	189	Notes payable to banks-secured (auto)		17	415
U.S. Government securities-Series EE bonds		56	800	Notes payable to banks-unsecured			
Listed securities - see schedule		425	278	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			350
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		527	137
Real estate owned - personal residence		875	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		38	000				
Cash value-life insurance		48	429				
Other assets itemize:							
				Total liabilities		544	902
				Net Worth		942	794
Total Assets	1	487	696	Total liabilities and net worth	1	487	696
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

NY Deferred Compensation Plan-Stable Income Fund	\$ 381,980
Vanguard Strategic Equity Fund	43,298
Total Listed Securities	<u>\$ 425,278</u>

Real Estate Mortgages Payable

Personal residence mortgage	\$ 463,413
Home equity line of credit	63,724
Total Real Estate Mortgages Payable	<u>\$ 527,137</u>

*Supreme Court, Appellate Division
First Department*



Nelson S. Roman
Associate Justice

*27 Madison Avenue
New York, N.Y. 10010
212-340-0400*

January 8, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 20, 2012 to be United States District Judge for the Southern District of New York. Incorporating the additional information listed below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

Q. 13b. – Provide citations for all opinions you have written, including concurrences and dissents.

Fabrizi v. 1095 Avenue of the Americas, L.L.C., 98 A.D.3d 864, 951 N.Y.S.2d 480 (N.Y.App. Div. 2012)

Melcher v. Greenberg Traurig, LLP (awaiting final publication)

Q. 13f – Reversed decisions

People v. Martinez, 84 A.D.3d 550, 925 N.Y.S.2d 8 (2011), modified by ___ N.E.2d ___, 2012 WL 6571277 (Ct. App. Dec. 18, 2012). The Appellate Division held that defendant's discharge of a gun without any regard as to whom he was shooting, which resulted in a bystander being shot, rose to the level of depraved indifference murder. The Court of Appeals modified that decision, holding that the depraved indifference murder count should be dismissed and the case remitted to the Supreme Court for resentencing based on a charge of manslaughter in the first degree. The Court of Appeals found that defendant's acts of obtaining a gun after an altercation with the victim, chasing him down, and firing four or five shots at the victim at close range, after he ran into the occupied lobby of a building, were inconsistent with a conviction for depraved indifference murder.

Q. 14 – Recusal

I recused myself sua sponte from the following cases because the City of New York was a named party to the litigation. My wife, Carol Robles-Román, serves as Deputy Mayor for Legal Affairs and Counsel to Mayor Michael Bloomberg for the City of New York.

Libertypointe Bank v. 75 East 125th Street, LLC

Saadia Shapiro v. The City of New York, et al.

Wood v. East 49th Street and the City of New York, et al.

Garcia v. The City of New York, et al.

Administration for Children's Services in re: Medina v. Cruz

Matter of Beckles v. Cestero, Commissioner, New York City Department of Housing Preservation and Development

Silverio v. The City of New York, et al.

I recused myself sua sponte from the following case because I know the plaintiff.

Colwin v. Katz, et al.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,


Nelson S. Román

cc:
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator COONS. Thank you, Judge Roman.
Now I would like to invite Raymond Moore to make your introductory statement.

**STATEMENT OF RAYMOND P. MOORE, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF COLORADO**

Mr. MOORE. Thank you, Senator. I would like to begin by thanking the President of the United States for the nomination and the faith in me. I am truly humbled by it.

I would also like to thank the Chair, the Ranking Member, and all Members of this Committee for the opportunity to appear today and respond to their questions.

I would like to recognize some family that I have here with me today. My wife of many decades, whom I met in college, Reine, is here, and without her love and support, I would not be here or be anywhere near what I am today.

We have three children, the eldest of which is in California and unable to attend, Nathan Moore. My other children are here: my daughter, Rachel, and my youngest son, Miles.

I am also joined by a partner in the law firm of Davis, Graham & Stubbs, a man named Charles Casteel, who is one of the first persons that I met when I moved to Colorado initially as a summer clerk in 1977, I believe. Again, I am humbled by his support.

I have no other statement to make. Again, I simply express my appreciation for the opportunity.

[The biographical information of Mr. Moore follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Raymond Paul Moore

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

United States District Judge for the District of Colorado

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

Office of the Federal Public Defender
633 17th Street, Suite 1000
Denver, Colorado 80202

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

1953; 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.

1975 – 1978, Yale Law School; J.D., 1978
1971 – 1975, Yale College; B.A. (*cum laude*), 1975

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
Office of the Federal Public Defender
Districts of Colorado and Wyoming
633 17th Street, Suite 1000
Denver, Colorado 80202
Federal Public Defender (2004 – Present)

Acting Federal Public Defender (2003)
Assistant Federal Public Defender (1993 – 2003)

1986 – 1992
Davis, Graham & Stubbs
1550 17th Street, Suite 500
Denver, Colorado 80202
Partner (1987 – 1992)
Associate Attorney (1986)

1982 – 1986
United States Attorney's Office for the District of Colorado
1225 17th Street, Suite 700
Denver, Colorado 80202
Assistant United States Attorney

Summer 1977; 1978 – 1982
Davis, Graham & Stubbs
1550 17th Street, Suite 500
Denver, Colorado 80202
Associate Attorney (1978 – 1982)
Summer Associate (Summer 1977)

Summers 1975 – 1976
Dorchester Division, Boston Municipal Court Department
510 Washington Street
Dorchester, Massachusetts 02124
Probation Officer Intern

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

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

Alfred A. Arraj Advocacy Award, American College of Trial Lawyers (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.

Administrative Office of the U.S. Courts, Office of Defender Services (A.O.)
Defender Performance Measurement Working Group (approx. 2006 – Present)
Defender Advisory/Expert Panel – Case Weights (approx. 2007 – 2010)
Defender Advisory/Expert Panel – Staffing Study (2011 – Present)
Sentencing Resource Group (2009 – Present)

American College of Trial Lawyers
State Committee (approx. 2001 – 2002)

Colorado Bar Association (1978 – 1982)

Sam Cary Bar Association (1978 – 1982)

U.S. Court of Appeals for the Tenth Circuit
Criminal Justice Act Standing Committee, Chair (2007 – Present)
Alternate Employment Dispute Resolution Coordinator (2007 – Present)

U.S. District Court for the District of Colorado
Criminal Justice Act Standing Committee (2004 – Present)
Committee on Conduct (1988 – 1991)
Court Security Committee (approx. 2008 – Present)

As the Federal Public Defender for the Districts of Colorado and Wyoming, I have frequently served on Committees of the Courts. Listed above are Committees of a more formal nature and do not include a variety of ad hoc Committees of a less formal nature formed for purposes ranging from examining the Criminal Justice Act Plan for the District of Wyoming to advising with respect to appointment of other Defenders in other districts.

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.

Colorado, 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.

United States Court of Appeals for the Tenth Circuit, 1979
United States District Court for the District of Colorado, 1978
Supreme Court of Colorado, 1978

There have been no lapses in membership.

11. **Memberships:**

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

American College of Trial Lawyers (1999 – Present)
Louisiana Historical Society (approx. 2002)

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

To my knowledge, neither of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

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.

Raymond Moore, Statement at the U.S. Sentencing Commission Public Hearing: Current State of Federal Sentencing (Feb. 16, 2012). Copy supplied.

Letter from Raymond P. Moore, Federal Public Defender, to Thomas E. Downey, Jr., Chair, Pretexting Subcommittee of the Standing Rules Committee of the Colorado Supreme Court (Feb. 8, 2012). Copy supplied.

Raymond Moore, Statement at the U.S. Sentencing Commission Public Hearing: The Sentencing Reform Act: 25 Years Later (Oct. 21, 2009). Copy supplied.

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

May 31, 2012: Panelist, "Staffing Studies and Related Issues," National Seminar for Federal Defenders, Atlanta, GA. I have no notes, transcripts, or recordings. The seminar was organized by the Office of Defender Services, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544.

May 31, 2012: Panelist, "Managing Offices in Times of Limited Resources," National Seminar for Federal Defenders, Atlanta, GA. I have no notes, transcripts, or recordings. The seminar was organized by the Office of Defender Services, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544.

January 26, 2011: Panelist, "Case Weights and Related Issues," National Seminar for Federal Defenders, Charleston, SC. I have no notes, transcripts, or recordings. The seminar was organized by the Office of Defender Services, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544.

June 1997 (est.): I presented on the topic of computer forensic analysis and defense of child pornography cases at a National Conference of Assistant Federal

Public Defenders, Dallas, TX. I have no notes, transcripts or recordings. The Conference was organized by the Office of Defender Services, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544.

In addition, our office provides training to the local Criminal Justice Act panels on an ongoing and recurring basis. These are closed sessions and are part of the normal operations of the office. For the Wyoming panel, there is an annual training session in October in Cheyenne, Wyoming, or Estes Park, Colorado. For the Colorado panel, there are multiple sessions throughout the year, all in Denver, Colorado, at our offices or at private law firms which make space available to us for these activities.

I have spoken or given lectures to the panels at various times in such sessions. In general, I speak almost every year at the Wyoming training session. In Colorado, members of my office are primarily responsible for the content and presentation of the training sessions, but I have spoken at such sessions on multiple occasions. I have no record of specific dates, and I have no notes, transcripts or recordings.

To the best of my recollection, the topics that I have addressed with the panels are a mix of legal and administrative matters. Over the years, I have spoken on computer forensics and child pornography, a multitude of guideline issues, and Supreme Court developments following decisions in *Blakely v. Washington*, 542 U.S. 296 (2004); *United States v. Booker*, 543 U.S. 220 (2005); and *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). I have also spoken on a variety of administrative matters affecting the panels, including voucher issues, the need to utilize expert services, budgetary developments in Washington, DC, and similar matters with potential for impact on panel services or payments.

- 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.

John Ingold, *Crack-Cocaine Offenders' Sentences Reduced Under New Federal Rules*, The Denver Post, Nov. 8, 2011. Copy supplied.

Felisa Cardona, *Federal Sentencing Guidelines Change Today for Some Drug Crimes*, The Denver Post, Nov. 1, 2010. Copy supplied.

Felisa Cardona, *Vacant Judge Slots Put Plea Into Motion*, The Denver Post, May 18, 2008. Copy supplied.

Alicia Caldwell, *Lawyers Angle for Sentence Changes. Supreme Court Ruling Lauded. "Mandatory Guidelines" Are Now Unconstitutional. So Attorneys Are Appealing to Judges' Discretion*, The Denver Post, Jan. 14, 2005. Copy supplied.

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

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

i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
 civil proceedings:	 _____%
criminal proceedings:	_____% [total 100%]

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

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

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

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

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

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

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

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

I have not held judicial office.

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

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

I have not served as a judge.

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

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

In 2003, I was appointed by the United States Court of Appeals for the Tenth Circuit to be Acting Federal Public Defender for the Districts of Colorado and Wyoming from approximately June to December 2003. In 2004, I was appointed by the Court to be Federal Public Defender for the Districts of Colorado and Wyoming. I have since been reappointed to successive terms. Acting for the Court, my initial appointment was by then-Chief Judge Deanell Tacha. I was appointed for my second term by then-Chief Judge Robert Henry. I was appointed to my current term by current Chief Judge Mary Beck Briscoe.

- 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 office in or rendered services to any political party or election committee. I have never held a position or played any 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;

I have not served as a 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.

1978 – 1982
Davis, Graham & Stubbs
1550 17th Street, Suite 500
Denver, Colorado 80202
Associate Attorney

1982 – 1986
United States Attorney's Office for the District of Colorado
1225 17th Street, Suite 700
Denver, Colorado 80202
Assistant United States Attorney

1986 – 1992
Davis, Graham & Stubbs
1550 17th Street, Suite 500
Denver, Colorado 80202
Associate Attorney (1986)
Partner (1987 – 1992)

1993 – Present
 Office of the Federal Public Defender
 Districts of Colorado and Wyoming
 633 17th Street, Suite 1000
 Denver, Colorado 80202
 Federal Public Defender (2004 – Present)
 Acting Federal Public Defender (2003)
 Assistant Federal Public Defender (1993 – 2003)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

As an associate at Davis, Graham & Stubbs (1978 – 1982), my practice changed periodically as I rotated throughout various practice fields including real estate, water, oil and gas, and litigation. My practice ultimately settled upon general litigation. There, my role was typical of firm practice, with much of my time devoted to discovery and research, with court appearances being infrequent and primarily in a support role.

I then served four years as an Assistant United States Attorney (1982 – 1986), during which time I was a federal prosecutor. I was responsible for all phases of the matters assigned to me, including grand jury proceedings, motions practice, trial, and appeal. My practice was entirely criminal cases. I did not specialize, but did a wide variety of criminal cases.

Following my time at the U.S. Attorney's Office, I returned to Davis, Graham & Stubbs in mid-1986 as a litigation associate. I became a partner in 1987. During this time, I was either wholly responsible for my cases or part of a team of attorneys assigned to more complex litigation. I worked exclusively in general litigation.

At the end of 1992, I resigned from the partnership and began as an Assistant Federal Public Defender with the Federal Public Defender's Office in January of 1993. As a member of the trial unit, I provided vertical representation to all clients from pre-trial matters through appeal. I became the Acting Federal Public Defender in 2003, and was appointed Federal Public Defender for the Districts of Colorado and Wyoming in

January 2004. The work of my office, and my practice since joining the office, has been and remains the provision of full-time defense to the indigent charged with federal criminal offenses. Since my appointment as the Federal Public Defender, however, my personal representation of individual clients has diminished over time as I have needed to concentrate on the supervisory and administrative duties of the office, including but not limited to budgeting, procurement, personnel, space acquisition, staff reviews, salary determinations, case supervision, assignment matters, office policies, and all other aspects of office operation and the accomplishment of its mission.

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

While in private practice at Davis, Graham & Stubbs, my clients were mostly corporate clients, although I represented individual clients on occasion. The corporate clients tended to be large, national corporations involved in litigation as defendants against comparable entities or individuals. The firm represented both plaintiffs and defendants.

While at the U.S. Attorney's Office, my client was the United States. I worked with a variety of federal law enforcement agencies in pursuing prosecutions against persons charged with violating federal criminal laws.

As an Assistant Federal Public Defender, and later as the Federal Public Defender, I have represented persons accused of violating federal criminal laws who cannot afford to retain counsel.

I have not specialized at any of these locations.

- 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 time in private practice consisted of two separate periods of association with the firm of Davis, Graham & Stubbs. During the first period (1978 – 1982), I rotated through practice groups, and my appearances in court were infrequent. During my second period at the firm (1986 – 1992), my entire practice was in litigation, and my court appearances were occasional.

At all times when I have served in government (1982 – 1986; 1993 – Present), my practice has consisted solely of criminal litigation. Court appearances were frequent, if not daily, during much of this period. However, since becoming the Federal Public Defender in 2004, my time in court has gradually decreased to only occasional appearances.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 90% |
| 2. state courts of record: | 10% |
| 3. other courts: | |
| 4. administrative agencies: | |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 20% |
| 2. criminal proceedings: | 80% |

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

I have tried approximately 25 to 30 cases to verdict, in each instance either as sole counsel or co-counsel. I estimate the percentage as being 60% with the U.S. Attorney's Office and 40% as an Assistant Federal Public Defender. While in private practice, I tried one case to verdict as sole counsel. All of these matters have been in federal court.

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. However, one matter has been presented to and argued before the Court by my office under my name as Federal Public Defender. That matter is *Wood v. Milyard*, 132 S. Ct. 1826 (2012). Although I did not author the briefs, I maintained supervisory control over them. The briefs are available at 2011 WL 4454481 (petition for writ of certiorari); 2011 WL 6464386 (brief for petitioner); and 2012 WL 523348 (reply brief for petitioner).

Additionally, my office has been co-signator on briefs with all defender offices in a number of cases during my time as Defender. With respect to such matters, I neither authored nor maintained supervisory control over the briefs. These matters are:

Pepper v. United States, 131 S. Ct. 1229 (2011) (Brief of the Federal Public and Community Defenders and the National Association of

Federal Defenders as Amici Curiae in Support of Petitioner, 2010 WL 3518665)

Magwood v. Culliver, 130 S. Ct. 2788 (2010) (Brief of Amici Curiae National Association of Criminal Defense Lawyers, Federal Public Defenders and Community Defenders, and the Association Of Federal Public Defenders in Support of the Petitioner, 2010 WL 108263)

Dillon v. United States, 130 S. Ct. 2683 (2009) (Brief of the Federal Public and Community Defenders and the National Association of Federal Defenders as Amici Curiae in Support of Petitioner, 2010 WL 383624)

Barber v. Thomas, 130 S. Ct. 2499 (2009) (Brief of the National Association of Criminal Defense Lawyers, The National Association of Federal Defenders, The Federal Public and Community Defenders in the United States, Families Against Mandatory Minimums, Prison Fellowship Ministries and Dean Erwin Chemerinsky as Amici Curiae in Support of Petitioner, 2009 WL 2248356; Brief of the National Association of Criminal Defense Lawyers, The National Association of Federal Defenders, The Federal Public and Community Defenders in the United States, Families Against Mandatory Minimums, The American Civil Liberties Union, and Law Deans and Faculty as Amici Curiae in Support of Petitioner, 2010 WL 302212)

Kimbrough v. United States, 552 U.S. 85 (2007) (Brief Amici Curiae of the Federal Public and Community Defenders and the National Association of Federal Defenders in Support of Petitioner, 2007 WL 2197507)

Gall v. United States, 552 U.S. 38 (2007) (Brief Amici Curiae of the Federal Public and Community Defenders and the National Association of Federal Defenders in Support of Petitioner, 2007 WL 2197511)

Rita v. United States, 551 U.S. 338 (2007) (Brief Amici Curiae of the Federal Public and Community Defenders and the National Association of Federal Defenders in Support of Petitioners, 2006 WL 3760844)

Mujahid v. Daniels, cert. denied 547 U.S. 1149 (2006) (Amicus Brief in Favor of Certiorari Families Against Mandatory Minimums Foundation, The Federal Public Defender and Community Defender Organizations, National Association of Criminal Defense Lawyers, 2006 WL 302430)

There may be other cases that I have been unable to recall or identify on which my name appears on the brief in an institutional capacity.

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. Wilson*, No. 97 CR 313 (D.Colo. 1997), *rev'd*, 182 F.3d 737 (10th Cir. 1999). This was the second of successive prosecutions against defendant for possession of child pornography. The first was resolved by voluntary government dismissal following development of lay and expert evidence that the subject images were "Photoshopped" rather than real in critical particulars. The second case, based on images which were "real," resulted in a trial on the merits. I was sole counsel for Mr. Wilson at both the trial and appellate levels. The defense was based on the jurisdictional nexus – specifically on the nature of proof required to show that digital images had travelled in interstate commerce. Mr. Wilson was convicted at trial. His conviction was reversed on appeal based on inadequacy of the evidence with respect to the interstate travels of the particular images possessed by Mr. Wilson.

The trial occurred in 1998, presided over by U.S. District Judge Zita Weinshienk. The prosecutor was James S. Russell. He is currently assigned to the Asset Forfeiture Section of the U.S. Attorney's Office, 1225 17th Street, Suite 700, Denver, Colorado 80202; Telephone: (303) 454.0100.

- (2) *United States v. Levine*, No. 93 CR 213 (D.Colo. 1993), *rev'd*, 41 F.3d 607 (10th Cir. 1994). This was a criminal case in which Ms. Levine was charged with consumer product tampering in connection with her surreptitious insertion of a syringe into a can of Pepsi Cola while purchasing the cola at a local supermarket. This was one of several suspected cases of tampering which occurred throughout the country during the height of the "Pepsi Panic" of 1993. This incident, however, was captured on videotape. I was sole counsel for Ms. Levine at both the trial and appellate levels. The trial defense focused on whether the interstate commerce requirement necessary for federal jurisdiction could attach to the container and ingredients used in the production of the subject can of Pepsi. Ms. Levine was convicted at trial. Her conviction was reversed on appeal upon a legal determination that the nexus could not so attach.

The 1993 trial of this matter was presided over by U.S. District Judge Jim R. Carrigan. The prosecutor was Thomas O'Rourke. He is currently Senior Litigation Counsel for the U.S. Attorney's Office, 1225 17th Street, Suite 700, Denver, Colorado 80202; Telephone: (303) 454.0100.

- (3) *United States v. Cook-Bey*, No. 82 CR 284 (D.Colo. 1982), *aff'd*, 712 F. 2d 883 (10th Cir. 1983). This was a criminal prosecution for bank robbery where all victim identification evidence was suppressed following government disclosure of police improprieties. At trial, the government was precluded from introducing any form of victim identification evidence while the defense was permitted to introduce evidence of the failure of certain tellers to pick out the defendant from a live lineup. I was sole counsel for the United States, both at trial and on appeal. Despite the absence of a confession or other corroborating evidence, Mr. Cook-Bey was convicted at trial based solely on his appearance. His conviction was upheld on appeal.

The trial was held in 1983, presided over by U.S. District Judge Richard P. Matsch. Defense counsel was then Federal Public Defender Michael G. Katz. He is currently retired, but personal contact information is available from the Federal Public Defender's Office.

- (4) *United States v. Hoffner*, district court case number unavailable and not appearing on Pacer, appeal reported at *United States v. Hoffner*, 777 F. 2d 1423 (10th Cir. 1985). This was a criminal prosecution asserting that a licensed physician's weight loss practice was, for several patients, a front for illegal distribution of prescription medications. The case involved the determination of the boundaries of legitimate medical practice and of what a physician could reasonably be charged with "knowing" based on her patients' behavior. I was sole counsel for the United States at trial and on appeal. Following a first trial which resulted in a hung jury, Dr. Hoffner was convicted on re-trial. Her conviction was upheld on appeal.

This matter was tried in 1985 before then U.S. District Judge John Moore. Then District Judge Moore is currently Tenth Circuit Judge John Porfilio. Defense counsel was Walker Miller, now retired U.S. District Judge Walker Miller, District of Colorado.

- (5) *Hartford House, Ltd. v. Hallmark Cards*, No. 86 C 1458 (D.Colo.1986). This was a civil case involving claims by Hartford House, Ltd., doing business as Blue Mountain Arts, of trade dress infringement against Hallmark Cards, Inc. The allegations pertained to the "look and feel" of a Hallmark card line known as Shoebox Greetings and its purported infringement on the trade dress of Blue Mountain Arts' greeting cards. Davis, Graham & Stubbs represented Hallmark Cards. As a member of the firm, I was part of a core team of attorneys responsible for defending Hallmark. My role on the case varied over the course of the litigation from discovery and research (both legal and historical) to coordination with experts on the selection and presentation of a defense. Although the case ultimately settled, I was selected by the client's in-house counsel to be part of the trial team in the event the case went to trial.

In the earliest stages of the litigation, a temporary restraining order was issued against Hallmark Cards by U.S. District Judge Jim R. Carrigan. *Hartford House, Ltd. v. Hallmark Cards, Inc.*, 647 F. Supp. 1533 (D. Colo. 1986). The matter continued thereafter for a protracted period before eventually being resolved by settlement.

Lead counsel for Hallmark Cards at Davis, Graham & Stubbs was Andrea Williams. She is retired from the firm. Personal contact information may be obtained from the firm at telephone (303) 892.9400. Hartford House was represented by multiple attorneys. Steve C. Briggs was lead, or lead local, counsel. Mr. Briggs is currently with the Judicial Arbitrator Group, Inc., 1601 Blake Street, Suite 400, Denver, Colorado 80202; Telephone: (303) 572.1919.

- (6) *United States v. Williams*, No. 85 CR 312 (D.Colo. 1985); appeal unreported and not appearing in Westlaw, but bearing Docket No. 86-0164. This was a criminal prosecution of a former police officer for multiple armed bank robberies. I was sole counsel for the United States at trial. The appearance of defendant and conduct of the robberies varied across the robberies. Accordingly, counts of the indictment were severed into distinct and separate groups for trial. Convictions were obtained on the trials of the first two groups. I then dismissed the remaining charges as further convictions were unnecessary for any viable sentencing purpose. All convictions were upheld on appeal.

These matters were tried in 1985 before U.S. District Judge Richard P. Matsch. Defense counsel was then Assistant Federal Public Defender Charles Szekely. He is currently retired, but personal contact information is available from the Federal Public Defender's Office.

- (7) *United States v. Pritchard*, No. 01 CR 228 (D.Colo. 2001), *aff'd*, 86 Fed. Appx. 387 (10th Cir. 2004). Mr. Pritchard was charged with multiple counts of wire fraud in connection with his sales of airplanes and airplane parts across the United States which, despite payment, were never delivered to customers for a variety of reasons. I represented Mr. Pritchard at both trial and appeal. He was convicted at trial, and his conviction was upheld on appeal.

This case was tried in 2003 before U.S. District Judge Wiley Daniel. The prosecutor was Valeria Spencer. She is currently at the U.S. Attorney's Office, 1225 17th Street, Suite 700, Denver, Colorado 80202; Telephone: (303) 454.0100.

- (8) *United States v. Jordan*, No. 04 CR 229 (D.Colo. 2004), *aff'd*, 485 F. 3d (10th Cir. 2007). This matter involved an inmate-on-inmate homicide at U.S.P. Florence where Mr. Jordan was incarcerated. Mr. Jordan was convicted at trial. Following that conviction and before sentencing, Mr. Jordan moved to have trial counsel replaced due to allegations of ineffective assistance of counsel. Then Chief Judge Babcock requested that I personally take on representation of Mr. Jordan for sentencing and related matters. A complete review of the trial ensued followed by a variety of attacks on guideline enhancements and sentencing recommendations. Ultimately, Mr. Jordan received a substantial sentence (30 years), but less than the life sentence vigorously sought by the government. The conviction and sentence were sustained on appeal. Although I handled all proceedings at the trial level, other staff handled Mr. Jordan's appeal.

This matter proceeded before U.S. District Judge Lewis Babcock. The prosecutor was David M. Conner. Mr. Conner is currently assigned to the Major Crimes Unit of the U.S. Attorney's Office, 1225 17th Street, Suite 700, Denver, Colorado 80202; Telephone: (303) 454.0100.

- (9) *United States v. Qayyum*, No. 03 CR 127 (D.Colo. 2003). This was a multi-defendant criminal case where Mr. Qayyum and other members of his family were accused of lying about their familial relationship with a Pakistani man in order to facilitate his admission into the United States and, thereafter, of continuing to lie about that relationship once a terrorism investigation had commenced regarding the Pakistani individual. The technical charges against the defendants were conspiracy and alien harboring. The case did involve Foreign Intelligence Surveillance Act issues. I was sole defense counsel for Mr. Qayyum. The matter proceeded over a three-year period before U.S. District Judge Lewis Babcock. During part of this time, until the district court's decision was reversed on appeal, *United States v. Qayyum*, 451 F.3d 1214 (10th Cir. 2006), the major conspiracy count was dismissed on statute of limitations grounds. Ultimately, after several superseding indictments, the case resolved by plea without trial. Mr. Qayyum received one year of probation in exchange for his plea to a single count of false statement. As part of a package resolution, all remaining defendants received misdemeanor resolutions or dismissals of charges against them.

This matter was presided over by U.S. District Judge Lewis Babcock. The prosecutor was David Gaouette. He is currently Executive Assistant U.S. Attorney for the U.S. Attorney's Office, 1225 17th Street, Suite 700, Denver, Colorado 80202; Telephone: (303) 454.0100.

Co-defendants' counsel included Jeff Pagliuca of Haddon, Morgan and Foreman, 150 East 10th Avenue, Denver, Colorado 80203; Telephone: (303) 832.2628; David Lane of Killmer, Lane & Newman, LLP, 1543 Champa Street, Suite 400, Denver, Colorado 80202; Telephone: (303) 571.1000; Thomas Hammond, 1544 Race Street, Denver, Colorado 80206; Telephone: (303) 872.5706; Donald Knight of Knight & Moses, LLC, 7258 South Elati Street, Suite 201, Littleton, Colorado 80120; Telephone: (303) 797.1645; William Michael Whelan, 703 Market Street, Suite 913, San Francisco, California 94103; Telephone: (888) 597.6584; and Marc Milavitz, 1733 Canyon Boulevard, Boulder, Colorado 80302; Telephone: (303) 442.2166.

- (10) *United States v. Mejia-Terriquez*, No. 00 CR 474 (D.Colo. 2000). This was a drug case in which Mr. Mejia was accused of being a distributor of methamphetamine. I was sole counsel for Mr. Mejia. The matter was tried in January 2001. Following presentation of the government's case-in-chief, the Court granted judgment of acquittal based on Mr. Mejia's contention that the jury could not reasonably interpret critical government evidence as incriminating without missing expert testimony.

This case was tried before U.S. District Judge Edward Nottingham. The prosecutor was James Boma. He is currently assigned to the Drug Task Force of the U.S. Attorney's

Office, 1225 17th Street, Suite 700, Denver, Colorado 80202; Telephone: (303) 454.0100.

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 the Federal Public Defender for the Districts of Colorado and Wyoming, I have personally represented indigent defendants as well as overseen thousands of additional representations in two distinct districts. In addition to two traditional trial units, I also oversee an appellate unit which provides representation to indigent defendants from across the entire Tenth Circuit and a capital habeas appellate unit which is unique in the United States. That latter unit, upon appointment by the Tenth Circuit, supplements pre-existing district court counsel to provide appellate expertise and representation at the Circuit level and beyond in capital habeas cases. The clients of that unit are capital defendants from districts other than my own. I was involved in the creation of a Criminal Justice Act Appellate Panel, and serve as Chair and permanent member of the Standing Committee of that Panel. I also serve on the District Court Criminal Justice Act Standing Committee for the District of Colorado.

In addition, I consider my involvement with the Office of Defender Services advisory boards and projects to be of significance. I have for several years served on the Performance Measurement Working Group which seeks to ensure that high quality representation is maintained throughout the Defender system, measures and tracks such quality where possible, and confronts issues that threaten the quality of representation. As part of the work of the group, I and two other Defenders served as expert advisors and consultants to the Rand Corporation in its development of a case weights system for Defender organizations. I also currently head a small group of Defender personnel performing a similar function with respect to a staffing study being conducted by the Administrative Office's Policy and Strategic Initiatives Office. The Working Group makes recommendations to the Office of Defender Services and to other Defender advisory groups. Through such involvement on a national scale, I contribute to the direction of the national program and attempt to help guide Defender Offices through difficult representation and administrative issues in times of limited funding and staffing.

I have never performed any form of lobbying activities.

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

I have not taught any courses.

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 such plans, commitments or agreements.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would recuse myself from any criminal case in which counsel was appointed or retained at any point prior to the effective date of my resignation from the Office of the Federal Public Defender. I also would recuse myself from any case involving an individual represented by the Office of the Federal Public Defender during my tenure as Defender.

- 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 resolve matters involving potential conflicts by application of Canon 3 of the Code of Conduct for United States Judges. I will also consult with the Administrative Office of the U.S. Courts for additional guidance.

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

During my years of service at the Office of the Federal Public Defender, my full-time work has been in service of 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.

On May 8, 2012, Senators Mark Udall and Michael Bennet formed a bipartisan Judicial Advisory Panel to review applications and to make recommendations to the Senators with respect to an upcoming vacancy on the bench of the U.S. District Court for the District of Colorado. Initially, I was asked to be a member of that Panel, and I agreed to serve. However, before the Panel began the official conduct of its business, I withdrew from the Panel and submitted a written application for the judicial vacancy. In late May 2012, I was interviewed by the Panel. On June 15, 2012, I was interviewed by Senators Udall and Bennet in the presence of some of their staff. On July 19, 2012, I was informed by the Senators that my name was being submitted to the White House.

Since July 20, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 24, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 14, 2012, 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.

AO 10
Rev. 1/2012

**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) Moore, Raymond P.	2. Court or Organization U.S. District Court, District of Colorado	3. Date of Report 11/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 11/14/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 10/30/2012
7. Chambers or Office Address 633 17th Street Suite 1000 Denver CO 80202		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

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

NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. _____	_____
2. _____	_____
3. _____	_____

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Moore, Raymond P.	Date of Report 11/14/2012
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME <i>(yours, not spouse's)</i>
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.	2011	Wheat Ridge Regional Center - Salary
2.	2012	Wheat Ridge Regional Center - 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 Moore, Raymond P.	Date of Report 11/14/2012
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Nelnet (Dept of Education)	School Loans	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Moore, Raymond P.	Date of Report 11/14/2012
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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.)

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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. ENT Federal Credit Union (IRA-Cash)	A	Interest	L	T					
2. ENT Federal Credit Union (Cash)	A	Interest	J	T					
3. Heltec Credit Union (Cash)		None	J	T					
4. US Bank (Cash)		None	J	T					
5. Satcon stock		None			Exempt				
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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 D3 and D4) F = \$50,001 - \$100,000 G = \$100,001 - \$1,000,000 H = \$1,000,001 - \$5,000,000 I = \$5,000,001 - \$50,000,000 J = \$50,000 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
2. Value Codes: Q = Appraisal R = Cost (Real Estate Only) S = Assessment T = Cash Market
(See Column C2) U = Book Value V = Other W = Donated

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Moore, Raymond P.	11/14/2012

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Moore, Raymond P.	11/14/2012

IX. CERTIFICATION.

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

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

Signature: *s/ Raymond P. Moore*

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

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

FINANCIAL STATEMENT

NET WORTH

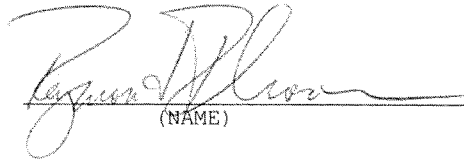
Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse,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

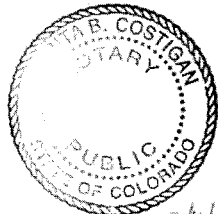
ASSETS				LIABILITIES			
Cash on hand and in banks		3	000	Notes payable to banks-secured (auto)		16	824
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	820
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		517	660
Real estate owned – personal residence	970	900		Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	40	000		Education loans		30	652
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan	456	992					
IRA (cash)	66	346					
				Total liabilities		568	956
				Net Worth		968	282
Total Assets	1	537	238	Total liabilities and net worth	1	537	238
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	118	000		Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

AFFIDAVIT

I, Raymond P. Moore, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 14, 2012
(DATE)


(NAME)



My Commission Expires 5/1/2013


(NOTARY)

Raymond P. Moore
Federal Public Defender
Warren R. Williamson
Chief, Trial Division
Jill M. Wichlens
Chief, Appellate Division
Virginia L. Grady
Senior Litigator

Office of the
FEDERAL PUBLIC DEFENDER
Districts of Colorado and Wyoming

633 17th Street, Suite 1000
Denver, CO 80202
Phone: (303) 294-7002
Fax: (303) 294-1192

January 3, 2013

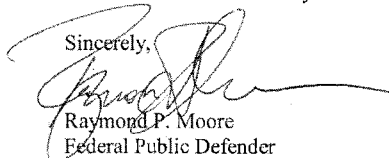
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire previously filed in connection with my nomination on November 14, 2012, to be a United States District Judge for the District of Colorado. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Raymond P. Moore
Federal Public Defender

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Enclosure

AO 10
Rev. 1/2012

**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) Moore, Raymond P.	2. Court or Organization U.S. District Court, District of Colorado	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/31/2012
7. Chambers or Office Address 633 17th Street Suite 1000 Denver CO 80202		
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. Insert signature on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. _____	_____
2. _____	_____
3. _____	_____

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Moore, Raymond P.	Date of Report 01/03/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
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.)*

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	2012	Wheat Ridge Regional Center - Salary
2.		
3.		
4.		

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

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Moore, Raymond P.	Date of Report 01/03/2013
--	-------------------------------------

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

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Nelnet (Dept of Education)	School Loans	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Moore, Raymond P.	Date of Report 01/03/2013
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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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. ENT Federal Credit Union (IRA-Cash)	A	Interest	L	T					
2. ENT Federal Credit Union (Cash)	A	Interest	J	T					
3. Belco Credit Union (Cash/Interest)	A	Interest	J	T					
4. US Bank (Cash)(X)		None	J	T					
5. Satcon stock		None			Exempt				
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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 H=\$1,000,001 - \$5,000,000 I2=More than \$5,000,000

2. Value Codes: J=\$15,000 or less K=\$15,001 - \$50,000 L=\$50,001 - \$100,000 M=\$100,001 - \$250,000
(See Columns C1 and D3) N=\$250,001 - \$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 5 of 6

Name of Person Reporting	Date of Report
Moore, Raymond P.	01/03/2013

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

ENT Federal Credit Union was formerly Consolidated Federal Credit Union

Because the value of the cash account fluctuates above and below the reporting threshold, I inadvertently omitted the asset listed at Line 4 of Part VII from previous reports.

FINANCIAL DISCLOSURE REPORT

Page 6 of 6

Name of Person Reporting	Date of Report
Moore, Raymond P.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/* **Raymond P. Moore**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		2	200	Notes payable to banks-secured (auto)		15	207
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	319
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- personal residence		513	543
Real estate owned -- personal residence		970	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000	Education loans		29	588
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		467	517				
IRA (cash)		66	688				
				Total liabilities		560	657
				Net Worth		986	648
Total Assets	1	547	305	Total liabilities and net worth	1	547	305
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		118	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

Senator COONS. Thank you, Mr. Moore.

I would like to invite the Honorable Analisa Torres to next make her statement.

STATEMENT OF HON. ANALISA TORRES, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Justice TORRES. Thank you, Chairman Coons, Ranking Member Grassley, and Senator Hirono, for holding this hearing.

I also thank Senator Gillibrand for her kind words and for recommending me for nomination.

I am also grateful to Senator Schumer for his support.

And thank you, President Obama, for honoring me with this nomination.

Before I introduce my family and friends, I must recognize one person who is not in this room but whose presence is felt. That is my late grandfather, Felipe Torres, who would have taken pride in this moment.

Here with me today is my incomparable husband, Stephen Whitter. Our daughter, Elena, could not make it to Washington, but is watching the Webcast at Earlham College in Indiana.

My parents, Frank and Yolanda Torres, are present, as are my brother, Ramon Torres; my sister, Andrea Torres Mahone, and her husband, Glenn Mahone; their son, Paco Mahone, and his wife, Denise, are also here, accompanied by their little boys, Amon and Gabriel, who is my godson. The Mahones flew in from Pittsburgh.

My mother-in-law, Carol Whitter, jetted up from Florida, and my two sisters-in-law, Roxanne and Janeen, traveled from Detroit and Boston.

My aunt, Alma Torres Warner, came down from New York, as did my cousin, Alexis Rodriguez; and my friends Linda Arastondo, Emily Goodman, Marcia Johnson, and Carlos Ortiz.

My faithful law clerk, Elba Galvon, is also present.

My uncle, Bob Garcia, is one of the people joining us from the D.C. area, as are Wendell Jenkins, Meryl Chertoff, Greg Klass, Melvin Williams, and Michael Fauntroy.

Thank you, everyone, for coming.

[The biographical information of Justice Torres follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Analisa Nadine Torres

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

United States District Judge for the Southern District of New York

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.

111 Centre Street
New York, New York 10013

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

1959; New York, New York

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

1981 – 1984, Columbia Law School; J.D., 1984
1977 – 1981, Harvard University; A.B. (*magna cum laude*), 1981

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.

2010 – Present
New York State Supreme Court
New York County, Criminal Term
111 Centre Street
New York, New York 10013
Justice (2012 – Present)
Acting Justice (2010 – 2011)

2004 – 2009

New York State Supreme Court
Bronx County, Criminal Division
265 East 161st Street
Bronx, New York 10451
Acting Justice

2003 – 2004

Civil Court of the City of New York
111 Centre Street
New York, New York 10013
Judge

2000 – 2002

Criminal Court of the City of New York
100 Centre Street
New York, New York 10013
Judge

1992 – 1999

New York State Supreme Court
Civil Term
60 Centre Street
New York, New York 10007
Law Clerk to Justice Elliott Wilk

1993 – 1995

Planning Commission of the City of New York
22 Reade Street
New York, New York 10007
Commissioner

May – August 1992

South Bronx Overall Economic Development Corporation
555 Bergen Avenue
Bronx, New York 10455
General Counsel

1988 – 1992

Patterson, Belknap, Webb & Tyler
1133 Avenue of the Americas
New York, New York 10036
Real Estate Associate

1987 – 1988
De La Salle Academy
202 West 97th Street
New York, New York 10025
Teacher

1985 – 1987
Coudert Brothers (Defunct)
New York, New York
Real Estate Associate

1984 – 1985
Kaye, Scholer LLP
425 Park Avenue
New York, New York 10022
Real Estate Associate

Summer 1983
Reavis & McGrath (now Fulbright & Jaworski)
666 Fifth Avenue
New York, New York 10103
Summer Associate

Summer 1982
Reed Smith
225 Fifth Avenue
Pittsburgh, Pennsylvania 15222
Summer Associate

Summer 1981
Harvard Upward Bound
Harvard University School of Education
13 Appian Way
Cambridge, Massachusetts 02138
Tutor/Counselor

Other Affiliations (uncompensated):

1998 – Present
Women's Housing and Economic Development Corporation
50 East 168th Street
Bronx, New York 10452
Chair (2007 – Present)
Member, Board of Directors (1998 – 2006)

2008 – Present
City University of New York School of Law
65-21 Main Street
Flushing, New York 11367
Member, Board of Visitors

2002 – 2009
Miss Porter's School
60 Main Street
Farmington, Connecticut 06032
Member, Board of Trustees

1995 – 1999
Museum of the City of New York
1220 Fifth Avenue
New York, New York 10029
Member *ex officio*, Board of Trustees

1994 – 1997
Morris-Jumel Mansion Museum
65 Jumel Terrace
New York, New York 10032
Member, Board of Trustees

1994 – 1997
Puerto Rican Bar Association
303 Park Avenue South #1405
New York, New York 10010
Member, Board of Directors

1990 – 1994
Lawyers Alliance for New York
171 Madison Avenue
New York, New York 10016
Member, Board of Directors

1992 – 1993
Bronx AIDS Services
540 East Fordham Road
Bronx, New York 10458
Member, Board of Directors

1990 – 1993
Pamela C. Torres Day Care Center, Inc.
161 St. Ann's Avenue

Bronx, New York 10454
Member, Board of Directors

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

I have never served in the military. I am 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.

Leon B. Polsky Fellowship (The Aspen Institute, Justice and Society Seminar) (2012)

Puerto Rican Bar Association:

Judiciary Committee Honoree (2012)

Judicial Excellence Award (2010)

President's Professional Achievement Award (2006)

Charles Evans Hughes Fellowship, Columbia Law School (1983)

S.K. Yee Scholarship, Columbia Law School (1982)

Puerto Rican Legal Defense & Education Fund Scholarship (1982)

Elizabeth Cary Agassiz Certificate of Merit (for high grades) (1980 – 1981)

Harvard University Center for International Affairs Summer Research Grant (for thesis research) (1980)

John F. Kennedy Institute of Politics Summer Research Award (for thesis research) (1980)

Harvard University Committee on Latin American and Iberian Studies Summer Research Grant (for thesis research) (1980)

Josephine L. Murray Travelling Fellowship (for thesis research) (1980)

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.

Association of Judges of Hispanic Heritage (2000 – Present)

Metropolitan Black Bar Association (1984 – Present)

National Association of Women Judges (2009 – Present)

New York Women's Bar Association (1994 – Present)

Puerto Rican Bar Association (1981 – Present)

Member, Board of Directors (1994 – 1997)

Pro Bono Committee (1988 – 1999)
Chair (1994 – 1999)

10. **Bar and Court Admission:**

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

New York, 1985

There were no lapses in membership during my years as a practicing attorney. Under New York State law, a judge is deemed retired from the practice of law. N.Y. Comp. Codes R. & Regs. tit. 22 § 118.1(g). I was deemed retired, therefore, on December 31, 1999, the day before I assumed judicial 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.

New York state courts, 1985

There were no lapses in membership, other than as described above.

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.

Bronx AIDS Services
Member, Board of Directors (1992 – 1993)

Cervantes Society, Inc. (2011 – Present)

City University of New York School of Law
Member, Board of Visitors (2008 – Present)

El Museo del Barrio (2011 – Present)

Lawyers Alliance for New York
Member, Board of Directors (1990 – 1994)

- Miss Porter's School
Member, Board of Trustees (2002 – 2009)
- Morris-Jumel Mansion Museum
Member, Board of Trustees (1994 – 1997)
- Museum of the City of New York
Member *ex officio*, Board of Trustees (1995 – 1999)
- Pamela C. Torres Day Care Center, Inc.
Member, Board of Directors (1990 – 1993)
- Women's Housing and Economic Development Corporation
Chair (2007 – Present)
Member, Board of Directors (1998 – 2006)

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

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Clara E. Rodriguez, et al., *Latino Racial Identity: In the Eye of the Beholder?*, LATINO STUD. J., Sept. 1991, at 33. Copy supplied.

Maria Rodriguez et al., *Ever Thought About Becoming an Attorney?* (Hispanic National Bar Association, 1988). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As an Acting New York State Supreme Court Justice, I was one of several judges who supported an editorial, published on March 26, 2009 in the New York Law Journal, advocating for drug law reform in the criminal justice system. Copy supplied.

I was a member of a delegation of judges who served as international monitors of the December 3, 2006, Venezuelan presidential election. The delegation issued a statement describing our observations. Copy supplied.

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

In 1996, the Puerto Rican Bar Association sent a letter and policy statement to the White House regarding H.R. 123. Although, as a Board member, my name appeared on the Bar Association letterhead, I did not sign the letter; I never discussed it, considered it, or was consulted about it; and the Board was never asked to vote on its contents. I only list it here in an effort to construe this question as broadly as possible. Copy supplied.

As a Commissioner of the New York City Planning Commission, from 1993 to 1995, I participated in the twice-monthly public hearings concerning proposals for the improvement of private and public real estate. I have no notes, transcripts or recordings. I understand that reel-to-reel audio recordings of the public hearings are available in the Commission archives.

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

I have not kept a comprehensive list of all the speeches, talks and presentations that I have given. Below is my best effort to recreate my history of speaking engagements, drawing from my calendars and files. It is possible that I have omitted presentations for which I did not retain records.

September 28, 2012: I spoke about my career path at the Depository Trust & Clearinghouse Corporation's panel titled "Hispanics and the Judiciary" (New York, New York). I have no notes, transcript or recording. The Depository Trust & Clearinghouse Corporation is located at 55 Water Street, New York, New York 10041.

June 8, 2012: I spoke to fifth graders about the law as a panelist on Career Day at Public School 175 (New York, New York). I have no notes, transcript or recording. The school is located at 175 West 134th Street, New York, New York 10030.

May 5, 2012: I participated in a National Association of Women Judges program for college students, where I discussed careers in the law (Bronx, New York). I have no notes, transcript or recording. The Association is located at 1341 Connecticut Avenue, NW, Suite 4.2, Washington, DC 20036.

February 25, 2012: At the Columbia Law School Admissions Conference, I served as a panelist on the Legal Practitioners Panel, where I discussed my career trajectory (New York, New York). I have no notes, transcript or recording. Columbia Law School is located at 435 West 116th Street, New York, New York 10025.

February 16, 2012: I expressed my gratitude to the Puerto Rican Bar Association at a reception honoring four judges, including myself (Brooklyn, New York). I have no notes, transcript or recording. The Association is located at 303 Park Avenue South, #1405, New York, New York 10010.

January 6, 2012: I delivered a speech at my induction as a New York State Supreme Court Justice (New York, New York). Prepared remarks supplied.

September 21, 2011: I delivered a speech accepting the Democratic Party's nomination for the office of New York State Supreme Court Justice (New York, New York). Prepared remarks supplied.

September 20, 2011: I delivered a campaign speech at the judicial candidates' forum sponsored by the Village Reform Democratic Club (New York, New York). Prepared remarks supplied.

September 19, 2011: I delivered a campaign speech at the judicial candidates' forums sponsored by: (1) the Lower Manhattan Democrats and (2) jointly by the Samuel L. Tilden Democratic Club and the Gramercy Stuyvesant Independent Democratic Club (both in New York, New York). I spoke from the same prepared remarks supplied for the September 20, 2011 speech.

September 15, 2011: I delivered a campaign speech at the judicial candidates' forum sponsored by the Community Free Democrats (New York, New York). I

spoke from the same prepared remarks supplied for the September 20, 2011 speech.

June 21, 2011: I spoke about my career path at a career panel sponsored by the Alumnae of Columbia Law School (New York, New York). I have no notes, transcript or recording. The Alumnae of Columbia Law School is located at 435 West 116th Street, Box A-2, New York, New York 10025.

May 26, 2011: I spoke to fourth graders about the law as a panelist on Career Day at Public School 175 (New York, New York). I have no notes, transcript or recording. The school is located at 175 West 134th Street, New York, New York 10030.

March 24, 2011: I gave a talk about how judges think at a Continuing Legal Education seminar sponsored by the New York Women's Bar Association (New York, New York). Notes supplied.

February 17, 2011: I served as a panelist at a forum sponsored by the Metropolitan Black Bar Association and titled "Demystifying the Judicial Election Process." I spoke about my experiences seeking election to the judiciary (New York, New York). I have no notes, transcript or recording. The Association is located at 275 Madison Avenue, New York, New York 10016.

September 21, 2010: I delivered an extemporaneous speech withdrawing myself as a potential Democratic Party nominee for the office of New York State Supreme Court Justice (New York, New York). I have no notes, transcript or recording. The New York County Democratic Committee is located at 461 Park Avenue South, 10th Floor, New York, New York 10016.

September 15, 2010: I delivered an extemporaneous speech describing my background and qualifications at the judicial candidates' forum sponsored by the Community Free Democrats (New York, New York). I have no notes, transcript or recording. The Community Free Democrats are located at 200 West 79th Street, #8N, New York, New York 10024.

September 14, 2010: I delivered an extemporaneous speech describing my background and qualifications, at the judicial candidates' forum sponsored jointly by the Downtown Independent Democrats and the Village Reform Democratic Club (New York, New York). I have no notes, transcript or recording. The Downtown Independent Democrats and the Village Reform Democratic Club have no physical address.

September 14, 2010: I delivered an extemporaneous speech describing my background and qualifications, at the judicial candidates' forums sponsored jointly by the Samuel J. Tilden Democratic Club and the Gramercy Stuyvesant Independent Democratic Club (New York, New York). I have no notes, transcript

or recording. The Samuel J. Tilden Democratic Club and the Gramercy Stuyvesant Independent Democratic Club have no physical address.

March 30, 2010: At a reception where I received the Puerto Rican Bar Association's Judicial Excellence Award, I spoke extemporaneously about my 45-year relationship with the organization (New York, New York). I have no notes, transcript or recording. The Association is located at 303 Park Avenue South, #1405, New York, New York 10010.

April 13, 2009: At the annual dinner of the Association of Judges of Hispanic Heritage, I spoke about the life of the late Judge Charles Tejada and the seven-decade relationship between the Torres and Tejada families (New York, New York). I have no notes, transcript or recording. The Association is located at P.O. Box 1064, New York, New York 10013.

November 14, 2007: I served as emcee at the reception celebrating the 15th anniversary of the Women's Housing and Economic Development Corporation (New York, New York). Prepared remarks supplied.

April 28, 2006: I delivered remarks at a meeting of the Board of Trustees of Miss Porter's School (Farmington, Connecticut). Prepared remarks supplied.

March 16, 2006: I delivered remarks at a reception where I received the Puerto Rican Bar Association's President's Achievement Award (New York, New York). Prepared remarks supplied.

February 2, 2006: I served as a panelist at a discussion titled "Perspectives from the Bench: Effective Courtroom Techniques" (New York, New York). I have no notes, transcript or recording. The event was co-sponsored by the Puerto Rican Bar Association, located at 303 Park Avenue South, #1405, New York, New York 10010; the Hispanic National Bar Association, located at 1900 L Street NW, Suite 700, Washington, DC 20036; the Dominican Bar Association, located at P.O. Box 203, Canal Street Station, New York, New York 10013; and the Latino Lawyers Association of Queens County, located at P.O. Box 751235, Forest Hills, New York 11375.

September 23, 2005: I spoke extemporaneously about the role of a judge at the Minority Law Student Leadership Summit (New York, New York). I have no notes, transcript or recording. The event was sponsored by Mayer, Brown, Rowe & Maw, located at 1675 Broadway, New York, New York 10019.

November 18, 2003: I spoke at the Women's Housing and Economic Development Corporation's Public Service Award reception (New York, New York). Prepared remarks supplied.

October 30, 2003: I delivered remarks in connection with awarding the Frank Torres Diversity Award to Mayor Bloomberg, at the annual dinner of the Association of Judges of Hispanic Heritage (New York, New York). I have no notes, transcript or recording. The Association is located at P.O. Box 1064, New York, New York 10013.

October 2003: I spoke about the law to eighth graders at De La Salle Academy, a school for intellectually gifted children from poor families (New York, New York). I have no notes, transcript or recording. The school is located at 202 West 97th Street, New York, New York 10025.

June 3, 2003: I delivered the commencement address at Miss Porter's School (New York, New York). Prepared remarks supplied.

March 8, 2003: I served as a panelist at a symposium sponsored by the Latin American Law Students Association of Columbia Law School and titled "Latinos in the Law" (New York, New York). I spoke about my career trajectory. I have no notes, transcript or recording. The Association is located at 435 West 116th Street, New York, New York 10025.

December 7, 2002: I participated in a panel discussion sponsored by the New York City Bar Association and titled "How to Become a Judge" (New York, New York). I spoke about my experience as a candidate for election to the Civil Court. I have no notes, transcript or recording. The Association is located at 42 West 44th Street, New York, New York 10036.

November 3, 2000: I spoke at the book-signing party celebrating the publication of *Changing Race: Latinos, the Census and the History of Ethnicity in the United States*, by Clara Rodriguez (New York, New York). Prepared remarks supplied.

November 17, 1999: I delivered a speech at my induction as a Judge of the Civil Court of the City of New York (New York, New York). Prepared remarks supplied.

Spring 1999: At candidate forums in connection with the 1999 Democratic Party primary for the office of Judge of the Civil Court of the City of New York (Sixth District), I gave a speech describing my background and qualifications (New York, New York). I cannot recall the dates or locations. I have no notes, transcript or recording. The forums were sponsored by the Lexington Democratic Club, located at 1202 Lexington Avenue, New York, New York 10028, and the Lenox Hill Democratic Club, located at P.O. Box 20431, Cherokee Station, New York, New York 10021.

- 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.

November 11-14, 2011: I exchanged emails with Michael Aronson, member of the New York Daily News Editorial Board, concerning an editorial published on November 8, 2011. I have supplied a copy of the email trail and two editorials:

Editorial, *Too Many Judicial Candidates in the City Are Violating Court Rules in Their Campaigns*, N.Y. DAILY NEWS, Nov. 8, 2011.

Editorial, *Judges-elect Annalisa Torres and Alex Tisch Failed to Follow the Letter of the Law*, N.Y. DAILY NEWS, Nov. 15, 2011.

Laura Nahmias, *After a Lifetime's Wait, One Final Delay*, CITY AND STATE, July 25, 2011. Copy Supplied.

Edgar Sandoval, et al., *N.Y.ers Proudly Fete Hometown Girl*, N.Y. DAILY NEWS, Aug. 7, 2009. Copy supplied.

August 6, 2009: I was interviewed by New York 1 television reporter Jeanine Ramirez in connection with the confirmation of Sonia Sotomayor as a United States Supreme Court Justice. A video of the story is available at: http://www.ny1.com/content/top_stories/103671/sotomayor-vote-a-crowning-moment-for-latino-community/.

October 3, 2006: I was interviewed by New York 1 television reporter Jeanine Ramirez in connection with the 50th Anniversary of the founding of the Puerto Rican Bar Association. A video of the story is available at: http://www.ny1.com/content/top_stories/63123/hispanic-heritage-week--puerto-rican-bar-association-set-to-celebrate-50-years.

Analisa N. Torres '77: And Justice For All, The Bulletin of Miss Porter's School, Winter/Spring 2000. Copy supplied.

Editorial, *For Civil Court and Bronx D.A.*, N.Y. TIMES, Sept. 13, 1999. Copy supplied.

Eric Pace, *Felipe N. Torres, 96, Former Legislator and Retired Judge*, N.Y. TIMES, Apr. 5, 1994. Copy supplied.

Richard Perez-Pena, *Job-Seekers Are Victims of Ad Hoax*, N.Y. TIMES, Aug. 10, 1993. Copy supplied.

Women Students Want Radcliffe To Assume More Active Role, HARVARD CRIMSON, Dec. 7, 1978. Copy supplied.

La O Backs Divestiture, HARVARD CRIMSON, Oct. 19, 1978. Copy supplied.

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

In 1999, I was elected a Judge of the Civil Court of the City of New York for a ten-year term commencing January 1, 2000. The Civil Court has jurisdiction over civil matters involving claims up to \$25,000. From January 2000 until December 2002, I was administratively assigned to the Criminal Court of the City of New York. The Criminal Court has jurisdiction over misdemeanors and violations. Judges of the Criminal Court also act as arraigning magistrates and conduct preliminary hearings in felony cases. From January 2003 to October 2004, I served on the Civil Court bench.

In 2004, then-Chief Administrative Judge Jonathan Lippman designated me an Acting Supreme Court Justice. From November 2004 to December 2009, I was assigned to the Supreme Court, Bronx County, Criminal Division, which has jurisdiction over misdemeanor and felony matters.

In 2009, I was reelected to the Civil Court for another ten-year term commencing January 2010. My designation as an Acting Supreme Court Justice continued.

In 2010, I was assigned to Supreme Court, New York County, Criminal Term which has jurisdiction over misdemeanor and felony matters.

In 2011, I was elected a Justice of the Supreme Court of the State of New York for a 14-year term commencing January 2012. I currently serve as a Manhattan trial judge, handling criminal cases.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 260

- i. Of these, approximately what percent were:

jury trials:	50%
bench trials:	50%
civil proceedings:	33%
criminal proceedings:	67%

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

People v. Weitz, -- N.Y.S.2d --, 2012 WL 3139877 (N.Y. Sup. Ct. Aug. 3, 2012).

People v. Reid, 918 N.Y.S.2d 863 (N.Y. Sup. Ct. 2011).

People v. Ventura, 913 N.Y.S.2d 543 (N.Y. Sup. Ct. 2010).

People v. Davila, 901 N.Y.S.2d 787 (N.Y. Sup. Ct. 2010).

People v. Gonzalez, 901 N.Y.S.2d 901, 2009 WL 2779856 (N.Y. Sup. Ct. 2009).

People v. Ortiz, 906 N.Y.S.2d 775, 2009 WL 4335844 (N.Y. Sup. Ct. 2009).

Montgomery Trading Co. v. Cho, 815 N.Y.S.2d 495, 2006 WL 481218 (N.Y. Civ. Ct. 2006), *aff'd*, 880 N.Y.S.2d 874, 2009 WL 400083 (N.Y. App. Term 2009).

People v. Ruiz, 831 N.Y.S.2d 349, 2006 WL 2988446 (N.Y. Sup. Ct. 2006).

People v. Morgan, 819 N.Y.S.2d 212, 2006 WL 1674295 (N.Y. Sup. Ct. 2006).

People v. Taylor, 819 N.Y.S.2d 212, 2006 WL 1348745 (N.Y. Sup. Ct. 2006).

People v. Scarborough, 2005 WL 6003425 (N.Y. Sup. Ct. 2005), *rev'd*, 818 N.Y.S.2d 510 (N.Y. App. 1st Dep't 2006), *leave denied*, 7 N.Y.3d 851 (2006).

Rokosz v. Belmont Watkins Realty Corp., 798 N.Y.S.2d 713, 2004 WL 2309271 (N.Y. Civ. Ct. 2004), *aff'd*, 867 N.Y.S.2d 20, 2008 WL 2420747 (N.Y. App. Term 2008).

H. Park Central LLC v. Meissen Gallery, Inc., 2003 WL 21435565 (N.Y. Civ. Ct. Mar. 17, 2003).

People v. Mohamady, NYLJ, Feb. 11, 2002, at 21, col. 3 (N.Y. Crim. Ct. 2002).

People v. Cullinan, 729 N.Y.S.2d 385 (N.Y. Crim. Ct. 2001).

People v. Cunningham, 727 N.Y.S.2d 281 (N.Y. Crim. Ct. 2001).

People v. Gristina, 721 N.Y.S.2d 491 (N.Y. Crim. Ct. 2001).

People v. Garcia, NYLJ, Feb. 5, 2001, at 24, col. 6 (N.Y. Crim. Ct. 2001).

People v. Webb, 709 N.Y.S.2d 369 (N.Y. Crim. Ct. 2000).

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

1. *People v. Harrell*. Indictment No. 3742/08; Supreme Court, New York County.

In the area of the Peter Cooper Village apartment complex in Manhattan, defendant stabbed a person with a screwdriver and attempted to stab another. Defendant admitted to the crimes during a videotaped interview with a prosecutor. The police conducted a lineup where one eyewitness identified defendant as the perpetrator; a second eyewitness did not. I denied defendant's pretrial suppression motion, holding that the police had probable cause for the arrest, defendant's statements, which were preceded by *Miranda* warnings, were voluntary and the lineup was not unduly suggestive. At trial, I denied defendant's request for a deadly force justification charge, because there was no evidence that defendant reasonably believed that the stabbing victim used or was about to use deadly force against defendant. The jury convicted defendant of attempted murder in the second degree and related charges.

Assistant District Attorney: Scott Leet
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(212) 335-3538

Defense Counsel: Hershel Katz
100 Lafayette Street
New York, NY 10013
(212) 925-2455

2. *People v. Mathis*. Indictment No. 1379/09; Supreme Court, New York County, *aff'd*, 941 N.Y.S.2d 146 (N.Y. App. 1st Dep't 2012).

Defendant and two others attempted a gunpoint robbery of Velazquez on a Manhattan subway platform. A police officer showed Velazquez a picture of a young man that the officer had obtained from a victim in a subway robbery that had occurred three days earlier. The officer did not know the name of the person depicted in the photo and he was not a suspect in the Velazquez case. Velazquez identified the individual as one of his assailants. Later, another suspect named defendant as the person in the picture. On three subsequent occasions, Velazquez again identified defendant as a participant in the robbery – while examining a photo array, viewing a lineup and during his testimony at trial. The jury convicted defendant of attempted robbery in the first degree and related charges. During summation and in his post-trial motion, defense counsel argued that showing Velazquez the single picture was unduly suggestive and tainted all subsequent identifications. I denied the motion, because the police did not use the photo as an identification procedure (they did not know who was depicted in the picture), but as an investigative tool designed to make use of the victim's memory while it was still fresh.

Assistant District Attorney: James Zaleta
New York Country District Attorney's Office

One Hogan Place
New York, NY 10013
(212) 335-3669

Defense Counsel: Michael Croce
100 Lafayette Street, Suite 404
New York, NY 10013
(212) 566-5828

3. *People v. Moore*. Indictment No. 5009/09; Supreme Court, New York County.

On a lower Manhattan street, defendant and codefendant Palencia approached Torres and asked for a lighter. Defendant punched Torres in the face, both defendants threw Torres up against a wall and Palencia removed cash, a cell phone and car keys from Torres' pockets. As the perpetrators fled, Palencia transferred the stolen property to defendant. Torres and an eyewitness gave chase and apprehended Palencia, who was arrested at the scene. Palencia informed an officer that defendant had taken part in the robbery. The officer showed Palencia an arrest photo of defendant and Palencia confirmed that the individual depicted was defendant. The officer showed Torres a photo array which included defendant's picture. Torres identified defendant as one of his assailants. During a police interview, defendant waived his *Miranda* rights and made verbal and written statements. The police conducted a lineup. Again, Torres identified defendant as a robber. I denied defendant's pretrial suppression motion, holding that the lineup was not unduly suggestive and that defendant's statements were voluntary. The jury convicted defendant of robbery in the second degree.

Assistant District Attorney: Shawn McMahon
New York County District Attorney's Office
One Hogan Place
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(212) 335-9965

Defense Counsel: Lawrence Gerzog
233 Broadway, Suite 2707
New York, NY 10279
(212) 486-3003

4. *People v. Davis*. Indictment No. 2342/11; Supreme Court, New York County.

A Columbia University employee reported to the police that her wallet and iPhone were missing from her office. The next day, the police stopped defendant for urinating in public. A check of defendant's identification revealed an open warrant. The police searched defendant and recovered the employee's credit cards from his person. At the precinct, a detective believed that defendant resembled an individual captured in Columbia surveillance photos. The police read defendant his *Miranda* warnings and he indicated that he understood each warning. Defendant denied being

at the University. When shown the surveillance pictures, defendant stated "all right, I was there. So what?" I denied defendant's pretrial motion to suppress his statements. Defendant moved for a trial order of dismissal, arguing that the evidence presented did not establish the elements of possession of stolen property. I denied the motion. The jury convicted defendant of grand larceny in the fourth degree and criminal possession of stolen property.

Assistant District Attorney: Larken Kade
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
(212) 335-9587

Defense Counsel: David Liebman
270 Madison Avenue
New York, NY 10016
(212) 213-6681

5. *People v. Lopez*. Docket No. 4896/11; Supreme Court, New York County.

Defendant posted a fraudulent advertisement on Craig's List, listing a Manhattan apartment for rent. Defendant accepted from two young women more than \$5,000 for a bogus application fee and the first and last months' "rent." They were instructed to make checks payable to defendant's friend, Kennedy, who cashed the checks. Defendant did not deliver the apartments. At trial, I permitted the prosecution to use, as rebuttal evidence impeaching Kennedy's testimony, a recorded telephone call between defendant and Kennedy made when defendant was incarcerated on Rikers Island. The jury convicted defendant of criminal possession of stolen property in the third degree, grand larceny in the fourth degree and scheme to defraud in the first degree.

Assistant District Attorney: Jeremy Pfetsch
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
(212) 335-9545

Defense Counsel: David W. Guy
12501 Queens Boulevard, Suite 218
Kew Gardens, NY 11415
(718) 268-7320

6. *People v. Gonzalez*. Indictment No. 807/09; Supreme Court, New York County.

Defendant, a friend of the complainant's girlfriend, was admitted to the complainant's home where he assaulted the complainant and robbed him of personal property.

Because the arresting officer failed to give defendant the *Miranda* warnings, I granted defendant's motion to suppress post-arrest statements made to that officer. After a jury trial, defendant was convicted of robbery in the third degree and possession of stolen property in the fifth degree.

Assistant District Attorney: Siobhan Carty
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
(212) 335-4225

Defense Counsel: Theodore Herlich
2560 Matthews Avenue, Suite One
Bronx, NY 10467
(212) 227-4716

7. *People v. Samuel*. Indictment No. 3418/09; Supreme Court, New York County *aff'd*, 938 N.Y.S.2d 69 (N.Y. App. 1st Dep't 2012).

Defendant committed a gunpoint robbery in a Lexington Avenue deli. At trial, I permitted the prosecution to introduce expert testimony regarding the technology of triangulation and cell sites, in order to establish the proximity of defendant's cell phone to the scene of the crime. The jury convicted defendant of robbery in the first and second degrees.

Assistant District Attorney: Megan Joy
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New York, NY 10013
(212) 335-8968

Defense Counsel: Natasha Lapiner-Giresi
New York County Defender Service
225 West Broadway, 11th Floor
New York, NY 10013
(212) 803-5140
(646) 924-7329

8. *People v. Plummer*. Indictment No. 0171/10; Supreme Court, New York New County, *aff'd*, 944 N.Y.S.2d 134 (N.Y. App. 1st Dep't 2012).

On a Harlem street, the victim was set upon by two men who struck him on the back of his head with an imitation pistol, causing pain and bleeding. As the second perpetrator held the complainant by the hood of his jacket, defendant pointed the fake gun at the victim's chest and demanded that he empty his pockets. The complainant handed over a wallet which contained his passport and \$676. At trial, I instructed the

jury that they were to consider whether the imitation pistol, as used, was a dangerous instrument capable of inflicting serious physical injury. The jury convicted the defendant of robbery in the first and second degrees.

Assistant District Attorney: Gerard Monusky
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
(212) 335-9947

Defense Counsel: Wendell Cruz
225 Broadway, Room 1100
New York, NY 10007
(212) 803-5125

9. *People v. Alam*. Indictment No. 911/11; Supreme Court, New York County.

Defendant and another cab driver, Amador, were involved in a "road rage" incident on the Transverse Road in Central Park. Both parties suffered injuries and were removed from the scene by ambulance. At trial, defendant claimed that, acting in self-defense, he stabbed Amador with a steel pen, because Amador had bitten defendant's ear which defendant believed "was gone." I denied defendant's request for a deadly force justification charge, because, under New York law, teeth do not constitute a dangerous instrument or weapon, and there was no evidence that defendant believed or had reason to believe that he was in imminent danger of being subjected to deadly physical force by an unarmed Amador. The jury acquitted defendant of assault in the second degree.

Assistant District Attorney: Andrew Weinstein
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
(212) 335-9171

Defense Counsel: Eric Sears
111 Broadway
New York, NY 10006
(212) 252-8560

10. *Montgomery Trading Co. v. Cho*. Index No. L&T 87842/02; Civil Court, New York County. 815 N.Y.S.2d 495, 2006 WL 481218 (N.Y. Civ. Ct. 2006), *aff'd*, 880 N.Y.S.2d 874, 2009 WL 400083 (N.Y. App. Term 2009).

In a commercial holdover proceeding, the owner of a building with ground floor retail premises and residential apartments above, sought possession of a street level space occupied by a deli, after a fire had destroyed some of the building's electrical

equipment. Because Con Edison cut off power, the landlord could not provide sufficient electricity to run the store. The lease stated that the owner was entitled to terminate the tenancy if the premises were rendered "wholly unusable" by fire. At trial, none of the tenant's experts, including an engineer who specializes in fire-damaged buildings, provided evidence that the landlord could have restored power to the deli. After a seven-week bench trial, I determined that the fire rendered the premises wholly unusable. Holding that the tenancy was properly terminated and that the landlord was entitled to possession of premises, I granted judgment in favor of the owner.

Plaintiff's Counsel: Liviu Vogel
 Salon Marrow Dyckman Newman & Broudy LLP
 292 Madison Avenue
 New York, NY 10017
 (212) 661-7100

Defense Counsel: Jay Dankberg
 1220 Broadway, Room 502
 New York, NY 10001
 (212) 967-1114

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. *People v. Reid*, 918 N.Y.S.2d 863 (N.Y. Sup. Ct. 2011).

Assistant District Attorney: Jonathan Chananie
 New York County District Attorney's Office
 One Hogan Place
 New York, NY 10013
 (212) 335-9978

Defense Counsel: Gary Sunden
 299 Broadway, Suite 1700
 New York, NY 10007
 (212) 925-4848

2. *People v. Femura*, 913 N.Y.S.2d 543 (N.Y. Sup. Ct. 2010).

Assistant District Attorney: Michael Clarke
 Office of the Mayor of New York City
 One Centre Street
 New York, NY 10013
 (917) 975-6055

Defense Counsel: Steven Hornstein
350 Broadway, Suite 1201
New York, NY 10013
(212) 941-7100

3. *People v. Davila*, 901 N.Y.S.2d 787 (N.Y. Sup. Ct. 2010).

Assistant District Attorney: Jason Petri
Bronx County District Attorney's Office
198 East 161st Street
Bronx, NY 10451
(718) 838-7291

Defense Counsel: William Schwarz
97 Spy Glass Hill
Hopewell Junction, NY 12533
(845) 592-2301

4. *People v. Gonzalez*, 901 N.Y.S.2d 901, 2009 WL 2779856 (N.Y. Sup. Ct. 2009).

Assistant District Attorneys: Jevet Johnson
Bronx County District Attorney's Office
215 East 161st Street
Bronx, NY 10451
(718) 590-2000

Heather Hatcher
Special Education Administrative Litigation Unit
New York City Department of Education
333 Seventh Avenue, 7th Floor
New York, NY 10001
(917) 339-1608

Defense Counsel: Arlen Yalkut
Yalkut & Israel
175 Main Street
White Plains, NY 10601
(914) 686-9393

5. *Montgomery Trading Co. v. Cho*, 815 N.Y.S.2d 495, 2006 WL 481218 (N.Y. Civ. Ct. 2006), *aff'd*, 880 N.Y.S.2d 874, 2009 WL 400083 (N.Y. App. Term 2009).

Plaintiff's Counsel: Liviu Vogel
Salon Marrow Dyckman Newman & Broudy LLP
292 Madison Avenue

New York, NY 10017
(212) 661-7100

Defense Counsel: Jay Dankberg
1220 Broadway, Room 502
New York, NY 10001
(212) 967-1114

6. *People v. Ruiz*, 831 N.Y.S.2d 349, 2006 WL 2988446 (N.Y. Sup. Ct. 2006).

Assistant District Attorney: Steve Cherfils
New York City Department of Education
335 Adams Street
Brooklyn, NY 11201
(718) 923-5120

Defense Counsel: Jeremy Schneider
Rothman Schneider Soloway & Stern LLP
100 Lafayette Street, Suite 501
New York, NY 10013
(212) 571-5500

7. *People v. Weitz*, ___ N.Y.S.2d ___, 2012 WL 3139877 (N.Y. Sup. Ct. Aug. 3, 2012).

Assistant District Attorney: Jessica Lynn
New York County District Attorney's Office
One Hogan Place
New York, NY 10013
(212) 335-3572

Department of Probation: Lisa Immit
New York City Department of Probation
General Counsel's Office
33 Beaver Street, 21st Floor
New York, NY 10004
(212) 442-4551

Defense Counsel: Roger Adler
233 Broadway, Suite 1800
New York, NY 10279
(212) 406-0181

8. *People v. Taylor*, 819 N.Y.S.2d 212, 2006 WL 1348745 (N.Y. Sup. Ct. 2006).

Assistant District Attorney: Cynthia Isaacs
Bronx Housing Court
1118 Grand Concourse

Bronx, NY 10456
(718) 466-3170

Defense Counsel: Caroline McGrath
The Legal Aid Society
260 East 161st Street
Bronx, NY 10451
(718) 579-3035

9. *Rokosz v. Belmont Watkins Realty Corp.*, 798 N.Y.S.2d 713, 2004 WL 2309271 (N.Y. Civ. Ct. 2004), *aff'd*, 867 N.Y.S.2d 20, 2008 WL 2420747 (N.Y. App. Term 2008).

Plaintiff's Counsel: Solomon Zabrowsky
250 West 57th Street, Suite 1401
New York, NY 10107
(212) 265-2800

Defense Counsel: Samuel Weissman
44 Monroe Street, Suite A1
New York, NY 10002
(646) 415-8029

10. *People v. Cullinan*, 729 N.Y.S.2d 385 (N.Y. Crim. Ct. 2001).

Assistant District Attorney: Leila Kermani
New York County District Attorney's Office
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New York, NY 10013
(212) 335-3574

Defense Counsel: David Kapner
The Legal Aid Society
49 Thomas Street
New York, NY 10013
(212) 298-5124

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

I am not aware of any 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.

People v. Rodriguez, 931 N.Y.S.2d 60 (N.Y. App. 1st Dep't 2011). In open court, I dismissed the second count of an indictment, charging defendant with failure to verify registration information, in violation of Correction Law § 168-f(3), on the ground that the provision was vague as applied to defendant. The Appellate Division reversed and reinstated the count.

People v. Rosado, 930 N.Y.S.2d 10 (N.Y. App. 1st Dep't 2011). Defendant was convicted of gang assault in the second degree. Defendant, along with seven others, assaulted the complainant on a Manhattan street, causing him to suffer a broken nose, chipped teeth and a scratched cornea. Despite reconstructive surgery to repair a nasal fracture, when the complainant testified at trial, a permanent indentation was apparent on his face. Defendant moved to set aside the verdict, on the ground that the prosecution failed to prove the element of "serious physical injury." On July 20, 2010, I denied the motion. The Appellate Division, relying upon a New York Court of Appeals decision issued on October 14, 2010, found the evidence legally insufficient and modified the judgment of conviction by reducing it to assault in the third degree.

People v. Scarborough, 2005 WL 6003425 (N.Y. Sup. Ct. 2005), *rev'd*, 818 N.Y.S.2d 510 (N.Y. App. 1st Dep't 2006), *leave denied*, 7 N.Y.3d 851 (2006). At a pretrial suppression hearing, a police officer testified that shortly before midnight, while standing outside the older model Cadillac in which defendant was the passenger, the officer looked through the open passenger side window and saw a two-inch by one-quarter of an inch plastic bag containing cocaine perched in the skeletal driver-side cup holder. Throughout his testimony, the officer was fidgety, nervous, averting his eyes and hesitant. I found the officer's testimony not credible and granted defendant's motion to suppress the evidence. The Appellate Division disagreed with my assessment of the officer's credibility and reversed.

Ford Motor Credit Co. v. Louie, 816 N.Y.S.2d 812 (N.Y. App. Term 2006), *aff'd*, 843 N.Y.S.2d 29 (N.Y. App. 1st Dep't 2007). After defendant's arrest for driving while intoxicated, the NYPD seized the car he had leased from plaintiff. The NYPD turned over the car to plaintiff, which eventually sold it. Plaintiff brought an action to recover the unpaid balance of the car lease. I denied both parties' motions for summary judgment. The Appellate Term reversed, granting defendant's motion. Unpublished opinion supplied.

Rosario v. 288 St. Nick LLC, 814 N.Y.S.2d 892, 2006 WL 288687 (N.Y. App. Term 2006), *leave denied*, 2006 N.Y. App. Div. LEXIS 11371 (N.Y. App. 1st Dep't 2006). The Appellate Term reversed my denial of landlord's motion to dismiss tenants' tort claims arising from building conditions, holding that some lacked merit and that others could have been raised in prior settled proceedings or failed to state a cause of action. Unpublished opinion supplied.

People v. Webers, 808 N.Y.S.2d 920, 2005 WL 2670944 (N.Y. App. Term 2005). After a bench trial, I found defendant guilty of aggravated harassment in the second degree. The Appellate Term reversed, holding that defendant's telephone calls to the complainant's office were not shown to have been actuated by the requisite criminal intent to "harass, annoy, threaten or alarm" or to have been initiated in a "manner likely to cause annoyance or alarm," under Penal Law § 240.30(1).

Espaillet v. Greenpath, Inc., 808 N.Y.S.2d 917, 2005 WL 2467067 (N.Y. App. Term 2005). The Appellate Term reversed my denial of a motion to vacate a default judgment. Unpublished opinion supplied.

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

More than 99% of the hundreds of decisions that I have issued are unpublished. Decisions issued by New York State judges are generally not published. During my twelve years on the bench, I have only sought publication of opinions that involve a subtle, complicated or novel fact pattern or issue of law. In order to have a decision published, a judge must submit it to the State Reporter or the New York Law Journal. Unpublished written opinions are stored in the original court file.

Decisions placed on the record, which is the typical practice in criminal cases, may be obtained by ordering a transcript.

- 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.

People v. Cullinan, 729 N.Y.S.2d 385 (N.Y. Crim. Ct. 2001).

People v. Davila, 901 N.Y.S.2d 787 (N.Y. Sup. Ct. 2010).

People v. Gonzalez, 901 N.Y.S.2d 901, 2009 WL 2779856 (N.Y. Sup. Ct. 2009).

People v. Reid, 918 N.Y.S.2d 863 (N.Y. Sup. Ct. 2011).

People v. Ruiz, 831 N.Y.S.2d 349, 2006 WL 2988446 (N.Y. Sup. Ct. 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 never served 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 have assessed the necessity or propriety of recusal in accordance with the rules and case law governing judicial ethics. N.Y. Judiciary Law § 14 (Consol. 2012); N.Y. Comp. Code R. & Regs. tit. 22 § 100.3 (E)-(F).

Additionally, although not a rule of “recusal,” Part 151.1 of the Rules of the Chief Administrative Judge (N.Y. Comp. Code R. & Regs. tit. 22 § 151.1), effective July 15, 2011, provides for the administrative reassignment of cases where an assigned judge has received significant campaign contributions from parties or counsel within the previous two years. That reassignment—which is not automatic—is designed to occur without the knowledge of the affected judge. Part 151.1 neither increases nor decreases the ethical obligations of a judge.

In *Kirsner v. Markowitz, et al.* (Index No. 15358/2000), I recused myself sua sponte, because Marc Landis, Esq., the attorney representing the defendant, served as the treasurer of my 1999 campaign for Civil Court. When the case was called and I realized that Mr. Landis was representing a party, I immediately announced my recusal to avoid the appearance of impropriety.

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.

From 1993 to 1995, I served as a Commissioner of the New York City Planning Commission. I was appointed by Mayor David N. Dinkins.

In 2010, I sought the Democratic Party's nomination for the office of Justice of the Supreme Court of the State of New York, but withdrew myself from consideration at the nominating convention.

- 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 or rendered services to a political party or election committee. The only role I have played in a political campaign is that of candidate in my own judicial campaigns.

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

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

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

I clerked for New York State Supreme Court Justice Elliott Wilk, from 1992 to 1999.

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

I 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.

1984 – 1985
Kaye, Scholer LLP
425 Park Avenue
New York, New York 10022
Real Estate Associate

1985 – 1987
Coudert Brothers (Defunct)
New York, New York
Real Estate Associate

1988 – 1992
Patterson, Belknap, Webb & Tyler

1133 Avenue of the Americas
New York, New York 10036
Real Estate Associate

May – August, 1992
South Bronx Overall Economic Development Corporation
555 Bergen Avenue
Bronx, New York 10455
General Counsel

1993 – 1995
Planning Commission of the City of New York
22 Reade Street
New York, New York 10007
Commissioner

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

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

b. Describe:

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

For my first seven years of law practice, I handled the purchase, sale, leasing and financing of commercial and residential real estate, including office buildings, shopping centers, industrial properties and homes. I represented banks in the restructuring and foreclosure of troubled loans. In addition, I participated in the drafting of a condominium offering plan and the closing of new units. I also assisted in the due diligence review of real estate aspects of leveraged buy-outs.

In my capacity as General Counsel to the South Bronx Overall Economic Development Corporation (May-August 1992), I advised the not-for-profit organization on real estate matters and commercial revitalization initiatives, including the development of business improvement districts.

During my seven years as law clerk to Justice Elliott Wilk, in the Civil Term of the New York State Supreme Court (1992-1999), I advised the judge on legal issues during trial (35 per year) and at the oral argument of motions (hundreds per year). My responsibilities also included legal research and drafting of opinions in the areas of contracts, real property,

torts, banking, matrimonial and civil rights law; mediation of discovery disputes; conferencing of cases; preparation of jury charges; and management of fiduciary appointments.

The New York City Planning Commission is a quasi-judicial and legislative body responsible for land use policy, including the review of private sector development proposals, site selection for municipal facilities, urban renewal, economic development, environmental review, infrastructure planning, modification of the New York City Zoning Resolution and changes to the city map. During my term as a Commissioner (1993-1995), the Commission addressed dozens of matters, including the amendment of laws governing waterfront zoning, the location of sex-related businesses, and the zoning of the Lincoln Center area.

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

Throughout my first seven years as an attorney, I practiced in the general area of transactional real estate. The law firms' typical clients included major corporations and high-net-worth individuals. I also served as General Counsel to The South Bronx Overall Economic Development Corporation, an economic development organization.

- 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 never worked as a litigator.

- i. Indicate the percentage of your practice in:

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

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: __%
- 2. criminal proceedings: __%

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

I never worked as a litigator.

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

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

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.

I never worked as a litigator. For my first seven years of law practice, I represented major corporations and high-net-worth individuals in transactional real estate matters. As General Counsel to the South Bronx Overall Economic Development Corporation, I represented the not-for-profit in its commercial revitalization initiatives. During my seven year tenure as law clerk to Supreme Court Justice Elliott Wilk, I assisted the judge with hundreds of matters in a wide variety of civil law cases. As a Commissioner of the New York City Planning Commission, I considered proposals for the development of private and public real property and amendments to the New York City Zoning Resolution.

- 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.)

Aside from serving as a judge, my most significant legal activity, over the course of two decades, has been my work with the Women's Housing and Economic Development Corporation (WHEDCO). WHEDCO's founder, Nancy Biberman, asked me to assume the role of pro bono general counsel in 1991, just as the organization got started. During my tenure as a law clerk, I provided pro bono legal services to WHEDCO, in accordance with New York State Judiciary Law § 50.6 (N.Y. Comp. Codes R. & Regs. tit. 22 § 50.6(c)). I served as pro bono general counsel until I became a judge and could no longer volunteer legal advice. I continued to actively serve the organization, however, on its Board of Directors. I became Board Chair in 2007. WHEDCO builds beautiful, award-winning, "green" affordable housing and provides supportive services for adults and children, including a pre-school, extracurricular enrichment and counseling.

I have also served as a member of the Board of Visitors of the City University of New York School of Law (2008 – 2012). In that role, I have focused on supporting and developing initiatives which promote student interaction with practicing attorneys.

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

During the 1987-1988 school year, I taught Spanish, Expository Writing, and Introduction to Law at De La Salle Academy, a middle school for intellectually gifted children from low income families. I do not have a syllabus for any of the courses.

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

I expect to receive income from the New York State and Local Employees Retirement System and the Deferred Compensation Plan. I have no other deferred income arrangements.

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

I have no plans, commitments or agreements to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

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.

The most likely area of conflict would be habeas corpus cases where I presided over the underlying state conviction. I would recuse myself in any matter in which I had prior judicial involvement.

- 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 adhere to the Code of Conduct for United States Judges and any relevant ethical canons or statutory provisions.

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

In addition to my service to WHEDCO (described in response to question 18), since entering law school in 1981, I have been actively involved, as a member and leader, in the Puerto Rican Bar Association (PRBA), volunteering at least 100 hours per year. As a judge, I have participated in PRBA panel discussions, mentored lawyers interested in pursuing a career in the judiciary and offered summer law student internships. As a lawyer, I served on the Board of Directors (1994 – 1997) and as a member (1988 – 1999) and Chair (1994 – 1999) of the Pro Bono Committee. In that capacity, I organized workshops to train members to provide civil legal services to needy senior citizens. On the Education Committee, I coauthored a pamphlet for college students titled "Ever Think of Becoming an Attorney?" On the Scholarship Committee, I read applications and interviewed candidates for the Association's annual grants. In law school, I organized LSAT preparation courses and essay writing workshops for aspiring college 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 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 2012, Senator Gillibrand expressed an interest in recommending me for nomination to the federal bench. I then exchanged phone calls and emails with her General Counsel, and on June 21, 2012, the Senator's General Counsel indicated that Senator Gillibrand would be recommending me for nomination to the position of United States District Judge for the Southern District of New York.

On June 28, 2012, I had a phone interview with an official from the White House Counsel's Office. I spoke with him again on July 16, 2012, and he informed me that I had been selected to proceed in the vetting process. Since July 18, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 27, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 14, 2012, 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.

AO 10
Rev. 1/2012

**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) Torres, Analisa N.	2. Court or Organization U.S. District Court for the Southern District of New York	3. Date of Report 11-14-2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 11-14-2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 11-2011 to 10-31-2012
	7. Chambers or Office Address New York State Supreme Court 111 Centre St. New York, NY 10013	
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. Insert signature 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	WHEDCO-Women's Housing and Economic Development Corporation
2.	Member, Board of Visitors	City University of New York Law 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.	10/19/1992	New York State and Local Retirement System Defined Benefit Pension Plan
2.		
3.		

FINANCIAL DISCLOSURE REPORT
Page 2 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME <i>(years, not spouse's)</i>
1. 2012	New York State Unified Court System	\$135,265.00
2. 2011	New York State Unified Court System	\$139,346.00
3. 2010	New York State Unified Court System	\$139,346.00
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 bonuses.)

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

DATE	SOURCE AND TYPE
1. 2012	Wells Fargo Advisors-salary, commissions and bonus
2. 2011	Wells Fargo Advisors-salary, commissions and bonus
3. 2011	Morgan Stanley Smith Barney-salary commissions and bonus
4. 2010	Morgan Stanley Smith Barney-salary, commissions and bonus

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 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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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.	Earlham College	Tuition, Room and Board	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 14-68 of filing instructions.)

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

1.	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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
		Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm dd yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1.	Brokerage Account #1					Exempt				
2.	-Wells Fargo Bank Deposit Sweep	A	Dividend	J	T					
3.	-Frod-F	A	Dividend	K	T					
4.	-Shares Dividend Index-DVY	A	Dividend	J	T					
5.	-Wisdom Tree Equity Income-DHIS	A	Dividend	J	T					
6.	-Center Coast MLP Fund-CCCNX	B	Dividend	K	T					
7.	-Blackrock High Yield Fund-BHYIX	A	Dividend	J	T					
8.	-Delaware High Yield Fund-DHOIX	B	Dividend	K	T					
9.	-Arno GLBL High Income Fund-JHYIX	A	Dividend	J	T					
10.	-MetWest High Yield Fund-MWHIX	A	Dividend	K	T					
11.	-Munstay High Yield Fund-MHYIX	A	Dividend	J	T					
12.	-Principal High Yield Fund-PHYIX	A	Dividend	J	T					
13.	-Ridgeworth High Yield Fund-STHIX	A	Dividend	J	T					
14.	-Blackrock Credit Alloc Trust-PSV	A	Dividend	J	T					
15.	-Calamos Strategic Fund-CSQ	A	Dividend	J	T					
16.	-NEJ Div Int Premium Strat Fund-NEJ	D	Dividend	L	T					
17.	-Nuveem Pref Inc Fund-JPC	B	Dividend	K	T					

1. Income Item Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$12,500; E = \$15,001 - \$100,000; F = \$15,000 or less; G = \$100,001 - \$1,000,000; H = \$1,000,001 - \$5,000,000; I = \$5,001 - \$100,000; J = \$100,001 - \$250,000; 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; P = \$1,000,001 - \$5,000,000; Q = \$5,000,001 - \$10,000,000; R = \$10,000,001 - \$50,000,000; S = More than \$50,000,000; T = \$15,001 - \$100,000; U = \$100,001 - \$250,000; V = \$250,001 - \$500,000; W = \$500,001 - \$1,000,000; X = \$1,000,001 - \$5,000,000; Y = \$5,000,001 - \$10,000,000; Z = More than \$10,000,000.

2. Value Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$12,500; E = \$15,001 - \$100,000; F = \$15,000 or less; G = \$100,001 - \$1,000,000; H = \$1,000,001 - \$5,000,000; I = \$5,001 - \$100,000; J = \$100,001 - \$250,000; 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; P = \$1,000,001 - \$5,000,000; Q = \$5,000,001 - \$10,000,000; R = \$10,000,001 - \$50,000,000; S = More than \$50,000,000.

3. Value Method Codes: A = Appraisal; B = Cost (Real Estate Only); C = Other; D = Assessed; E = Cash Market; F = Inherited; G = Other.

FINANCIAL DISCLOSURE REPORT
Page 5 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (I-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller of private transaction	
18. --DreyfusPrem Lang Debt Loc Cur-DDHX	A	Dividend								
19. --Citigroup Inc.-C	A	Dividend								
20. --Dreyfus Intl Bond Fd-DIBRX	A	Dividend								
21. Brokerage Account #2										
22. --Wells Fargo Bank Deposit Sweep	A	Dividend	J	T						
23. --iShares High Yield ETF-HYG	A	Dividend								
24. --iShares S&P 500 ETF-SPY	A	Dividend								
25. --MFS Bond Inc-MIN	A	Dividend								
26. --PWR SHRS Fndcl Pfd-PGF	A	Dividend								
27. Brokerage Account #3										
28. --Wells Fargo Bank Deposit Sweep	A	Dividend	J	T						
29. IRA#1										
30. --Wells Fargo Bank Deposit Sweep	A	Dividend	K	T						
31. --Abbott Labs-AHT	A	Dividend	J	T						
32. --Altria-MO	A	Dividend	J	T						
33. --Apple-AAPL	B	Dividend	M	T						
34. --BCE Inc-BCE	A	Dividend	J	T						

1. Income Gain Codes: A: \$1,000 or less; B: \$1,001 - \$2,500; C: \$2,501 - \$5,000; D: \$5,001 - \$15,000; E: \$15,001 - \$50,000
 (See Columns B1 and D4) F: \$50,001 - \$100,000; G: \$100,001 - \$1,000,000; H: \$1,000,001 - \$5,000,000; I: More than \$5,000,000
 2. Value Codes: J: \$25,000 or less; K: \$25,001 - \$50,000; L: \$50,001 - \$100,000; M: \$100,001 - \$250,000
 (See Columns C1 and D5) 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
 3. Value Method Codes: Q: Appraisal; R: Cost (Real Estate Only); S: Assessed; T: Cash Market
 (See Column C2) U: Book Value; V: Other; W: Estimated

FINANCIAL DISCLOSURE REPORT
Page 6 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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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 "XN" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller of private transaction	
35. -CenturyLink Inc -CTL	A	Dividend	J	T						
36. -Citigroup-C	A	Dividend	K	T						
37. -Con Ed-ED	A	Dividend	J	T						
38. -Emerson Electric-EMR	A	Dividend	J	T						
39. -Enterprise Pdets Partners-EPD	A	Dividend	J	T						
40. -JPM Chase-JPM	A	Dividend	K	T						
41. -Magellan Midstream Partners-MMP	A	Dividend	J	T						
42. -Philip Morris Intl-PM	A	Dividend	J	T						
43. -Plains All American Pipeline-PAA	A	Dividend	J	T						
44. -Sunoco Logistics Partners-SXL	A	Dividend	K	T						
45. -TeeKay Lng Partners LP-TGP	A	Dividend	J	T						
46. -The Southern Company-SO	A	Dividend	J	T						
47. -Verizon-VZ	A	Dividend	J	T						
48. -Bristol Myers-BMY	A	Dividend								
49. -Chevron-CHEV	A	Dividend								
50. -Dominion Res-D	A	Dividend								
51. -General Electric-GE	A	Dividend								

1. Income/Item 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; F: \$50,001 - \$100,000; G: \$100,001 - \$1,000,000; H: \$1,000,001 - \$5,000,000; I: \$5,000,001 - \$50,000,000; J: \$50,000,001 - \$100,000,000; K: \$100,000,001 - \$500,000,000; L: \$500,000,001 - \$1,000,000,000; M: More than \$1,000,000,000.
 2. Value Codes: J: \$15,000 or less; K: \$15,001 - \$50,000; L: \$50,001 - \$100,000; M: \$100,001 - \$250,000; N: \$250,001 - \$500,000; O: \$500,001 - \$1,000,000; P: \$1,000,001 - \$5,000,000; Q: More than \$5,000,000.
 3. Value Method Codes: Q: Appraisal; R: Cost (Real Estate Only); S: Assessment; T: Cash Market; U: Book Value; V: Other; W: Estimated.

FINANCIAL DISCLOSURE REPORT
Page 7 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)

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

A Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 3 (A-H)	Identity of buyer/seller (if private transaction)
52. -Lazard Emg Mkts Fd -LZEMX	A	Dividend							
53. -McDonalds-MCD	A	Dividend							
54. -Regency Energy Partners-RGP	A	Dividend							
55. -Sasol-SSL	A	Dividend							
56. -United Technologies-UTX	A	Dividend							
57. -Vodafone Group-VOD	A	Dividend							
58. -Shares Inv Grd Bond ETF-LQD	A	Dividend							
59. -Am Tower-AMT	A	Dividend							
60. -Express Scripts-ESRX		None							
61. -Ford-F	A	Dividend							
62. -Google-GOOG		None							
63. -Occidental Petroleum-OXY	A	Dividend							
64. -Peabody Energy-BTU	A	Dividend							
65. -Vale SA ADR-VALE	A	Dividend							
66. -Wells Fargo-WFC	A	Dividend							
67. -Berkshire Hathway B-BRKB	A	Dividend							
68. -Shares Portugal ETF-EWY	A	Dividend							

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; F. \$50,001 - \$100,000; G. \$100,001 - \$1,000,000; H. \$1,000,001 - \$5,000,000; I. \$5,000,001 - \$25,000,000; J. \$25,000,001 - \$50,000,000; K. \$50,000,001 - \$100,000,000; L. \$100,000,001 - \$500,000,000; M. More than \$500,000,000

2. Value Codes: J. \$15,000 or less; K. \$15,001 - \$50,000; L. \$50,001 - \$100,000; M. \$100,001 - \$250,000; N. \$250,001 - \$500,000; O. \$500,001 - \$1,000,000; P. \$1,000,001 - \$5,000,000; Q. More than \$5,000,000

3. Value Method Codes: Q - Appraisal; R - Cost (Real Estate Only); S - Assessment; T - Cash Market; U - Book Value; V - Other; W - Estimated

FINANCIAL DISCLOSURE REPORT
Page 8 of 14

Name of Person Reporting Turrus, Analisa N.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period													
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)									
		Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller if private transaction									
69.	-iShares S Korea ETF	A	Dividend																
70.	-Vornado Realty-VNO	A	Dividend																
71.	-Las Vegas Sands-LVS	A	Dividend																
72.	-AT&T-T	A	Dividend																
73.	-Merck-MRK	A	Dividend																
74.	-Direct TV-DTV		None																
75.	-Freeman MacMoran-FCX	A	Dividend																
76.	-Amazon-AMZN		None																
77.	-Apache-APA	A	Dividend																
78.	-BHP Billiton-BHP	A	Dividend																
79.	-Bandu ADR-BIDU		None																
80.	-Bank of AM-BAC	A	Dividend																
81.	-Boing-BA	A	Dividend																
82.	-Bristol Myers-BMY	A	Dividend																
83.	-CSX Corp-CSX	A	Dividend																
84.	-Capital One Fincl-ONE		None																
85.	-Cellcom Israel-CEL	A	Dividend																

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; F \$50,001 - \$100,000; G \$100,001 - \$1,000,000; H \$1,000,001 - \$5,000,000; I \$5,000,001 - \$10,000,000; J \$10,000,001 - \$50,000,000; K \$50,000,001 - \$100,000,000; L \$100,000,001 - \$500,000,000; M \$500,000,001 - \$1,000,000,000; N \$1,000,000,001 - \$5,000,000,000; O \$5,000,000,001 - \$25,000,000,000; P More than \$25,000,000,000.

2. Value Codes: (See Column C1 and D3) A \$15,000 or less; B \$15,001 - \$50,000; C \$50,001 - \$100,000; D \$100,001 - \$250,000; E \$250,001 - \$500,000; F \$500,001 - \$1,000,000; G \$1,000,001 - \$5,000,000; H \$5,000,001 - \$25,000,000; I \$25,000,001 - \$50,000,000; J \$50,000,001 - \$100,000,000; K \$100,000,001 - \$500,000,000; L \$500,000,001 - \$1,000,000,000; M \$1,000,000,001 - \$5,000,000,000; N \$5,000,000,001 - \$25,000,000,000; O More than \$25,000,000,000.

3. Value Method Codes: (See Column C2) Q Appraisal; R Cost (Real Estate Only); S Assessment; T Cash Method; U Book Value; V Other; W Estimated.

FINANCIAL DISCLOSURE REPORT
Page 9 of 14

Name of Person Reporting Forres, Anaisa N.	Date of Report 11-14-2012
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VII. INVESTMENTS and TRUSTS - *Income, value, transactions (Includes those of spouse and dependent children; see pp. 33-60 of filing instructions.)*

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

	A. Description of Assets (including trust assets) Place "NA" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period								
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)				
		Amount Code F (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer-seller (if private transaction)				
86.	-Conoco Phillips-COP	A	Dividend											
87.	-Disney-DIS	A	Dividend											
88.	-Dow Chemical-DOW	A	Dividend											
89.	-Dupont-DD	A	Dividend											
90.	-EMC Corp-EMC		None											
91.	-Exxon-XOM	A	Dividend											
92.	-General Motors-GM		None											
93.	-Goldman Sachs Group-GS	A	Dividend											
94.	-Halliburton-HAL	A	Dividend											
95.	-Hewlett Packard-HPQ	A	Dividend											
96.	-Intl Bus Mach-IBM	A	Dividend											
97.	-NetApp-NTAP		None											
98.	-MetLife-MET	A	Dividend											
99.	-NEJ DVD INT Prem Strat-NEJ	A	Dividend											
100.	-Oracle-ORCL	A	Dividend											
101.	-Pfizer-PFE	A	Dividend											
102.	-Precision Castparts-PCP	A	Dividend											

1. Income Code Codes: A - \$1,000 or less; B - \$2,001 - \$5,000; C - \$2,501 - \$5,000; D - \$5,001 - \$15,000; E - \$15,001 - \$50,000
 (See Columns B1 and D34)
 F - \$50,001 - \$100,000; G - \$100,001 - \$1,000,000; H - \$1,000,001 - \$5,000,000; I - \$5,000,001 - \$50,000,000; J - \$50,000,001 - \$100,000,000; K - \$100,000,001 - \$500,000,000; L - \$500,000,001 - \$1,000,000,000; M - \$1,000,000,001 - \$25,000,000,000; N - \$25,000,000,001 - \$50,000,000,000; O - \$50,000,000,001 - \$1,000,000,000,000; P - \$1,000,000,000,001 - \$5,000,000,000,000; Q - More than \$5,000,000,000,000
 (See Columns C1 and D35)

2. Value Codes: A - \$1,000 or less; B - \$1,001 - \$5,000; C - \$5,001 - \$15,000; D - \$15,001 - \$50,000; E - \$50,001 - \$100,000; F - \$100,001 - \$1,000,000; G - \$1,000,001 - \$5,000,000; H - \$5,000,001 - \$15,000,000; I - \$15,000,001 - \$50,000,000; J - \$50,000,001 - \$100,000,000; K - \$100,000,001 - \$500,000,000; L - \$500,000,001 - \$1,000,000,000; M - \$1,000,000,001 - \$5,000,000,000; N - More than \$5,000,000,000
 (See Column C2)

3. Value Method Codes: Q - Appraisal; R - Cost (Real Estate, Only); S - Assessment; T - Cash Market; U - Book Value; V - Other; W - Estimated
 (See Column C2)

FINANCIAL DISCLOSURE REPORT
Page 10 of 14

Name of Person Reporting Torres, Analisa S.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period			D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller of private transaction	
103. --Qualcomm-Qcom	A	Dividend								
104. --Red Hat-RHT		None								
105. --Rio Tinto-RIO	A	Dividend								
106. --St Jude Med-STJ	A	Dividend								
107. --Schlumberger-SLB	A	Dividend								
108. --Starwood Hotels-HOT	A	Dividend								
109. --Seadrill-SDRL	A	Dividend								
110. --Union Pac-UNP	A	Dividend								
111. --United Parcel Service-UPS	A	Dividend								
112. --VM Ware-VMW		None								
113. --Wellpoint-WLP	A	Dividend								
114. IRA #2										
115. --Wells Fargo Bank Deposit Sweep	A	Dividend	K	T						
116. --Polars Industries, Inc.-PII	A	Dividend	K	T						
117. --Lululemon Athletica Inc.-LULU	A	Dividend	J	T						
118. --NFJ Div Int Premium Strat Fund-NFJ	A	Dividend								
119. IRA #3										

1. Income Code
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
H: \$1,000,001 - \$5,000,000
I: \$5,000,001 - \$25,000,000
J: \$25,000,001 - \$50,000,000
K: \$50,000,001 - \$100,000,000
L: \$100,000,001 - \$500,000,000
M: \$500,000,001 - \$2,500,000,000
N: \$2,500,000,001 - \$50,000,000,000
P: \$1,000,001 - \$5,000,000
Q: More than \$50,000,000
R: Cost (Real Estate Only)
S: Assessment
T: Cash Market
U: Other
V: Estimated
W: Unlisted

FINANCIAL DISCLOSURE REPORT
Page 11 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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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.)

Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
120. -Wells Fargo Bank Deposit Sweep	A	Dividend	J	T					
121. -NEJ Div Inc Prem Strat Fund-NEJ	A	Dividend	J	T					
122. -ishares High Yield ETF-HYG	A	Dividend							
123. -ishares Inv Grd Bond ETF-LQD	A	Dividend							
124. -NY State Deferred Compensation Plan #4									
125. -Intl Equity Fd	A	Dividend	J	T					
126. -MSIF Emg Mkts Fd	A	Dividend	J	T					
127. -Columbia Acorn USA Fd	A	Dividend	J	T					
128. -Wells Fargo Adv Sm Cap Val Fd	A	Dividend	J	T					
129. -Vanguard Cap Opp Fund Fd	A	Dividend	J	T					
130. -Eaton Vance Lg Cap Val Fd	A	Dividend	J	T					
131. -Fid OTC Fd	A	Dividend	J	T					
132. -Janus Fd	A	Dividend	J	T					
133. -Davis NY Venture Fd	A	Dividend	J	T					
134. -T Rowe Price Eq Inc Fd	A	Dividend	J	T					
135. -Vanguard Intl Index Fd	A	Dividend	J	T					
136. -Vanguard Prime Cap Fd	A	Dividend	J	T					

1. Income Gain Codes
 A. \$1,000 or less
 B. \$1,001 - \$2,500
 C. \$2,501 - \$5,000
 D. \$5,001 - \$15,000
 E. \$15,001 - \$50,000
 F. \$50,001 - \$100,000
 G. \$100,001 - \$1,000,000
 H. \$1,000,001 - \$5,000,000
 I. \$5,000,001 - \$25,000,000
 J. \$25,000,001 - \$50,000,000
 K. \$50,000,001 - \$100,000,000
 L. \$100,000,001 - \$500,000,000
 M. \$500,000,001 - \$1,000,000,000
 N. More than \$1,000,000,000

2. Value Codes
 A. \$1,000 or less
 B. \$1,001 - \$5,000
 C. \$5,001 - \$10,000
 D. \$10,001 - \$25,000
 E. \$25,001 - \$50,000
 F. \$50,001 - \$100,000
 G. \$100,001 - \$500,000
 H. \$500,001 - \$1,000,000
 I. \$1,000,001 - \$5,000,000
 J. \$5,000,001 - \$10,000,000
 K. \$10,000,001 - \$50,000,000
 L. \$50,000,001 - \$100,000,000
 M. \$100,000,001 - \$500,000,000
 N. \$500,000,001 - \$1,000,000,000
 O. More than \$1,000,000,000

3. Value Method Codes
 A. Cost (incl. 1-step bids)
 B. Appraisal
 C. Book Value
 D. Cost (incl. 1-step bids)
 E. Other
 F. Assessment
 G. Cash Market
 H. 1 - automatic

FINANCIAL DISCLOSURE REPORT
Page 12 of 14

Name of Person Reporting Torres, Analisa N.	Date of Report 11/14/2012
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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 except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rem., or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
137 TD Bank Savings Account	A	Dividend	K	T						
138 Chase Checking Plus Account	A	Dividend	J	T						
139 401K #1										
140 Wells Fargo 401k Large Cap Growth Multi-Manager Fund	A	Distribution	J	T						
141 Wells Fargo 401k Large Cap Value Multi-Manager Fund	A	Distribution	J	T						
142 Wells Fargo 401k Small Cap Multi-Manager Fund	A	Distribution	J	T						
143 Lazard Emerging Markets Equity Fund	A	Distribution	J	T						
144 American Funds EuroPacific Fund	A	Distribution	J	T						
145 SSGA International Index Fund	A	Distribution	J	T						
146 Wells Fargo non-ESOP Fund	A	Distribution	K	T						
147										

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; F - \$50,001 - \$100,000; G - \$100,001 - \$1,000,000; H - \$1,000,001 - \$5,000,000; I - \$5,000,001 - \$50,000,000; 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; P - \$1,000,001 - \$5,000,000; Q - \$5,000,001 - \$10,000,000; R - Cost (Real Estate Only); S - Assessment; T - Cash/Market; U - Book Value; V - Other; W - Unstated

2. Value Codes: X - \$1,000 or less; Y - \$1,001 - \$100,000; Z - \$100,001 - \$500,000; AA - \$500,001 - \$1,000,000; AB - \$1,000,001 - \$5,000,000; AC - \$5,000,001 - \$10,000,000; AD - \$10,000,001 - \$50,000,000; AE - \$50,000,001 - \$100,000,000; AF - More than \$100,000,000

3. Value Method Codes: Q - Appraisal; R - Cost (Real Estate Only); S - Assessment; T - Cash/Market; U - Book Value; V - Other; W - Unstated

FINANCIAL DISCLOSURE REPORT
Page 13 of 14

Name of Person Reporting	Date of Report
Torres, Analisa S.	11/14/2012

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

FINANCIAL DISCLOSURE REPORT
Page 14 of 14

Name of Person Reporting	Date of Report
Forres, Analisa N.	11/14/2012

IX. CERTIFICATION.

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

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

Signature: *S/ Analisa N. Torres*

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

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

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		81	535	Notes payable to banks-secured (auto)		5	980
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		667	420	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	129
Due from relatives and friends		34	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule		674	938
Real estate owned - personal residence	1	350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000	Education tuition		12	000
Cash value-life insurance				Education loans		14	000
Other assets itemize:							
				Total liabilities		711	047
				Net Worth		1	521 908
Total Assets	2	232	955	Total liabilities and net worth	2	232	955
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Listed Securities</u>	
Abbott Laboratories stock	\$ 3,624
Altria Group, Inc. stock	4,587
American Funds EuroPacific Growth Fund	783
Apple Inc. stock	119,626
Artio Global High Income Fund	11,381
BCE Inc. stock	3,314
BlackRock Credit Allocation Income Trust II	12,277
BlackRock High Yield Bond Fund	10,903
Calamos Strategic Total Return Fund	10,993
Center Coast Capital MLP Focus Fund	21,125
CenturyLink, Inc. stock	3,281
Citigroup Inc. stock	30,826
Columbia Acorn USA Fund	3,210
Consolidated Edison, Inc.	4,105
Davis New York Venture Fund	5,154
Delaware High-Yield Opportunities Fund	17,337
Eaton Vance Large-Cap Value Fund	5,166
Emerson Electric Co. stock	4,194
Enterprise Products Partners LP stock	12,886
Fidelity OTC Portfolio	8,041
Ford Motor Company stock	18,391
iShares Dow Jones Select Dividend ETF	5,635
Janus Fund	3,737
JPMorgan Chase & Co. stock	33,725
Lazard Emerging Markets Equity Portfolio	1,531
Lululemon Athletica Inc. stock	6,884
Magellen Midstream Partners LP stock	15,125
MainStay High Yield Corporate Bond Fund	6,041
Metropolitan West High Yield Bond Fund	16,831
MSIF Emerging Markets Portfolio	2,707
NYS Deferred Compensation Plan International Equity Fund	15,670
NFJ Dividend Interest & Premium Strategy	73,006
Nuveen Preferred Income Opportunities Fund	22,456
Phillip Morris International Inc. stock	4,775
Plains All American Pipeline LP stock	13,666
Polaris Industries Inc. stock	25,350
Principal High Yield Fund	11,583
RidgeWorth High Income Fund	11,445
The Southern Company stock	3,142
SSgA International Index Fund	771
Sunoco Logistics Partners LP stock	17,835
T. Rowe Price Equity Income Fund	6,205

Teekay LNG Partners LP stock	11,694
Vanguard Capital Opportunity Fund	5,181
Vanguard Institutional Index Fund	2,823
Vanguard PRIMECAP Fund	466
Verizon Communications Inc. stock	3,517
Wells Fargo Advantage Small Cap Value Fund	5,306
Wells Fargo Non-ESOP Fund	18,290
Wells Fargo 401k Large Cap Growth Multi-Manager Fund	1,616
Wells Fargo 401k Large Cap Value Multi-Manager Fund	820
Wells Fargo 401k Small Cap Multi-Manager Fund	2,547
WisdomTree Equity Income Fund	5,836
Total Listed Securities	<u>\$ 667,420</u>

<u>Real Estate Mortgages Payable</u>	
Personal residence – mortgage	\$ 390,000
Personal residence – home equity loan	<u>284,938</u>
Total Real Estate Mortgages Payable	<u>\$674,938</u>

AFFIDAVIT

I, ANALISA LADINE TORRES, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/04/12
(DATE)

[Signature]
(NAME)

CRYSTAL B. SCUDDER
Notary Public, State of New York
No. 01SC4689928
Qualified in New York County
Commission Expires 7/12/2015

[Signature]
(NOTARY)

*Supreme Court
of the
State of New York*



*Analisa Torres
Justice*

*Chambers
111 Centre Street
New York, New York 10013
(646) 386-5219*

January 3, 2013

PERSONAL AND UNOFFICIAL

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on November 14, 2012, to be a United States District Judge for the Southern District of New York. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Question 13 a.:

Since November 14, 2012, I have presided over an additional case that has gone to verdict.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Analisa Torres".

Analisa Torres

cc:

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2012

**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) Torres, Analisa N.	2. Court or Organization U.S. District Court for the Southern District of New York	3. Date of Report 1/3/2013
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge -Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 1/3/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2012 to 12/18/2012
7. Chambers or Office Address New York State Supreme Court 111 Centre St. New York, NY 10013		
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. Insert signature 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	WHEDCO-Women's Housing and Economic Development Corporation
2. Member, Board of Visitors	City University of New York Law 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. 10/19/1992	New York State and Local Retirement System/Defined Benefit Pension Plan
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouses; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1. 2012	New York State Unified Court System	\$155,264.00
2. 2011	New York State Unified Court System	\$139,346.00
3.		
4.		

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

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2012	Wells Fargo Advisors-salary, commissions and bonus
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.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Earlham College	Tuition, Room and Board	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
---	-----------------------------------

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.)

1. 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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
1. Brokerage Account #1					Exempt					
2. -Wells Fargo Bank Deposit Sweep	A	Dividend	K	T						
3. -Ford-F	A	Dividend	K	T						
4. -Shares Dividend Index-DVY	A	Dividend	J	T						
5. -Wisdom Tree Equity Income-DHS	A	Dividend	J	T						
6. -Center Coast MLP Fund-CCCNX	B	Dividend	K	T						
7. -Blackrock High Yield Fund-BHYIX	A	Dividend	J	T						
8. -Delaware High Yield Fund-DHOIX	B	Dividend	K	T						
9. -Artio GBLB High Income Fund-JHYIX	A	Dividend	J	T						
10. -MetWest High Yield Fund-MWHIX	A	Dividend	K	T						
11. -Mainstay High Yield Fund-MHYIX	A	Dividend	J	T						
12. -Principal High Yield Fund-PYHPX	A	Dividend	J	T						
13. -Ridgeworth High Yield Fund-STHTX	A	Dividend	J	T						
14. -Blackrock Credit Alloc Trust-PSY	A	Dividend	J	T						
15. -Calamos Strategic Fund-CSQ	A	Dividend	J	T						
16. -NFJ Div Int Premium Strat Fund-NFJ	D	Dividend	K	T						
17. -Nuveen Pref Inc Fund-IPC	B	Dividend	K	T						

1. Income Code: 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 Code: J = \$15,000 or less; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 - \$250,000
 (See Columns C1 and D3) N = \$250,001 - \$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 Code: 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 5 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
---	-----------------------------------

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

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Wells fargo Absolute Return Fund-WARDX (X)	A	Dividend	J	T					
19. PIMCO All Asset Fund-Paaix (X)	A	Dividend	J	T					
20. -DreyfusPrem Emg Debt Loc Cur-DDIX	A	Dividend							
21. -Citigroup Inc.-C	A	Dividend							
22. -Dreyfus Intl Bond Fd-DIBRX	A	Dividend							
23. Brokerage Account #2									
24. -Wells Fargo Bank Deposit Sweep	A	Dividend	J	T					
25. -ishares High Yield ETF-HYG	A	Dividend							
26. -ishares S&P Pfd Stk ETF-PFF	A	Dividend							
27. -MFS Intl Inc-MIN	A	Dividend							
28. -PWR SHRS Fincl Pfd-PGF	A	Dividend							
29. Brokerage Account #3									
30. -Wells Fargo Bank Deposit Sweep	A	Dividend	J	T					
31. IRA#1									
32. -Wells Fargo Bank Deposit Sweep	A	Dividend	K	T					
33. -Abbott Labs-ABT	A	Dividend	J	T					
34. -Atria-MO	A	Dividend	J	T					

1. Income Gain Codes: A=\$1,000 or less; B=\$1,001 - \$2,500; C=\$2,501 - \$5,000; D=\$5,001 - \$15,000; E=\$15,001 - \$50,000; F=\$50,001 - \$100,000; G=\$100,001 - \$1,000,000; H=\$1,000,001 - \$5,000,000; I1=\$5,000,001 - \$10,000,000; I2=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

2. Value Codes (See Columns C1 and D3): 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; H=\$1,000,001 - \$5,000,000; I1=\$5,000,001 - \$10,000,000; I2=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 C2): Q=Appraisal; R=Cost (Real Estate Only); S=Assessment; T=Cash Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT
Page 6 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
---	-----------------------------------

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period				D. Transactions during reporting period					
	(1) Amount	(2) Type (e.g., div., rent, or int.)	(1) Value	(2) Value	(1) Type (e.g., buy, sell, redemption)	(2) Date	(3) Value	(4) Gain	(5) Identity of buyer/seller (if private transaction)			
	Code 1 (A-H)	(J-P)	Code 2 (J-P)	Code 3 (Q-W)	Code 1 (A-H)	Code 2 (J-P)	Code 1 (A-H)	Code 1 (A-H)	Code 1 (A-H)			
35. -Apple-AAPL	B	Dividend	M	T								
36. -BCE Inc.-BCE	A	Dividend										
37. -CenturyLink Inc.-CTL	A	Dividend										
38. -Citigroup-C	A	Dividend	K	T								
39. -Con Ed-ED	A	Dividend										
40. -Emerson Electric-EMR	A	Dividend										
41. -Enterprise Pdets Partners-EPD	A	Dividend	J	T								
42. -JPM Chase-JPM	A	Dividend	K	T								
43. -Magellan Midstream Partners-MMP	A	Dividend										
44. -Philip Morris Intl-PM	A	Dividend	J	T								
45. -Plains All American Pipeline-PAA	A	Dividend										
46. -Sunoco Logistics Partners-SXL	A	Dividend										
47. -Teekay Lng Partners LP-TGP	A	Dividend	J	T								
48. -The Southern Company-SO	A	Dividend										
49. -Verizon-VZ	A	Dividend	J	T								
50. -Bristol Myers-BMY	A	Dividend										
51. -Chevron-CHV	A	Dividend										

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) P=\$50,001 - \$100,000; G=\$100,001 - \$1,000,000; H1=\$1,000,001 - \$5,000,000; H2=More than \$5,000,000

2. Value Codes: J=\$15,000 or less; K=\$15,001 - \$50,000; L=\$50,001 - \$100,000; M=\$100,001 - \$250,000
 (See Columns C1 and D3) N=\$250,001 - \$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 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
52. -Dominion Res-D	A	Dividend								
53. -Lazard Emg Mkts Fd -LZEMX	A	Dividend								
54. -McDonalds-MCD	A	Dividend								
55. -Regency Energy Partners-RGP	A	Dividend								
56. -Sasol-SSL	A	Dividend								
57. -United Technologies-UTX	A	Dividend								
58. -Vodafone Group-VOD	A	Dividend								
59. IRA #2										
60. -Wells Fargo Bank Deposit Sweep	A	Dividend	J	T						
61. -Polaris Industries, Inc.-PII	A	Dividend	K	T						
62. -Lululemon Athletica Inc.-LULU		None	J	T						
63. -NFJ Div Int Premium Strat Fund-NFJ	A	Dividend								
64. IRA #3										
65. -Wells Fargo Bank Deposit Sweep	A	Dividend	J	T						
66. -NFJ Div Inc Prem Strat Fund-NFJ	A	Dividend	J	T						
67. -ishares High Yield ETF-HYG	A	Dividend								
68. -ishares Inv Grd Bond ETF-LQD	A	Dividend								

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

3. Value Method Codes (See Column C2): U=Appraisal; V=Book Value; W=Estimated

FINANCIAL DISCLOSURE REPORT
Page 8 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 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	(2) Type (e.g., div., rent, or int.)	(1) Value	(2) Value	(1) Type (e.g., buy, sell, redemption)	(2) Date	(3) Value	(4) Gain	(5) Identity of buyer/seller (if private transaction)
	Code 1 (A-H)		Code 2 (J-P)	Code 3 (Q-W)		mm/dd/yy	Code 2 (J-P)	Code 1 (A-H)	
69. NY State Deferred Compensation Plan #4									
70. -Intl Equity Fd	A	Dividend	J	T					
71. -MSIF Emg Mkts Fd	A	Dividend	J	T					
72. -Columbia Acorn USA Fd	A	Dividend	J	T					
73. -Wells Fargo Adv Sm Cap Val Fd	A	Dividend	J	T					
74. -Vanguard Cap Opp Fund Fd	A	Dividend	J	T					
75. -Eaton Vance Lg Cap Val Fd	A	Dividend	J	T					
76. -Fid OTC Fd	A	Dividend	J	T					
77. -Janus Fd	A	Dividend	J	T					
78. -Davis NY Venture Fd	A	Dividend	J	T					
79. -T Rowe Price Eq Inc Fd	A	Dividend	J	T					
80. -Vanguard Inst Index Fd	A	Dividend	J	T					
81. -Vanguard Prime Cap Fd	A	Dividend	J	T					
82. TD Bank Savings Account	A	Dividend	J	T					
83. Chase Checking Plus Account	A	Dividend	J	T					
84. 401K #1									
85. Wells Fargo 401k Large Cap Growth Multi-Manager Fund	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 9 of 11

Name of Person Reporting Torres, Analisa N.	Date of Report 1/3/2013
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
86. Wells Fargo 401k LargeCap Value Multi-Manager Fund	A	Dividend	J	T					
87. Wells Fargo 401k Small Cap Multi-Manager Fund	A	Dividend	J	T					
88. Lazard Emerging Markets Equity Fund	A	Dividend	J	T					
89. American Funds EuroPacific Fund	A	Dividend	J	T					
90. SSGA International Index Fund	A	Dividend	J	T					
91. Wells Fargo non-ESOP Fund	A	Dividend	K	T					
92.									
93.									
94.									
95.									
96.									
97.									
98.									
99.									
100.									
101.									

1. Income Gain Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$15,000; E = \$15,001 - \$50,000
 (See Columns B1 and D4) F = \$50,001 - \$100,000; G = \$100,001 - \$1,000,000; H1 = \$1,000,001 - \$5,000,000; H2 = More than \$5,000,000
 2. Value Codes: J = \$15,000 or less; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 - \$250,000
 (See Columns C1 and D3) N = \$250,001 - \$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
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 (See Column C2) U = Book Value; V = Other; W = Estimated

FINANCIAL DISCLOSURE REPORT
Page 10 of 11

Name of Person Reporting	Date of Report
Torres, Analisa N.	1/3/2013

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

FINANCIAL DISCLOSURE REPORT
Page 11 of 11

Name of Person Reporting	Date of Report
Torres, Analisa N.	1/3/2013

IX. CERTIFICATION.

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

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

Signature: *s/ Analisa N. Torres*

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		120	928	Notes payable to banks-secured (auto)		5	475
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		608	693	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		6	419
Due from relatives and friends		33	500	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule		674	938
Real estate owned - personal residence	1	350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000	Education tuition		12	000
Cash value-life insurance				Education loans		21	000
Other assets itemize:							
				Total liabilities		719	832
				Net Worth	1	493	289
Total Assets	2	213	121	Total liabilities and net worth	2	213	121
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
Abbott Laboratories stock	\$ 3,624
Altria Group, Inc. stock	4,784
American Funds EuroPacific Growth Fund	783
Apple Inc. stock	128,435
Artio Global High Income Fund	11,669
BlackRock Credit Allocation Income Trust II	12,056
BlackRock High Yield Bond Fund	11,054
Calamos Strategic Total Return Fund	10,836
Center Coast Capital MLP Focus Fund	20,518
Citigroup Inc. stock	31,008
Columbia Acorn USA Fund	3,210
Davis New York Venture Fund	5,154
Delaware High-Yield Opportunities Fund	17,650
Eaton Vance Large-Cap Value Fund	5,166
Enterprise Products Partners LP stock	12,090
Fidelity OTC Portfolio	8,041
Ford Motor Company stock	18,293
iShares Dow Jones Select Dividend ETF	5,715
Janus Fund	3,737
JPMorgan Chase & Co. stock	42,859
Lazard Emerging Markets Equity Portfolio	1,853
Lululemon Athletica Inc. stock	7,455
MainStay High Yield Corporate Bond Fund	6,171
Metropolitan West High Yield Bond Fund	17,045
MSIF Emerging Markets Portfolio	2,707
NYS Deferred Compensation Plan International Equity Fund	15,670
NFJ Dividend Interest & Premium Strategy	34,963
Nuveen Preferred Income Opportunities Fund	22,537
Phillip Morris International Inc. stock	4,732
PIMCO All Asset Fund	5,000
Polaris Industries Inc. stock	36,284
Principal High Yield Fund	11,917
RidgeWorth High Income Fund	11,808
SSgA International Index Fund	771
SSgA NASDAQ 100 Index	63
SSgA Russell Small Cap Index	98
SSgA S&P 500 Index	63
SSgA S&P Mid Cap Index	64
T. Rowe Price Equity Income Fund	6,205
Teekay LNG Partners LP stock	11,974
Vanguard Capital Opportunity Fund	5,181
Vanguard Institutional Index Fund	2,823

Vanguard PRIMECAP Fund	466
Verizon Communications Inc. stock	3,524
Wells Fargo Absolute Return Fund	5,500
Wells Fargo Advantage Small Cap Value Fund	5,306
Wells Fargo Non-ESOP Fund	20,079
Wells Fargo 401k Large Cap Growth Multi-Manager Fund	1,787
Wells Fargo 401k Large Cap Value Multi-Manager Fund	1,036
Wells Fargo 401k Small Cap Multi-Manager Fund	2,547
Wells Fargo 401k Dow Jones Target Fund 2015	63
Wells Fargo 401k Dow Jones Target Fund 2020	63
Wells Fargo 401k Dow Jones Target Fund 2025	63
Wells Fargo 401k Dow Jones Target Fund 2030	64
Wells Fargo 401k Dow Jones Target Fund 2035	64
Wells Fargo 401k Dow Jones Target Fund 2040	64
Wells Fargo 401k Dow Jones Target Fund 2045	64
Wells Fargo 401k Dow Jones Target Fund 2050	65
Wells Fargo 401k Dow Jones Target Fund 2055	65
WisdomTree Equity Income Fund	5,807
Total Listed Securities	<u>\$ 608,693</u>

<u>Real Estate Mortgages Payable</u>	
Personal residence – mortgage	\$ 388,720
Personal residence – home equity loan	<u>283,938</u>
Total Real Estate Mortgages Payable	<u>\$ 672,658</u>

Senator COONS. Thank you, Your Honor.

At this point I would like to ask unanimous consent to introduce to the record statements by Chairman Leahy and Senator Schumer in support of today's nominees. Without objection.

[The prepared statements of Chairman Leahy and Senator Schumer were not submitted for the record.]

And I apologize. I have to excuse myself for five minutes to join a hearing on Benghazi on the Foreign Relations Committee. Senator Grassley will act as Chair in my absence, and I should rejoin you in just a few moments.

Thank you.

Senator GRASSLEY [presiding]. Mr. Watson is the next person.

**STATEMENT OF DERRICK KAHALA WATSON, NOMINEE TO BE
DISTRICT JUDGE FOR THE DISTRICT OF HAWAII**

Mr. WATSON. Chairman Grassley, thank you for this opportunity. I would like to thank a few people along the way, including Senator Hirono and Senator Schatz, this morning for their kind words. Thank you.

I also wanted to thank the late Senator Daniel Inouye for his support through my nomination back in November as well as the now-retired Senator Daniel Akaka. Both of them were instrumental in my sitting here this morning, and I certainly appreciate their support over the last year.

I wanted to thank Senator—excuse me—President Obama as well.

I wanted to recognize, Chairman Grassley, my family members who have traveled from Honolulu to be with me here this morning: my wife, Gloriann; my two kids, Cade and my three-year-old, Daly; my father- and mother-in-law, Gwen and Frank Dalere; and my sister-in-law, Kimberley Holkup, with her two kids, Saige and Saber Holkup, who is two years old.

In particular, I also wanted to recognize, Chairman Grassley, the late United States Army colonel and paratrooper Leroy Bass. Many of you, and probably most of you, do not know Colonel Bass, but he was a teacher of mine at the Kamehameha Schools back when I was a sophomore. He taught a course called simply "The Law." He does not know it and probably never did—I never had an opportunity to express my appreciation to him—but he inspired my interest in the law and has as much to do with me sitting here today as anyone. And I wanted to express my thank you to him and to his family.

Thank you, Chairman.

[The biographical information of Mr. Watson follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

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

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

United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850
4. **Birthplace:** State year and place of birth.

1966; Honolulu, Hawaii
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.

1988 – 1991, Harvard Law School; J.D., 1991
1984 – 1988, Harvard College; A.B. (*cum laude*), 1988
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2007 – present
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850

Chief, Civil Division (2009 – present)
Assistant United States Attorney (2007 – 2009)

2000 – 2007
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, California 94104
Partner (2003 – 2007)
Special Counsel (2000 – 2002)

2000
McCutchen Doyle Brown & Enersen (now Bingham McCutchen)
Three Embarcadero Center
San Francisco, California 94111
Of Counsel

1995 – 2000
United States Attorney's Office
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Deputy Chief, Civil Division (1999 – 2000)
Assistant United States Attorney (1995 – 1999)

Summer 1990, 1991 – 1995
Landels, Ripley & Diamond (firm no longer exists)
350 The Embarcadero
San Francisco, California 94105
Associate Attorney (1991 – 1995)
Summer Associate (Summer 1990)

1988 – 1991 (during school year only)
Kummel Library of the Geological Sciences
Harvard University
24 Oxford Street
Cambridge, Massachusetts 02138
Library Clerk

Summer 1989
Pettit & Martin (firm no longer exists)
601 13th Street, N.W.
Washington, D.C. 20005
Summer Associate

Other Affiliations (uncompensated):

2010 – present
 Prince Kuhio Child Care Center/Rainbow School
 300 Ala Moana Boulevard
 Honolulu, Hawaii 96850
 Member, Board of Directors (2010 – 2012)
 Secretary (2012 – present)

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

1998 – 2006
 United States Army Reserve, Captain, Judge Advocate General's Corps
 Honorable Discharge

I registered for the selective service upon turning age 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.

Bronze Medal, United States Environmental Protection Agency (2010)

Certificate and Coin of Commendation, United States Customs & Border Protection, Field Operations (2010)

National Defense Service Ribbon (2004)

Army Commendation Ribbon (2000)

Army Achievement Ribbon (2000)

Army Service Ribbon (1999)

Director's Award for Superior Performance as an Assistant United States Attorney, United States Department of Justice (1999)

Award of Excellence, Department of Veterans Affairs, Office of Inspector General (1998)

Director's Award, United States Department of Health & Human Services, National Health Service Corps (1997)

Commendation, United States Army Litigation Division (1996)

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 (1991 – 1995; 2001 – 2007; 2012 – present)
Committee on Superfund and Natural Resource Damages Litigation, Section on Environment, Energy and Resources
Vice-Chair, Year in Review (2003 – 2006)
Newsletter Editor (2006)
Federal Bar Association (2001 – 2006; 2012 – present)
National Asian Pacific American Bar Association (2012 – present)
Native Hawaiian Bar Association (2012 – present)
San Francisco Bar Association (1991 – 1995; 2001 – 2007)
United States District Court for the District of Hawaii, Delegate (2012 – 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, 1991
Hawaii, admission pending

There have been no lapses in membership.

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

Supreme Court of the United States, 2003
United States Court of Appeals for the Ninth Circuit, 1992
United States District Court for the Northern District of California, 1991
United States District Court for the Southern District of California, 1992
United States District Court for the Central District of California, 1992
United States District Court for the Eastern District of California, 1992
United States District Court for the District of Hawaii, 2007
Courts of the State of California, 1991

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.

Hawaiian Civic Club of Honolulu (2012 – present)

Knights of Columbus (2006 – 2007)

Prince Kuhio Child Care Center/Rainbow School
Member, Board of Directors (2010 – 2012)
Secretary (2012 – present)

Waialae-Kahala Athletic Club (2011 – present)

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

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

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

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

American Bar Association, Section on Environment, Energy and Resources, Year in Review: Superfund and Natural Resource Damages Litigation (annually from 2003 – 2006). Copies supplied.

Editor, American Bar Association. Section on Environment, Energy and Resources, Superfund and Natural Resource Damages Litigation Committee Newsletter, March 2006. Copy supplied.

D. Watson, *Ninth Circuit Holds That "Hybrid" RCRA Claims Are Not Subject To RCRA Notice Provisions*, 2004. Copy supplied.

D. Watson, *Ninth Circuit Adopts "Bright-Line" Statute Of Limitations Standard For CERCLA Remedial Cost Recovery Actions*, 2004. Copy supplied.

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

I have not prepared or contributed to the preparation of any such reports, memoranda or policy statements.

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

I have not prepared 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.

January 26, 2007: I spoke on Natural Resource Damages Litigation Cause of Action Elements and Defenses as part of a Law Seminars International workshop on Natural Resource Damages in Hawaii and the Pacific. Materials supplied.

2000: In approximately 2000, I taught part of a writing class for Department of Justice paralegals at the National Advocacy Center in Columbia, South Carolina. I have no notes, transcript or recording. The address for the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

1999: In approximately 1999, I taught a moot court class at Castro Valley High School in Castro Valley, California. I have no notes, transcript or recording. The address of Castro Valley High School is 19400 Santa Maria Avenue, Castro Valley, California 94546.

1999: In approximately 1999, I spoke to a real estate industry group in the Bay Area on the Financial Institutions Reform, Recovery and Enforcement Act, and the government's civil penalty initiatives to combat consumer mortgage fraud. I have no notes, transcript or recording, and do not recall the name of the industry group to which I spoke.

- 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.

Alan Boyle, *Atom-smasher Fears Spark Lawsuit*, msnbc.com, Mar. 28, 2008. Copy supplied.

Judge Sides with Coast Guard on Harbor Safety Zone, Associated Press, Oct. 6, 2007. Copy supplied.

Firm Hired for Superferry Study, Honolulu Advertiser, Oct. 6, 2007. Copy supplied.

Sharon Simonson, *Environmental Concerns Scuttle Sobrato's Deal to Buy Land*, Silicon Valley/San Jose Business Journal, Mar. 23, 2003. Copy supplied.

Angelica Pence, *Old Building, New Brew*, San Francisco Chronicle, June 15, 2002. Copy supplied.

Dennis J. Opatrny, *Over There*, The Recorder, Oct. 9, 2001. Copy supplied.

Lisa Davis, *School of Scandal*, SF Weekly, Oct. 29, 1997. Copy supplied.

Rick DelVecchio, *Laney College, Veterans Accused of GI Bill Fraud*, San Francisco Chronicle, July 4, 1996. Copy supplied.

Richard Liefer, *U.S. Targets 500 Veterans in \$5 Million GI Bill Fraud*, Chicago Tribune, June 30, 1996. Copy supplied.

Sandra Ann Harris, *Veterans Sought in G.I. Bill Scam*, United Press International, June 28, 1996. Copy supplied.

Associated Press, *Reneging East Bay Doctor Owes \$292,000*, Daily Journal, June 7, 1996. Copy supplied.

Wire Reports, *Court Orders Doctor to Pay Bill*, Oakland Tribune, June 7, 1996. Copy supplied.

Jim Herron Zamora, *Psychiatrist Owes U.S. \$292,000*, San Francisco Examiner, June 6, 1996. Copy supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

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

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have not served as a judge.

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

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

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

I have not held any public office. I have not been an unsuccessful candidate for an elective office, nor have I been an unsuccessful nominee for an appointed office.

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

I have not been a member of or held office in any political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

I 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.

1991 – 1995

Landels, Ripley & Diamond (firm no longer exists)
350 The Embarcadero
San Francisco, California 94105
Associate Attorney

1995 – 2000

United States Attorney's Office
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Deputy Chief, Civil Division (1999 – 2000)
Assistant United States Attorney (1995 – 1999)

2000

McCutchen Doyle Brown & Enersen (now Bingham McCutchen)
Three Embarcadero Center
San Francisco, California 94111
Of Counsel

2000 – 2007
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, California 94104
Partner (2003 – 2007)
Special Counsel (2000 – 2002)

2007 – present
United States Attorney's Office
District of Hawaii
300 Ala Moana Boulevard, Room 6-100
Honolulu, Hawaii 96850
Chief, Civil Division (2009 – present)
Assistant United States Attorney (2007 – 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 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.

My twenty-one years of law practice have been almost equally divided between large firm private practice and federal government service.

From 1991 to 1995, and then again from 2000 to 2007, I worked as an associate attorney, of counsel, special counsel and equity partner primarily at two San Francisco law firms, specializing in product liability, toxic tort and environmental cost recovery litigation. My responsibilities began with fact investigation, pleading, and case management, and eventually grew to discovery, motions and hearing practice, and trial. While I also occasionally counseled clients on compliance with state and federal environmental regulations, at least 95% of my work involved litigation, principally in federal court.

From 1995 to 2000, and then again from 2007 to present, I served, and am currently serving, as an Assistant United States Attorney, first in the Northern District of California, and now in the District of Hawaii. In both jurisdictions and over both time periods, my responsibilities have been largely the same: representing the United States, and its departments,

agencies and employees, in all manner of civil litigation, almost exclusively in federal court, at both the trial and appellate court levels. My caseload has been wide-ranging, involving claims under the Federal Tort Claims Act, employment discrimination and harassment actions under Title VII and the ADEA, individual capacity claims brought against government employees for alleged constitutional violations, programmatic challenges under the Administrative Procedure Act, and privacy and information claims under the Privacy Act and Freedom of Information Act, among many others.

As an Assistant United States Attorney, I have also held supervisory positions. From 1999 to 2000, I was one of two Deputy Chiefs in the Civil Division in the Northern District of California. In that role, in addition to maintaining my own defensive litigation caseload, I directly supervised the Financial Litigation Unit, the Environmental Unit, and the San Jose, California satellite office that collectively included eight other Assistant United States Attorneys, as well as numerous paralegals and staff. I was also the approving authority for all appellate briefs filed by the Civil Division in the United States Court of Appeals for the Ninth Circuit. From 2009 to present, I have been the Chief of the Civil Division in the District of Hawaii. In this capacity, I directly supervise four other Assistant United States Attorneys and seven staff members, including the office's Financial Litigation Unit. In addition to my administrative and supervisory responsibilities, I maintain a caseload that focuses on affirmative fraud investigations and prosecutions involving the False Claims Act, and defending tort claims brought under the Federal Tort Claims Act.

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

While in private practice (1991 – 1995; 2000 – 2007), I principally represented large companies, such as the General Electric Company and FMC Corporation, in product liability and environmental cost recovery litigation in federal court.

While in government service (1995 – 2000; 2007 – present), my only client has been the United States government, including its departments, agencies and employees, and I have specialized in defending tort and employment discrimination actions in federal court.

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

My practice has been almost exclusively litigation-based for the entirety of my legal career. At Landels, Ripley & Diamond, from 1991 to 1995, I appeared several times a month throughout the California state court system, even as a junior associate, as a result of an extremely active product liability docket. My court appearances increased when I became an Assistant United States Attorney. From 1995 to 2000, I generally appeared multiple times each week before the United States District Court for the Northern District of California, and occasionally before the United States Court of Appeals for the Ninth Circuit. From 2000 to 2007, when I returned to private practice, I infrequently appeared in court, and when I did, it was usually before one of the federal district courts in California. Since 2007, as an Assistant United States Attorney in the District of Hawaii, I usually appear in federal district court a few times per month, though my appearances have generally tapered since early 2009 when I became Chief of the Civil Division.

- i. Indicate the percentage of your practice in:
- | | |
|-----------------------------|-----|
| 1. federal courts: | 85% |
| 2. state courts of record: | 15% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:
- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

- 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 six civil cases to verdict, judgment or final decision. I served as sole counsel in one, lead counsel in four, and second chair in one.

- i. What percentage of these trials were:
- | | |
|--------------|-----|
| 1. jury: | 17% |
| 2. non-jury: | 83% |

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

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases

were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Futi v. United States*, Civ. No. 08-00403, 2010 WL 2900328 (D. Haw. 2010) (Seabright, J.)

I served as lead counsel for the United States throughout the defense of this Federal Tort Claims Act case involving the alleged wrongful death of an infant detained along with his mother and traveling nurse by Customs and Border Protection ("CBP") at the Honolulu International Airport. Through extensive fact and expert witness interviews and depositions, including those of the infant's parents and health care providers in American Samoa and experts in Texas, Illinois and California, Plaintiff's first agreed to abandon their assertion that CBP failed to render emergency assistance when the infant initially went into respiratory distress. Then, after suggesting, drafting and implementing an extensive trial briefing protocol stipulated to in lieu of trial, I successfully argued that CBP's actions at the Airport could not have been the cause of the infant's death as a matter of Hawaii tort law. I took and defended nearly all of the more than twenty-five depositions, developed the litigation strategy and served as principal author of the United States' trial briefs.

Co-Counsel: Gregory J. Martin, Department of Homeland Security, Customs and Border Protection, Office of Assistant Chief Counsel, 555 Battery Street, Suite 116, San Francisco, California 94111, (415) 782-9473.

Opposing Counsel: L. Richard Fried, Jr., Howard G. McPherson, Cronin Fried Sekiya Kekina & Fairbanks, 841 Bishop Street, Suite 600, Honolulu, Hawaii 96813, (808) 524-1433.

2. *Rouse v. United States Department of State*, Civ. No. 05-00620 (D. Haw.) (King, J.), *aff'd*, 567 F.3d 408 (9th Cir. 2008)

I served as lead appellate counsel for the government in defense of this Privacy Act suit initiated by a United States citizen arrested in the Philippines. Plaintiff asserted that the State Department's failure to maintain accurate records of his arrest, inquiries and protests prevented third parties who requested copies of his

file from promptly securing his release. Plaintiff also complained that the State Department failed to itself secure his release because of inadequate diplomatic efforts. Affirming the district court, the Ninth Circuit determined that Plaintiff's claims were untimely, and that even if Plaintiff could show that the government failed to properly maintain his records, he could not show that that was the reason for his inability to secure an early release. Further, the Court concluded that the Privacy Act did not vest Plaintiff with a right to a particular level of diplomatic effort on his behalf. AUSA Lawrence L. Tong handled the case at the district court level, AUSA Tong and I co-wrote the government's appellate brief, and I both argued the matter before the Ninth Circuit and wrote the government's response to Plaintiff's petition for rehearing.

Co-Counsel: Lawrence L. Tong, Assistant United States Attorney, United States Attorney's Office, District of Hawaii, 300 Ala Moana Boulevard, Room 6-100, Honolulu, Hawaii 96850. (808) 440-9230.

Opposing Counsel: Kari E. Hong, Law Offices of Kari E. Hong, 1300 Clay Street, Suite 600, Oakland, California 94612, (510) 384-4524.

3. *Wong v. Bush*, Civ. No. 07-00484 (D. Haw.) (Gillmor, J.), *aff'd*, 542 F.3d 732 (9th Cir. 2008)

I served as lead government counsel throughout the defense of this action challenging the authority of the United States Coast Guard to enact protective "security zones" in proximity to the Hawaii Superferry. Plaintiffs alleged in particular that Coast Guard security zone regulations violated their First Amendment protest rights, including their right to physically blockade the Superferry from entering Nawiliwili Harbor on Kauai. Denying Plaintiffs' request for a temporary restraining order and for other injunctive relief, the district court held that Plaintiffs lacked standing, the Coast Guard had the authority to enact the challenged security zones and complied with both the Administrative Procedure Act and the National Environmental Policy Act ("NEPA") in doing so, and that the security zones did not violate Plaintiffs' First Amendment rights. Affirming all but the district court's ruling on standing, the Ninth Circuit determined that Title 50 authorized the Coast Guard to create the security zones at issue, which constituted proper time, place and manner restrictions on Plaintiffs' First Amendment rights, and that the Coast Guard's security zone regulations were enacted pursuant to a categorical exclusion, consistent with NEPA. I was the principal author of the government's briefs at both the district court and Ninth Circuit levels, which were written without the benefit of discovery, and I argued the matter on an emergent basis before the district court (there was no oral argument before the Ninth Circuit).

Co-Counsel: Lawrence L. Tong, Assistant United States Attorney, United States Attorney's Office, District of Hawaii, 300 Ala Moana Boulevard, Room 6-100, Honolulu, Hawaii 96850. (808) 440-9230.

Opposing Counsel: Lanny Sinkin, 118 Broadway, Suite 621, San Antonio, Texas 78205, (210) 354-0236.

4. *Panoke v. United States Army Military Police Brigade, Hawaii*, Civ. No. 05-00432, 2007 WL 2790750 (D. Haw. 2007) (Seabright, J.), *aff'd*, 307 Fed. Appx. 54 (9th Cir. 2009)

I served as sole government counsel before both the district court and the Ninth Circuit in defense of this discrimination, retaliation and hostile work environment action brought pursuant to Title VII and the Age Discrimination in Employment Act ("ADEA"). Plaintiff claimed that his military police supervisors discriminated against him by sending derogatory information to the Army's Central Clearance Facility ("CCF"), which resulted in the revocation of Plaintiff's security clearance and his inability to remain employed by the Army. Plaintiff also contended that the Army failed to promote him in violation of an administrative settlement of his Equal Employment Opportunity ("EEO") claims. The district court granted the government's motion for summary judgment, holding that some of Plaintiff's claims had been administratively settled and had therefore been satisfied, Plaintiff could not challenge the information provided to CCF, even on discrimination grounds, because security clearance determinations and related claims are non-justiciable, Plaintiff lacked evidence showing that he was treated differently than similarly situated individuals. Plaintiff lacked evidence causally linking allegedly adverse employment actions to the filing of his EEO claims, and the workplace actions Plaintiff complained of were not sufficiently pervasive or severe enough to alter the terms and conditions of his employment. The Ninth Circuit affirmed, holding that courts are not permitted to interfere with the Army's security clearance process and that "a review of the circumstances surrounding a security clearance is tantamount to a review of the security clearance itself." The Court also determined that the promotion Plaintiff claimed was not afforded to him in violation of an administrative EEO settlement was only supported by parol evidence, which the Court could not consider.

Opposing Counsel: Elbridge W. Smith, Smith Himmelman, 745 Fort Street, Suite 311, Honolulu, Hawaii 96813, (808) 523-5050.

5. *Otay Land Company v. UE Limited, L.P.*, Civ. No. 03-2488, 440 F. Supp. 2d 1152 (S.D. Cal. 2006) (Benitez, J.), *aff'd in part, vacated in part*, 338 Fed. Appx. 689 (9th Cir. 2009)

This case involved the remediation of a former trap and skeet shooting range in Otay Valley, San Diego, near the Mexican border. We represented the Plaintiffs, the current owners of the property, against the Defendants, the prior owners and operators of both the property and the shooting range, with regard to a remediation plan whose implementation was expected to exceed \$12 million. After hundreds of pages of summary judgment briefs filed by Defendants, the

Court entered judgment against Plaintiffs, but on theories that none of the Defendants advanced. These included that the shooting range was not a “facility” within the meaning of the Comprehensive Environmental Response Compensation and Liability Act and that used munitions were not “solid waste” within the meaning of the Resource Conservation and Recovery Act. The Ninth Circuit affirmed, but on grounds not discussed by the district court. Instead, the Ninth Circuit held that Plaintiffs’ claims were not ripe because Plaintiffs had not yet expended most of their planned remediation costs, and no government agency had yet required remediation. I took and defended more than thirty fact and expert witness depositions, developed the testimony of more than eight expert witnesses and authored the principal briefs before the district court and the opening appellant’s brief before the Ninth Circuit. Nearly ten years after filing, the matter is still pending, albeit in California state court.

Co-Counsel: James A. Bruen, Farella Braun + Martel LLP, 235 Montgomery Street, San Francisco, California 94104, (415) 954-4400; Robert D. Shoecraft, Shoecraft Burton LLP, 1230 Columbia Street, Suite 1140, San Diego, California 92101, (619) 794-2280.

Opposing Counsel: Mark J. Dillon, Stephen F. Tee, Gatzke Dillon & Ballance, 2762 Gateway Road, Carlsbad, California 92009, (760) 431-9501; R. Anthony Mahavier, Law Offices of R. Anthony Mahavier, 2550 Fifth Avenue, Ninth Floor, San Diego, California 92103, (619) 233-3760; John J. Freni, Law Offices of John J. Freni, 600 West Broadway, Suite 2800, San Diego, California 92101, (619) 557-9128; Alice Seebach, Seebach & Seebach, 633 West Fifth Street, Suite 5410, Los Angeles, California 90071, (213) 553-7900; Walter B. Hill, Booth Mitchel & Strange LLP, 701 South Parker, Orange, California 92868, (714) 480-8500; Thomas L. Van Wyngarden, Pillsbury Winthrop Shaw Pittman LLP, 725 South Figueroa Street, 28th Floor, Los Angeles, California 90017, (213) 488-7100.

6. *SI V. LLC v. FMC Corporation*, Civ. No. 02-02606, 223 F. Supp. 2d 1059 (N.D. Cal. 2002) (Ware, J.)

This action involved an attempt by Plaintiff, a large Silicon Valley real estate developer, to renege on a land purchase agreement based on the notion that disclosed contamination on the property was not remediated to the degree required by the purchase and sales agreement. I successfully briefed and argued the motion dismissing the developer’s action and compelling him to participate in arbitration, which facilitated the negotiated resolution of the dispute on confidential terms favorable to the Defendant seller. I also served as lead negotiator for the seller.

Co-Counsel: James A. Bruen, Farella Braun + Martel LLP, 235 Montgomery Street, San Francisco, California 94104, (415) 954-4400.

Opposing Counsel: Jeffrey S. Lawson, Silicon Valley Law Group, 25 Metro Drive, 6th Floor, San Jose, California 95110, (408) 573-5700.

7. *FMC Corporation v. Weir Floway, Inc.*, Civ. No. 00-05295 (E.D. Cal.) (Wanger, J.)

This action involved the remediation of FMC's former pesticide formulation facility in Fresno, California. It involved a complex investigation of the historical practices of numerous adjoining businesses over the course of more than sixty years, complex soil and groundwater modeling designed to map the spread of contaminants over time, and the use of photogrammetry experts to identify property features that might have contributed to the contamination. I led Plaintiff's investigation team, including the use of several private investigators, developed the interrelated testimony of more than a dozen expert witnesses, took and defended more than twenty-five fact and expert witness depositions, and created the Powerpoint presentation for an intermittent four-month-long mediation that ultimately led to a multi-million dollar settlement favorable to Plaintiff.

Co-Counsel: James A. Bruen, Robert L. Hines, James H. Colopy, Farella Braun + Martel LLP, 235 Montgomery Street, San Francisco, California 94104, (415) 954-4400; Stephen Cornwell, Cornwell & Sample LLP, 7045 Fruit Avenue, Fresno, California 93711, (559) 431-3142.

Opposing Counsel: Mark E. Elliott, Pillsbury Winthrop Shaw Pittman, 725 South Figueroa Street, Suite 2800, Los Angeles, California 90017, (213) 488-7100; Stephen Holzer, Lewitt Hackman, 16633 Ventura Boulevard, 11th Floor, Encino, California 91436, (818) 907-3299; Kevin P. Holewinski, Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001, (202) 879-3797; John F. Barg, Barg Coffin Lewis LLP, 350 California Street, 22nd Floor, San Francisco, California 94104, (415) 228-5400.

8. *Hell's Angels Motorcycle Corp. v. County of Monterey*, Civ. No. 99-1513, 89 F. Supp. 2d 1144 (N.D. Cal. 2000) (Walker, J.), *aff'd*, 360 F.3d 930 (9th Cir. 2004).

This action presented difficult Fourth Amendment issues associated with the sharing of materials lawfully seized by County law enforcement with federal law enforcement pursuant to a federal administrative subpoena. The district court determined that while a property owner is entitled to notice and a pre-enforcement opportunity to review the propriety of such a subpoena, the novelty of the question at the time afforded the federal actors with qualified immunity because Plaintiff's rights were probably not clearly established. Together with AUSA Scott Nonaka, I was co-lead counsel for the individually named federal defendants. AUSA Nonaka and I both interviewed witnesses and drafted portions of the government's motion to dismiss. After I returned to private practice, the Ninth Circuit affirmed the district court's approval of qualified immunity, holding

that Plaintiff had a “substantially reduced” reasonable expectation of privacy in the materials subpoenaed by the federal government because the materials had already been lawfully seized by County officials. Because of this insubstantial privacy interest, Plaintiff was not entitled to notice or an opportunity to contest the subpoena, and therefore no Fourth Amendment claim could be sustained.

Co-Counsel: Scott T. Nonaka (former AUSA), O’Melveny & Myers, Meiji Yasuda Seimei Building, 11th Floor, 2-1-1, Marunouchi, Chiyoda-ku, Tokyo 100-0005, Japan, +81-3-5293-2700.

Opposing Counsel: Fritz Clapp, P.O. Box 2517, Beverly Hills, California 90213, (888) 292-5784.

9. *United States v. Powers*, Civ. No. 94-3401, 1996 WL 376651 (N.D. Cal. 1996) (Hamilton, J.)

This action involved a psychiatrist’s attempt to renege on her public service obligation to an underserved geographic area after the Department of Health and Human Services (“HHS”) paid for her medical school education under the National Health Service Corps Scholarship Program. Defendant claimed that she could only carry out her service obligation in the Bay Area (which was not a designated area of need) because that was where her support network existed. The court granted the United States’ motion for summary judgment and required the psychiatrist to repay triple the amount of education funds she received, plus interest. The matter was settled post-judgment with the Defendant agreeing to serve, and subsequently serving, an area in the Midwest in need of psychiatry services, as identified by HHS. I took and defended several depositions before drafting and arguing the government’s summary judgment motion, and subsequently negotiated Defendant’s service obligation on behalf of HHS.

Opposing Counsel: Henry G. Wykowski, Wykowski & Associates, 235 Montgomery Street, Suite 657, San Francisco, California 94104, (415) 788-4545.

10. *Burittica v. United States*, Civ. No. 95-3354, 8 F. Supp. 2d 1188 (N.D. Cal. 1998) (Walker, J.)

This action involved *Bivens* and Federal Tort Claims Act claims arising out of an incident at the San Francisco International Airport in which United States Customs inspectors detained Plaintiff because they suspected her of serving as a “mule” by smuggling balloons containing drugs in her stomach. When radiology scans were suspicious but inconclusive, Plaintiff was forced to consume a gallon of laxatives in a hospital setting and had her bowel movements monitored for a period of twenty-four hours, after which nothing was discovered. Following dispositive motions and a jury trial, Plaintiff was awarded \$451,002. I second-chaired the trial and was principally responsible for two of the five *Bivens*

Defendants, one of whom was the only one exonerated, and the other of whom was found liable for \$2 in compensatory damages.

Co-Counsel: Gail Killefer (former AUSA), United States District Court for the Central District of California, ADR Program, 312 North Spring Street, Los Angeles, California 90012, (213) 894-2993.

Opposing Counsel: Gregory M. Fox, Bertrand Fox & Elliot, 2749 Hyde Street, San Francisco, California 94109, (415) 353-0999; David A. Levy, San Mateo County Counsel's Office, 400 County Center, 6th Floor, Redwood City, California 94063, (650) 363-4756; Richard K. Wilson, Ropers Majeski, 1001 Marshall Street, Redwood City, California 94063, (415) 364-8200; Barry Marsh, Hinshaw Draa Marsh, 12901 Saratoga Avenue, Saratoga, California 95070, (408) 861-6500.

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

As an Assistant United States Attorney, I have participated in numerous fraud investigations that were resolved short of litigation. Some have resulted in significant settlement recoveries, while others have resulted in declined civil prosecutions. The following are representative of these efforts:

- a. In 1996, in a parallel prosecution with the Criminal Division, I brought civil fraud charges against dozens of former veterans, who enrolled in, but did not attend, speech classes at Laney College in Oakland, California, recovering via settlement nearly \$2.5 million in G.I. Bill education funds on behalf of the Department of Veterans Affairs.
- b. From 1996 through 1999, I brought numerous residential mortgage fraud charges under the United States Department of Justice's FIRREA (the Financial Institutions Reform, Recovery, and Enforcement Act) fast-track initiative. Though the monetary recovery in these collective cases was modest (just under \$1 million), the initiative was an important deterrent in an industry rampant with misrepresentation.
- c. In 2009, I brought Medicare fraud charges against two Maui cardiologists, which resulted in modest civil settlements of several hundred thousand dollars. In addition, the resolutions included extensive Department of Health and Human Services-supervised corporate integrity agreements designed to improve training, education and ultimately patient care.

- d. In 2010, in conjunction with the Naval Criminal Investigative Service (NCIS), I investigated a morale, welfare and recreation contractor which provided, among other things, certified lifeguard services on the island of Diego Garcia and under whose supervision a soldier died while swimming in a pool in the middle of the day. While evidence called into question the validity of the certifications provided by the contractor, we declined and transferred the matter to the United States Attorney's Office for the Northern District of Texas due to False Claims Act venue concerns.

While serving as a reservist for eight years in the Judge Advocate General's Corps, United States Army, I participated in several unit mobilization events, assisting mobilizing soldiers with their legal affairs, such as through the preparation of wills and powers of attorney, and through the provision of general legal advice. I also provided general legal assistance to active duty soldiers at Fort Irwin, National Training Center, California and Fort Lewis, Washington during annual training activations.

I have never performed lobbying activities or registered as a lobbyist.

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

I have not taught any such course.

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

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.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items

exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

If confirmed, I would recuse myself from all civil cases handled by the United States Attorney's Office for the District of Hawaii, by another component of the United States Department of Justice, or by a United States department or agency with litigating authority independent of the United States Department of Justice, which were filed before my appointment and in which I had either direct involvement, or supervisory or oversight responsibility.

- 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 fully comply with 28 U.S.C. Sections 144 and 455, the Code of Conduct for United States Judges, and any other applicable conflicts rules.

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

While in private practice, I spent hundreds of hours representing pro bono clients. For instance, together with one of my partners, we supervised a team of attorneys and paralegals who brought human trafficking, common law tort, and wage and hour claims on behalf of two Mexican nationals against a chain of Bay Area taquerias. After extensive discovery, much of which was done in Spanish, we recovered significant sums for both plaintiffs and their families. In addition, I participated on another pro bono team that partnered with the San Francisco Lawyer's Committee for Civil Rights ("LCCR") to successfully challenge the Hanford Union High School District's electoral system, which had prevented the election of a Hispanic member for decades despite Hispanics constituting the majority of residents in the District. Further, I did intake work on a

monthly basis at LCCR, eventually supervising the intake work for which our law firm was responsible. Through this effort, I handled a variety of matters for pro bono clients, most commonly those with landlord-tenant and credit problems. I have not provided pro bono services since returning to government service, as it is my understanding that the Department of Justice does not generally approve the outside practice of law by Assistant United States Attorneys, even on a pro bono basis.

26. **Selection Process:**

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

On March 28, 2012, I submitted my application to the Hawaii Federal Judicial Selection Commission established by Hawaii Senators Daniel K. Inouye and Daniel K. Akaka. On May 23, 2012, I interviewed with the nine members of the Commission. On May 25, 2012, I was notified that I was one of three persons whose names had been sent to Senator Inouye and Senator Akaka for further proceedings. On May 29, 2012, I interviewed with Senator Inouye, Senator Akaka and their respective chiefs of staff.

On July 3, 2012, the White House Counsel's Office requested by email a complete copy of my application to the Commission, which I provided that same day. On July 12, 2012, I interviewed by telephone with the White House Counsel's Office. On August 7, 2012, I was notified by the White House Counsel's Office that I would be advancing for further vetting, and have been in contact with officials from the Office of Legal Policy at the Department of Justice since August 8, 2012. On September 20, 2012, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 14, 2012, 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.

AO 10
Rev. 1/2012

**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) WATSON, DERRICK K.	2. Court or Organization UNITED STATES DISTRICT COURT, DISTRICT OF HAWAII	3. Date of Report 11/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) UNITED STATES DISTRICT JUDGE, ACTIVE STATUS	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 11/14/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 11/01/2012
7. Chambers or Office Address UNITED STATES COURTHOUSE 300 ALA MOANA BOULEVARD HONOLULU, HI 96850		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. DIRECTOR AND SECRETARY	PRINCE JONAH KUIHO KALANIANA'OLE CHILD CARE CENTER (NON-PROFIT)
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 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 11/14/2012
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

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

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

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

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

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

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 11/14/2012
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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.	AMERICAN SAVINGS BANK	PHOTOVOLTAIC SYSTEM GREEN LOAN	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

	A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross Value at end of reporting period			D. Transactions during reporting period								
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)					
		Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-I)	Identity of buyer/seller (if private transaction)					
1.	SCHOLARSHARE 529 PLAN AGE-BASED PORTFOLIO 0-4		None	J	T	Exempt									
2.	SCHOLARSHARE 529 PLAN AGE-BASED PORTFOLIO 5-8		None	K	T										
3.	FIDELITY BLUE CHIP VALUE FUND	A	Dividend	K	T										
4.	FIDELITY EQUITY INCOME FUND	A	Dividend	K	T										
5.	FIDELITY FIFTY	A	Dividend	K	T										
6.	FIDELITY INDEPENDENCE FUND	A	Dividend	K	T										
7.	FIDELITY INTERNATIONAL DISCOVERY FUND	A	Dividend	J	T										
8.	FIDELITY INVESTMENT GRADE BOND FUND	A	Interest	K	T										
9.	FIDELITY NEW MILLENIUM FUND	A	Dividend	K	T										
10.	FIDELITY STOCK SELECTOR SMALL CAP FUND		None	J	T										
11.	FIDELITY TOTAL BOND FUND	C	Interest	L	T										
12.	FIDELITY VALUE STRATEGIES FUND	A	Dividend	K	T										
13.	CLEAN ENERGY FUELS CORPORATION STOCK	A	Dividend	J	T										
14.	FIRST TRUST ISE REVERE NATURAL GAS INDEX FUND	A	Dividend	J	T										
15.	GENERAL ELECTRIC COMPANY STOCK	A	Dividend	K	T										
16.	GREATER CHINA FUND INC.	A	Dividend	J	T										
17.	JOHNSON & JOHNSON STOCK	A	Dividend												

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; H = \$1,000,001 - \$5,000,000; I2 = More than \$5,000,000
2. Value Codes: J = \$15,000 or less; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 - \$250,000
(See Columns C1 and D3)
N = \$250,001 - \$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 5 of 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 33-58 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XX" after each asset except 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., rem., or mt.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
18. PRIME MONEY MARKET RBC RESERVE	A	Interest	J	T						
19. NAVISTAR INTERNATIONAL CORP. STOCK	A	Dividend	J	T						
20. WISDOM TREE INDIA EARNINGS FUND	A	Dividend	J	T						
21. WISDOM TREE INTERNATIONAL BASIC MATERIALS FUND	A	Dividend								
22. AMERICAN SAVINGS BANK ACCOUNTS	A	Interest	J	T						
23. HONOLULU FEDERAL CREDIT UNION ACCOUNTS	A	Interest	J	T						
24. U.S. TREASURY SAVINGS BONDS		None	J	T						

1. Income Gain Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$10,000; E = \$10,001 - \$50,000; F = \$50,001 - \$100,000; G = \$100,001 - \$1,000,000; H = \$1,000,001 - \$5,000,000; I = \$5,000,001 - \$10,000,000; J = \$10,000,001 - \$25,000,000; K = \$25,000,001 - \$50,000,000; L = \$50,000,001 - \$100,000,000; M = \$100,000,001 - \$250,000,000; N = \$250,000,001 - \$500,000,000; O = \$500,000,001 - \$1,000,000,000; P = \$1,000,000,001 - \$5,000,000,000; Q = More than \$5,000,000,000

2. Value Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$10,000; E = \$10,001 - \$50,000; F = \$50,001 - \$100,000; G = \$100,001 - \$1,000,000; H = \$1,000,001 - \$5,000,000; I = \$5,000,001 - \$10,000,000; J = \$10,000,001 - \$25,000,000; K = \$25,000,001 - \$50,000,000; L = \$50,000,001 - \$100,000,000; M = \$100,000,001 - \$250,000,000; N = \$250,000,001 - \$500,000,000; O = \$500,000,001 - \$1,000,000,000; P = \$1,000,000,001 - \$5,000,000,000; Q = More than \$5,000,000,000

3. Value Method Codes: 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 7

Name of Person Reporting	Date of Report
WATSON, DERRICK K.	11/14/2012

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 7

Name of Person Reporting	Date of Report
WATSON, DERRICK K.	11-14-2012

IX. CERTIFICATION.

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

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

Signature: *s/* DERRICK K. WATSON

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		15	029	Notes payable to banks-secured			
U.S. Government securities – see schedule		8	925	Notes payable to banks-unsecured		45	000
Listed securities – see schedule		497	706	Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- personal residence	1	009	079
Real estate owned-add schedule	1	365	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		87	000	Thrift Savings Plan loans		64	716
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		158	269				
				Total liabilities	1	118	795
				Net Worth	1	013	134
Total Assets	2	131	929	Total liabilities and net worth	2	131	929
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**U.S. Government Securities

Series E Bonds	\$ 50
Series EE Bonds	8,875
Total U.S. Government Securities	<u>\$ 8,925</u>

Listed Securities

AMR Corporation stock	\$ 20
Clean Energy Fuels Corporation stock	1,142
First Trust ISE-Revere Natural Gas Index Fund	8,450
General Electric Company stock	21,220
Greater China Fund Inc.	2,360
Fidelity Blue Chip Value Fund	41,276
Fidelity Cash Reserves	300
Fidelity Equity-Income Fund	39,827
Fidelity Fifty	33,097
Fidelity Independence Fund	39,835
Fidelity International Discovery Fund	14,856
Fidelity Investment Grade Bond Fund	33,603
Fidelity New Millennium Fund	36,598
Fidelity Stock Selector Small Cap Fund	15,350
Fidelity Total Bond Fund	84,751
Fidelity Value Strategies Fund	33,611
Navistar International Corp.	8,712
Prime Money Market RBC Reserve	33,917
ScholarShare 529 Plan Age-Based Portfolio 0-4	12,100
ScholarShare 529 Plan Age-Based Portfolio 5-8	32,471
WisdomTree India Earnings Fund (ETF)	3,712
Xerox Corporation stock	498
Total Listed Securities	<u>\$ 497,706</u>

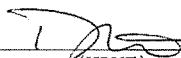
Real Estate Owned

Personal residence	\$ 1,350,000
Time share	30,000
Total Real Estate Owned	<u>\$ 1,380,000</u>

AFFIDAVIT

I, Derrick Kahala Watson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 15, 2012
(DATE)


(NAME)

Spencerita Gerald
(NOTARY)

My Commission Expires Nov. 30, 2012

218

Derrick K. Watson
2256 Hikino Street
Honolulu, HI 96821
(808) 561-1238

January 3, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on November 14, 2012 to be a United States District Judge for the District of Hawaii. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate:

- As of December 2012, I am admitted to the bar of the State of Hawaii (in addition to bar of the State of California)(Question 10a).
- As of December 2012, I am admitted to practice before all Courts of the State of Hawaii (Question 10b).

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report, as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Derrick K. Watson

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10*
Rev. 1/2012

**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) WATSON, DERRICK K.	2. Court or Organization UNITED STATES DISTRICT COURT, DISTRICT OF HAWAII	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) UNITED STATES DISTRICT JUDGE, ACTIVE STATUS	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Attended Report	6. Reporting Period 01/01/2012 to 12/14/2012
7. Chambers or Office Address UNITED STATES COURTHOUSE 300 ALA MOANA BOULEVARD HONOLULU, HI 96850		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. DIRECTOR AND SECRETARY	PRINCE JONAH KUHIO KALANIANOALE CHILD CARE CENTER (NON-PROFIT)
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 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 01/03/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

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

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

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

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

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

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 01/03/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	AMERICAN SAVINGS BANK	PHOTOVOLTAIC SYSTEM GREEN LOAN	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp.34-60 of filing instructions.)

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

	A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period					
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)		
		Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)		
1.	SCHOLARSHARE 529 PLAN AGE-BASED PORTFOLIO 0-4		None	J	T	Exempt						
2.	SCHOLARSHARE 529 PLAN AGE-BASED PORTFOLIO 5-8		None	J	T							
3.	FIDELITY BLUE CHIP VALUE FUND	A	Dividend	K	T							
4.	FIDELITY EQUITY INCOME FUND	A	Dividend	K	T							
5.	FIDELITY FIFTY	A	Dividend	K	T							
6.	FIDELITY INDEPENDENCE FUND	A	Dividend	K	T							
7.	FIDELITY INTERNATIONAL DISCOVERY FUND	A	Dividend	J	T							
8.	FIDELITY INVESTMENT GRADE BOND FUND	A	Interest	K	T							
9.	FIDELITY NEW MILLENIUM FUND	A	Dividend	K	T							
10.	FIDELITY STOCK SELECTOR SMALL CAP FUND		None	J	T							
11.	FIDELITY TOTAL BOND FUND	C	Interest	L	T							
12.	FIDELITY VALUE STRATEGIES FUND	A	Dividend	K	T							
13.	CLEAN ENERGY FUELS CORPORATION STOCK	A	Dividend	J	T							
14.	FIRST TRUST ISE REVERE NATURAL GAS INDEX FUND	A	Dividend	J	T							
15.	GENERAL ELECTRIC COMPANY STOCK	A	Dividend	K	T							
16.	GREATER CHINA FUND INC.	A	Dividend	J	T							
17.	JOHNSON & JOHNSON STOCK	A	Dividend									

1. Income Gain Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$15,000; E = \$15,001 - \$50,000
(See Columns B1 and D4)
F = \$50,001 - \$100,000; G = \$100,001 - \$1,000,000; H1 = \$1,000,001 - \$5,000,000; H2 = More than \$5,000,000
2. Value Codes: J = \$15,000 or less; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 - \$250,000
(See Columns C1 and D3)
N = \$250,001 - \$500,000; O = \$500,001 - \$1,000,000; P1 = \$1,000,001 - \$5,000,000; P4 = More than \$5,000,000
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 5 of 7

Name of Person Reporting WATSON, DERRICK K.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.) (J-P)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
18. PRIME MONEY MARKET RBC RESERVE	A	Interest	J	T						
19. NAVISTAR INTERNATIONAL CORP. STOCK	A	Dividend	J	T						
20. WISDOM TREE INDIA EARNINGS FUND	A	Dividend	J	T						
21. WISDOM TREE INTERNATIONAL BASIC MATERIALS FUND	A	Dividend								
22. AMERICAN SAVINGS BANK ACCOUNTS	A	Interest	J	T						
23. HONOLULU FEDERAL CREDIT UNION ACCOUNTS	A	Interest	J	T						
24. U.S. TREASURY SAVINGS BONDS		None	J	T						
25. GUGGENHEIM ABC HIGH DIVIDEND ETF (X)	A	Dividend	J	T						
26. HAWAIIAN ELECTRIC INDUSTRIES INC. (X)	A	Dividend	J	T						
27. MARKET VECTORS RARE EARTH/ STRATEGIC METALS ETF (X)	A	Dividend	J	T						
28. FREEPORT MCMORAN COPPER & GOLD (X)	A	Dividend	J	T						
29. XEROX CORPORATION (X)	A	Dividend	J	T						

- 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; F = \$50,001 - \$100,000; G = \$100,001 - \$1,000,000; H = \$1,000,001 - \$5,000,000; I = \$5,000,001 - \$50,000,000; J = \$50,000,001 - \$100,000,000; K = \$100,000,001 - \$500,000,000; L = \$500,000,001 - \$1,000,000,000; M = \$1,000,000,001 - \$5,000,000,000; N = \$5,000,000,001 - \$50,000,000,000; O = \$50,000,000,001 - \$1,000,000,000,000; P = \$1,000,000,000,001 - \$5,000,000,000,000; Q = \$5,000,000,000,001 - \$50,000,000,000,000; R = Cost (Real Estate Only); S = Assessment; T = Cash Market; U = Book Value; V = Other; W = Estimated.
- Value Codes (See Columns C) and D3): J = \$15,000 or less; N = \$250,001 - \$500,000; P3 = \$25,000,001 - \$50,000,000; Q = Appraisal; U = Book Value.
- Value Method Codes (See Column C2): R = Cost (Real Estate Only); S = Assessment; T = Cash Market; U = Book Value; V = Other; W = Estimated.

FINANCIAL DISCLOSURE REPORT
Page 6 of 7

Name of Person Reporting	Date of Report
WATSON, DERRICK K.	01/03/2013

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

FINANCIAL DISCLOSURE REPORT

Page 7 of 7

Name of Person Reporting	Date of Report
WATSON, DERRICK K.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/* DERRICK K. WATSON

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		12	644	Notes payable to banks-secured			
U.S. Government securities -- see schedule		8	925	Notes payable to banks-unsecured		44	500
Listed securities -- see schedule		500	450	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- personal residence	1	006	138
Real estate owned--add schedule	1	365	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts--itemize:			
Autos and other personal property		87	000	Thrift Savings Plan loans		63	130
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		167	498				
				Total liabilities	1	113	768
				Net Worth	1	027	749
Total Assets	2	141	517	Total liabilities and net worth	2	141	517
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities

Series E Bonds	\$ 50
Series EE Bonds	8,875
Total U.S. Government Securities	\$ 8,925

Listed Securities

AMR Corporation stock	\$ 32
Clean Energy Fuels Corporation stock	1,306
First Trust ISE-Revere Natural Gas Index Fund	7,990
General Electric Company stock	21,785
Greater China Fund Inc.	2,540
Fidelity Blue Chip Value Fund	41,466
Fidelity Cash Reserves	300
Fidelity Equity Income Fund	39,785
Fidelity Fifty	33,097
Fidelity Independence Fund	39,976
Fidelity International Discovery Fund	15,207
Fidelity Investment Grade Bond Fund	33,655
Fidelity New Millennium Fund	36,367
Fidelity Stock Selector Small Cap Fund	15,179
Fidelity Total Bond Fund	84,855
Fidelity Value Strategies Fund	33,850
Freeport McMoRan Copper & Gold	3,255
Guggenheim ABC High Dividend ETF	3,790
Hawaiian Electric Industries Inc.	2,544
Market Vectors Rare Earth/Strategic Metals ETF	3,853
Navistar International Corp.	9,300
Prime Money Market RBC Reserve	20,364
ScholarShare 529 Plan Age-Based Portfolio 0-4	12,491
ScholarShare 529 Plan Age-Based Portfolio 5-8	33,119
WisdomTree India Earnings Fund ETF	3,814
Xerox Corporation stock	530
Total Listed Securities	\$ 500,450

Real Estate Owned

Personal residence	\$ 1,350,000
Time share	30,000
Total Real Estate Owned	\$ 1,380,000

Senator GRASSLEY. Now Ms. Kelly.

**STATEMENT OF CLAIRE R. KELLY, NOMINEE TO BE A JUDGE
OF THE COURT OF INTERNATIONAL TRADE**

Ms. KELLY. Thank you, Mr. Chairman. I would like to thank you and the Committee for this hearing, and I would like to thank the President for the honor of the nomination.

With me here today, I would like to acknowledge my husband, Joseph DiBartolo, and thank him for all his love and support. Our son, also Joseph, or J.J., is six, so he is in first grade today, but he will watch this later, so I want to make sure I thank him for his love and support.

My mother-in-law, Ann DiBartolo, would have loved to have been here today, but she is making sure my son gets back and forth to school safely.

I am proud to have my father-in-law, Joseph DiBartolo, also a New York City firefighter for over 30 years.

My cousins, the Kilgens—Richard, Bernadette, and Krista. And my good friend and administrative assistant for the last 15 years, Ms. Golda Lawrence, was able to make the trip.

My brothers, Dennis and John Kelly, were not able to make it because of work commitments, but I do know they will be watching, and I thank them for that.

Our father, George Kelly, passed away when we were young, but I wanted to acknowledge his profound effect on our lives.

I would like to also acknowledge my friends and colleagues at Brooklyn Law School, and especially my students. I had to cancel Administrative Law to be here, so I appreciate their understanding.

And, last, I wanted to acknowledge and thank my mother, Rita Kelly, who is here today. For most of my life, my mom worked two and sometimes three jobs to give my brothers and I advantages that she did not have. I would not be here without her today, and I would not be anywhere. And I am very grateful for the opportunity to be able to thank her.

And thank you for allowing me to acknowledge my family.

[The biographical information of Ms. Kelly follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

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

Judge of the United States Court of International Trade
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.

Brooklyn Law School
250 Joralemon Street, Room 800
Brooklyn, New York 11201

Residence: Forest Hills, New York
4. **Birthplace:** State year and place of birth.

1965; New York, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1993, Brooklyn Law School; J.D. (*magna cum laude*), 1993

1983 – 1987, Barnard College; B.A. (*cum laude*), 1987
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.

1996 – present
Brooklyn Law School
250 Joralemon Street, Room 800

Brooklyn, New York 11201
Professor of Law (2008 – present)
Associate Professor of Law (2005 – 2008)
Assistant Professor of Law (2003 – 2005)
Acting Assistant Professor of Law (2000 – 2002)
Instructor of Law (1997 – 2000)
Adjunct Instructor of Law (Spring 1996, Spring 1997)

2008 – 2012
Kaplan, Inc.
1015 Windward Ridge Parkway
Alpharetta, Georgia 30005
Bar Lecturer

2010
DiNicola Law Offices
Ronald A. DiNicola, P.C.
1001 State Street, Suite 1400
Erie, Pennsylvania 16501
Consultant

2006
Pino & Associates, LLP
50 Mail Street
White Plains, New York 10606
Consultant

Summer 1992, 1993 – 2000
Coudert Brothers (no longer in existence)
1114 Avenue of the Americas
New York, New York 10036
Consultant (1997 – 2000)
Associate (1993 – 1997)
Summer Associate (1992)

1991 – 1993
Professor Aaron Twerski
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11201
Research Assistant

1989 – 1990
Milbank Tweed Hadley & McCloy
1 Chase Manhattan Plaza

New York, New York 10005
Legal Assistant

1989
Jane Harmon Associates (Theatrical Producer)
1 Lincoln Plaza
New York, New York 10023
Office Assistant

1988 – 1989
Lucy Kroll Literary Agency (no longer in existence)
300 West End Avenue
New York, New York 10023
Office Assistant

1987 – 1988
The Circle Repertory Company (no longer in existence)
137 Varick Street
New York, New York 10013
Office Assistant

1987 – 1992
The Wheatley Hills Tavern (no longer in existence)
170 Post Avenue
Westbury, New York 11590
Waitress

Other Affiliations (Uncompensated):

2004 – 2005, 2010 – present
Customs and International Trade Bar Association
No physical address
Board Member

2006 – present
10 Holder Apartments Corporation
10 Holder Place
Forest Hills, New York 11375
Member, Board of Directors (2006 – present)
Officer (2006 – 2010)
Vice President (2010 – present)

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

I have not served in the military. I am 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.

Professional:

Brooklyn Law School Outstanding Woman Alumni (2012)
 Elected as Member of the American Law Institute (2010)
 Consultative Group Legal and Economic Principles of World Trade Law
 Brooklyn Law School Professor of the Year Award (1999 – 2000, 2000 – 2001, 2001 – 2002)

Academic:

Brooklyn Law School, Dean's List
 Stanley W. Nathanson Prize, Special Proficiency in the Study of Law
 Jeffrey E. Rockwell Prize, International Law
 Edith C. Blum Foundation Prize, Exceptional Achievement in the Study of Taxation

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 (1994 – present)

Customs and International Trade Bar Association (1995 – present)

Board Member (2004 – 2005, 2010 – present)
 Chair, CITBA Judicial Selection Committee for the United States Court of
 International Trade (2004 – 2005)
 Chair, Liaison with Other Bar Associations Committee (2010 – present)
 Chair, *Ad Hoc* CITBA Sub-Committee on the Trade Adjustment Assistance Act
 (2004 – present)

New York City Bar Association

International Trade Committee (1999 – 2001; 2011 – present)

New York State Bar Association

International Trade Committee (1999 – 2009)
 Co-Chair (2005 – 2009)

10. **Bar and Court Admission:**

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

New York, 1994
 New Jersey, 1994
 Ohio, 2003

I resigned my New Jersey bar membership in 1995 because I did not practice in New Jersey. I resigned my Ohio bar membership in 2007 because I did not practice in Ohio.

- 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 Federal Circuit, 1996
 United States Court of International Trade, 1994
 United States Court of Federal Claims, 1996

There have been no lapses in membership.

11. **Memberships:**

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

10 Holder Apartments Corporation
 Member, Board of Directors (2006 – present)
 Officer (2006 – 2010)
 Vice President (2010 – present)

American Society of International Law
 Co-Chair, International Economic Law Group (2011 – 2013)
 Co-Vice Chair, International Economic Law Group (2007 – 2010)

American Society of Comparative Law
 Editorial Board Member (as representative for Brooklyn Law School)
 (2000-2011)

National Arts Club (2004)

Speak Up Long Island (support group for Families in the Deaf Community) (2010 – present)

United States Court of International Trade Bench & Bar Meeting Planning Committee (2003)

Women in International Trade (1997 – 2000)

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

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

12. Published Writings and Public Statements:

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

The Future of International Networks of Market Regulators and the Role of Stakeholders and Civil Society, in *THE ACCOUNTABILITY OF FINANCIAL REGULATORS: LESSONS FROM THE FINANCIAL CRISIS* (P. Iglesias-Rodriguez ed., forthcoming 2013). Copy supplied.

The Sociological Pull of Soft Law, 106 *AM. J. INT'L L.* (forthcoming 2013). Copy supplied.

Conceptions of Legitimacy Among International Entities in the Global Political Economy, in *LAW, CONTESTATION, AND POWER IN THE GLOBAL POLITICAL ECONOMY* (C. Cutler & E. Cohen eds., forthcoming 2012). Copy supplied.

Sungjoon Cho & Claire R. Kelly, *Are Global Trading Rules Passé?: Trade Anachronism and Its Discontents* (Soc'y of Int'l Econ. Law, Working Paper No. 2012/18, 2012). Copy supplied.

Claire R. Kelly, et al., 2012 *PRIMER ON THE TRADE ADJUSTMENT ASSISTANCE ACT* (2012). Copy supplied.

Sungjoon Cho & Claire R. Kelly, *Promises and Perils of New Global Governance: A Case of the G20*, 12 CHI. J. INT'L L. 491 (2012). Copy supplied.

VJIL Symposium: Doctor, Heal Thyself – A Commentary on Professor Sungjoon Cho's Critique of Shaffer and Trachtman, OPINIO JURIS (Apr. 12, 2012). Copy supplied.

If the Glove or Shoe Fits: Court of International Trade Invokes Totes-Isotoner and Rejects Another Equal Protection Exception for Customs Cases in Rack Room Shoes v. United States, 16 ASIL INSIGHTS 13 (Apr. 3, 2012). Copy supplied.

The Evolving International Trade Order: Global Sourcing and New Challenges to the WTO System, in WTO PUBLIC FORUM 2011: SEEKING ANSWERS TO GLOBAL TRADE CHALLENGES (2011). Copy supplied.

Dana Brakman Reiser & Claire R. Kelly, *Linking NGO Accountability and the Legitimacy of Global Governance*, 36 BROOK. J. INT'L L. 1011 (2011). Copy supplied.

Dana Brakman Reiser & Claire R. Kelly, *Introduction: Governing Civil Society*, 36 BROOK. J. INT'L L. 813 (2011). Copy supplied.

Financial Crises and Civil Society, 11 CHI. J. INT'L L. 505 (2011). Copy supplied.

Suzanne I. Offerman & Claire R. Kelly, *National Security Measures in Customs Law*, in LA ACTIVIDAD ADUANERA Y LOS RETOS DEL FUTURO (2011). Copy supplied.

The Politics of Legitimacy in the UNCITRAL Working Methods, in THE POLITICS OF INTERNATIONAL ECONOMIC LAW (T. Broude, M. Busch & A. Porges eds., 2011). Copy supplied.

The Brand X Liberation: Doing Away with Chevron's Second Step as well as Other Doctrines of Deference, 44 U.C. DAVIS L. REV. 151 (2010). Copy supplied.

Introductory Note To The WTO Panel Report: United States - Anti-Dumping Measures On Polyethylene Retail Carrier Bags From Thailand, 49 I.L.M. 934 (2010). Copy supplied.

Court of Appeals for the Federal Circuit Announces Equal Protection Exception for Customs Cases: Totes-Isotoner v. United States, 14 ASIL INSIGHTS 12 (May 17, 2010). Copy supplied.

Roberta S. Karmel & Claire R. Kelly, *The Hardening of Soft Law in Securities Regulation*, 34 BROOK. J. INT'L L. 883 (2009). Copy supplied.

Steven A. Dean & Claire R. Kelly, *Introduction: Ruling the World*, 34 BROOK. J. INT'L L. 597 (2009). Copy supplied.

Institutional Alliances and Derivative Legitimacy, 29 MICH. J. INT'L L. 605 (2008). Copy supplied.

Understanding the Role of Global Governance Institutions in the Regulation of International Business Transactions (2008) (paper presented at the International Association of Law Schools Conference: The Law of International Business Transactions: A Global Perspective). Copy supplied.

Power, Linkage and Accommodation: The WTO as an International Actor and Its Influence on Other Actors and Regimes, 24 BERKELEY J. INT'L L. 79 (2006), reprinted in ICFAI Journal of Environmental Law (Vol. VI, No. 2, April, 2007). Copy supplied.

The Dangers of Daubert Creep in the Regulatory Realm, 14 J.L. & POL'Y 165 (2006), reprinted in 26 J. NAT'L ASS'N ADMIN. L. JUDGES 469 (2007). Copy supplied.

An Evolutionary Endeavour: Teaching Scholarly Writing to Law Students, 12 LEGAL WRITING 285 (2006). Copy supplied.

Enmeshment as a Theory of Compliance, 37 N.Y.U. J. INT'L L. & POL. 303 (2005). Copy supplied.

M. Page Hall, et al., PRIMER ON THE TRADE ADJUSTMENT ASSISTANCE PROGRAM (2005). Copy supplied.

The War on Jurisdiction: Troubling Questions About Executive Order 13303, 46 ARIZ. L. REV. 483 (2004). Copy supplied.

Realist Theory and Real Constraints, 44 VA. J. INT'L L. 545 (2004). Copy supplied.

Neil B. Cohen, et al., *Introduction*, 29 BROOK. J. INT'L L. 977 (2004). Copy supplied.

Anthony J. Sebok & Claire R. Kelly, *Does a Presidential Iraq Executive Order Take Away Tort Victims' Right To Sue?*, FINDLAW (Nov. 3, 2003). Copy supplied.

The Value Vacuum: Self-Enforcing Regimes and the Dilution of the Normative Feedback Loop, 22 MICH. J. INT'L L. 673 (2001). Copy supplied.

Remnants of Recent Customs Litigation: Jurisdiction and Statutory Interpretation, 26 BROOK. J. INT'L L. 861 (2001). Copy supplied.

Claire R. Kelly & Patrick C. Reed, *Once More Unto the Breach: Reconciling Chevron Analysis and De Novo Judicial Review After United States v. Haggart Apparel Company*, 49 AM. U. L. REV. 1167 (2000). Copy supplied.

Claire R. Kelly & Daniela Amzel, *Does the Commerce Clause Eclipse the Export Clause?: Making Sense of United States v. United States Shoe Corp.*, 84 MINN. L. REV. 129 (1999). Copy supplied.

Book Note, 38 VA. J. INT'L L. 547 (1998) (reviewing Patrick C. Reed, *THE ROLE OF FEDERAL COURTS IN U.S. CUSTOMS AND INTERNATIONAL TRADE LAW* (1997)). Copy supplied.

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

States' Rights v. International Trade: The Massachusetts Burma Law, Committee on Int'l Trade of the Ass'n of the Bar of the City of New York, 55 THE RECORD 553 (July/August 2000). Copy supplied.

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

I have not given any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

- 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.

October 2, 2012: I gave a talk to the International Trade Committee of the New York City Bar Association, on *What's New at the WTO*. Presentation supplied.

August 12, 2012: I served as the master of ceremonies at the Brooklyn Law School Convocation. Transcript supplied.

April 20, 2012: I presented my draft paper, *The Future of International Networks of Market Regulators and the Role of Stakeholders and Civil Society*, at a symposium entitled "The Accountability of Financial Regulators: Lessons from the Financial Crisis," sponsored by Maastricht University, in Maastricht, The Netherlands. PowerPoint supplied and paper supplied in response to Question 12a.

April 4, 2012: I introduced speakers and moderated a symposium sponsored by the Trade Secrets Institute entitled "Private Data/Public Good: Emerging Issues in Trade Secrets Law" at Brooklyn Law School in Brooklyn, New York. I have no notes, transcript, or recording. The address of the Trade Secrets Institute is 250 Joralemon Street, Brooklyn, NY 11201.

March 30, 2012: I participated in a panel discussion during the American Society of International Law Annual Meeting in Washington, DC, during which I summarized my draft paper, *The Sociological Pull of Soft Law*. Paper supplied in response to Question 12a.

February 29, 2012: I served as a commentator on Samuel Litton's article, *US-Tuna and the Hardening of International Soft Law*, during the International Law and Human Rights Scholarship Conference held in New York, New York and sponsored by New York University's Institute for International Law and Justice. My comments focused on the question of the legitimacy of decisions of the Appellate Body in the World Trade Organization. I have no notes, transcript, or recording. The address of the Institute for International Law and Justice is 139 MacDougal Street, 3rd Floor, New York, NY 10012.

February 14, 2012: I presented a working draft of my paper, *Are Global Trading Rules Passé?: Trade Anachronism and Its Discontents*, at the Chicago Kent School of Law in Chicago, Illinois. Paper supplied in response to Question 12a.

December 15, 2011: I moderated a panel discussion focusing on a review of current export control laws, entitled "Export Controls: What In-House and Outside Counsel Should Know for 2012," held in New York, New York. I have no notes, transcript, or recording. The event was sponsored by the New York State Bar Association, One Elk Street, Albany, NY 12207; the Customs and International Trade Bar Association, 220 Fifth Avenue, New York, NY 10001; and the Brooklyn Law School, 250 Joralemon Street, Brooklyn, NY 11201.

December 2, 2011: I moderated a panel discussion on “Institutional Responses to Financial Crisis” at a symposium sponsored by the International Economic Law Interest Group of the American Society of International Law entitled “Post-Crisis International Financial Regulation: Fragmentation, Harmonization and Coordination.” at the Suffolk University School of Law in Boston, Massachusetts. I have no notes, transcript, or recording. The address of the American Society of International Law is 2223 Massachusetts Avenue, NW, Washington, DC 20008.

November 22, 2011: I served as a presenter at an event entitled, “Overview of Recent US Trade Agreements,” sponsored by the International Trade Committee of the New York City Bar Association and held in New York, New York. My presentation focused on the Columbian and Korean Free Trade agreements and the negotiations of the Trans-Pacific Partnership. I have no notes, transcript, or recording. The address of the International Trade Committee is 42 West 44th Street, New York, NY 10036.

November 16, 2011: I was a panelist for a roundtable entitled “Quo Vadis Doha: The Doha Round & the Future of the World Trading System,” sponsored by the Fordham International Law Journal, and held in New York, New York. DVD supplied.

November 5, 2011: I was a presenter at the American Society of International Law Inaugural Research Forum held in Los Angeles, California. My presentation, entitled “Breaking the Frame Between Public International Trade and Private International Business,” focused on the development of trade networks to identify new approaches to complex trade problems and discussed a draft of my paper, *Are Global Trading Rules Passé?: Trade Anachronism and Its Discontents*. Paper supplied in response to Question 12a.

October 22, 2011: I moderated a panel discussion entitled “The Future of U.S. Trade Negotiations – What Is a 21st Century Trade Agreement?” during the 90th Annual Meeting of the American Branch of the International Law Association, held in New York, New York. The panel focused on the latest developments in U.S. trade negotiations, emphasizing recent bilateral and regional free trade agreements. I have no notes, transcript, or recording. The address of the American Branch of the International Law Association is 11510 Lake Potomac Drive, Potomac, MD 20854.

October 21, 2011: I moderated a “Safe Spaces Roundtable” where junior scholars presented works in progress on financial regulations and trade regulation and five senior scholars supplied feedback on substance and structure of their work. The event was sponsored by the International Economic Law Interest Group of the American Society of International Law and was held in Brooklyn, New York. I have no notes, transcript, or recording. The address of the American Society of International Law is 2223 Massachusetts Avenue, NW, Washington DC 20008.

October 21, 2011: I participated in a panel discussion entitled "International Financial Reform and the Domestic Response," during the 90th Annual Meeting of the American Branch of the International Law Association, held in New York, New York. My presentation focused on administrative law issues involved in financial regulation. I have no notes, transcript, or recording. The address of the American Branch of the International Law Association is 11510 Lake Potomac Drive, Potomac, MD 20854.

October 4, 2011: I was a guest speaker at the International Law Colloquium at Temple University Beasley School of Law in Philadelphia, Pennsylvania. My presentation focused on questions of legitimacy and accountability when norms arise in the international setting. I have no notes, transcript, or recording. The address of the Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, PA 19122.

September 20, 2011: I spoke on a panel entitled "The Evolving International Trade Order: The Global Sourcing and New Challenges to the WTO System," during the WTO Public Forum 2011, held in Geneva, Switzerland. I discussed the reality of global supply chains with respect to both valuation concerns and rules of origin. Report summarizing the panel supplied in response to Question 12a.

September 9, 2011: I was a presenter at the Center for International and Comparative Law New York Research Roundtable at St. John's University School of Law in New York, New York. My presentation was based on my paper, *Are Global Trading Rules Passé?: Trade Anachronism and Its Discontents*. Paper supplied in response to Question 12a.

August 15, 2011: I gave the opening remarks at the Brooklyn Law School Convocation. Speech supplied.

July 21, 2011: I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*, at the Wharton Business School in Philadelphia, Pennsylvania. Paper supplied in response to Question 12a.

July 20, 2011: I participated in a seminar on International Trade Law and Policy sponsored by the United Nations Institute for Training and Research, held in New York, New York. PowerPoint supplied.

May 27, 2011: I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*, at conference on "Financial Governance through Soft law and Insolvency Problems", at the University of Tartu, Tallinn, Estonia. Paper supplied in response to Question 12a.

April 8-9, 2011: I was a discussant at the International Law / International Relations Workshop, sponsored by Temple University Beasley School of Law

and held in Philadelphia, Pennsylvania. My comments examined the usefulness of soft law instruments, or non-binding norms established in the international arena. I have no notes, transcript, or recording. The address of the Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, PA 19122.

April 4, 2011: I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*, at the Brooklyn Law School International Economic Law Forum in Brooklyn, New York. Paper supplied in response to Question 12a.

March 17, 2011: I gave the Keynote Speech at KPMG's International Trade Update and Share Forum, entitled "Global Challenges Facing Importers and Exporters." The event was held in Hollywood, Florida. PowerPoint supplied.

March 7, 2011: I spoke at the International and Comparative Law Colloquium at George Washington University School of Law in Washington, DC. I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*. Paper supplied in response to Question 12a.

January 18, 2011: I was a commentator on James Thuo Gathii speech at the International Law Colloquium at Temple University Beasley School of Law. My comments focused on the effect that regional trade agreements have on the multilateral trading regime. I have no notes, transcript, or recording. The address of the Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, PA 19122.

November 19, 2010. I was a panelist at the American Society of International Law International Economic Law Interest Group Biennial Conference held in Minneapolis, Minnesota. I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*. Paper supplied in response to Question 12a.

November 18, 2010: I gave introductory remarks discussing the importance of the rule of law to development at the American Society of International Law International Economic Law Interest Group Biennial Conference held in Minneapolis, Minnesota. I have no notes, transcript, or recording. The address of the American Society of International Law is 2223 Massachusetts Avenue, NW Washington, DC 20008.

October 22, 2010: I was a panelist and moderator at a symposium co-sponsored by the Dennis J. Block Center for International Business Law and the *Brooklyn Journal of International Law* entitled "Governing Civil Society: NGO Accountability, Legitimacy and Influence" in Brooklyn, New York. DVD supplied.

September 30, 2010: I moderated a panel discussion at Brooklyn Law School entitled "Representing the Fashion Client" that dealt with intellectual property issues and customs and trade issues that face businesses in the fashion industry. I introduced the speakers and took questions from the audience. I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

September 17, 2010: I spoke on a panel entitled "The Role of the G20 in WTO Governance" during the WTO Public Forum 2010, held in Geneva Switzerland. I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*. Paper supplied in response to Question 12a.

September 16, 2010: I spoke at a NCCR Research Series Lecture sponsored by the World Trade Institute held in Bern, Switzerland. I presented a draft of my paper, *Promises and Perils of Global Governance: A Case of the G20*. Paper supplied in response to Question 12a.

August 15, 2010: I gave the opening remarks at the Brooklyn Law School Convocation. I used the same speech materials supplied for the August 2011 Convocation.

June 3, 2010: I presented a draft of my paper, *Financial Crisis and Civil Society*, at the International Financial and Monetary Law Conference, sponsored by the Cardozo Law School in New York, New York. Paper supplied in response to Question 12a.

April 8, 2010: I spoke to law clerks at the United States Court of International Trade about careers in academia involving customs and trade law. I have no notes, transcript, or recording. The address of the Court of International Trade is 1 Federal Plaza, New York, NY 10278.

March 6, 2010: I served as a commentator on Joanna Langille's article, *Neither Constitution nor Contract: Reconceptualising the WTO by Examining Legal Limits on Contracting Out through RTA*, during the International Law and Human Rights Scholarship Conference held in New York, New York, and sponsored by New York University's Institute for International Law and Justice. My comments focused on the effect that regional trade agreements have on the multilateral system. I have no notes, transcript, or recording. The address of the Institute for International Law and Justice is 139 MacDougal Street, 3rd Floor, New York, NY 10012.

December 5, 2009: I was chair and commentator during a research forum on "Risk, Science and International Governance," held in Chicago, Illinois, and sponsored by the American Society of International Law's International Economic Law Interest Group. I commented on papers dealing with the Appellate Body's examination of scientific issues in the World Trade

Organization and focused on the importance of rigorous scientific support. I have no notes, transcript, or recording. The address of the American Society of International Law is 2223 Massachusetts Avenue, NW, Washington DC 20008.

October 23, 2009: I introduced a panel discussion on Trade and Climate Change at the 88th Annual Meeting of the American Branch of the International Law Association, held in New York, New York. The panel examined what WTO rules would confront various climate change proposals. I have no notes, transcript, or recording. The address of the American Branch of the International Law Association is 11510 Lake Potomac Drive, Potomac, MD 20854.

March 27, 2009: I gave a poster presentation on the topic of "Process, Politics and Legitimacy: The UNCITRAL Working Methods." during the 103rd Annual Meeting of the American Society of International Law, held in Washington, DC. Poster supplied.

November 14, 2008: I participated in a roundtable discussion during the American Society of International Law's International Economic Law Interest Group Biennial Conference held in Washington, DC. I presented a draft of my paper, *Institutional Alliances and Derivative Legitimacy*. Paper supplied in response to Question 12a.

November 11, 2008: I moderated a panel discussion sponsored by the New York State Bar Association for Customs Practice for In House Counsel. The panel addressed questions concerning classification, valuation, and country of origin of merchandise. I have no notes, transcript, or recording. The address of the New York State Bar Association is One Elk Street, Albany, NY 12207.

October 24, 2008: I presented a draft of my paper, *The Hardening of Soft Law in Securities Regulation*, at a symposium at Brooklyn Law School entitled "Ruling the World: Problems and Concerns of Generating International Legal Norms." Paper supplied in response to Question 12a. DVD supplied.

October 13, 2008: I participated in a panel discussion entitled "Update in Administrative Law" during the National Association of Administrative Law Judiciary 2008 Annual Conference in New York, New York. I discussed recent cases involving the *Chevron* doctrine. I have no notes, transcript or recording. The address of the National Association of Administrative Law Judiciary is 1001 Office Park Road, Suite 105, West Des Moines, IA 50265.

June 12, 2008: I gave a presentation during an American Law Institute course entitled "The UCC and Beyond: Current Developments in Commercial Law" held at the Fordham School of Law in New York, New York. My comments addressed recent cases decided under the Convention on the International Sale of Goods. PowerPoint supplied.

April 2007: I presented a draft of my paper, *Institutional Alliances and Derivative Legitimacy*, at the Dennis J. Block Center for the Study of International Business Law at Brooklyn Law School. Paper supplied in response to Question 12a.

January 2007: I presented a draft of my paper, *Institutional Alliances and Derivative Legitimacy*, at the Vanderbilt University Law School Roundtable. Paper supplied in response to Question 12a.

November 6, 2006: I participated in a panel discussion at the U.S. Court of International Trade 14th Judicial Conference on the Trade Adjustment Assistance program. Presentation supplied.

October 20, 2006: I was a commentator at a symposium at the Brooklyn Law School entitled "Bankruptcy in the Global Village: The Second Decade." I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

February 17, 2006: I was a speaker at the Legal Writing Symposium at the Brooklyn Law School. My speech was entitled, "Teaching Scholarly Writing." I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

February 3, 2006: I participated in a panel discussion entitled "Ethics in International Trade Cases" at the Georgetown University Law Center. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

December 15-17, 2005: I gave a presentation on "Current Issues in the International Sale of Goods: Excused Performance, the CISG and the UCC" during an American Law Institute course in Washington D.C. entitled "The New Uniform Commercial Code." My comments addressed recent cases decided under the Convention on the International Sale of Goods. PowerPoint supplied.

December 15-17, 2005: I gave a presentation on "Hot Topics in Articles 3, 4 and 4A" during an American Law Institute course in Washington D.C. entitled "The New Uniform Commercial Code." My comments addressed recent letter of credit cases. I have no notes, transcript, or recording. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, PA 19104.

September 2005: I introduced speakers and moderated a panel during a symposium sponsored by the Brooklyn Law School entitled "War and Trade: Deconstructing the Difference." The symposium examined the connections between trade and war. I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

December 5-6, 2004: I presented a draft of my paper, *Institutional Alliances and Derivative Legitimacy*, at a symposium sponsored by the Bar Ilan University in Israel entitled "The WTO at a Crossroads." Paper supplied in response to Question 12a.

October 8, 2004: I made introductory remarks at a symposium sponsored by the Brooklyn Law School entitled "Intellectual Property Online: The Challenge of Multi-Territorial Disputes." The symposium focused on conflicts of law challenges involving cross border uses of intellectual property. I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

September 19, 2003: I made introductory remarks at a symposium sponsored by the Brooklyn Law School entitled "Creating and Interpreting Law in a Multilingual Environment." My introduction is supplied in response to Question 12a.

April 3, 2003: I participated in a panel discussion on "Free Speech in a World Without Borders" at the 13th Annual Conference on Computers, Freedom & Privacy. My comments focused on the use of the Internet in international business transactions and personal jurisdiction. I have no notes, transcript, or recording. I cannot locate an address for the Computers, Freedom & Privacy Conference, but the website for the conference is <http://www.cfp.org/>.

September 20, 2002: I introduced speakers and moderated a panel discussion during a symposium sponsored by the Brooklyn Law School entitled "Do Financial Supermarkets Need Super Regulators?" I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

August 5, 2002: I participated in a panel discussion at the Shanghai Municipal Economic Relations and Trade Commission in Shanghai, China. My comments focused on China's accession to the WTO and how that might affect U.S. interests. I have no notes, transcript, or recording. I believe the presentation was sponsored by The US-China Business Council, whose address is 1701 Beijing West Road, Room 1301, Shanghai, China 200040.

January 9, 2002: I served as a presenter at an event entitled, "What the WTO Means For Other Regimes," sponsored by the International Trade Committee of the New York City Bar Association and held in New York, New York. My presentation focused on the strength of the WTO dispute resolution system. I have no notes, transcript, or recording. The address of the International Trade Committee is 42 West 44th Street, New York, NY 10036.

March 23, 2001: I participated in a panel discussion on "International and Cross Border Internet Law: Customs Law Governing Cross Border Consumer

Purchases.” sponsored by the New York State Bar Association. My comments reviewed the dutiability of Internet purchases under U.S. law. I have no notes, transcript, or recording. The address of the New York State Bar Association is One Elk Street, Albany, NY 12207.

November 9-10, 2000: I introduced speakers and moderated a panel discussion during a symposium sponsored by the Brooklyn Law School entitled “International Tax Policy in the New Millennium: The Pursuit of National Tax Policies in a Globalized Environment.” I have no notes, transcript, or recording. The address of the Brooklyn Law School is 250 Joralemon Street, Brooklyn, NY 11201.

December 7, 1999: I presented a draft of my paper, *Remnants of Recent Customs Litigation: Jurisdiction and Statutory Interpretation*, at the U.S. Court of International Trade 11th Judicial Conference. Paper supplied in response to Question 12a.

For several years, I served as a bar lecturer for Kaplan, Inc. on the topics of New York Practice Civil Rules and Administrative Law. Specifically, I have given twice-yearly live lectures on New York Practice Civil Rules since June 2008. I do not prepare my own outlines for these lectures, and have no transcript or recording. In 2008 and 2011, I recorded a lecture on the same topic for general bar takers. 2011 DVDs supplied. In 2010, I recorded two other lectures on the same topic – one for LLM students and one Q&A session. DVDs supplied. Finally, I prepared and taped a lecture on Administrative Law in 2010. Outline and DVD 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.

Andrew Keshner, *Brooklyn Dean Campaigns for Graduate Employment*, N.Y. L.J. (Oct. 16, 2012). Copy supplied.

IBL Roundtable: Inside Customs and Border Protection Today: Recent Developments, Issues, and Concerns, BROOKLYN LAWNOTES, Fall 2012. Copy supplied.

Benjamin Falber '12 Wins Two National Writing Competitions, Brooklyn Law School Website, News & Events (June 22, 2012). Copy supplied.

Erin Shimmeman '11 Places Second in Brown Award for Excellence in Legal Writing, Brooklyn Law School Website, News & Events (Nov. 11, 2011). Copy supplied.

Block Center Launches Innovative Trade Secrets Institute. BROOKLYN LAWNOTES, Fall 2011. Copy supplied.

The Tax Man: Professor Martin Hauptman '65 Retires. BROOKLYN LAWNOTES, Fall 2011. Copy supplied.

David A. Shapiro. *After Two Promising Candidates Walk Away, Committee Resumes Search for New Dean*. BLS ADVOCATE (Aug. 31, 2011). Copy supplied.

Brooklyn Law School Launches Trade Secrets Institute. Brooklyn Law School Website, News & Events (June 21, 2011). Copy supplied.

Conversation with Prof. Claire Kelly (June 9, 2011). Podcast available at: <http://blslibraryblog.blogspot.com/2011/06/episode-066-conversation-with-prof.html>.

Lindsey A. Zahn '12 Wins Trandafir International Business Writing Competition. Brooklyn Law School Website, News & Events (June 7, 2011). Copy supplied.

Fashion Week Comes to Brooklyn Law School. Brooklyn Law School Website, News & Events (Nov. 09, 2010) (edited version reprinted in BROOKLYN LAWNOTES, Spring 2011). Copy supplied.

Brooklyn Law School Community Mourns the Loss of Irina Shekhets '10. Brooklyn Law School Website, News & Events (Aug. 25, 2010). Copy supplied.

New York Civil Practice with Prof. Claire Kelly. Brooklyn Law School Website, Media Gallery (2009). Video available at: <http://www.brooklaw.edu/newsandevents/mediagallery/Videos/classroomvideos/kelly/kelly.aspx>.

Claire R. Kelly. BROOKLYN LAWNOTES, Winter 2007-08. Copy supplied.

Law School Honors Professors on Their Retirement: BLS Was Home to Professors Poser and Comerford for Decades. BROOKLYN LAWNOTES, Winter 2007-08. Copy supplied.

Claire R. Kelly. BROOKLYN LAWNOTES, Fall 2003. Copy supplied.

Claire R. Kelly. BROOKLYN LAWNOTES, Winter 1998. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

civil proceedings: _____%
 criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have not served as a judge.

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

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

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

I have never held political office or been a candidate or nominee for elective or 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.

In 2011, I helped to organize a fundraiser for Jonathan Sennett, a law school classmate who was running for District Attorney in Ulster County, New York. I called and emailed former classmates of ours to see if they would attend a benefit for Jon at a New York restaurant. I had no title and no other role in the campaign.

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

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

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

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

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

I 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.

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Acting Assistant Professor of Law (2000 – 2002)
Instructor of Law (1997 – 2000)
Adjunct Instructor of Law (Spring 1996, Spring 1997)

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

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

b. Describe:

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

When I started at Coudert Brothers as an associate in 1993, I worked in the Customs and International Trade Department of the New York firm. Throughout my four years as an associate, my practice had three components: a litigation component, an administrative adjudication component, and a client audit and counseling component. I conducted general research in connection with several litigation matters. I drafted motions and pleadings. I drafted administrative filings that included protests, applications for further review, requests for penalty mitigation, prior disclosures, and responses to requests for information. I also conducted internal audits of many companies to ascertain whether they were in compliance with customs, trade and other regulatory requirements and to identify potential duty savings opportunities.

As a consultant I worked on a case involving the Convention on the International Sale of Goods. I gave my opinion regarding whether the Convention by its terms applied to a sale of goods between two companies. I also consulted on a proceeding challenging the denial of certification under the Trade Adjustment Assistance Act. I gave my opinion regarding what was required under the Act in order to successfully claim benefits.

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

Throughout my career, my typical clients were importers and exporters of merchandise. Some clients were U.S.-owned companies and some were foreign-owned companies. These clients imported a variety of goods, from industrial goods used by other companies (i.e., ball bearings) to consumer goods (i.e., watch importers and textile and clothing importers). I specialized in customs and trade law. Most of my work focused on: classification of merchandise, country of origin marking laws, customs valuation of merchandise, admissibility of merchandise, agency contracts, trademark and copyright protection, illegal transshipment, drawback, quota, and visa restrictions, anti-boycott regulations, the interpretation of and compliance with bilateral and multilateral trade agreements, qualification for special tariff programs (Generalized System of Preferences, U.S./Canada, U.S./Israel, NAFTA, American Goods Returned), Federal Trade Commission import regulations, Fish & Wildlife regulations, FDA requirements, and the resolution of seizure, penalty, and liquidated damage cases.

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

About a third of my practice involved litigation. In addition, about a third of my practice involved informal adjudication before the United States Customs Service (the predecessor to Customs and Border Protection). This informal adjudication took the form of ruling requests, protests, applications for further review, prior disclosures, and administrative penalty proceedings.

I was rarely in court. My practice was mostly before the United States Court of International Trade, which has trials only infrequently. I was in court for a small number of motions. Much of the litigation in which I was involved was conducted on the pleadings and briefs without the need for court appearances.

- i. Indicate the percentage of your practice in:

1. federal courts:	50%
2. state courts of record:	0%
3. other courts:	0%
4. administrative agencies:	50%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	98%
2. criminal proceedings:	2%

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

I have not tried a case to verdict.

- i. What percentage of these trials were:
- | | |
|--------------|----|
| 1. jury: | 0% |
| 2. non-jury: | 0% |

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

I have 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. *U.S. Shoe Corp. v. United States*, 19 C.I.T. 1284 (1995), *aff'd*, 113 F.3d 1564 (Fed. Cir. 1997), *aff'd*, 523 U.S. 360 (1998).

Exporters of merchandise from the United States challenged the Harbor Maintenance Tax under the Export Clause of the United States Constitution. The Harbor Maintenance Tax imposed a charge on every shipper of merchandise into, out of or within U.S. harbors. The charge was based on a percentage of the value of the shipment. The court used its "test case" procedures to administer the case. Hundreds of exporters were represented by a number of firms. All of the counsel consulted on the main brief and *amici curiae* also filed briefs on behalf of their clients. Coudert Brothers represented over one hundred exporters. I worked on the administrative filings, and the briefs in the United States Court of International Trade and the Court of Appeals for the Federal Circuit. After I left practice for academia, the case went to the Supreme Court, which affirmed the findings of the lower courts that the charge did indeed violate the Export Clause. I worked on this case from 1994 to 1997. This case was heard by Judges DiCarlo, Restani, and Musgrave of the United States Court of International Trade.

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2. *Baxter Healthcare Corp. v. United States*, 20 C.I.T. 552 (1996)

This case addressed whether the challenges to the Harbor Maintenance Tax under the Export Clause of the United States Constitution should be heard via a class action vehicle or in the United States Court of International Trade under its test case procedures. Coudert Brothers represented over one hundred exporters in the HMT cases arguing for use of the court's test case procedures. I conducted research for the case. Ultimately, the court denied class certification and opted to use its test class procedures. I worked on this case from 1994 to 1997. This case was heard before Judge Restani of the United States Court of International Trade.

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3. *United States v. Nippon Miniature Bearing, Inc.*, 22 C.I.T. 147 (1998).

The United States Customs Service brought a penalty case against our client, Nippon Miniature Bearing, Inc. (NMB), pursuant to 19 U.S.C. § 1592. Customs claimed that NMB made material false statements in connection with its importation of ball bearings. NMB claimed that its statements were not false or misleading and also counterclaimed that Customs lacked authority to bring an action based on statements made to customers in catalogs and not in connection with the importation of the goods. NMB and Customs both moved for summary judgment on their respective claims. I worked on this case from 1996 to 1997. I conducted research in the case, met with the client and assisted in the drafting of the pleadings and briefs. The case was heard by Judge Pogue of the United States Court of International Trade. Judge Pogue denied both motions for summary judgment. It is my understanding that after I left the firm the case settled prior to trial.

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4. *Nippon Miniature Bearing, Inc. v. Wesie, et al.*, Docket No. 2:96-cv-08837-RSWL-AJW (C.D. Cal. 1997).

Our client, Nippon Miniature Bearing, Inc. (NMB) sued the United States Customs Service challenging the legality of Customs' seizures of its ball bearings and its imposition of administrative penalties. NMB argued that it never made any material misstatements to Customs and therefore Customs was without authority to seize its goods or impose administrative penalties. The district court dismissed NMB's case for lack of subject matter jurisdiction. I worked on this case in 1997. I conducted research in the case and assisted in the drafting of the pleadings and briefs. The case was heard before Judge Lew of the United States District Court for the Central District of California.

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5. *Rheem Closures PTE v. Amer. Flange & Mfg.*, Docket No. 2:94-cv-08130 (C.D. Cal. Dec. 2, 1994)

This litigation involved a motion for a preliminary injunction. We represented Rheem Closures PTE. The action, which involved a trademark dispute, was subsequently settled pursuant to a settlement agreement which contained a confidentiality clause so that I cannot discuss the details of the case beyond what is available in the public record. I worked on this case in 1994 to 1995. I performed legal research, assisted in drafting the

motion papers and participated in settlement negotiations. The case was heard by Judge Wilson of the United States District Court for the Central District of California.

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6. *Paradis v. Arave, Paradis v. Arave*, 20 F.3d 950 (9th Cir. 1994)

Paradis was on death row in Idaho and claimed he was denied effective assistance of counsel and that he was innocent. There were many motions in the case. I worked on research and motions in connection with his habeas petition, which was denied. I also worked on efforts to secure a pardon for Paradis. After I left Coudert, Paradis secured a pardon and was released from prison. I worked on this case from 1994 to 1997. The case was heard by Judge Alarcon and Judge Beezer of the U.S. Court of Appeals for the Ninth Circuit, and Judge Nielsen, of the Southern District of California, sitting by designation.

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7. *Semperit Industrial Products v. United States*, 855 F. Supp. 1292 (C.I.T. 1994).

The case involved the classification of imported conveyor belts. Our client protested Customs' classification based upon our argument that the putative tariff term did not extend to our product. I researched the tariff term under the Harmonized Tariff Schedule, as well as the predecessor statute to the Harmonized Tariff Schedule, the Tariff Schedule of the United States. The CIT ordered judgment in favor of our client. I worked on this case in 1994. It was heard before Judge Carman of the United States Court of International Trade.

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8. *Park B. Smith, Ltd. v. United States*, 25 C.I.T. 506 (2001), *aff'd in part and vacated in part*, 347 F.3d 922 (Fed. Cir. 2003).

This case involved the classification of a variety of products. Our client Park B. Smith argued that the products, which were decorated with various holiday themes (e.g., Santa Claus's face), were duty-free under a festive article provision of the Harmonized Tariff Schedule of the United States. Customs had classified the imports under their generic classification (e.g., placemats and tablecloths). I left the firm before the case proceeded to trial, but beginning in 1994 I researched all the relevant issues and filed the administrative protests and complaint in connection with many of the entries. Ultimately, the CIT found in favor of our client as to most of the products at issue. I worked on this case in from 1993 to 1997. The case was heard by Judge Goldberg of the United States Court of International Trade.

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9. *George E. Warren Corp. v. United States*, 201 F. Supp. 2d 1366 (C.I.T. 2002).

This case involved claims that our client, an importer of petroleum, could claim drawback on Harbor Maintenance Taxes and certain environmental taxes. I conducted research concerning the drawback laws and helped to file the complaint. Ultimately the plaintiff was unsuccessful in its suit. I worked on this case in 1997 when it was still an administrative matter. The case was heard by Judge Restani of the United States Court of International Trade.

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10. *Swisher Int'l. Inc. v. United States*, 25 C.I.T. 1355 (2001).

This case involved a claim that prejudgment interest was due on Harbor Maintenance Taxes that were found unconstitutional and subsequently refunded. Coudert Brothers represented hundreds of exporters in the HMT cases. I conducted research and assisted with pleadings. Ultimately, the court found that prejudgment interest was not authorized. I worked on this case from 1995 to 1997. This case was heard by Judge Restani of the United States Court of International Trade.

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McKenna Long & Aldridge LLP
1900 K Street, NW
Washington, DC 20006
(202) 496-7500

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440 Park Avenue, South, 9th Floor
New York, New York 10016
(212) 679-1500

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

While in practice I worked on a number of litigation matters that did not proceed to trial or proceeded to trial after I had left the firm. A number of these cases involved the classification of merchandise. I conducted extensive research regarding the meaning of various tariff terms and the application of the interpretive rules that would be applied by the Court of International Trade should the matter proceed to trial. I worked extensively

on a series of cases involving the Harbor Maintenance Tax imposed on imports, exports, and domestic shipments of merchandise moving through U.S. ports. I researched case law dealing with the Export Clause and the Import-Export Clause of the United States Constitution. I drafted administrative filings as well as pleadings and briefs in the Court of International Trade. I worked extensively on a penalty cases involving the importation of ball bearings and a related case challenging the authority of the Customs Service to take action against particular imports. I researched the law and participated in all aspects of these cases at the administrative level. I prepared pleadings and briefs for the Court of International Trade.

I was the primary associate responsible for several administrative audits of importers which involved the application of a number of important customs and trade law issues including the country of origin laws, valuation laws, NAFTA, anti-dumping laws, and the regulations involving the prior disclosure of customs violations.

While in academia I have worked extensively on the Trade Adjustment Assistance Project of the Customs and International Trade Bar Association. Over the past seven years I have followed the legislative changes and the case law involving nearly every issue confronted by the Court of International Trade and the Court of Appeals for the Federal Circuit in TAA cases. I have overseen the preparation of two handbooks detailing the filing of administrative proceedings and the case law from the Court of International Trade and the Court of Appeals for the Federal Circuit. I have written about and participated in a panel discussion concerning judicial review of customs cases in the Court of International Trade. I have helped prepare and participated in presentations co-sponsored by various bar associations related to customs and trade practitioners. I have also served as an Associate Director and a Co-Director of the Dennis J. Block Center for the Study of International Business Law. The Center organizes a wide range of international business law programs on subjects such as trade, finance, commercial law and intellectual property, for students, faculty and members of the practice community.

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.

Administrative Law

Brooklyn Law School, Summer 2000, Spring 2003, Spring 2004, Spring 2005, Spring 2006, Fall 2007, Fall 2008, Spring 2008, Spring 2011

This course addresses the nature and functioning of federal and state administrative agencies, its dominant theme being the relationship between the administrative process and the judicial system. Accordingly, the course covers such topics as: whether the judiciary can review administrative action, the scope of review, who can obtain it and against whom, and when review can be sought and granted. Also covered is an overview of the federal administrative system. Spring 2011 syllabus supplied.

Administrative Law Writing Practicum

Brooklyn Law School, Spring 2007

This course was an intensive writing course which allowed students from the administrative law class to draft legislation, notices of proposed rulemaking, comments to rulemaking and administrative petitions. Syllabus supplied.

Advanced Legal Writing: Scholarly Writing I

Brooklyn Law School, Fall 1999, Fall 2000

Advanced Legal Writing: Scholarly Writing II

Brooklyn Law School, Spring 2000, Spring 2001

This was a year-long course in which non-journal students learned how to write a student note and then wrote one. No syllabus available.

Civil Procedure I

Brooklyn Law School, Fall 2000

This course was the basic first year course on federal civil procedure covering subject matter jurisdiction, personal jurisdiction, provisional remedies, and motions. No syllabus available.

European Union Law

Brooklyn Law School, Spring 2012, Fall 2012

The course covers the fundamentals of the legal structure of the European Union, with particular emphasis on the law-creating pillar of the Union, the European Community. It also devotes some attention to the legal provisions for the creation and operation of the European common market. Fall 2012 syllabus supplied.

Fundamentals of Law Practice 1: Writing, Analysis, Research and Skills

Brooklyn Law School, Fall 1997, Fall 1998, Fall 1999

This course provided students with practical experience in writing and researching legal problems. The course focused on analytic skills necessary for a predictive memo: reading case law critically, identifying rules and synthesizing cases, interpreting statutes, drawing analogies between case law and a legal problem, identifying key facts, and organizing information effectively. No syllabus available.

Fundamentals of Law Practice 2: Writing, Analysis, Research and Skills.

Brooklyn Law School, Spring 1996, Spring 1997, Spring 1998, Spring 1999, Spring 2000

In the spring semester, students consolidated the writing, analytic and research skills they learned in the fall semester, but also learned the art of written and oral persuasion. The course focused on the trial motion, and students were introduced to the format and purpose of a trial motion and the rules defining the standards for those motions. They then wrote a summary judgment motion, critiqued each other's motions, and presented an oral argument. No syllabus available.

International Business Transactions

Brooklyn Law School, Fall 2001, Fall 2002, Fall 2003, Spring 2003, Fall 2004, Spring 2004, Spring 2005, Fall 2006, Spring 2007, Fall 2007, Spring 2007, Fall 2008, Spring 2008, Fall 2011

This course analyzes the international law, United States law, and selected foreign law issues regarding doing business abroad. Problems such as international sales contracts, choice of law, letters of credit, international transportation and insurance, customs law, tariffs, import relief, export licensing, international boycotts, foreign corrupt practices, antitrust, extraterritorial regulation, trade in services, joint ventures, licensing of intellectual property and foreign investment issues are discussed. Fall 2011 syllabus supplied.

International Sales

Summer 2007 University of Bologna (as part of a summer program with Brooklyn Law School)

This course covered the Convention on the International Sales of Goods including scope, applicability, offer, acceptance, damages and remedies. Syllabus supplied.

International Trade Law

Brooklyn Law School, Spring 2001, Summer 2001 and 2002 (University of Business and Economics in Beijing China as part of a Brooklyn Law School Summer Program), Fall 2005, Fall 2006, Fall 2009, Fall 2011, Spring 2011, Fall 2012

This course covers the regulation of international trade at the international level by organizations such as the World Trade Organization, at the regional level by such arrangements as the North American Free Trade Agreement, and at the national level by the United States and its principal trading partners – the European Union and Japan. Topics include the constitutional allocation of authority over international trade in the United States, customs law, non-tariff barriers, import relief measures, government procurement, trade in services, regional economic integration, and the need to examine trade issues in relation to such issues as the environment, protection of intellectual property rights, foreign investment, and competition law. Fall 2012 syllabus supplied.

New York Civil Practice

Brooklyn Law School, Fall 2002, Spring 2002, Fall 2003, Spring 2003, Fall 2004, Spring 2009, Fall 2009, Fall 2010

New York Civil Practice I

Brooklyn Law School, Fall 2001

New York Civil Practice II

Brooklyn Law School, Spring 2002

The practice in civil cases in New York under the Civil Practice Law and Rules and related statutes are studied, including the structure and jurisdiction of New York courts, the commencement of actions, joinder of parties and causes of action, res judicata, statutes of limitation, pleadings, motion practice, accelerated

judgment, disclosure devices, provisional remedies, trial practice, judgments and their enforcement, and special proceedings. Fall 2010 syllabus supplied.

Summer Legal Process

Brooklyn Law School, Summer 2003

This class was offered to entering students during the summer before their first year of law school to prepare them for the academic rigors of law school. The course covered case law development using problems that arise in torts and property. Syllabus supplied.

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

I have no sources of anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which I expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers.

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

I do not have any current plans; however, I greatly enjoy teaching law students and I would certainly consider teaching an evening class as an adjunct if the opportunity arose.

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 Statement

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 brother, Denis G. Kelly, is an attorney who practices in New York. His practice is almost exclusively in state court and to my knowledge he does not represent clients who would have matters before the United States Court of International Trade. If one of his clients did have a matter before the United States Court of International Trade, I would recuse myself. It is possible that a potential conflict of interest could arise with regard to a case involving a former client of Coudert Brothers on whose matters I had worked. If that were to happen I would recuse myself.

- 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 follow the Code of Conduct for United States Judges, as well as any other applicable ethical rules or statutes.

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

While I was in practice I worked on the case of Donald M. Paradis, a death row inmate in Idaho. I began working on the case when I was a summer associate in 1992 and continued when I was at Coudert Brothers full time for the entire time I was an associate. I estimate that I spent at least 100 hours annually on the case. I did research regarding various motions for ineffective assistance of counsel and requests for evidentiary hearings. I did research in connection with his habeas petition. I also spent a good deal of time working on research in connection with a pardon. After I left Coudert Brothers, Mr. Paradis was eventually pardoned by the State of Idaho.

Since I have been in academia, I have not represented clients pro bono but I have devoted considerable time to preparing materials that will assist other attorneys in Trade Adjustment Assistance (TAA) Act Cases. The TAA Act is a remedial statute meant to assist workers who have lost their jobs as a result of increased imports or shifts in production or services. Workers seeking benefits under the TAA seek them through the Labor and Agriculture Departments. If their petitions are denied they may appeal to the United States Court of International Trade. Attorneys admitted to the United States Court of International Trade represent these petitioners *pro bono*. Many attorneys handling these cases are unfamiliar with the administrative process and the CIT case law. Starting in 2004, I chaired the Customs and International Trade Bar Association Ad Hoc TAA Subcommittee. We produced a detailed primer on handling TAA cases, *Primer on the Trade Adjustment Assistance Program* (Customs & International Trade Bar Association, Subcommittee on Trade Adjustment Assistance 2005) and ran a CLE program along with

a representative from the Department of Labor to educate the legal community on handling these cases. We have just recently produced a new primer current as of 2012 (*2012 Primer on the Trade Adjustment Assistance Act*). On both primers I was the primary author although I received wonderful help from colleagues in the bar as well as law students, all of whom are listed as contributors. As a result of this work, over the years I have received numerous calls for advice and guidance from attorneys and one clinic (at Yale Law School) representing TAA petitioners. I would estimate that each year I spend at least 100 hours on the TAA project.

26. **Selection Process:**

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

I am a member of the Customs and International Trade Bar Association (CITBA) and a member of its Board. When I had heard that there were vacancies at the United States Court of International Trade, I forwarded my resume and an expression of interest to the Chair of the CITBA Judicial Selection Committee, Elizabeth Drake. She subsequently forwarded my name and resume to the Office of Legal Policy at the Department of Justice. Since July 3, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 7, 2012, I met with officials from the White House Counsel's office and the Department of Justice in Washington, DC. On November 14, 2012, 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.

AO 10
Rev. 1/2012

**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) Kelly, Clare R.	2. Court or Organization U.S. Court of International Trade	3. Date of Report 11/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Court of International Trade Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 11/14/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 10/31/2012
7. Chambers or Office Address Brooklyn Law School 250 Joralemon Street Brooklyn, NY 11201 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. Insert signature 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.	Vice President - Cooperative Board	10 Holder Apartments Corporation
2.	Board Member	Customs and International Trade Bar Association
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 9

Name of Person Reporting Kelly, Claire R.	Date of Report 11/14/2012
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	Brooklyn Law School-salary	\$162,231.40
2. 2010	Kaplan, Inc. - teaching	\$19,221.00
3. 2010	DiNicola Law Offices - consulting	\$500.00
4. 2011	Brooklyn Law School-salary	\$170,101.12
5. 2011	Kaplan, Inc. - teaching	\$12,460.00
6. 2012	Brooklyn Law School-salary	\$158,597.34
7. 2012	Kaplan, Inc. - teaching	\$5,250.00
8.		

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

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2011	Hewlett-Woodmere Union Free School District - salary
2. 2012	Hewlett-Woodmere Union Free School District - 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.				

FINANCIAL DISCLOSURE REPORT
Page 3 of 9

Name of Person Reporting	Date of Report
Kelly, Claire R.	11-14-2012

4. _____
5. _____

FINANCIAL DISCLOSURE REPORT
Page 4 of 9

Name of Person Reporting Kelly, Claire R.	Date of Report 11-14-2012
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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

NONE *(No reportable gifts.)*

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

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

NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE</u>	<u>CODE</u>
1.				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
Page 5 of 9

Name of Person Reporting Kelly, Claire R.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XF" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code I (A-H)	Type (e.g., div., rent, or other)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller if private transaction
1. Citibank - Cash Accounts	A	Interest	L	T					
2. Nassau Educators Federal Credit Union - Cash Account	A	Interest	J	F					
3. BROKERAGE ACCOUNT #1									
4. - Allianz NFJ Small Cap Value Fund	A	Dividend	J	T					
5. - American Century Heritage Fund		None	J	I					
6. - Davis New York Venture Fund	A	Dividend	K	F					
7. - American Funds Europacific Growth Fund	A	Dividend	K	T					
8. - Gabelli Value Fund	B	Dividend	J	T					
9. - American Funds Growth Fund of America	A	Dividend	K	F					
10. - Oppenheimer Limited Term New York Mini Fund	A	Dividend	J	F					
11. - American Funds Washington Mutual Investors	B	Dividend	K	T					
12. IRA # 91									
13. - Formanite Corp. Stock (common)		None	J	T					
14. - Revlon Inc. Stock (common)		None	K	T					
15. - American Funds American High Income Trust	B	Dividend	J	T					
16. - American Funds Bond Fund of America	B	Dividend	K	T					
17. - American Funds Europacific Growth Fund	A	Dividend	K	T					

1. Income Item Codes (See Columns B1 and D4)
 2. Value Codes (See Columns C1 and D3)
 3. Value Method Codes (See Column C2)

A - \$1,000 or less
 F - \$50,001 - \$100,000
 J - \$15,000 or less
 N - \$250,001 - \$500,000
 Q - Appraisal
 R - Other

B - \$1,001 - \$2,500
 G - \$100,001 - \$1,000,000
 K - \$15,001 - \$50,000
 O - \$500,001 - \$1,000,000
 S - Cost (Real Estate Only)
 V - Other

C - \$2,501 - \$5,000
 H - \$1,000,001 - \$5,000,000
 L - \$50,001 - \$100,000
 P - \$1,000,001 - \$5,000,000
 T - Assessment
 W - Estimated

D - \$5,001 - \$15,000
 I2 - More than \$5,000,000
 M - \$100,001 - \$250,000
 P2 - \$5,000,001 - \$25,000,000
 F - Cash Market

FINANCIAL DISCLOSURE REPORT
Page 6 of 9

Name of Person Reporting Kelly, Claire R.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-66 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		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-I)	Identity of buyer/seller (if private transaction)	
18. - Gabelli Value Fund	B	Dividend	J	T						
19. - American Funds - Growth Fund of America	A	Dividend	K	T						
20. - American Funds New Perspective Fund	A	Dividend	J	T						
21. - RS Small Cap Growth Fund		None	J	T						
22. - American Funds Washington Mutual Investors	B	Dividend	K	T						
23. COLLEGE FUND #1										
24. - JP Morgan NY 529 Moderate Growth Ages-Based		None	K	T						
25. IRA #2										
26. - Fidelity Contrafund	A	Dividend	L	T						
27. - Fidelity Export & Multinational Fund	A	Dividend	J	T						
28. - Fidelity Low Priced Stock Fund	D	Dividend	L	T						
29. - Fidelity Diversified International Fund	A	Dividend	K	T						
30. - Fidelity Pacific Basin Fund	A	Dividend	K	T						
31. BROKERAGE ACCOUNT #2										
32. - TD Ameritrade - Cash Account	A	Interest	J	T						
33. BROKERAGE ACCOUNT #3										
34. - TD Ameritrade - Cash Account	A	Interest	J	T						

1. Income Gain Codes (See Columns B1 and D14)
 A - \$1,000 or less
 F - \$50,001 - \$100,000
 J - \$15,000 or less
 N - \$250,001 - \$500,000
 S - \$25,000,001 - \$50,000,000
 2. Value Codes (See Columns C1 and D3)
 K - \$15,001 - \$50,000
 O - \$100,001 - \$1,000,000
 P - \$1,000,001 - \$5,000,000
 PS - More than \$50,000,000
 3. Value Method Codes (See Column C2)
 Q - Appraisal
 U - Book Value
 B - \$1,001 - \$2,500
 G - \$100,001 - \$1,000,000
 K - \$15,001 - \$50,000
 O - \$100,001 - \$1,000,000
 R - Cash/Real Estate Only
 V - Other
 C - \$2,501 - \$5,000
 H - \$1,000,001 - \$5,000,000
 L - \$50,001 - \$100,000
 P - \$1,000,001 - \$5,000,000
 PS - More than \$50,000,000
 S - Assessment
 W - Unstated
 D - \$5,001 - \$15,000
 I2 - More than \$5,000,000
 M - \$100,001 - \$250,000
 P2 - \$5,000,001 - \$25,000,000
 T - Cash Market
 L - \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT
Page 7 of 9

Name of Person Reporting Kelly, Claire R.	Date of Report 11/14/2012
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)

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

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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller of private transaction	
35. - Citigroup Inc Stock (common)	A	Dividend	J	T						
36. - General Electric Stock (common)	A	Dividend	K	T						
37. CUSTODIAL ACCOUNT / #1										
38. - General Electric Stock (common)	A	Dividend	J	T						
39. IRA - #3										
40. - CREF Stock		None	L	T						
41. - CREF Growth		None	L	T						
42. - CREF Equity Index		None	L	T						
43. - CREF Global Equities		None	M	T						
44. - TIAA Real Estate		None	K	T						
45. - CREF Bond Market		None	K	T						
46. Met Life - whole life / life insurance	A	Dividend	J	T						
47. Note - W J. Vellack - Jean		None	J	T						
48. Series EE US Savings Bonds		None	J	T						
49.										
50.										

1. Income/Gain Codes (See Columns B1 and D3)	A - \$1,000 or less F - \$50,001 - \$100,000 J - \$15,000 or less N - \$250,001 - \$500,000 P3 - \$25,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000	D - \$5,001 - \$15,000 I1 - \$15,000,001 - \$5,000,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	L - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q - Appraisal R - 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	Date of Report
Kelly, Claire R.	11/14/2012

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

FINANCIAL DISCLOSURE REPORT
Page 9 of 9

Name of Person Reporting	Date of Report
Kelly, Claire R.	11-14-2012

IX. CERTIFICATION.

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

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

Signature: *s/ Claire R. Kelly*

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		88	452	Notes payable to banks-secured			
U.S. Government securities - Series EE		2	599	Notes payable to banks-unsecured			
Listed securities - see schedule	1	001	124	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		5	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful		10	000	Real estate mortgages payable - see schedule		632	875
Real estate owned-add schedule	1	035	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		38	000				
Cash value-life insurance		6	267				
Other assets itemize:							
				Total liabilities		632	875
				Net Worth	1	553	568
Total Assets	2	186	442	Total liabilities and net worth	2	186	442
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

Allianz NFJ Small Cap Value Fund	\$ 6,778
American Century Heritage Fund	10,348
American Century International Value Fund	764
American Funds American High-Income Trust	13,387
American Funds Bond Fund of America	27,768
American Funds EuroPacific Growth Fund	36,868
American Funds Growth Fund of America	60,117
American Funds New Perspective Fund	10,083
American Funds Washington Mutual Investors Fund	68,801
Citigroup stock	5,609
CREF Bond Market Account	49,093
CREF Equity Index Account	90,456
CREF Global Equities Account	103,279
CREF Growth Account	96,878
CREF Stock Account	86,887
Davis New York Venture Fund	17,724
Fidelity Contrafund	54,674
Fidelity Diversified International Fund	31,023
Fidelity Export and Multinational Fund	2,608
Fidelity Low-Priced Stock Fund	56,299
Fidelity Pacific Basin Fund	33,208
Furmanite Corp. stock	1,010
Gabelli Value Fund	22,432
General Electric stock	26,646
JC Penney stock	192
JPMorgan 529 Moderate Growth Age-Based Portfolio	39,005
LSI Corp. stock	69
Oppenheimer Limited Term New York Municipal Fund	3,021
Revlon Inc. stock	21,745
RS Small Cap Growth Fund	4,472
TIAA Real Estate Account	19,882
Total Listed Securities	\$ 1,001,124

Real Estate Owned

Personal residence	\$ 650,000
Secondary residence	385,000
Total Real Estate Owned	\$ 1,035,000

Real Estate Mortgages Payable

Personal residence	\$ 423,722
Secondary residence	209,153
Total Real Estate Mortgages Payable	\$ 632,875

AFFIDAVIT

I, Claire R. Kelly, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

11/15/2012
(DATE)

Claire R Kelly
(NAME)

Frances J. Buonarota
(NOTARY)

FRANCES J. BUONAROTA
Notary Public, State of New York
No. 01BU5080231
Qualified in New York County
Commission Expires June 16, 2015



CLAIRE R. KELLY
PROFESSOR OF LAW

January 3, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on November 14, 2012 to be Judge for the United States Court of International Trade. Incorporating the additional information listed below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

Questions 6 and 11.

On November 29, 2012, I resigned as a member of the Board of Directors of 10 Holder Apartments Corporation.

Questions 6 and 9.

On November 21, 2012, I resigned my position as a member of the Board of Directors and Chair of the Liaison with Other Bar Associations Subcommittee of the Customs and International Trade Bar Association.

Question 12a

Are the Global Trading Rules Passé? Trade Anachronism and Its Discontents (with Sungjoon Cho) has been accepted for publication by the Virginia Journal of International Law.

Question 12d

Although I had previously requested any available recordings, I received audio recordings for the following events subsequent to the submission of my questionnaire. Copies supplied.

June 12, 2008: "The UCC and Beyond: Current Developments in Commercial Law." My comments addressed recent cases decided under the Convention on the International Sale of Goods. Power Point supplied.

December 15-17, 2005: I gave a presentation on "Current Issues in the International Sale of Goods: Excused Performance, The CISG and the UCC" during an American Law Institute course in Washington D.C. entitled "The New Uniform Commercial Code." My comments addressed recent cases decided under the Convention on the International Sale of Goods. Power Point supplied.

I am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

A handwritten signature in black ink that reads "Claire R. Kelly". The signature is written in a cursive style with a large, stylized initial "C".

Claire R. Kelly

Cc: The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2012

**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) Kelly, Claire R.	2. Court or Organization U.S. Court of International Trade	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Court of International Trade Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/14/2012
7. Chambers or Office Address Brooklyn Law School 250 Joralemon Street Brooklyn, NY 11201		
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. Insert signature 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. Vice President - Cooperative Board	10 Holder Apartments Corporation
2. Board Member	Customs and International Trade Bar Association
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 8

Name of Person Reporting Kelly, Claire R.	Date of Report 01/03/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1. 2011	Brooklyn Law School-salary	\$170,101.12
2. 2011	Kaplan, Inc. - teaching	\$12,460.00
3. 2012	Brooklyn Law School-salary	\$173,066.51
4. 2012	Kaplan, Inc. - teaching	\$5,250.00

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.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2012	Hewlett-Woodmere Union Free School District - salary
2.	
3.	
4.	

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

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

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 8

Name of Person Reporting Kelly, Claire R.	Date of Report 01/03/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting Kelly, Claire R.	Date of Report 01/03/2013
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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		C Gross value at end of reporting period			D Transactions during reporting period				
	(1) Amount	(2) Type (e.g., div., rent, or int.)	(1) Value	(2) Value	(3) Method	(1) Type (e.g., buy, sell, redemption)	(2) Date	(3) Value	(4) Gain	(5) Identity of buyer/seller (if private transaction)
	Code 1 (A-H)		Code 2 (J-P)	Code 3 (Q-W)			mm/dd/yy	Code 2 (J-P)	Code 1 (A-H)	
1. Citibank - Cash Accounts	A	Interest	L	T						
2. Nassau Educators Federal Credit Union - Cash Account	A	Interest	J	T						
3. BROKERAGE ACCOUNT #1										
4. - Allianz NFJ Small Cap Value Fund	A	Dividend	J	T						
5. - American Century Heritage Fund		None	J	T						
6. - Davis New York Venture Fund		None	K	T						
7. - American Funds Europacific Growth Fund		None	K	T						
8. - Gabelli Value Fund		None	J	T						
9. - American Funds Growth Fund of America		None	K	T						
10. - Oppenheimer Limited Term New York Muni Fund	A	Dividend	J	T						
11. - American Funds Washington Mutual Investors	A	Dividend	K	T						
12. - Raymond James Cash Account	A	Interest	J	T						
13. IRA / #1										
14. - Furnanite Corp. Stock (common)		None	J	T						
15. - Revlon Inc. Stock (common)		None	K	T						
16. - American Funds American High Income Trust	A	Dividend	J	T						
17. - American Funds Bond Fund of America	A	Dividend	K	T						

1. Income Gain Codes: A=\$1,000 or less; B=\$1,001 - \$2,500; C=\$2,501 - \$5,000; D=\$5,001 - \$15,000; E=\$15,001 - \$50,000
 (See Columns B1 and D4) F=\$50,001 - \$100,000; G=\$100,001 - \$1,000,000; H1=\$1,000,001 - \$5,000,000; H2=More than \$5,000,000
 2. Value Codes: J=\$15,000 or less; K=\$15,001 - \$50,000; L=\$50,001 - \$100,000; M=\$100,001 - \$250,000
 (See Columns C1 and D3) N=\$250,001 - \$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 5 of 8

Name of Person Reporting Kelly, Claire R.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. - American Funds Europacific Growth Fund		None	K	T					
19. - Gabelli Value Fund		None	J	T					
20. - American Funds - Growth Fund of America		None	K	T					
21. - American Funds New Perspective Fund		None	J	T					
22. - RS Small Cap Growth Fund		None	J	T					
23. - American Funds Washington Mutual Investors	A	Dividend	K	T					
24. COLLEGE FUND / #1									
25. - JP Morgan NY 529 Moderate Growth Age-Based		None	K	T					
26. IRA / #2									
27. - Fidelity Contrafund	A	Dividend	L	T					
28. - Fidelity Export & Multinational Fund	A	Dividend	J	T					
29. - Fidelity Low Priced Stock Fund	C	Dividend	L	T					
30. - Fidelity Diversified International Fund	A	Dividend	K	T					
31. - Fidelity Pacific Basin Fund	B	Dividend	K	T					
32. BROKERAGE ACCOUNT #2									
33. - TD Ameritrade - Cash Account	A	Interest	J	T					
34. BROKERAGE ACCOUNT #3									

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; F=\$50,001 - \$100,000; G=\$100,001 - \$1,000,000; H1=\$1,000,001 - \$5,000,000; H2=More than \$5,000,000; 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

2. Value Codes: J=\$15,000 or less; K=\$15,001 - \$50,000; L=\$50,001 - \$100,000; M=\$100,001 - \$250,000; N=\$250,001 - \$500,000; O=\$500,001 - \$1,000,000; P1=\$1,000,001 - \$5,000,000; P2=\$5,000,001 - \$25,000,000; P3=\$25,000,001 - \$50,000,000; P4=More than \$50,000,000

3. Value Method Codes: O=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 Kelly, Claire R.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
35. - TD Ameritrade - Cash Account	A	Interest	J	T						
36. - Citigroup Inc Stock (common)	A	Dividend	J	T						
37. - General Electric Stock (common)	A	Dividend	K	T						
38. CUSTODIAL ACCOUNT / #1										
39. - General Electric Stock (common)	A	Dividend	J	T						
40. IRA / #3										
41. - CREF Stock		None	L	T						
42. - CREF Growth		None	L	T						
43. - CREF Equity Index		None	L	T						
44. - CREF Global Equities		None	M	T						
45. - TIAA Real Estate		None	K	T						
46. - CREF Bond Market		None	K	T						
47. Met Life - whole life / life insurance	A	Dividend	J	T						
48. Note - W.J. Vollack - loan		None	J	T						
49. Series EE US Savings Bonds		None	J	T						
50.										
51.										

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
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FINANCIAL DISCLOSURE REPORT
Page 7 of 8

Name of Person Reporting	Date of Report
Kelly, Claire R.	01/03/2013

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 8

Name of Person Reporting	Date of Report
Kelly, Claire R.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/* **Claire R. Kelly**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
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U.S. Government securities - Series EE		2	633	Notes payable to banks-unsecured			
Listed securities -- see schedule	1	021	837	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		5	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful		10	000	Real estate mortgages payable -- see schedule		628	140
Real estate owned--add schedule	1	035	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts--itemize:			
Autos and other personal property		38	000				
Cash value-life insurance		6	550				
Other assets itemize:							
				Total liabilities		628	140
				Net Worth	1	573	393
Total Assets	2	201	553	Total liabilities and net worth	2	201	533
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, conaker 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

Allianz NFJ Small Cap Value Fund	\$ 6,837
American Century Heritage Fund	10,324
American Century International Value Fund	788
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American Funds EuroPacific Growth Fund	38,567
American Funds Growth Fund of America	61,555
American Funds New Perspective Fund	10,443
American Funds Washington Mutual Investors Fund	69,133
Citigroup stock	5,640
CREF Bond Market Account	49,673
CREF Equity Index Account	92,156
CREF Global Equities Account	106,681
CREF Growth Account	98,552
CREF Stock Account	89,438
Davis New York Venture Fund	17,842
Fidelity Contrafund	55,783
Fidelity Diversified International Fund	32,606
Fidelity Export and Multinational Fund	2,614
Fidelity Low-Priced Stock Fund	58,382
Fidelity Pacific Basin Fund	34,040
Furmanite Corp. stock	922
Gabelli Value Fund	22,746
General Electric stock	27,354
JC Penney stock	168
JPMorgan 529 Moderate Growth Age-Based Portfolio	39,728
LSI Corp. stock	68
Oppenheimer Limited Term New York Municipal Fund	3,039
Revlon Inc. stock	20,545
RS Small Cap Growth Fund	4,452
TIAA Real Estate Account	20,331
Total Listed Securities	<u>\$ 1,021,837</u>

Real Estate Owned

Personal residence	\$ 650,000
Secondary residence	385,000
Total Real Estate Owned	<u>\$ 1,035,000</u>

Real Estate Mortgages Payable

Personal residence	\$ 419,564
Secondary residence	208,576
Total Real Estate Mortgages Payable	<u>\$ 628,140</u>

Senator GRASSLEY. I will start questioning, and if my colleagues would not object if I take a little over five minutes so I can go through the whole panel, so I can go to another meeting? Okay.

I will start with Mr. Roman, and I think I have just a couple questions for you. In the case named *Matter of Darryl C*, you joined an opinion tossing out a weapons possession case against a 14-year-old boy stopped by the police and found to be carrying a semi-automatic pistol. It is my understanding that this took place during school hours in a high-crime area and that the police observed him holding a suspicious object.

So, just simply, I am asking you to explain your decision in the case.

Justice ROMAN. Thank you, Senator, for the question.

Senator, as an appellate court judge, my role in cases such as this—

Senator GRASSLEY. Is your microphone on, please? Is the red light on?

Justice ROMAN. There it is.

Senator GRASSLEY. Thank you.

Justice ROMAN. I am sorry, Senator. Thank you for the question. First, let me start off by saying that as a former New York City police officer and having conducted quite a number of search-and-seizures and stop-and-frisk, I am extremely sensitive to these types of cases. However, I recognize that my role as a judge is quite different than that of a police officer or even that of my role as a former prosecutor.

As an appellate court judge, my role was very simple. In cases such as this, we defer factual and credibility determinations to the hearing court, and then we determine whether or not the proper rule of law was applied.

In this particular case, deferring all credibility and factual determinations to the hearing officer, the family court judge, the family court judge just merely got—applied the wrong standard of law. In this instance, the family court judge ruled that, upon reaching into the juvenile's pocket and feeling or finding what he determined to be the handle of a gun, the police officer the had reasonable suspicion to believe that the juvenile had committed a crime. That, Senator, is merely a misapplication of the law, and there are references to the facts which are, I think, more particularized in the majority opinion which corresponds to the facts as articulated by the testifying officer. And for that basis, I ruled that it was a misapplication of law.

Senator GRASSLEY. Okay. My last question to you would be in regard to the Supreme Court addressing the Second Amendment in *Heller* and again in *McDonald*. What is your understanding of the rights afforded by the Second Amendment?

Justice ROMAN. It is a right that is afforded to all, Senator. I have not had an opportunity to study those cases. However, Senator, I am prepared to follow the rule as it is articulated by the Supreme Court decisions. As I have done in the past, I have always followed the prevailing rule, absent any personal feelings that I may have.

Senator GRASSLEY. Okay. Mr. Moore, a couple questions. In a statement to the U.S. Sentencing Commission public hearing, you

said that district judges should not base their sentencing decisions on personal sentencing philosophies or on their “personal views.”

Do you think that this is a problem in the federal courts? And what did you mean by this testimony?

Mr. MOORE. No, Senator, I do not believe that this is a problem. At the time I was testifying in front of the Sentencing Commission, I was doing so as a representative of the defender community and expressing the views of the defender community as a whole. My comment was simply to say that in these times, I did not believe that there was a reason to retreat from the advisory guideline system that we now have, largely because I believed that judges were being fair and impartial and applying the rule of law as handed down by the Supreme Court.

Senator GRASSLEY. Okay. Last question. Are there Sentencing Guidelines that you feel are unjust or should not be followed?

Mr. MOORE. Again, Senator, no is the simple answer.

Senator GRASSLEY. Okay.

Mr. MOORE. I have been an advocate, obviously, for the federal defenders. I have also served as an Assistant U.S. Attorney. I understand, or at least believe I understand, all sides of this issue. I bring no preconceived animus against any guideline or policy or position. All cases, if I am fortunate enough to be confirmed, that I would decide would be decided on the basis of the law and the facts.

And if I might take five seconds to correct an oversight, I want to acknowledge the kind words of both Senators Udall and Bennet in their introductions and hope that I can live up to their kind projections.

Thank you.

Senator GRASSLEY. Thank you.

Ms. Torres, just a couple questions. If confirmed, would you commit to protect an individual’s right to possess a firearm?

Justice TORRES. Yes.

Senator GRASSLEY. Number two, you were quoted in an article as saying, “I try to listen, not just to legal arguments made by counsel, but to people’s feelings.” If confirmed as a district court judge, what role would people’s feelings have in your rulings?

Justice TORRES. The role of a judge is to apply the law to the facts and in that way decide a case. In doing so, a judge must inform herself about the relative positions that are being put forth by the parties, and in some cases individuals express feelings about their positions, and I must understand everyone’s point of view in order to be fully informed. That is what I meant.

Senator GRASSLEY. Okay. Mr. Watson, I have a few more questions for you, not to find any fault with anything but to learn from your experience. And this comes from the fact that in 1986 I authored an update of the *Federal False Claims Act*, which reinvigorated the qui tam provisions and has helped recover more than \$30 billion. In fact, I think the Justice Department just announced that under the *False Claims Act of 1986*, it so far has brought in somewhere between \$32 billion and \$33 billion.

Your background materials indicate that as an Assistant U.S. Attorney, you have handled a number of these false claims cases, so

I have got five questions, but I am going to give them to you one at a time.

Could you please briefly describe your experience with the *False Claims Act* in general and specifically any work you did with qui tam whistleblowers?

Mr. WATSON. Certainly, Chairman. The qui tam provisions of the *False Claims Act* are perhaps the most significant tool in my estimation that the Department of Justice utilizes in its civil prosecutions. As you just mentioned, in fact, the Department of Justice—not just this past fiscal year but for the last several fiscal years that I am aware of—has collected more moneys through the *False Claims Act* provisions than the Justice Department as a whole expends, and that alone, I think, speaks volumes of its utility.

More particularly, Chairman, I have handled a number of *False Claims Act* cases, both inside and outside the qui tam provisions, both as an Assistant United States Attorney with the Northern District of California, San Francisco, as well as the District of Hawaii. I have handled cases recovering civil monetary recoveries against physicians, Medicaid/Medicare fraud cases exceeding seven figures on multiple occasions. Obviously I cannot comment on current qui tam cases that are under seal and pending in our district.

Senator GRASSLEY. Sure.

Mr. WATSON. But I have handled many, both in San Francisco as well as Honolulu, in the last five years.

Senator GRASSLEY. Okay. During the litigation of *False Claims Act* cases that you handled, did you ever prepare memoranda advocating for or against intervening in a case filed by a qui tam whistleblower?

Mr. WATSON. Yes.

Senator GRASSLEY. So you did do memoranda one way or the other?

Mr. WATSON. That is correct, Senator.

Senator GRASSLEY. Okay. In your experience, did you ever receive approval to intervene in a matter, only to have that approval reversed or subsequently withdrawn?

Mr. WATSON. No, I have not.

Senator GRASSLEY. Okay. If you were to receive such a subsequent declination, would you find that unusual?

Mr. WATSON. It would be unusual in that in my 10-year, 11-year career now with the United States Attorney's Office, it has never occurred.

Senator GRASSLEY. And do you have any views regarding—well, what is your view regarding the constitutionality of the *False Claims Act* and qui tam provisions?

Mr. WATSON. My view on it is that it is constitutional.

Senator GRASSLEY. Okay. Now, Ms. Kelly—and then I just have about the same number of questions, but based upon just getting information, not with any fault with your position, in 2003 you wrote an article analyzing the legality of Executive Order 13303, a 2003 Executive order issued by President Bush. Your analysis began with *Youngstown*, the famous steel seizure case, where the court described the limits of Executive power.

Justice Jackson described three areas or levels of Executive power:

First, the President's authority to act is strongest when he acts with the express authorization of Congress;

Second, the President's authority is in, according to Jackson's words, "a zone of twilight" when Congress is silent;

And, third, the President's authority is at its lowest ebb when the President takes measures "incompatible with the express or implied will of Congress."

So about three or four questions. Based on your understanding of *Youngstown*, if Congress expressly granted the President authority to take an action and the President did so, would it be correct to say that the President would be operating safely within his constitutional powers?

Ms. KELLY. Yes, it would.

Senator GRASSLEY. Second, based on *Youngstown*, is it your understanding that the President has the least constitutional authority when he acts against the express or implied will of Congress?

Ms. KELLY. Yes, Senator.

Senator GRASSLEY. Three, based on *Youngstown*, if Congress expressly prohibited an agency from taking a particular action and yet the President nonetheless issued an Executive order or Presidential memoranda directing the agency to perform that action, do you believe a court would view the Presidential Executive order as constitutionally suspect?

Ms. KELLY. Well, speaking in the abstract, that is what *Youngstown* seems to say. I mean, I would have to look at all the Supreme Court precedent, *Dames & Moore*, other precedent carefully and look at the act and how Congress had acted. But just based upon my article, what I wrote in the *Arizona Law Review*, that is the framework that *Youngstown* sets out.

Senator GRASSLEY. And then, last, if you were presiding over a case where the President acted in the lowest ebb of Presidential authority—and I am not talking about a specific case, just generally—what factors would you consider when analyzing whether the President's action was unconstitutional?

Ms. KELLY. Well, I would look to the *Youngstown* factors and any other Supreme Court factors that are laid out for that specific context—in the Law Review article, for example, the *Dames & Moore* case—but I would look to what the Congress had said on the matter specifically and what the Congress might have done implicitly in case there were any implied authorization, and I would look to inherent Presidential power.

Senator GRASSLEY. Okay.

Mr. Chairman, you see I went over a long time, but I asked permission of my colleagues before I started.

[Laughter.]

Senator GRASSLEY. You are not Mr. Coons. You are Mr. Blumenthal. So that is why—

Senator BLUMENTHAL [presiding]. I would have happily given you permission.

Senator GRASSLEY. Thank you. Thank you. I am done now.

Senator BLUMENTHAL. Thank you, Senator Grassley.

Senator GRASSLEY. Thank you all very much for your time.

Senator BLUMENTHAL. Thank you.

Unless my friend Senator Lee objects, I am going to call on the distinguished Senator from Hawaii to ask questions at this point, and then we will go to Senator Lee.

Senator HIRONO. Thank you, Mr. Chairman.

First of all, I wanted to commend all of our nominees. You have very interesting and extensive personal backgrounds as well as, of course, your legal backgrounds. So I just have a few questions.

Mr. Moore, you have had extensive experience in the federal courts. Can you discuss your views on what qualities the best judges possess?

Mr. MOORE. Thank you, Senator. I think the qualities include the ability to narrowly constrain oneself to the issue before the court; fairness, obviously; impartiality; the ability to be transparent in explaining one's decision and the rationale for it; adherence to the principles of stare decisis; a commitment to the work necessary; patience; listening to the analyst and the parties.

I may have missed some qualities, but I think that that generally would sum up what I believe would be the qualities that would make for a good judge.

Senator HIRONO. Would the other nominees be in agreement? If any of you have any other qualities that you would consider to be very important for someone sitting on the federal bench, please, federal court? Did you want to add something, Ms. Torres.

Justice TORRES. First, the ability to listen well; to be even-handed; to have the courage to do what you believe is right; to speak and write clearly so that people who are not lawyers understand what you are saying; to know the Rules of Evidence and to know the substantive law.

Justice ROMAN. I would only add that we not prejudge any particular case and not bring our own individual opinions into the matter.

Senator HIRONO. I have a question for you, Mr. Roman. You have served on the State court for 15 years. Can you tell us why you at this point would like to serve on the federal bench?

Justice ROMAN. Senator, thank you for the question. I have a long-lasting commitment to public service. I have been in public service for 30 years now, having started as a New York City police officer when I was only 21 years old. And now I currently serve as an appellate court judge in the New York State intermediate court, which is one of the most prestigious courts in the country.

That being said, I could think of no greater honor than to serve my country at the national level as an Article III judge.

Senator HIRONO. Thank you.

Ms. Torres, you mentioned being able to listen very carefully, so can you describe a time when your background or experience allowed you to approach a case in a different way than someone without your kind of background or experience might have looked at a case?

Justice TORRES. I have tried to approach all of my cases with impartiality and fairness, and my colleagues on the New York State bench, I believe, have also done the same. I do not know that there is anything special about my background that would make me more impartial or more fair.

Senator HIRONO. I am going to save the last question for the nominee from Hawaii. You practiced law in California for 15 years before moving back home, and we are glad to have you home. What motivated you to leave California and come back to Hawaii at that point in your career?

Mr. WATSON. After being away for so long, Senator Hirono, I could use one word to sum it up: family. The reason for my move—or our family's move—was the birth of our first son, Cade, in November 2006. We moved—I looked for a job immediately that month, recognizing that his grandparents on both mother's and father's side were in Hawaii, still are in Hawaii, make their homes in Hawaii, and have no intention of leaving Hawaii. And, quite frankly, neither do we. That was the reason for our decision to leave the Bay Area at that time.

Senator HIRONO. Thank you.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you.

Now Senator Lee.

Senator LEE. It is good to have all of you here, and it is also nice to have your families with you. Why don't we start with Judge Roman. I saw you brought Ariana but not Andres. Is that punishment—oh, he is here.

Justice ROMAN. They are both here.

Senator LEE. Okay. The soccer star is here. I just wanted to make sure that Andres was not getting left out or that he was not in trouble for something.

[Laughter.]

Senator LEE. So when you were in practice, your practice was primarily criminal. Is that right?

Justice ROMAN. I started as a prosecutor, as an assistant DA in Kings County, and as a special narcotics prosecutor.

Senator LEE. And then since you have been on the bench, you have been largely civil?

Justice ROMAN. Largely civil, but in the past three years as an appellate court judge, I have handled—in addition to complex civil matters, complex commercial matters—I have also handled criminal appeals.

Senator LEE. How did you find that transition from primarily criminal practice into handling civil matters routinely, particularly before you went on and started handling—

Justice ROMAN. It was quite an adventure, but it was the most amazing adventure for me. I love research and writing, and I love immersing myself in the subject matter. I love the law, and I was a quick learner, and I was fortunate enough to have clerked for two years for a judge who served in the civil court. I learned a great deal. And as a result, I must say I was very fortunate to have been able to serve shortly thereafter as a judge in the housing court part and then as a civil court judge and then as a Supreme Court judge.

Senator LEE. One of the differences that I see between a civil practice and a criminal practice is that there is really no analog to the motion for summary judgment in a criminal practices. You have got motions to dismiss. You have got evidentiary motions. But there really is not a summary judgment process, and the summary judgment motion plays a pretty prominent role in civil litigation.

I see a tendency on the part of some judges sometimes to handle summary judgment motions in one of two ways. In a close case, where they are not sure whether they have got a genuine issue of material fact, some judges might be inclined to cut the cards one way, saying let the plaintiff have his or her day in court. Others might be inclined to say, no, let us clear up my calendar and move it forward.

Overall, I think the pull for judges is more naturally in the direction in a close case of denying a motion for summary judgment because it produces less work for the judge in the short term. They do not have to write an opinion which might get overturned on appeal, and the case may well settle long before it gets to trial. So there is something of a perverse incentive on the part of a judge to deny a motion for summary judgment as long as it is close.

Do you have any thoughts on that matter?

Justice ROMAN. Senator, I have had the opportunity to resolve a host of dispositive motions, motions to dismiss, summary judgment motions, both at the trial court level and I have reviewed hundreds of dispositive motions at the appellate level. I believe it is each and every judge's responsibility to address each and every motion on its merits and let the chips fall where they may. I have never shied away from making a decision.

Senator LEE. There are things a judge can do to look out for this natural tendency to want to deny it rather than grant it?

Justice ROMAN. As I said, I have never shied away from a motion no matter how difficult it is, and if it warrants a certain conclusion, that is how I call them.

Senator LEE. Great.

Judge Torres, I wanted to talk to you about your career. You have had a very accomplished and interesting career, started out largely in real estate, as I understand it, and then you moved into the judicial system, serving as a law clerk in your State judicial system. Was that a difficult transition, moving from real estate into sort of a judge support model, and then into the role as a judge?

Justice TORRES. I did not find it difficult. I found it fascinating, exhilarating. I enjoyed very, very much the opportunity to get back to reading cases and writing decisions. It was a wonderful experience working for Judge Wilk.

Senator LEE. More interesting in some ways than writing up the land deals and things like that, I would imagine. I have never been a transactional lawyer, so I do not know, but I would imagine that would have been a fun transition to make.

Justice TORRES. Contracts and mortgages do have their level of interest.

[Laughter.]

Senator LEE. Well said. Very well said.

So your experience has been largely, perhaps entirely, within the State court system?

Justice TORRES. Yes.

Senator LEE. And now that you have been nominated to be a federal district judge, your role would be changing. Should you be confirmed, you will be transitioning into a completely new system with new rules. What do you think you can do to help prepare yourself

for that transition and help ease it and make sure that it goes out smoothly?

Justice TORRES. The first thing that I have done is that I have spoken to the three Southern District judges who went from the State to the federal bench to get their guidance about how they made that transition.

I have also taken advantage of the materials that are available through the Federal Judicial Center. I have been studying on my own the Federal Rules of Civil Procedure and the Criminal Procedure Rules, and I believe that I can get up to speed quickly. I am confident about that.

Senator LEE. Great. Thank you very much, and I see my time has expired, Mr. Chairman.

Senator COONS [presiding]. Thank you, Senator Lee.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Mr. Chairman, and thank you to each of our nominees for being here today. And I want to join in thanking your families and friends who have stood by you with such loyalty and support in a very arduous process. I note that each of you was nominated during the last session, and you have hung in there, so to speak, and braved this process a second time around. And I want to thank you for your endurance in this process and say very seriously it should not be the kind of marathon that it has been, in many instances, for many of our nominees because the demands of that process itself are in a sense discouraging and deterring to some of our most able people. And I am glad that some of our most able attorneys like yourselves are willing to continue and go through it and then to serve.

And I know, as a trial lawyer myself before having this job, that your service is supremely important to our Nation. As Judge Roman has remarked, an Article III judge for countless people across the country is the voice and face of justice. People tend to focus on the U.S. Supreme Court, but for many litigants, as you well know, the district court is the place where they go to seek justice. And so is the Court of International Trade.

So this is a really awesome and profoundly significant responsibility, and I thank you for devoting the work that you will do, the countless hours. People do not realize that the hours that you spend on the bench are a fraction of the time that you will devote to your opinions and research and evidentiary considerations. So I am here primarily to express my thanks.

Each of you is very well qualified, in my view, and I am delighted particularly that a number of you have law enforcement backgrounds. Judge Roman, Judge Torres, Mr. Watson, you have been prosecutors, and, Mr. Moore, as a public defender, you have very direct experience in the criminal justice system as well, and I think that kind of experience bodes very well for the kind of real-life experience that you will bring to the bench, which is so important.

Let me just ask a question, perhaps of Judge Roman and Judge Torres and Mr. Watson, about your experience as a prosecutor. Do you think that will inform or impact your judgments in sentencing, in criminal justice issues? Just as a personal or human impression, if you could answer.

Justice ROMAN. Senator, as I indicated before, I believe the role of a judge is to render decisions in a neutral fashion and not to do so—or not to impose one’s personal belief. I believe my experience just makes it—it gives me a different perspective on the law, and it brings a certain sensitivity. However, my role is very specific, and that is to apply the rule of law and only the rule of law on the particular facts. And that is what I have done in the past, and that is what I will continue to do.

Senator BLUMENTHAL. Thank you.

Judge Torres.

Justice TORRES. Senator Blumenthal, although I have handled criminal matters for 11 years, I did not serve as a prosecutor beforehand.

Senator BLUMENTHAL. But you have handled felony cases, serious criminal matters?

Justice TORRES. Oh, absolutely.

Senator BLUMENTHAL. And do you think that will impact your service as a district court judge?

Justice TORRES. Yes, that will inform me, as well as the amount of civil matters that I handled during my 20 years serving the New York State judiciary.

Senator BLUMENTHAL. Mr. Watson.

Mr. WATSON. Senator Blumenthal, I would echo the comments of Judge Roman ahead of me that this is the challenge that all of us who have litigated extensively throughout our careers face in the transition between being an advocate and what will hopefully be our upcoming roles as a jurist. We have that challenge of impartially applying the rule of law regardless of what we have done prior to now, and that includes my work with the United States Attorney’s Office as well as my work as an advocate in the private sector. So while that will be a challenge, it is one that I am confident I can meet.

Senator BLUMENTHAL. And, Mr. Moore, how do you think your service as a public defender will impact, if at all, your service as a judge?

Mr. MOORE. Senator, the parallel I would draw is this one: I have spent a number of years serving the government representing individuals without regard to public opinion as to the individuals’ conduct, without regard to what I might personally think about that individual’s defense or any of the other matters that are the topic of conversation between counsel and client.

I would think the ability to do that would hopefully serve me well as a judge, being able to apply the law, do what is best and right, without regard to public opinion, without regard to any personal beliefs that I may have with respect to the subject matter, to be neutral and to give the service every ounce of energy that I can.

Senator BLUMENTHAL. Thank you. Thank you all for your willingness to serve, and I look forward to considering your nominations. Thank you.

Senator COONS. Thank you, Senator Blumenthal.

Recognizing the press of time, I might ask one question that gives an opportunity for each of you to reflect on some of the bal-

ance between your previous service and the service on which we hope you are about to embark as judges in our federal system.

You have a very broad range of experiences. Whether in private practice, as an academic, as a prosecutor, as a judge, as a police officer, as someone who has been involved in advocacy or who has handled cases in the private sector on a pro bono basis, you have seen a very wide range of human experience and a very wide range of the roles that our courts can play and our judiciary can play in ensuring access to justice and ensuring a swift and legally sound decision.

So I would just ask if you might, each of you in turn, offer some comment about the most important lessons you have learned in the various legal positions you have held about how do we ensure fair access to justice in our legal system and how will you apply the lessons more broadly that you have learned in your service as attorneys in your role as a federal district court judge or a judge on the Court of International Trade, should you be confirmed. Judge Roman, if you might.

Justice Roman. Senator, one of the most important lessons that I have learned over the course of 30 years is to listen very carefully and to allow individuals who seek our services, whether it be as a police officer, as a prosecutor, or as a judge who seek our services, to listen very carefully and to give them their fair respect and to give them their day in court, regardless of how minor the claims may be or how serious the claims may be. So it is important to give everyone their fair day in court and to pay them respect.

Senator COONS. Thank you, Judge.

Mr. Moore.

Mr. MOORE. Senator, I have seen the courtroom from a lot of different perspectives.

Senator COONS. Yes, you have.

Mr. MOORE. What is clear to me is that, regardless of what perspective or what branch or segment of litigation appears in front of a judge, everyone wants the same thing. They want to be heard; they want to be listened to; they want to have their views considered; and they would like to have their issues resolved promptly.

I would hope and do commit that I would do everything in my power to be fair, to be prompt, to be decisive, to be transparent, and to give, if you would, a fair shake to everyone who appears—criminal, civil—and hopefully be able to increase the number of cases that can get through the Colorado system, give everyone their day in court, if they would, and their day out of court as well.

Senator COONS. It is my only hope that the Senate could begin to model that behavior of being fair, prompt, and decisive.

Judge Torres.

Justice TORRES. The most important lesson that I have learned is that a judge must adhere to the law and apply it impartially.

Senator COONS. Thank you.

Mr. Watson.

Mr. WATSON. Mr. Chairman, two things come to mind in listening to your question. The first is utilizing the tools of case management to allow litigants—primarily I am thinking civil litigants—access to the district court, and that, I think, require the use—and, fortunately, in Hawaii we have three excellent magistrate judges

that assist the district court judges in promptly resolving both our cases criminal and civil.

The second thing that comes to mind is adjudicating motions for appointment of counsel, and in the criminal context it is quite different, but in the civil context, there is a limited right to representation and appointment of outside counsel in certain cases. And that is my commitment to this Committee, is to promptly adjudicate those motions and looking for those cases. Usually those who are looking are pro se at that point in time, not looking to change counsel, and determining whether outside counsel can benefit litigants in the most need.

Senator COONS. Thank you, Mr. Watson.

Professor Kelly.

Ms. KELLY. Yes, Senator. The two things that I have found most important are fidelity to the rule of law and clarity in expressing the rule by the judges, both as a practitioner, as a teacher, and in my work with the Customs and International Trade Bar Association. If the courts are faithful to the rule of law, apply the law as written, and then explain it clearly, everyone benefits.

Senator COONS. Thank you.

Professor Kelly, you have both written and spoken about the need to expand the jurisdiction of the Court of International Trade. I would be interested if you might just expound on that briefly.

Ms. KELLY. Well, I have worked with the Customs and International Trade Bar Association over the years regarding their effort to expand the court's jurisdiction. There are some very specific proposals that I think are under consideration in a bill by the Congress. So there are some instances where perhaps a matter would be heard currently in district court, where there are very busy dockets, criminal dockets, and so one might have to go to district court to get a subpoena where it is involving an import matter. It would be just as easy and would seem to make a lot of sense to go to the Court of International Trade. So it is my understanding there is a very detailed proposal to better use the Court of International Trade.

Senator COONS. I have been interested in your trade secret work and in this jurisdictional work. I will not engage everyone on it now, but I would certainly be interested in following up with you on that.

Of the four of you who are nominated for Article III judgeships, for district court judgeships, you have in different roles at different times been engaged in reviewing the role of legislated standards, whether it is mandatory minimums or otherwise. And I would just be interested if our four district court nominees would, in turn, speak to the question of what is the role of the federal judiciary at the district court level in interpreting acts of the legislative body, particularly ones that might expand jurisdiction or might change rules of procedure, might impose mandatory minimums. How do you go about correctly interpreting and applying the will of the legislative branch as a member of the federal judiciary? If you might, Judge Roman.

Justice ROMAN. What I do each and every time that I look at a statute is to read the statute, give words their plain meaning, and then I would look to judicial precedents for guidance. If confirmed,

I would look to the Second Circuit and to the Supreme Court for guidance on those issues.

Senator COONS. Thank you, Your Honor.

Mr. Moore.

Mr. MOORE. I agree with what Judge Roman has to say. I would say that the paramount thing that one must do is to be true to the language of the enactment, whether it be statute or regulation, whatever is under consideration at that time. If its meaning is plain, then apply it. If there is some ambiguity, then one can begin to look to the precedent that applies, obviously the Supreme Court and, in my case, the Tenth Circuit Court of Appeals as well. And there are other rules of statutory interpretation that would come into play, but the critical aspect is to apply the words of the statute and give them their plain meaning, respect the intent of Congress as expressed in that plain meaning, and that is what I would hope to do.

Senator COONS. Thank you, Mr. Moore.

Judge Torres.

Justice TORRES. I concur with what Judge Roman and Mr. Moore stated.

Senator COONS. Mr. Watson.

Mr. WATSON. Well, at the end of the line, Senator, I really do not have any—I cannot create new rules of statutory interpretation than have already been expressed.

Senator COONS. Very wise answer.

[Laughter.]

Senator COONS. And a reminder to those of us who serve in Congress to draw what lines we draw with precision and clarity.

Senator HIRONO, do you have any additional questions?

Senator HIRONO. Thank you. With your indulgence, I started this hearing by thanking Chairman Leahy and Senator Grassley for scheduling this hearing so that we can fill these vacancies as promptly as possible and for including, of course, Mr. Watson from Hawaii in this panel and lineup.

I also want to thank the Chairman's staff and the Ranking Member's staff for making this hearing possible and all of the other hearings to follow. We could not do it without all of you. So thank you very much.

Senator COONS. Thank you, Senator Hirono.

I would like to ask unanimous consent to include letters of support in the record of this hearing. I understand there are 15 such letters for Justice Roman, and any other letters. So, without objection, if we might include letters of support in the record.

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

Senator COONS. There being no further questions from this panel, we will hold the record open for a week so that Members of the Committee who were not able to attend today due to conflicts in their schedules who wish to submit written questions have the opportunity to do so.

I would like to thank each of our five superbly qualified and determined and dedicated to public service nominees today and your families for your patience and your endurance and your dedication to improving the quality of justice in our country. I thank you for being here today and congratulate you on your nominations, and I

know I share the wish of all of you and your families that you might proceed swiftly to consideration by the full Senate.

Thank you. We stand in recess.

[Whereupon, at 11:18 a.m., the Committee was adjourned.]

Questions for the Record

Hearing: Nominations

January 23, 2013

Submitted by Senator Amy Klobuchar

Questions for all nominees:

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

**Senator Chuck Grassley
Questions for the Record**

**Nelson Stephan Román
Nominee, U.S. District Judge for the Southern District of New York**

1. Do you believe that diversity on the bench is important?
 - a. If so, why?
 - b. Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge's approach to interpreting text, or otherwise affect the judicial process?
 - c. What steps should a judge take to ensure personal views or background does not influence the outcome of the judicial process.
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

9. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
11. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance?
12. Please explain your understanding of the major differences you will encounter between being a state court judge and a United States District Judge. How will you prepare for and accomplish this transition?
13. What effect will your experience as an appellate judge have on your performance as a trial judge?
14. Please describe with particularity the process by which these questions were answered.
15. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Raymond P. Moore
Nominee, U.S. District Judge for the District of Colorado**

1. In sentencing, what consideration should a judge give to factors such as a defendant's race, age, marital status, or family status (whether or not the defendant has children)? Should two defendants who committed the same crime receive different sentences based on these factors?
2. As a federal judge, if confirmed, what factors would you weigh in considering alternative sentencing programs?
3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?
4. What is the most important attribute of a judge, and do you possess it?
5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
6. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?

11. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
13. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
14. Please describe with particularity the process by which these questions were answered.
15. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Analisa Torres
Nominee, U.S. District Judge for the Southern District of New York**

1. In your original statement, you specifically distinguished “legal arguments” and “people’s feelings” as two separate factors you consider as a judge. (Again, you said you listed “not just to legal arguments made by counsel, but to peoples’ feelings.”) Yet at your hearing, you indicated that these were not separate factors, but rather it is the party’s “feelings about their positions” that you consider. I find this response somewhat confusing and for that reason would like to learn a bit more about your views on this topic. How exactly does an individual demonstrate their feelings about their positions?
2. Assuming you can ascertain what an individuals’ feelings are, how does knowing an individual’s feelings about a case or decision before you better inform your decision?
3. Please provide several examples of cases you presided over in which learning the feelings of an individual affected by the case before you allowed you to reach a better decision in the outcome of the case?
4. Has knowing the feelings of an individual ever altered a decision you issued as a judge? If so, please provide the context of each case, what your ruling was, how knowledge of an individual’s feelings factored in to your decision-making process, as well as how the decision would have been different had you not learned about the individual’s feelings. If not, please describe the added-value of knowing the individual’s feelings if their feelings are not affecting the disposition of the case at hand.
5. Considering the above, I ask again, as a district court judge, what role would people’s feelings have in your rulings?
6. What is your view on the role of politics in the judicial decision-making process?
7. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?
8. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
9. What is the most important attribute of a judge, and do you possess it?

10. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
11. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
13. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
15. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?
16. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance?
19. Please explain your understanding of the major differences you will encounter between being a state court judge and a United States District Judge. How will you prepare for and accomplish this transition?
20. Please describe with particularity the process by which these questions were answered.
21. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Derrick Kahala Watson
Nominee, U.S. District Judge for the District of Hawaii**

1. It appears you have very limited experience with criminal law matters, focusing exclusively in civil matters. How will you get up to speed on criminal matters that will come before you, if confirmed?
2. How will you use the Sentencing Guidelines to guide you in criminal cases?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?
10. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?
11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

12. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
13. Please describe with particularity the process by which these questions were answered.
14. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Claire R. Kelly
Nominee, Judge of the United States Court of International Trade**

1. Please describe factors you will take into account as you consider the appropriate level of deference the Court of International Trade (CIT) should give to the U.S. International Trade Commission (ITC) on questions of statutory interpretation, particularly in appeals of determinations in antidumping and countervailing duty cases.
2. Please describe your view on the appropriate level of deference the CIT should give to the ITC on questions of fact when presented with “Substantial Evidence” questions and challenges. What will be your approach to such challenges, and what factors would you consider in such cases?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
9. What will be your approach in cases regulating commercial speech?

10. Please describe your understanding of the workload of the Court of International Trade. If confirmed, how do you intend to manage your caseload?
11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
12. You have spent your legal career as an advocate for your clients, or as an academic researching and teaching about the law. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
13. Please describe with particularity the process by which these questions were answered.
14. Do these answers reflect your true and personal views?

Questions for Judicial Nominees
Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Written Questions of Senator Jeff Flake

Nelson Stephen Roman

Nominee, to be United States District Judge for the Southern District of New York

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?
 - a. How does your record reflect these qualities?
2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?
 - a. If so, how would you determine the original meaning?
3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." In what ways do you believe our Constitution places limits on the government?
 - a. How does the Judicial Branch contribute to this system of checks and balances?
4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.
 - a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?
 - b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?
 - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Written Questions of Senator Jeff Flake

Raymond P. Moore

Nominee, to be United States District Judge for the District of Colorado

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?
 - a. How does your record reflect these qualities?
2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?
 - a. If so, how would you determine the original meaning?
3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." In what ways do you believe our Constitution places limits on the government?
 - a. How does the Judicial Branch contribute to this system of checks and balances?
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 - b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?
 - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Written Questions of Senator Jeff Flake

Analisa Torres

Nominee, to be United States District Judge for the Southern District of New York

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?
 - a. How does your record reflect these qualities?
2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?
 - a. If so, how would you determine the original meaning?
3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." In what ways do you believe our Constitution places limits on the government?
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 - a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?
 - b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?
 - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Written Questions of Senator Jeff Flake

Derrick Kahala Watson

Nominee, to be United States District Judge for the District of Hawaii

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?
 - a. How does your record reflect these qualities?
2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?
 - a. If so, how would you determine the original meaning?
3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." In what ways do you believe our Constitution places limits on the government?
 - a. How does the Judicial Branch contribute to this system of checks and balances?
4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.
 - a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?
 - b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?
 - c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?
5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Response of Claire R. Kelly
Nominee to be a Judge of the United States Court of International Trade
to the Written Questions of Senator Chuck Grassley

- 1. Please describe factors you will take into account as you consider the appropriate level of deference the Court of International Trade (CIT) should give to the U.S. International Trade Commission (ITC) on questions of statutory interpretation, particularly in appeals of determinations in antidumping and countervailing duty cases.**

Response: If I were fortunate enough to be confirmed I would review statutory interpretation of the International Trade Commission using *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., et al.*, 467 U.S. 837 (1984). First, I would look to see if the statute was ambiguous. If the meaning was clear, that would end the matter as I would adopt the plain meaning as expressed by Congress in the statute. If the statute was ambiguous, I would defer to the reasonable interpretation of the agency. I would follow the precedent of the Court of Appeals for the Federal Circuit and the United States Supreme Court when determining whether the agency interpretation was a reasonable one.

- 2. Please describe your view on the appropriate level of deference the CIT should give to the ITC on questions of fact when presented with “Substantial Evidence” questions and challenges. What will be your approach to such challenges, and what factors would you consider in such cases?**

Response: I would defer to the ITC when its decisions were supported by substantial evidence. I would follow the precedent of the Court of Appeals for the Federal Circuit and the United States Supreme Court and I would look to see whether the agency determination was based upon “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).

- 3. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is to be faithful to the rule of law and follow precedent. I do possess these attributes. As a practitioner and academic I have striven to conduct careful and intellectually honest analysis that respects stare decisis and the rule of law.

- 4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must have an even temperament and treat all who come before the court with respect. A judge should be patient, dignified and courteous. As a teacher for fifteen years (and before that as a practitioner) I have behaved according to this standard in my classroom and I would continue to do so in a courtroom if I were fortunate enough to be confirmed.

5. **In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would look to the words of the statute to try to discern the meaning of the words from the plain text. If the meaning was not clear I would be guided by the canons of construction, any binding precedent, and if there were no binding precedent any analogous precedent. The United States Court of International Trade reviews agency decisions, and therefore, I would follow the appropriate standard of review of agency action.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would follow the precedent set by the Supreme Court and the Court of Appeals.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: If a court can avoid the constitutional question, it should. If it cannot avoid the question then the court should only declare a statute enacted by Congress unconstitutional if in enacting the statute Congress clearly exceeded its authority granted by the Constitution.

9. **What will be your approach in cases regulating commercial speech?**

Response: Commercial speech is protected speech and I would follow the precedent of the Supreme Court such as *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980) and all other precedent of the Supreme Court and the Court of Appeals for the Federal Circuit.

10. Please describe your understanding of the workload of the Court of International Trade. If confirmed, how do you intend to manage your caseload?

Response: The Court of International Trade decides about 150 cases per year. Many of these cases are trade remedies cases or agency determinations with respect to classification, valuation and country of origin of imported merchandise. These cases can be extremely complex. I would take an active role in managing my caseload. I would consult with the Chief Judge regarding the best means of managing my caseload and I would make certain that the cases moved forward at an appropriate pace. I would set reasonable deadlines and ask that the parties follow them. I would set an example to others through my own hard work and diligence.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges have an obligation to control the pace and conduct of litigation. I would consult with the Chief Judge at the Court of International Trade for any advice on how to do this. I expect that I would establish scheduling orders and work with the parties to make certain that we stayed on schedule.

12. You have spent your legal career as an advocate for your clients, or as an academic researching and teaching about the law. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: A large part of my job now is challenging students to think like a lawyer, and to work carefully through cases and doctrine so that they can be effective advocates for their clients. I believe that there are many attributes that benefit one in the role of teacher or academic that will benefit me in a judicial role if I were confirmed. These attributes include careful research, clarity of expression, and above all, respect for the rule of law. I also think that one cannot walk into a classroom, begin to write a law review article, or represent a client unless one has thoroughly familiarized oneself with the facts of the case, the law, and the arguments on each side. I approached my role as an advocate and as an academic with these principles in mind and I would do so again as a judge if I were confirmed. I expect that

the most difficult part of my transition will be leaving an atmosphere where I challenge students to carefully work through cases and doctrine and engage in that process with them, as that is something I have truly enjoyed and I will miss.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on January 30, 2013. I forwarded them to the Department of Justice on January 31, 2013. I reviewed them with a representative from the Department of Justice. Afterwards I finalized my responses and authorized the Department of Justice to submit them to the Senate Judiciary Committee.

14. Do these answers reflect your true and personal views?

Response: Yes.

Response of Claire R. Kelly
Nominee to be a Judge of the United States Court of International Trade
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My philosophy is that judges should act with modesty and moderation and should decide only the case before them by applying the applicable law. They should be bound by the relevant statutes and any applicable precedent and they should respect the given standard of review of agency action. Finally, they should articulate their analysis clearly.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I am certain that I can be fair to all litigants regardless of their circumstances or beliefs. I am absolutely committed to the rule of law. As a teacher and an academic I have committed myself to intellectual honesty, the fair consideration of all arguments, having an open mind and treating everyone equally.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: In my opinion all judges are bound by the doctrine of stare decisis. The obligation is fundamental to our legal system. District Court judges are strictly bound while the Court of Appeals may, in very limited circumstances, review its own precedent. The Court of Appeals is strictly bound to follow Supreme Court precedent.

Response of Derrick Kahala Watson
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is characterized by the timely and fair resolution of all cases, accomplished after deliberate consideration of the relevant authorities and precedent. It also calls for patience and respect for all counsel and litigants, whether or not represented. A federal judge in our system of government must similarly respect the decisions of the executive and legislative branches and acknowledge the judiciary's limited role in reviewing those decisions.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: Throughout my twenty-two year career as an Assistant United States Attorney and private practice attorney, I have always advanced the interests of clients based on the facts and applicable law. Clients' political beliefs have never been a factor or even been known to me, and I have represented plaintiffs and defendants alike. While in private practice, I devoted significant time to the representation of pro bono clients who would not have otherwise been able to afford the services of my law firm. If confirmed, I intend to continue to apply such principles of fairness and equity to all those who appear before me.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The public at large is entitled to predictability, fairness and reliability from its federal courts. The principle of stare decisis is critical to meeting these expectations and should be applied wherever possible by every federal district court.

**Response of Derrick Kahala Watson
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Chuck Grassley**

1. **It appears you have very limited experience with criminal law matters, focusing exclusively in civil matters. How will you get up to speed on criminal matters that will come before you, if confirmed?**

Response: I have already started to observe the criminal calendars of the District of Hawaii, to consult with criminal Assistant United States Attorneys within my office and to read the substantive materials provided to nominees by the Federal Judicial Center. If confirmed, I will reach out to the federal bench within the District of Hawaii for guidance on particular and common criminal law issues and continue to study criminal law and procedure as best I can to prepare for taking the bench myself.

2. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

Response: The Sentencing Guidelines, calculations based on the guidelines and departure justifications, if any, are among those issues which I will have to study in earnest. I generally intend to give the Guidelines great weight.

3. **What is the most important attribute of a judge, and do you possess it?**

Response: While many qualities are important, the most important attribute of a judge is to apply the law fairly to all parties, whether or not represented by counsel. I believe that I possess this ability.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A federal district judge should be patient, considerate, respectful and decisive. I believe I possess each of these traits.

5. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes, I would follow the controlling precedent from higher courts, even if I personally disagreed with those decisions.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the interpretation of a statute was a matter of first impression, I would first look to the plain language of the statute itself to determine its meaning. If the plain language was unambiguous, no further search is necessary. If the language, however, was ambiguous, and there was no controlling precedent from the United States Supreme Court or Ninth Circuit Court of Appeals, principles of statutory construction should be employed, potentially including reference to legislative history. If the issue of first impression did not involve a statute and was again without controlling precedent, guidance may be found in the non-controlling case law of other jurisdictions.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would follow and apply the precedent of the United States Supreme Court and the Ninth Circuit Court of Appeals, even if I personally believed that such precedent had been wrongly decided.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes should not be held unconstitutional unless they clearly violate the Constitution, based on United States Supreme Court and Ninth Circuit Court of Appeals precedent, and cannot be reasonably interpreted as constitutional, or are enacted without authority.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No, it is not proper to rely on foreign law or the world community in determining the meaning of the Constitution.

10. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I intend to manage a heavy docket in a number of ways, including promptly adjudicating dispositive motions, aggressively calendaring pretrial and trial dates and only continuing such dates when necessary, utilizing the case management, discovery and alternative dispute resolution services of the District of Hawaii’s three

excellent federal magistrate judges, and encouraging the use of private mediation and arbitration in appropriate cases.

- 11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Responsible judges play a significant role in the pace and conduct of litigation. Together with federal magistrate judges, federal district judges should explore the possibility of early settlement, set and continually monitor an aggressive pretrial and trial schedule that does not allow for date slippage, absent good cause, and hear and decide dispositive motions at the earliest opportunity.

- 12. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I intend to reach decisions after listening to, weighing, and testing the parties' written and oral submissions, conducting independent research of the relevant law and employing court-appointed experts where appropriate. I anticipate that learning the criminal law and procedure will be the most difficult aspect of my transition. I intend to work hard to overcome this challenge and have already started on this path by observing the criminal calendars of the District of Hawaii, speaking with criminal Assistant United States Attorneys within my office and reading the substantive materials provided to nominees by the Federal Judicial Center.

- 13. Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on January 30, 2013 and personally drafted my answers that same day. I reviewed my answers with an official from the United States Department of Justice before submitting them to the Committee.

- 14. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Derrick Kahala Watson
Nominee to be United States District Judge for the District of Hawaii
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My philosophical approach would emphasize judicial restraint and adherence to precedent. I am not, however, a scholar of the Supreme Court and am not familiar enough with the philosophies of each of the individual justices of these Courts to identify a particular justice whose philosophy is most analogous to my own.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes, originalism and, more specifically, original meaning should be considered through historical scholarship and inquiry obtained from the parties, the court and/or amici.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: The role of a federal district court judge is to apply controlling precedent where it exists, not to seek to overrule that precedent even if the judge disagrees with it. This is the role and approach I intend to follow.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: It would be inappropriate for a prospective nominee to express agreement or disagreement with binding precedent of the Supreme Court. If confirmed, I would be bound to follow Supreme Court precedent without regard to whatever personal views I might have regarding that precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has identified three categories of activity that Congress may regulate under its Commerce Clause authority: 1) "the use of the channels of interstate commerce;" 2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may only come from intrastate activities;" and 3) "activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). Under this formulation, it is possible that Congress' Commerce Clause power, together with its Necessary and Proper Clause power, extends to non-economic activity.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The judicial framework for evaluating the validity of an executive order is set forth in *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 635-638 (1952) (Jackson, J. concurring). The focus of such a review includes whether the order was issued pursuant to an express or implied Congressional authorization, whether the order is closely related to that authorization, and whether the subject matter of the order concerns an area traditionally entrusted to the President (e.g. foreign affairs, national security).

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: Fundamental rights subject to substantive due process review include those fundamental rights and liberties that are deeply rooted in the Nation's history and traditions, such as the right to marry, to have children, to bodily integrity and to privacy. See *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Suspect classifications entitled to heightened scrutiny under the Equal Protection Clause include those based on race, national origin, gender, alienage and legitimacy.

Do you "expect that [25] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a federal district judge, I would be bound to apply all controlling precedent regarding the use of affirmative action in public higher education, regardless of any personal expectations that I might have.

Written Questions of Senator Jeff Flake

Derrick Kahala Watson

Nominee, to be United States District Judge for the District of Hawaii

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?

Response: All good judges should be patient, fair, courteous, respectful, even-tempered, open-minded, decisive, studious and inquisitive.

a. How does your record reflect these qualities?

Response: Over the course of my twenty-two years as an Assistant United States Attorney and private practice attorney, I believe my clients, supervisors, former partners and even adversaries would attest that I possess each of these traits.

2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?

Response: Yes, original meaning should be considered.

a. If so, how would you determine the original meaning?

Response: As exemplified by *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008), there is no substitute for evaluating original meaning through historical scholarship and inquiry.

3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." In what ways do you believe our Constitution places limits on the government?

Response: The Constitution, including through application of the Fourteenth Amendment, restricts governmental interference most notably in the area of individual rights – including through First Amendment protections regarding expression and association, Second Amendment protections regarding gun rights, Fourth Amendment protections regarding unreasonable searches and seizures, and Fifth Amendment guarantees of due process and freedom from self-incrimination.

The Constitution also limits governmental authority by dispersing power among different branches of government, by dispersing power within branches of government (*e.g.* through different legislative bodies with different compositions and electoral rules), and by dispersing power at the federal, state and local levels, in part through the Tenth Amendment.

- a. **How does the Judicial Branch contribute to this system of checks and balances?**

Response: The Judicial Branch contributes to checks and balances principally through the doctrine of judicial review. *See Marbury v. Madison*, 5 U.S. 137 (1803). Once confirmed for lifetime tenure, Article III judges are generally free from interference by the legislative or executive branches.

4. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: No, I do not agree. While *Lopez* and *Morrison* marked the first time in decades that the Court had rejected federal legislation on Commerce Clause grounds, the analytic framework employed by the Court (*e.g.* whether the activity "substantially affects interstate commerce," etc.) did not change from that collectively employed by its predecessors. In each case, the federal legislation at issue was struck down principally because there was no economic link or limit, and the area subject to regulation was one traditionally reserved to local government.

- b. **In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: The Supreme Court's articulation of Congress' Commerce Clause power in cases such as *Lopez* dictates the parameters within which the federal government must operate in order for its legislation to be constitutionally valid. More specifically, Congress must tie its actions to the protection of the instrumentalities of interstate commerce, the channels of interstate commerce or to activities substantially affecting interstate commerce. Where it does not do so, its legislation will be found invalid, as occurred in *Lopez* and *Morrison*.

- c. **Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

Response: No. Though I am not aware of a case that specifically addresses it, the mere exchange of federal currency, without more, does not subject that exchange to federal Commerce Clause legislation.

5. **What powers do you believe the 10th Amendment guarantees to the state? Please be specific.**

Response: The Tenth Amendment generally reserves to the States all powers not expressly delegated by the Constitution to the United States. In recent years, the Supreme Court has applied the Tenth Amendment to protect states' rights to be free from a mandatory federal hazardous waste management scheme (*New York v. United States*, 112 S.Ct. 2408 (1992)) and to be free from federal "commandeering" of state and local officials in the execution of a federal regulatory scheme (*Printz v. United States*, 521 U.S. 898 (1997)).

Response of Analisa Torres**Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is to adhere to the law and apply it impartially. I share Chief Justice Marshall's view on the role of the judge in our constitutional system, as articulated in *Marbury v. Madison*: the "province and duty of the Judicial Department is to say what the law is."

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: During my 13 years as a New York State judge, I have treated all litigants with fairness and impartiality, without regard to their political beliefs, their level of wealth or their status as a plaintiff (or, in criminal cases, the prosecution) or a defendant. If confirmed, I would employ the same approach.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The doctrine of stare decisis is a cornerstone of American jurisprudence. Supreme Court precedent is binding on all lower federal courts. Circuit court precedent binds the district courts within a particular circuit. If confirmed, I would faithfully apply controlling Supreme Court and Second Circuit authority. A three-judge circuit court panel may not overturn circuit precedent. That may be accomplished only through the *en banc* process, when the circuit is considering a question of "exceptional importance" (see, Fed. R. App. P. 35[a]) or when one panel decision conflicts with another.

Response of Analisa Torres
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Chuck Grassley

1. **In your original statement, you specifically distinguished “legal arguments” and “people’s feelings” as two separate factors you consider as a judge. (Again, you said you listed “not just to legal arguments made by counsel, but to peoples’ feelings.”) Yet at your hearing, you indicated that these were not separate factors, but rather it is the party’s “feelings about their positions” that you consider. I find this response somewhat confusing and for that reason would like to learn a bit more about your views on this topic. How exactly does an individual demonstrate their feelings about their positions?**

Response: I appreciate the opportunity to clarify my views on this subject. I would like to make clear that as a judge my job is to discern the law and apply it to the facts before me in a neutral and impartial way. The feelings of the litigants before me have no bearing on my determination of the governing law that I apply to a particular case. However, there are certain circumstances in which the law requires me to consider the feelings of those who come before me. For example, as a state trial judge who presides over numerous felony cases, one area in which people’s feelings figure into my decision-making is sentencing. In determining the penalty a defendant must face, I consider victim impact statements—feelings expressed by the victim while describing the effect of the crime on his or her life. In addition, before imposing sentence, I afford the defendant an opportunity to make a statement. I consider whether the defendant takes responsibility for his actions and expresses remorse for the crime.

2. **Assuming you can ascertain what an individuals’ feelings are, how does knowing an individual’s feelings about a case or decision before you better inform your decision?**

Response: In most cases, the feelings of the parties have no bearing on my decision. As explained above, however, there are some circumstances in which they can be relevant to the correct disposition of a case under the law. For example, the degree of suffering of a victim and the absence of remorse on the part of the defendant may be aggravating factors in determining the length of the sentence.

3. **Please provide several examples of cases you presided over in which learning the feelings of an individual affected by the case before you allowed you to reach a better decision in the outcome of the case?**

Response: I imposed the maximum sentence for robbery on a defendant who broke the collarbone and arm of an 85-year-old woman and stole the proceeds of the social security check she had just cashed, based, in part, on her victim impact statement in which she described her loss of independence as a result of the injuries. Another defendant’s statement that he and his seven-year-old female rape victim were “in

love” and that he “did not hurt her” was a factor I considered in imposing the maximum sentence. The statement of a victim of domestic violence who described the hardship she would face if her husband were incarcerated, contributed to my decision to impose a six month sentence of weekend jail, so that the defendant could keep his job and support his family. In each of these cases, I imposed the sentence that the law required, but my understanding of the impact of the defendants’ crimes and their degree of remorse helped me determine what sentence the law required.

4. **Has knowing the feelings of an individual ever altered a decision you issued as a judge? If so, please provide the context of each case, what your ruling was, how knowledge of an individual’s feelings factored in to your decision-making process, as well as how the decision would have been different had you not learned about the individual’s feelings. If not, please describe the added-value of knowing the individual’s feelings if their feelings are not affecting the disposition of the case at hand.**

Response: Please see my answers to questions 1, 2, and 3.

5. **Considering the above, I ask again, as a district court judge, what role would people’s feelings have in your rulings?**

Response: If confirmed, I would consider people’s feelings only to the extent that they directly bear on the proper disposition of the case under the governing law.

6. **What is your view on the role of politics in the judicial decision-making process?**

Response: Politics must play no role in judicial decision-making.

7. **Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Yes.

8. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: For thirteen years, as a New York State judge, I have handled my cases in a fair and impartial manner, without regard to my personal views. If confirmed, I would do the same.

9. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is the willingness to adhere to the law and apply it impartially. I believe I have demonstrated this attribute during my tenure as a New York State judge.

- 10. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that a judge must listen carefully to all litigants and treat them with politeness and patience. I believe that I meet that standard.

- 11. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- 12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the case involves statutory interpretation, I would start with the plain language of the statute. If the statute is unambiguous, I would apply it as written. If the statute is ambiguous, I would look to the legislative history to try to determine the legislative intent. I would consider the most closely analogous Supreme Court and Second Circuit precedent. If the case involves interpretation of the U.S. Constitution, I would start with the text of the provision and consider the most closely analogous Supreme Court and Second Circuit precedent.

- 13. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: The federal district court is bound by Supreme Court and Court of Appeals precedent. I would apply controlling precedent, whether I agreed with it or not.

- 14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Acts of Congress enjoy a presumption of constitutionality. The federal courts may declare a statute enacted by Congress unconstitutional only where Congress has exceeded its authority or where the act violates the Constitution.

15. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No.

16. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed, I would first seek the advice of experienced district court judges, in order to learn the most effective case management techniques. I would also hold regular status conferences, utilize the skills of the magistrate judges, enforce discovery deadlines, and swiftly issue decisions on dispositive motions.

17. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. If confirmed, I would play a proactive role in overseeing the orderly pace and conduct of each litigated matter. I would take the steps listed in my answer to question 16.

18. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance?**

Response: I consider the written submissions of the parties and the oral argument, if any. If necessary, I conduct additional research to identify the relevant legal provisions and governing precedents. Then, I apply the law to the facts and in that way decide the case. I would continue to follow these practices, if confirmed as a district judge.

19. **Please explain your understanding of the major differences you will encounter between being a state court judge and a United States District Judge. How will you prepare for and accomplish this transition?**

Response: The most significant difference between the state and federal courts is subject matter jurisdiction. In order to prepare myself to work as a district judge, I have contacted and sought the guidance of several former state judges who now serve as United States District Judges in the Southern District of New York and who have

successfully made the transition. I have also availed myself of the materials on federal law that are provided by the Federal Judicial Center. In addition, I have undertaken the study of federal civil and criminal procedure and the federal rules of evidence.

20. Please describe with particularity the process by which these questions were answered.

Response: I reviewed the questions, researched some issues, and submitted draft answers to an official at the Department of Justice, who discussed them with me. Thereafter, I put my answers in final form and submitted them to the Department for submission to the Committee.

21. Do these answers reflect your true and personal views?

Response: Yes. These answers reflect my true and personal views.

**Response of Analisa Torres
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to adhere to the law and apply it impartially. I have not undertaken a meaningful assessment of the Supreme Court Justices' philosophies, so I am unable to say which is most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would take my instruction on issues of constitutional interpretation from Supreme Court and Second Circuit precedents applicable to each case and not from any particular theory of constitutional interpretation. I note, however, that the Supreme Court has applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, there would be no circumstance in which I would overrule a precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), is controlling authority. If confirmed, I would apply it as binding precedent, whether I agree with it or not.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even

though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce[.]” *United States v. Lopez*, 514 U.S. 549, 558-559 (1995) (citations omitted). If confirmed, I would apply the analysis set forth in *Lopez* and other applicable precedents of the Supreme Court and the Second Circuit, in order to determine whether an activity is covered by the Commerce Clause.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Justice Jackson defined the judicially enforceable limits on presidential acts in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), and the full Supreme Court adopted the analysis set forth in his concurrence in that case. If confirmed, I would apply the *Youngstown* analysis to any cases in which I am called upon to assess the legality of presidential executive orders or actions.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that the “Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed.’” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court applies the strict scrutiny standard in evaluating suspect classifications such as race and national origin. Strict scrutiny is also applied to state action that impinges on fundamental rights under the Constitution.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would apply controlling precedent in the area of affirmative action in higher education, without regard to my expectations or opinions.

Response of Analisa Torres
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Jeff Flake

1. What qualities do you believe all good judges possess?

Response: All good judges are good listeners. They are also even-handed, have the courage to do what they believe is right, speak and write clearly, are patient and respectful, and adhere to the rules of evidence and the substantive law.

a. How does your record reflect these qualities?

Response: I believe that my work for thirteen years as a New York State judge, presiding over hundreds of trials and other proceedings, has demonstrated these qualities and capabilities.

2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?

Response: If confirmed, I would take my instruction on issues of constitutional interpretation from Supreme Court and Second Circuit precedents applicable to each case and not from any particular theory of constitutional interpretation. I note, however, that the Supreme Court has applied originalism in cases including *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

a. If so, how would you determine the original meaning?

Response: I understand the term “original meaning originalism” to express a theory of constitutional interpretation which holds that the text of the Constitution should be interpreted based upon what people living at the time the Constitution was drafted would have understood the text’s ordinary meaning to be.

3. In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?

Response: The Supreme Court has recognized the separation of powers framework and the system of checks and balances established by the Framers, acknowledging that there are provisions of the Constitution which provide “structural protections against abuse of power [that are] critical to preserving liberty.” *Bowsher v. Synar*, 478 U.S. 714, 730 (1986).

a. How does the Judicial Branch contribute to this system of checks and balances?

Response: The judicial branch contributes to the system of checks and balances, by using its constitutional authority to limit the power of the executive and legislative branches when they exceed their authority.

- 4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?**

Response: In *Lopez*, the Supreme Court distinguished, but did not overrule, prior Commerce Clause decisions. Both *Lopez* and *Morrison* constitute controlling authority. If confirmed, I would apply them as binding precedent.

- b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?**

Response: The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce[.]" *United States v. Lopez*, 514 U.S. 549, 558-559 (1995) (citations omitted). If confirmed, I would apply the analysis set forth in *Lopez* and other applicable precedents of the Supreme Court and the Second Circuit, in order to determine whether an activity is covered by the Commerce Clause.

- c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?**

Response: No. The Commerce Clause gives Congress power to regulate economic matters that transcend state lines, not to monitor every dollar that changes hands.

- 5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.**

Response: The Tenth Amendment states that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This means that the power of the national government is specifically

delineated by the Constitution, as amended, but all power not so delineated is reserved to the states or the people. The Tenth Amendment preserves state authority over the police power, historically understood as the health, safety, welfare, and morals of the people within its jurisdiction.

Response of Nelson Stephen Román
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: A judge must decide matters fairly, impartially and promptly, and treat all parties that come before the court with respect. A judge must at all times respect the rule of law and understand the limited role of judges within our constitutional system. This means that judges should exercise judicial restraint in all matters by deciding only the issues in controversy before them and should apply prevailing applicable precedent.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: Judges must be impartial and treat all parties with respect regardless of their socio-economic status or political beliefs. As a judge for approximately fifteen years, both at the state trial court and appellate court levels, I have demonstrated a commitment to approach each and every matter with an open mind. I have endeavored to treat all parties respectfully and impartially. If confirmed, I would continue to give all parties equal respect and consideration.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: District court judges are duty bound to apply precedential authority issued by the Supreme Court and by the court of appeals of the circuit in which they sit. As I have demonstrated over the course of my career, I am fully prepared to apply such precedent. The obligation to follow precedent applies to all courts—trial and appellate courts.

Response of Nelson Stephen Román
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Chuck Grassley

1. Do you believe that diversity on the bench is important?

Response: Yes.

a. If so, why?

Response: Diversity in the judiciary helps promote public trust and confidence.

b. Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge's approach to interpreting text, or otherwise affect the judicial process?

Response: A judge's gender or ethnic background should not influence his or her view of the law, shape his or her approach to interpreting text, or otherwise affect the judicial process.

c. What steps should a judge take to ensure personal views or background does not influence the outcome of the judicial process.

Response: To ensure personal views and background do not influence the outcome of the judicial process, a judge should first give each party equal opportunity to be heard and to present its case. Then, the judge should adhere strictly to the applicable law, interpreting statutes carefully, following precedent faithfully, and applying the law to the facts accordingly. My track record as a judge for over 15 years demonstrates my ability to refrain from allowing my personal views to affect my decisionmaking process.

2. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is the ability to apply the law fairly and impartially to all cases. In so doing, the judge must be mindful of his or her duty to exercise judicial restraint, thereby deciding only the issues in controversy and applying applicable precedent. I believe I possess this attribute.

3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should exercise patience and civility, and should behave in a dignified and professional manner at all times. I believe I meet this standard.

4. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: Absent controlling precedent, when interpreting statutes, I would look first to the plain meaning of the statutory language, and then to legislative history only if necessary to resolve ambiguities. I would also look to federal court interpretations of similar statutory language. For other issues, I would look to opinions of the Supreme Court and the Court of Appeals for the Second Circuit that were rendered in analogous situations. If no such opinions existed, I would look to decisions of other federal circuit courts.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: It is the duty of a district court judge to apply precedential authority issued by the Supreme Court and the Court of Appeals of the circuit in which he or she sits. As a district court judge, I would apply the law as articulated in decisions with which I disagreed regardless of my personal feelings. I have demonstrated over the course of my career as a state court judge that I am fully prepared to apply such precedent.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: When a party challenges the constitutionality of a federal statute, a federal court may appropriately declare that statute unconstitutional either when it violates a constitutional provision or when Congress had exceeded its authority in enacting the statute. In making any such determination, I would proceed cautiously and follow strictly the Supreme Court's interpretation of the pertinent constitutional provision.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No, I do not believe it is proper for a U.S. district court judge to rely on foreign law, or the views of the “world community,” in determining the meaning of the U.S. Constitution.

9. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: As a state trial court judge, I also faced the pressure of a heavy caseload. My approach there was to insist upon strict adherence to established scheduling calendars, to streamline discovery wherever possible, to facilitate settlement negotiations, to encourage mediation, and to resolve motions expeditiously. If confirmed, I would continue these proactive management techniques in coordination with the magistrate judges of the Southern District of New York.

10. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges certainly have a role in controlling the pace and conduct of litigation. Regarding the pace of litigation, a judge owes the parties a duty to administer the proceedings impartially and efficiently. If confirmed, I would decide the issues before me carefully, practically and as quickly as possible, set reasonable scheduling timetables, and encourage and facilitate mediation and settlement. Regarding the conduct of litigation, a judge must exude dignity, professionalism and civility, and ensure that the parties follow his or her example. I would continue to comport myself appropriately and insist upon the same from all involved.

11. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance?**

Response: Before reaching a decision, I consider testimony, documents submitted by the parties, and the arguments made. I then rely on applicable statutes, regulations, and precedential interpretations of law in deciding whether to grant judgment to one party or another.

12. **Please explain your understanding of the major differences you will encounter between being a state court judge and a United States District Judge. How will you prepare for and accomplish this transition?**

Response: While state courts may hear most cases and controversies arising under the Constitution and laws of the United States, such cases tend to be brought infrequently. If confirmed, I would expect to hear many more cases dealing with federal questions, meaning that consideration of federal law will be much more common. Rules of evidence and procedure differ to a degree between state and federal courts. I would accomplish the transition to federal court by diligent study

and application of federal law, just as I have done with state law. Additionally, I have observed several district court proceedings, reviewed materials provided by the Federal Judicial Center, and attended several continuing legal education courses dealing with substantive federal law topics.

13. What effect will your experience as an appellate judge have on your performance as a trial judge?

Response: As a former trial court judge for over ten years, I have experience conducting hearings and trials, managing a case load, setting discovery schedules, facilitating settlement discussions, and tracking motions and setting time schedules for the efficient resolution of pending motions. As an appellate judge I learned firsthand the necessity of a full and accurate record to the proper resolution of a motion or a case. If confirmed, my previous experience would help me to fully delineate the applicable rule of law and to provide a clear legal analysis after fostering a full development of the factual record by the parties.

14. Please describe with particularity the process by which these questions were answered.

Response: After considering each question carefully, I drafted responses that were reviewed by representatives from the Department of Justice. I then finalized my responses and forwarded them to the Department of Justice for submission to the Judiciary Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

**Response of Nelson Stephen Román
Nominee to be United States District Judge for the Southern District of New York
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: A judge must decide matters fairly, impartially and promptly, and treat all parties that come before the court with respect. A judge must at all times respect the rule of law and understand the limited role of judges within our constitutional system. This means that judges should exercise judicial restraint in all matters by deciding only the issues in controversy before them and applying prevailing applicable precedent. While I have great respect and admiration for the justices of the Supreme Court, I do not consider myself a student of the Supreme Court and I have not closely followed the judicial philosophy of a particular justice.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: District court judges are constrained to follow prevailing legal precedent on all matters in which the Supreme Court or their particular court of appeals has spoken. In a number of cases, the Supreme Court has looked at the original intent behind various Constitutional provisions. If confirmed, I would apply all such precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: A district court judge is constrained by the doctrine of stare decisis to apply precedential authority issued by the Supreme Court and the court of appeals of the circuit in which he or she sits. If confirmed, I would, therefore, not overrule any precedent as a district court judge.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed as a district court judge, I would apply the precedent articulated by *Garcia v. San Antonio Metropolitan Transit Authority* regardless of my personal view on the more proper method to protect State sovereign interests.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: According to *United States v. Lopez*, 514 U.S. 549, 558–59 (1995), the federal government first “may regulate the use of the channels of interstate commerce,” second “may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce” even if threatened only by “intrastate activities,” and third may “regulate those activities having a substantial relation to interstate commerce, i.e., . . . that substantially affect interstate commerce.” If I am confirmed and presented with a case that requires me to determine whether Congress could regulate a particular non-economic activity, I would apply *Lopez* and any other relevant precedent of the Supreme Court and the Second Circuit.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The judicial branch can limit actions by the President that violate the Constitution or a statute properly enacted by Congress, or that exceed authority granted to the President by those sources of law. See generally *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

When do you believe a right is “fundamental” for purposes of the substantive due process doctrine?

Response: For purposes of the substantive due process doctrine, Chief Justice Rehnquist in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), stated that in addition to the specific freedoms protected by the Bill of Rights, fundamental rights include the “rights to marry, to have children, to direct the education and upbringing of one’s children, to marital privacy, to use contraception, to bodily integrity, and to abortion.” The *Glucksberg* case also recognized that the Court had “assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment.” *Id.*

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Following Supreme Court precedent, a classification should be subjected to two separate forms of heightened scrutiny under the Equal Protection Clause, depending on the type of classification used. When a state law differentiates individuals by race, national origin, or (in most circumstances) alienage, strict scrutiny should be used. When a law differentiates individuals by gender or legitimacy of birth, intermediate scrutiny should be used.

Do you “expect that [15] years from now, the use of racial preferences will no longer be necessary” in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I am hopeful that our nation will continue to progress to racial equality. If confirmed, I would abide by Supreme Court precedent regardless of my personal views and expectations.

Written Questions of Senator Jeff Flake

Nelson Stephen Román

Nominee, to be United States District Judge for the Southern District of New York

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?

Response: All good judges should possess the ability to apply the law fairly and impartially to all cases. At the same time, they should be mindful of their duty to exercise judicial restraint, thus deciding only the issues in controversy while following applicable precedent. Furthermore, they should exude dignity, professionalism, civility and respect for the rule of law, and ensure that parties conduct themselves appropriately.

a. How does your record reflect these qualities?

Response: My written decisions at the state trial and appellate levels reflect my commitment to fair and impartial application of the laws, as well as to judicial restraint. My reputation in the New York City legal community reflects the standard of professionalism that all good judges should meet.

2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?

Response: District court judges are constrained to follow prevailing legal precedent on all matters in which the Supreme Court or their particular court of appeals has spoken. In a number of cases, the Supreme Court has looked at the original intent behind various constitutional provisions. If confirmed, I would apply all such precedent.

a. If so, how would you determine the original meaning?

Response: I would follow Supreme Court precedent that has addressed the issue of original meaning. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008).

3. In Federalist Paper 51, James Madison wrote: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?

Response: The Constitution enumerates certain powers that the federal government may exercise, yet it also places limits on government by reserving unenumerated powers to the states or the people and prohibiting the federal and state governments from exercising certain other powers. Additionally, the Constitution divides the executive, legislative, and judicial powers among the three branches of government while also requiring certain

governmental actions to be approved by another branch. For instance, laws cannot be established by Congress until presented to the President, who may sign or veto the bill.

a. How does the Judicial Branch contribute to this system of checks and balances?

Response: The Judicial Branch is charged with the task of interpreting the law. Thus, if an executive action does not comport with a duly enacted statute, if a statute violates a constitutional provision, or if Congress has exceeded its authority in enacting a statute, the Judicial Branch contributes to the system of checks and balances by invalidating such an action or statute.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress' power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Some have said the Court's decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court's earlier Commerce Clause decisions. Do you agree? Why or why not?

Response: The Supreme Court explained that, unlike the federal laws previously considered in other Commerce Clause cases, the laws at issue in *Morrison* and *Lopez* lacked a sufficient connection to commercial or economic activity that substantially affected interstate commerce. They were therefore invalidated.

b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?

Response: According to *Lopez*, the federal government's authority under the Commerce Clause is limited to three categories: first, it "may regulate the use of the channels of interstate commerce"; second, it "may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce" even if threatened only by "intrastate activities"; and third, it may "regulate those activities having a substantial relation to interstate commerce, i.e., . . . that substantially affect interstate commerce." 514 U.S. at 558-59.

c. Is any transaction involving the exchange of money subject to Congress's Commerce Clause power?

Response: No. Under the Supreme Court's interpretation, Congress's Commerce Clause power does not extend to every transaction involving the exchange of money.

5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Response: According to Chief Justice John Marshall, it was “neither necessary nor proper” for the drafters of the Tenth Amendment “to define the powers retained by the States,” which proceed “not from the people of America, but from the people of the several States,” *Sturgis v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819), because states retained all the powers they initially had which were not granted to the federal government. Accordingly, the Supreme Court has recognized that the Tenth Amendment guarantees to the state its police power to regulate such matters as health, safety, welfare, and morals within the state, including regulation of contractual relationships, tort law, property rights, land use, corporate law, education, professional and business licensing, and public safety.

Response of Raymond P. Moore
Nominee to be United States District Judge for the District of Colorado
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?**

Response: My philosophy is to treat all litigants fairly and with both patience and respect, to decide matters coming before the court with transparency, to decide matters narrowly by ruling only on those issues actually before the court, and to decide matters with fidelity to the principle of stare decisis. The role of the judge in our constitutional system is to resolve matters coming before the court by application of these principles, while also respecting the rights of the public as well as the role of the jury.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: During my career, I have represented plaintiffs and defendants ranging from wealthy corporations to indigent individuals. I have prosecuted criminal cases as an AUSA and defended those charged as an AFPD. I have litigated in both the civil and criminal arenas. I have represented all clients without regard to societal status, wealth or political beliefs. This background informs my commitment to treat all litigants fairly. I assure the Committee that all litigants will be treated fairly in my courtroom if I am fortunate enough to be confirmed.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: District judges are absolutely bound to the doctrine of stare decisis. Controlling precedent is settled law which must always be followed. The United States Supreme Court and the United States Courts of Appeals sitting en banc may reconsider their own precedent in limited circumstances. However, a district judge is always bound to follow controlling precedent.

Response of Raymond P. Moore
Nominee to be United States District Judge for the District of Colorado
to the Written Questions of Senator Chuck Grassley

1. **In sentencing, what consideration should a judge give to factors such as a defendant's race, age, marital status, or family status (whether or not the defendant has children)? Should two defendants who committed the same crime receive different sentences based on these factors?**

Response: None of these factors should be a determining factor in imposing a sentence on an individual. Two defendants committing the same crime should not be sentenced differently simply because of such differences. Sentences should be imposed in accordance with the laws passed by Congress and binding precedent. Currently, 18 U.S.C. §3553 requires a sentencing judge to consider seven specific factors in sentencing a defendant.

2. **As a federal judge, if confirmed, what factors would you weigh in considering alternative sentencing programs?**

Response: If confirmed, the only factors I would consider are those required by the laws of the United States and binding precedent. Currently, those factors are set forth in 18 U.S.C. §3553 and include the U.S. Sentencing Guidelines, policy statements of the Sentencing Commission, avoidance of unwarranted disparity and other factors.

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is to be fair and impartial in all matters coming before the court. A judge must apply the law without favoritism, bias or preconception as to the proper outcome. This attribute must be present both in fact and in appearance. I believe that I possess this attribute.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be at all times even tempered, patient, open minded and courteous to those who appear before him. A judge must also be decisive in deciding

the issues that come before the court. I believe that all of these attributes are of equal importance. I also believe that I meet this standard.

6. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would turn first to the statute at issue and examine its plain language. If the plain language is unambiguous, the inquiry is at an end and the matter must be resolved on that basis. If the plain language does not resolve the matter, I would apply the existing standards or canons of statutory construction. I would also consider precedent with respect to analogous matters in the cases of the United States Supreme Court, the United States Court of Appeals for the Tenth Circuit, other circuit courts of the United States and, lastly, other United States District Courts.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: The decision of the Supreme Court or Court of Appeals must be applied as it is binding precedent. My belief as to its wisdom or correctness would be irrelevant.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes passed by Congress are presumed to be constitutional. Such statutes should only be declared unconstitutional where it is clear that the statute violates an express provision of the Constitution or where Congress has clearly exceeded its constitutional powers.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution?**

Response: No.

11. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: I believe that caseload management can be aided by the use of realistic deadlines, status or case management conferences with the parties, availability to resolve matters that arise during the course of litigation, effective use of magistrate judges, and prompt rulings by the judge. I would employ all of these tools to manage my caseload. I would also consult with existing judges for procedures, tools and approaches which they have found to be effective.

12. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. I would employ the tools and methodologies described above in response to the previous question.

13. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I would approach each case with an open mind. I would listen carefully to the arguments of the litigants and review carefully their memoranda and other written submissions. I would listen to the witnesses and review all exhibits received into evidence. If the decision I had to make were a factual one, I would reach that decision by looking to these matters as sources of information. If the decision were a legal one, I would apply existing law and precedent to the facts. What I expect to be the most difficult part of the transition will be to avoid any urge to argue, question, or analyze the issue as if I were presenting it. Being aware of this issue, however, I believe that I will be able to let the litigants litigate without interference and to confine myself to my new role in the judicial process.

14. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on January 30, 2013. On January 30-31, 2013, I prepared my draft responses. I forwarded these to representatives of the Department of Justice for discussion on January 31, 2013. After discussion, I finalized my responses and, on February 2, 2013, authorized their submission.

15. Do these answers reflect your true and personal views?

Response: Yes.

**Response of Raymond P. Moore
Nominee to be United States District Judge for the District of Colorado
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My philosophy would be to treat all litigants fairly and with both patience and respect, to decide matters coming before the court with transparency, to decide matters narrowly by ruling only on those issues actually before the court, and to decide matters with fidelity to the principle of stare decisis. I have not studied the Justices over the years with an eye towards identifying their judicial philosophies, in part because their role as Justices of the highest court of the land differs from that of a District Judge. I doubt that I would wholly subscribe to the entire philosophy of any one Justice.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I believe that the Constitution is not an organic document whose meaning constantly changes with the times. The Constitution should be interpreted according to the plain meaning of its terms. If the plain meaning is uncertain or cannot be discerned, originalism may be a proper part of an analysis to attempt to determine the intent of the framers under established rules of construction.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a United States District Court Judge, I would have no authority or power to overrule precedent from the U.S. Supreme Court or Tenth Circuit Court of Appeals and would not seek to do so under any circumstances.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: This pronouncement of the U.S. Supreme Court stands as precedent for District Court Judges. As such, my personal feelings towards such issue would have no place in any decision which I may be called upon to make in this regard.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The U.S. Supreme Court has held and determined that Congress may regulate three broad categories of activity under its commerce power. In *United States v. Lopez*, 514 U.S. 549, 558 (1995), the Court identified these categories of activities as: (i) "the use of the channels of interstate commerce," (ii) "the instrumentalities of interstate commerce," and (iii) "activities having a substantial relation to interstate commerce." Activity which does not fall within these categories is beyond Congress's power to regulate. As to the place of "non-economic activity" in this regulatory scheme, Justice Scalia has observed that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring).

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President and the Executive Branch are limited by the authority and powers vested in that Office and Branch by the U.S. Constitution. These limitations are judicially enforceable.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is "fundamental" when it is deeply rooted in the history or tradition of the United States. And from a district court perspective, a right is "fundamental" when it has been so characterized by the U.S. Supreme Court or the applicable Court of Appeals.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: A classification should be subject to heightened scrutiny when it involves race, gender or other suspect classification or when the classification burdens fundamental rights such as the right to vote.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no specific expectation as to when the use of racial preferences in public higher education will no longer be necessary in the sense described in *Grutter*. As a nation we have

been making steady progress on this front, and I would hope that it would be the case that preferences will not be necessary in 15 years. However, the actual determination will need to be based on the facts as are developed in such cases as come before the Supreme Court.

Written Questions of Senator Jeff Flake

Raymond P. Moore

Nominee, to be United States District Judge for the District of Colorado

U.S. Senate Committee on the Judiciary

January 30, 2013

1. What qualities do you believe all good judges possess?

Response: I believe that all good judges are fundamentally fair and even handed in their treatment of litigants, open minded with respect to the arguments and positions of the litigants, well prepared, and observant of the rule of law.

a. How does your record reflect these qualities?

Response: Over my career, I have represented and advocated strongly for the rights of a wide range of clients, including large corporations, the United States, and indigent individuals. And with respect to individuals, my clients have ranged from the most highly educated to the illiterate. I submit that the ability to interact with, understand and advocate for such diverse clients and interests is suggestive of the ability to be fair, open minded and even handed. I submit that my selection as an Alternate Employment Dispute Resolution Coordinator for the Tenth Circuit Court of Appeals is also suggestive of the ability to be fair and balanced in my treatment of individuals. I have always been well prepared in my dealings with the court and others, and commit to continuing to be so. And having been an advocate from several perspectives, I am mindful of the role that the rule of law plays in proper decisions of a judge.

2. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases?

Response: As with all matters, if established precedent exists as to the proper meaning or scope of a Constitutional provision, such precedent would be binding. Absent that, the Constitution should be interpreted according to the plain meaning of its terms. If the plain meaning is uncertain or cannot be discerned, determination of the original meaning may be a proper part of an analysis to attempt to determine the intent of the framers under established rules of statutory construction.

a. If so, how would you determine the original meaning?

Response: Depending upon the term, phrase or clause at issue, resort may be made to an examination of other parts of the Constitution where similar language may have been used. I would also look to all established rules of construction for determining the correct meaning. This could include review of the debates and convention discussions, as well as writings of the framers pertinent to the issue, if any.

3. In Federalist Paper 51, James Madison wrote: "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first

enable the government to control the governed; and in the next place oblige it to control itself.” In what ways do you believe our Constitution places limits on the government?

Response: The Bill of Rights, including the 10th Amendment, limits the powers of government. Additionally, the specific enumeration of the powers of the various branches of government acts as a limit on government power.

a. How does the Judicial Branch contribute to this system of checks and balances?

Response: The role of the Judicial Branch in such matters is the same as it is in all matters – to interpret and apply the law and Constitution fairly and impartially, without preconception or political motivation, and to thereby assure that constitutional limits are faithfully applied.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Some have said the Court’s decisions in *Lopez* and *Morrison* are inconsistent with the Supreme Court’s earlier Commerce Clause decisions. Do you agree? Why or why not?

Response: Over my years of practice, my approach to Commerce Clause issues has been narrow and case specific. I have not performed an academic analysis of all Commerce Clause cases and precedent. Nor have I familiarized myself with the nuances of the position of those who claim inconsistency. Both *Lopez* and *Morrison* are binding precedent and would be treated as such by me.

b. In your opinion, what are the limits to the actions the federal government may take pursuant to the Commerce Clause?

Response: I am not sufficiently familiar with the Supreme Court’s cases in this area to be able to state the limits of Commerce Clause authority applicable to all circumstances. In matters involving the limits of Commerce Clause authority, I would consider the specific issue before me, apply such binding precedent as may exist, consider the position and input of the litigants and rule narrowly on the specific issue before the court. I do recognize, however, that the Commerce Clause has limits and is not a grant of unconstrained power to the Congress.

c. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?

Response: No.

5. What powers do you believe the 10th Amendment guarantees to the state? Please be specific.

Response: By its terms, the 10th Amendment guarantees to the states all powers not delegated to the United States or prohibited by the states under the U.S. Constitution. My understanding is that the Supreme Court has utilized the 10th Amendment to invalidate attempts by the federal government to compel states to enforce federal regulations and programs. Beyond that, I hold to no preconceived list of powers which I would declare to be within or beyond the scope of the 10th Amendment. I would approach this issue in the same manner as any other – applying existing precedent, listening to and fairly considering the position of the parties, and ruling narrowly and without preconception on such matters as may come before me if I am fortunate enough to be confirmed.



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Suite 4100
401 Union Street
Seattle, WA 98101

ELEVENTH CIRCUIT
Jim Galt
Suite 4050
1700 Lincoln Street
Denver, CO 80202-4156

THIRTEENTH CIRCUIT
Ramon A. Abuelin
Suite 1208
5000 Dahlia Lane Boulevard
Miami, FL 33156-2749

FOURTEENTH CIRCUIT
Reid A. Cox
10500 Fox Forest Drive
Falls Church, VA 22040

FEDERAL CIRCUIT
Ilana J. Horowitz
Potomac Avenue, NW
Washington, DC 20002-2401

STAFF COUNSEL
Denise A. Cardman
202-462-1761
cardman@americanbar.org

Please respond to:
Judy Perry Martinez, Esq.
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

VIA EMAIL AND FIRST CLASS MAIL

November 15, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Claire R. Kelly*
To the United States Court of International Trade

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Claire R. Kelly who has been nominated for a position on the United States Court of International Trade. As a result of our investigation, the Committee is of the opinion that Professor Kelly is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Professor Kelly.

Sincerely,

Judy Perry Martinez
Chair

cc: Claire R. Kelly
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 15, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 15, 2012.



RECEIVED MAR 20 2013

Customs & International Trade Bar Association

 475 Park Avenue South, 25th Floor, New York, NY 10016 • 212 725-4200 • Fax 212 889-4135 • jcannon@cassidylevy.com

March 20, 2013

The Honorable Harry Reid
 Majority Leader
 United States Senate
 522 Hart Senate Office Building
 Washington, D.C. 20510-2803

The Honorable Mitch McConnell
 Minority Leader
 United States Senate
 317 Russell Senate Office Building
 Washington, D.C. 20510-2803

Re: *Nomination of Claire Kelly to the U.S. Court of International Trade*

Dear Majority Leader Reid and Minority Leader McConnell:

The Customs and International Trade Bar Association herewith submits its views concerning the fitness of Claire Kelly to serve as a Judge on the U.S. Court of International Trade.

The Customs and International Trade Bar Association (CITBA) was founded in 1926. Its members consist of attorneys that maintain an interest in the field of customs law, international trade law, and related matters. CITBA members represent United States importers, exporters, and domestic parties concerned with matters that involve the United States Customs laws, antidumping, countervailing duties, and other international trade laws, and related laws and regulations of other U.S. federal agencies concerned with international commerce. The vast majority of our over-500 members are members of the bar of the U.S. Court of International Trade.¹

¹ CITBA's membership includes government attorneys and officials, but they have taken no position regarding this matter.

James R. Cannon, Jr. President • Joseph W. Dorn, Vice President • Lawrence M. Friedman, Secretary • William C. Sjöberg, Treasurer
 • Barbara S. Williams, Chairman, Continuing Legal Education & Professional Responsibility • Beth C. Ring, Chairman, Meeting & Special Events • Brenda A. Jacobs, Alan Goggins, Co-Chairs, Customs and Tariff • Kathleen W. Cannon, Alice Kipel, Co-Chairs International Trade • Melvin S. Schwechter, Chairman, Export • Elizabeth Drake, Chairman, Judicial Selection • Frances P. Hadfield, Chairman, Trial & Appellate Practice • Claire R. Kelly, Chairman, Liaison with Other Bar Associations • Jay Eizenstat, Chairman, Membership • Mark Ludwikowski, Chairman Publications • Victor S. Mroczka, Chairman, Technology • Michael S. O'Rourke, Past President • Jeanne Davidson, At Large



Summary of CITBA Views

CITBA strongly recommends that it is appropriate and desirable to appoint judges to the United States Court of International Trade that possess a depth of experience in the relevant field of law. Ms. Kelly meets this standard. Ms. Kelly is well qualified to serve on the Court of International Trade, in terms of expertise in the relevant laws applied by the court and professional experience as a professor of international trade law and related legal topics at Brooklyn Law School.

Background on the U.S. Court of International Trade

The Court of International Trade has jurisdiction over a diverse range of matters involving import transactions. Since 1890, the Board of General Appraisers, which became the Customs Court and, later, the Court of International Trade, has been responsible for reviewing the rate and amount of duty imposed on imported merchandise, as well as the classification and value of such merchandise. In 1980, the Court of International Trade was created to clarify and expand the jurisdiction of the Customs Court. The Court of International Trade was created by Congress in the Customs Courts Act of 1980 as a nationwide forum to review and resolve disputes involving the importation of goods and the payment of customs duties.

Among other things, the 1980 Act clarified that the Court of International Trade has jurisdiction to review antidumping and countervailing duty determinations by the Department of Commerce and the International Trade Commission, in addition to its traditional jurisdiction over Customs classification and valuation matters. Importantly, Congress bestowed on the Court of International Trade residual jurisdiction to decide any civil action against the United States arising out of any law pertaining to international trade. The House Report articulated that the purpose of the 1980 Act was to create

a comprehensive system of judicial review of civil actions arising from import transactions, utilizing the specialized expertise of the United States Customs Court [now Court of International Trade] and the United States Court of Customs and Patent Appeals [now Federal Circuit].²

Congress' intent to provide for judicial review by a national court with "specialized expertise" is best served by appointing true experts to the Court of International Trade. The subject matter before the court is complex, technical, and always changing.

The court reviews agency determinations—made by Customs and Border Protection, the Department of Commerce, or the U.S. International Trade Commission—under different standards of review. The Court of International Trade, however, does not function entirely in the manner of an appellate court. Various questions of Customs classification are entitled to *de novo*

² H.R. Rep. No. 96-1235 at 20, reprinted in 1980 USCCAN 3729, 3731.



review by the Court of International Trade.³ In such cases, questions of fact, such as the actual use or application of an imported article, must be established on the basis of “positive testimony” before a judge of the Court of International Trade. These issues typically involve presentation of expert and other testimony and evidence.

Legal issues, where the facts are not in dispute, are typically decided upon motions for summary judgment.⁴ Questions presented by appeals from antidumping and countervailing duty cases are not covered by the Administrative Procedure Act, but are governed by a standard of review that is quite similar to the APA standard.⁵ These cases also typically involve a voluminous evidentiary record including accounting documents, statistical data, and economic analyses. When a Customs classification ruling is challenged on a point of law, the court applies the standard of review established by the Supreme Court in *United States v. Mead Corp.*⁶ Application of such a standard presumes an expert judiciary, fully capable of interpreting and applying the HTS as intended by Congress.

In order to provide relief in matters covered by its broad subject matter jurisdiction, the Court of International Trade has complete powers in law and equity. That is, the court is an Article III court of the United States. The court may grant any relief appropriate to the particular case before it, including, but not limited to, money judgments, writs of mandamus, and preliminary or permanent injunctions.

Moreover, the geographical jurisdiction of the Court of International Trade is nationwide. The court decides cases that arise anywhere in the country, and judges may sit in the courthouse in New York or in a Federal Courthouse in the locality in which the dispute arose. The court also is authorized to hold hearings in foreign countries.

In short, the Court of International Trade confronts disputes that affect industries and workers across the nation, and those disputes can be economically and politically substantial, technical, and subject to complicated and differing standards of review. For all of these reasons, CITBA believes that it is appropriate and desirable to appoint judges to the United States Court of International Trade that possess a depth of experience in the relevant field of law.

³ Customs’ classification decisions are subject to *de novo* review pursuant to 28 U.S.C. § 2640 (1994).

⁴ See, e.g., *E.M. Chem. v. United States*, 920 F.2d 910, 912 (Fed. Cir. 1990).

⁵ Pursuant to 19 U.S.C. § 1516a(b)(1), the Court of International Trade reviews certain agency determinations under the “arbitrary, capricious” standard and other determinations under the “substantial evidence” standard.

⁶ 533 U.S. 218, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001).



Consideration of Fitness

In considering the fitness of Ms. Kelly to assume a position on the bench, CITBA did not conduct a detailed review of her personal background, finances, or political affiliations. Rather, in keeping with our mission as an association of customs and international trade practitioners, CITBA focused on the prior experience and public writing of Ms. Kelly. In order to assess the fitness of Ms. Kelly for a position on the court, CITBA reviewed articles on international trade matters that were authored by Ms. Kelly. In addition, CITBA interviewed Ms. Kelly to better understand her judicial philosophy.

Ms. Kelly has a high degree of expertise on the substance of international trade law, as well as a deep understanding of administrative procedure and the standards of judicial review applied by the Court of International Trade. She is a widely published academic and speaks frequently on international trade and customs issues, including current issues facing the court. She is also a well-respected professor, and she has mentored a number of students seeking to enter the practice of international trade law. Before joining academia, Ms. Kelly also practiced in the area for a number of years, primarily in the customs area. These professional experiences will serve Ms. Kelly well as a judge at the Court of International Trade should she be confirmed.

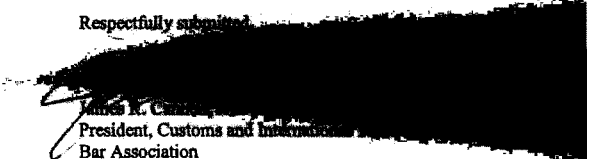
Finally, as a result of Ms. Kelly's participation in CITBA over the years, members of the bar association who have had the opportunity to work with her can attest to her professionalism, temperament, and dedication to the law. For example, at a time when the court had experienced an increase in the number of appeals involving the Trade Adjustment Assistance program, Ms. Kelly oversaw the creation of a primer on such cases that was of great value to the bar. For all of these reasons, we believe Ms. Kelly will make a fine addition to the Court of International Trade.

citba.org

Conclusion

On behalf of the Customs and International Trade Bar Association, we respectfully submit these views on the fitness of Claire Kelly for the position of Judge of the U.S. Court of International Trade. We thank you for considering our views in a matter of great interest and importance to the lawyers practicing before the Court of International Trade.

Respectfully submitted,



President, Customs and International
Bar Association

Elizabeth J. Drake
Chairman, Judicial Selection Committee, Customs
and International Trade Bar Association

cc: Senator Patrick Leahy
Chairman, Senate Judiciary Committee

Senator Chuck Grassley
Ranking Member, Senate Judiciary Committee



Customs & International Trade Bar Association

475 Park Avenue South, 25th Floor, New York, NY 10016 • 212 725-020 • Fax 212 889-4135 • jcannon@cassidylevy.com

March 20, 2013

The Honorable Harry Reid
Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510-2803

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510-2803

Re: *Nomination of Claire Kelly to the U.S. Court of International Trade*

Dear Majority Leader Reid and Minority Leader McConnell:

The Customs and International Trade Bar Association herewith submits its views concerning the fitness of Claire Kelly to serve as a Judge on the U.S. Court of International Trade.

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Summary of CITBA Views

CITBA strongly recommends that it is appropriate and desirable to appoint judges to the United States Court of International Trade that possess a depth of experience in the relevant field of law. Ms. Kelly meets this standard. Ms. Kelly is well qualified to serve on the Court of International Trade, in terms of expertise in the relevant laws applied by the court and professional experience as a professor of international trade law and related legal topics at Brooklyn Law School.

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Congress' intent to provide for judicial review by a national court with "specialized expertise" is best served by appointing true experts to the Court of International Trade. The subject matter before the court is complex, technical, and always changing.

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In short, the Court of International Trade confronts disputes that affect industries and workers across the nation, and those disputes can be economically and politically substantial, technical, and subject to complicated and differing standards of review. For all of these reasons, CITBA believes that it is appropriate and desirable to appoint judges to the United States Court of International Trade that possess a depth of experience in the relevant field of law.

³ Customs’ classification decisions are subject to *de novo* review pursuant to 28 U.S.C. § 2640 (1994).

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Ms. Kelly has a high degree of expertise on the substance of international trade law, as well as a deep understanding of administrative procedure and the standards of judicial review applied by the Court of International Trade. She is a widely published academic and speaks frequently on international trade and customs issues, including current issues facing the court. She is also a well-respected professor, and she has mentored a number of students seeking to enter the practice of international trade law. Before joining academia, Ms. Kelly also practiced in the area for a number of years, primarily in the customs area. These professional experiences will serve Ms. Kelly well as a judge at the Court of International Trade should she be confirmed.

Finally, as a result of Ms. Kelly's participation in CITBA over the years, members of the bar association who have had the opportunity to work with her can attest to her professionalism, temperament, and dedication to the law. For example, at a time when the court had experienced an increase in the number of appeals involving the Trade Adjustment Assistance program, Ms. Kelly oversaw the creation of a primer on such cases that was of great value to the bar. For all of these reasons, we believe Ms. Kelly will make a fine addition to the Court of International Trade.



Conclusion

On behalf of the Customs and International Trade Bar Association, we respectfully submit these views on the fitness of Claire Kelly for the position of Judge of the U.S. Court of International Trade. We thank you for considering our views in a matter of great interest and importance to the lawyers practicing before the Court of International Trade.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James R. Cannon, Jr.", is written over the typed name and title.

James R. Cannon, Jr.
President, Customs and International Trade
Bar Association

Elizabeth J. Drake
Chairman, Judicial Selection Committee, Customs
and International Trade Bar Association

cc: Senator Patrick Leahy
Chairman, Senate Judiciary Committee

Senator Chuck Grassley
Ranking Member, Senate Judiciary Committee



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

CLARENCE
Judy Perry Martinez
New Orleans, LA

MAILING ADDRESS:
2980 Fairview Park Drive
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Harrisburg, PA 17104-2808

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10500 Fox Forest Drive
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FEDERAL CIRCUIT
Ellen J. Eisenberg
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STAFF COUNSEL
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see denise@www.ababar.org

Please respond to:

Judy Perry Martinez, Esq.
Northrop Grumman Corporation
2980 Fairview Park Drive
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Tel: 703-280-4088
Email: judy.martinez@ngc.com

VIA EMAIL AND FIRST CLASS MAIL

November 15, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Raymond P. Moore*
To the United States District Court for the District of Colorado

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Raymond P. Moore who has been nominated for a position on the United States District Court for the District of Colorado. As a result of our investigation, the Committee is of the opinion that Mr. Moore is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. Moore.

Sincerely,

Judy Perry Martinez
Chair

cc: Raymond P. Moore
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 15, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 15, 2012.



AMERICAN BAR ASSOCIATION

**Standing Committee on
the Federal Judiciary**
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

CPH408
Judy Perry Martinez
Attn: Denise A. Cardman

380 Fairview Park Drive
Falls Church, VA 22042

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SECOND CIRCUIT
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THIRD CIRCUIT
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FOURTH CIRCUIT
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Charlotte, NC 28202-6021

FIFTH CIRCUIT
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New Orleans, LA 70112

SIXTH CIRCUIT
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ELEVENTH CIRCUIT
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THIRTEENTH CIRCUIT
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Miami, FL 33136-2719

D.C. CIRCUIT
Renee A. C. 218
1050 First Street
Great Falls, VA 22066

FEDERAL CIRCUIT
David J. Farnum
311 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
222-682-1764
dc_cardman@americanbar.org

Please respond to:

Judy Perry Martinez, Esq.
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@nge.com

VIA EMAIL AND FIRST CLASS MAIL

September 21, 2012

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: *Nomination of Nelson S. Roman
To the United States District Court for the Southern District of
New York***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Nelson S. Roman who has been nominated for a position on the United States District Court for the Southern District of New York. As a result of our investigation, the Committee is of the opinion that Mr. Roman is Substantial Majority-Well Qualified, Minority-Qualified for this position.

A copy of this letter has been provided to Mr. Roman.

Sincerely,

Judy Perry Martinez
Chair

cc: Nelson S. Roman
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

September 21, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on September 21, 2012

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NEW YORK STATE COURT OFFICERS ASSOCIATION

OFFICE OF THE PRESIDENT



September 21, 2012

Hon. Patrick J. Leahy
Chairman
United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Leahy:

As president of the New York State Court Officers Association I write this letter on my organization's behalf in support of Nelson S. Roman's (Judge Roman) nomination to the United States District Court, Southern District of New York. The New York State Court Officers Association represents court officers who provide security within and around New York State's various courts. Many of our members have and continue to work with Judge Roman, and without exception, all have nothing but great things to say about him, his ability and his qualifications.

It's often said that people with real world experience make the best trial judges. If this is true, then perhaps it helps explain why Judge Roman is such a great jurist. As I'm sure you know, long before joining the judiciary, Judge Roman began his career as a New York City Police Officer, where he served in one of New York City's toughest neighborhoods. Thereafter, he became a lawyer, joining the Office of the King's County District Attorney, where over the course of five years, he prosecuted countless misdemeanor and felony crimes.

Whether presiding over a trial, a hearing or an appeal, Judge Roman is always well prepared. No matter how complex the matter before him, Judge Roman educates himself, becoming well versed on the relevant legal issues, thus enabling to rule properly. Judge Roman is always fair, giving all the parties and their respective counsel the respect they deserve. Further, and perhaps more important, Judge Roman is open minded, never prejudging the issues before him until all parties have had ample opportunity to be heard.

Accordingly, we believe that Judge Roman is well qualified to sit on the federal bench. If past conduct is any indication, it is clear that Judge Roman will be ready to preside on day one, doing whatever it takes to ensure he is prepared to handle the cases over which he will preside.

Yours truly,

Dennis W. Quirk
President



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N.Y. 10013
(212) 335-9000

September 25, 2012

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Senate Judiciary committee
224 Dirksen Senate Office building
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I am writing in support of the nomination of New York State Supreme Court Justice Nelson Stephen Roman to the United States District Court for the Southern District of New York.

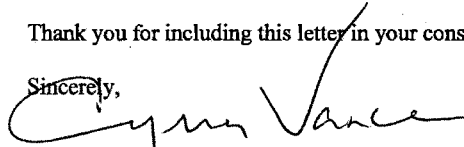
Justice Roman's career has been marked from the beginning by a deep commitment and dedication to public service. He attended law school at night while working full-time as a New York City police officer, later serving for more than five years as an Assistant District Attorney in Kings County. As an Assistant D.A., he prosecuted violent felony offenses, and was also assigned for more than two years to the office of the New York City Special Narcotics prosecutor. This strong background in law enforcement prepared him well for his New York judicial positions, and would bring an important perspective to matters that might be considered in federal court cases.

During his many years of service in our courts, Justice Roman has demonstrated his ability to serve as a conscientious, thoughtful and responsible member of the judiciary. He has served ably on both trial and appellate courts, and during this time has considered a remarkably broad spectrum of issues. I am most familiar with his work as an Associate Justice of the Appellate Division, First Department, where Justice Roman has presided over appeals of criminal and civil cases, including those from New York's Supreme Court, Criminal and Appellate Terms, the Court of Claims, Surrogate's Court, and Family Court.

I believe that Justice Roman would serve as a federal court judge with the same dignity, integrity, and dedication to the fair administration of justice that he has demonstrated throughout his career.

Thank you for including this letter in your consideration of Justice Roman's nomination.

Sincerely,

A handwritten signature in black ink that reads "Cyrus Vance". The signature is written in a cursive style with a large, sweeping initial "C".

Cyrus R. Vance, Jr.



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September 27, 2012

Hon. Patrick Leahy
Majority Leader of the United States Senate
Senator of Nevada
Washington, D.C.

**Re: Appointment of Associate Justice Nelson S. Román
to the District Court for the Southern District of New York**

Dear Senator Leahy:

On behalf of the Puerto Rican Bar Association ("PRBA"), the oldest ethnic bar association in the State of New York, we would like to wholeheartedly recommend Associate Justice Nelson S. Román for appointment to the Federal District Court for the Southern District of New York.

Our findings are based upon our due diligence review of Associate Justice Román's background, experience, qualifications, integrity, judgment, reputation, temperament, intellect and commitment to public service. The PRBA Officers and Board of Directors enthusiastically approve those findings, since Justice Román is well known to our organization, having served as President and in various other capacities throughout the years. Our members have also known and worked with Justice Román for many years, and enthusiastically endorse his appointment. He has a fine reputation as a wonderful jurist and a true legal scholar.

Specifically, we note that Associate Justice Román's academic and professional qualifications are indisputably excellent. A graduate from Fordham University with a J.D. from Brooklyn Law School of Law, Justice Román has demonstrated the formidable intellect necessary to be in New York State's intermediate appellate court, the Appellate

303 Park Avenue South, #1405, New York, New York 10010

Tel: (212) 505-6633 and Fax: (347) 244-7132

Contact us at: info@prba.net or Visit us at: www.prba.net

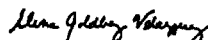
Division, First Department, and at the New York State Supreme Court for over a decade. He previously served as a Judge for both the Civil Court and Housing Court of the City of New York. His opinions and decisions have been published extensively. Not to mention that his demeanor, temperament and conduct embodies the patience, thoughtfulness and wisdom that are key qualities for any successful Federal District Court Judge. In addition to handling complex cases in one of the busiest courts of the State, he devotes much time to ensuring that there is true access to justice and diversity in the courts.

More importantly, Justice Román not only possesses decades of judicial experience, but also practical experience in the public sector, which would inform his decisions as a District Court Judge. Justice Román's experience as a New York City District Attorney, prosecuting complex felonies and narcotics crimes, as well as his years as a New York City Police Officer, are just as distinguished and truly prepared him for a career on the Federal bench. His dedication to the public good is also evident in his service to a myriad of community and philanthropic organizations as well as by his mentorship of young attorneys and law students through bar associations, and as a professor for college students.

We are aware of your commitment to diversity and the PRBA is fully committed to that goal as well. Associate Justice Román is a long time Latino resident of New York and an active member of our organization and the community. We firmly believe that his vast judicial experience, keen intellect, professional achievements, and personal temperament would make him an ideal Federal District Judge.

Based on the foregoing, the PRBA respectfully urges you to appoint Associate Justice Nelson S. Román as Federal District Court Judge for the Southern District of New York.

Respectfully Submitted,



Elena Goldberg Velazquez, Esq.
President

cc:

Hon. Nelson S. Román
New York State Supreme Court
Appellate Division, First Dept.
27 Madison Avenue
New York, NY 10010

303 Park Avenue South, #1405, New York, New York 10010
Tel: (212) 505-6633 and Fax: (347) 244-7132
Contact us at: info@prba.net or Visit us at: www.prba.net

397

JUDITH S. KAYE
FOUR TIMES SQUARE
NEW YORK, NY 10036
—
(212) 735-3680
FAX (917) 777-3680
JUDITH.KAYE@SKADDEN.COM

September 27, 2012

Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, DC 20510

RE: Nelson Roman:
Candidate for United States District Court for the Southern
District of New York

Dear Senator Leahy,

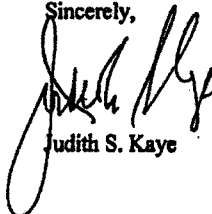
It is my great pleasure to write you on behalf of an extraordinary New York State judge recently nominated for the federal bench by President Obama.

I have known Nelson Roman for many years, perhaps most relevantly during my years as Chief Judge of the State of New York, when he served as an outstanding judge of our trial court, and then went on to (again outstanding) service as a judge of our intermediate appellate court. These courts have dauntingly large dockets of every variety, which Judge Roman has resolved with distinction.

Throughout the years, I have also come to know Judge Roman and his wonderful family personally. So I know that the excellence I have observed in his performance on the bench derives from his human qualities as well as his diligence and dedication.

I hope that he will have your support.

Sincerely,



Judith S. Kaye

BRONX COUNTY BAR ASSOCIATION

851 Grand Concourse, Room 124, Bronx, New York 10451
718-293-2227 www.bronxbar.org

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October 1, 2012

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Hon. Nelson S. Roman

Dear Chairman Leahy and Ranking Member Grassley:

As President of the Bronx County Bar Association I am writing to express the Association's support for the nomination of Justice Nelson S. Roman to the United States District Court for the Southern District of New York.

Justice Roman is a former New York City Police Officer and prosecutor in the Kings County District Attorney's Office and Special Narcotics Office. From 1995 to 1998 he served as Law Secretary to a Civil Court judge in New York City. In June 1998 he was appointed to serve as a Judge of the Housing Part of the Civil Court. He served for two years as a Judge of the New York City Civil Court before his election to the New York State Supreme Court in 2002. He served for seven years as a Justice of The Supreme Court, Bronx County, Civil Division, where he was widely recognized as a respected and productive trial Judge, earning one of the highest rates of resolved cases and motions and developed a reputation as a legal scholar, having authored forty-seven published decisions.


In 2009, Justice Roman was elevated to the Appellate Division, First Department (serving Bronx and New York Counties) which hears appeals in both civil and criminal matters from the Supreme Court, Surrogate's Court, Family Court, Court of Claims and Appellate Term.

Re: Hon. Nelson Roman
Page 2

In recognition of his distinguished career in public service, the Bronx County Bar Association honored him at our Annual Dinner in 2010.

Justice Roman's personal background and experience in all levels of the administration of justice make him uniquely qualified to serve as a judge in such a diverse forum as the Southern District of New York. I can think of no more deserving candidate for the federal bench. Justice Roman has, over his twenty-nine year career in law enforcement and on the bench, demonstrated that he possesses the necessary moral character, legal acumen, experience and temperament to serve on the District Court bench.

The Bronx County Bar Association supports his nomination without reservation.

Very Truly Yours,


Michael A. Marinaccio
President

400

THOMAS W. CUSANELLI, ESQ.
6 Essex Place
Deer Park, New York 11729-3504
631-860-1356 (cell)
cusanellit@yahoo.com

October 17, 2012

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

It gives me great pleasure to write this letter in support of Judge Nelson S. Roman's nomination to the United States District Court, Southern District of New York. I am a retired New York City Police Department (NYPD) Captain and am currently an attorney employed by Law Office of Russo Apoznanski and Tambasco. I have known Judge Roman for over 25 years, initially meeting him while we were both employed by the NYPD

Judge Roman and I both were police officers and worked full-time for the NYPD's Legal Bureau as we attended law school during the evening. In particular he and I were tasked with administratively prosecuting business establishments who, by virtue of being the subject of multiple criminal complaints, had become public nuisances. Judge Roman, who began his career with the NYPD patrolling one of the poorest and toughest neighborhoods in the South Bronx, diligently, methodically, and tenaciously investigated and prepared his cases. It was apparent to me then, that he would go on to do great things. He served the NYPD with great integrity and dedication.

Over the years, in my capacity as an attorney, I and members of my former offices have had the pleasure of appearing before Judge Roman and can confidently say that he is a great Jurist. Whether presiding over a trial, a hearing, or an appeal, Judge Roman was always well prepared and well versed in the subject matter. Judge Roman was always fair, giving all the parties and their respective counsel the respect that they deserve. Further, and perhaps more important,

Judge Roman was open minded, never prejudging the issues before him until all parties have had ample opportunity to be heard.

I believe that Judge Roman is well qualified to sit on the federal bench. If past conduct is any indication, it is clear that Judge Roman will be ready to preside on day one, doing whatever it takes to ensure he is prepared to handle the cases over which he will preside.

I hope this letter is of assistance to the Committee.

Very Truly Yours,



Thomas W. Cusanelli, Esq.

SheppardMullin

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30 Rockefeller Plaza
New York, NY 10112-0015
212.653.8700 main
212.653.8701 main fax
www.sheppardmullin.com

Robert S. Friedman
212.634.3058 direct
friedman@sheppardmullin.com

October 23, 2012

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Re: Honorable Nelson S. Roman

Dear Chairman Leahy and Ranking Member Grassley:

I write this letter in support of the nomination of Hon. Nelson Roman to be a District Court Judge in the Southern District of New York.

I am a partner at Sheppard, Mullin, Richter & Hampton, LLP, an international law firm of 600 lawyers. I head the New York litigation group. I have known Nelson for twenty-three (23) years, since we started in the same class as first-year prosecutors in the King's County (Brooklyn) District Attorney's Office. This was a very different and chaotic time for prosecutors in New York City. The late 1980s and early 1990s saw record crime in New York, especially in Brooklyn where the crack epidemic and economic problems led to very large caseloads for prosecutors and unique challenges with juries.

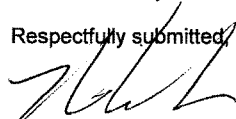
In this tumultuous environment, Nelson shined. I worked closely with Nelson. He stood out for his maturity, intelligence and reasoned dedication to law enforcement. He was selected as a Special Narcotics Prosecutor, where he handled the most important cases in the City against traffickers and gangs. His background as a police officer provided him with real world perspective which served him well as a prosecutor and continues to guide him as a jurist. As a prosecutor, Nelson was universally respected by the judges, fellow prosecutors and adversaries. This has continued on the Bench, where both as a trial and appellate judge, he has distinguished himself for intelligence, efficiency, and justice. His integrity is beyond reproach.

SheppardMullin

The Honorable Patrick J. Leahy
The Honorable Charles Grassley
October 23, 2012
Page 2

I am proud and honored to submit this letter on Nelson's behalf. It was easy to write. The federal Judiciary will be greatly enhanced by Nelson's appointment.

Respectfully submitted,



Robert S. Friedman

SMRH:200704676.1



Puerto Rican Bar Association of Florida, Inc.

November 9, 2012

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The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Building
Washington, DC 20510

Re: Appointment of Associate Justice Nelson S. Roman to the United States District Court for the Southern District of New York

As President of the Puerto Rican Bar Association of Florida, it is with great honor that we recommend Associate Justice Nelson S. Roman for appointment to the United States Federal District Court for the Southern District of New York.

Justice Roman is well known to our organization and to the Puerto Rican community here in Florida. He is an excellent and impartial judge, highly skilled in legal jurisprudence. Justice Roman's many years of experience on the judiciary makes him an excellent choice as a Federal District Court Judge. His experience and reputation is impeccable. His service on the judiciary was preceded by many years in law enforcement first as a uniformed police officer and later as a prosecutor. Justice Roman possesses the skills and experience necessary to excel as a federal judge.

Justice Roman has been an inspiration for many of us in the Florida community. He is highly respected, and his contributions to our judicial system distinguish him one of the best jurists of our time.

Therefore, the Puerto Rican Bar Association of Florida highly recommends Justice Nelson S. Roman for appointment to the United States Federal District Court for the Southern District of New York.

Puerto Rican Bar Association of Florida, Inc.
c/o Richard R. Robles, Esq., 905 Brickell Bay Drive, Suite 228, Miami, Florida 33131

Visit our website at www.prbartflorida.org

Respectfully,

Richard R. Robles
President

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November 21, 2012

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510
Attn: Hon. Patrick J. Leahy

Dear Senator Leahy,

I write this letter as president of the Dominican Bar Association in support of Nelson S. Roman's (Judge Roman) nomination to the United States District Court, Southern District of New York. The Dominican Bar Association is comprised of lawyers, judges, and law students. Our mission is to assist the community at large and more specifically, to ensure the progress of lawyers of Dominican descent, as well as other minority lawyers in the legal profession. Many of our members have and continue to appear before Judge Roman, and without exception, all have nothing but exceptional things to say about him and his qualifications.

It is often said that people with real world experience make the best trial judges. If this is true, then perhaps it explains why Judge Roman is such a great jurist. As you may know, long before joining the judiciary, Judge Roman began his career as New York City Police Officer, where he served in one of New York City's toughest neighborhoods. Thereafter, he became a lawyer, joining the Office of the King's County District Attorney, where over the course of five years, he prosecuted countless misdemeanor and felony crimes.

Whether presiding over a trial, a hearing, or an appeal, Judge Roman is always well prepared. No matter how complex the matter before him, Judge Roman educates himself, becoming well versed on the relevant legal issues. Judge Roman is always fair, giving all the parties and their respective counsel the respect that they deserve. Furthermore, and perhaps

more importantly, Judge Roman is open minded, never prejudging the issues before him until all parties have had ample opportunity to be heard.

Since we believe that Judge Roman is extremely well qualified, we wholeheartedly support his ascension to the federal judiciary. If past conduct is any indication, it is clear that Judge Roman will be ready to preside on day one, doing whatever it takes to ensure he is prepared to handle the cases over which he will preside.

Bianka Perez
President

407

Vincent Abbene
20 River Terrace, Apt. 23 C
New York, NY 10282

January 15, 2013

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
437 Russell Senate Bldg
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

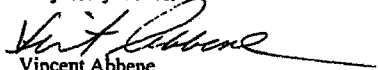
I am writing to you in support of President Obama's nomination of Associate Justice Nelson S. Román to the United States District Court, Southern District of New York. I am a retired New York City Police Department Captain and a longtime registered Republican. I have known Justice Román for more than 27 years, ever since he was Police Officer assigned to the 44th Precinct. I believe Justice Román is well qualified to serve as a federal district court judge.

Justice Román comes from a very humble background. He was raised in the Bronx, yet through hard work and perseverance he worked his way to the upper echelon of the New York State Judicial System. Justice Román began his professional career as a patrol officer in the South Bronx. While he worked full-time as a police officer, he attended school at night to complete his undergraduate and law degrees. Upon graduating from law school, Justice Román worked as prosecutor for the King's County District Attorney's Office. In this role, he gained a reputation as a skilled trial attorney and zealous advocate. Given his integrity and keen sense of fair play, it became apparent to me and to others who watched his career unfold that he was destined to become a judge. He has since served as a distinguished trial court and appellate court judge.

Justice Román is an earnest man of great personal and judicial integrity, a scholar, and an exemplary public servant. His wealth of experience as a police officer, a prosecutor, and a state court jurist makes him well qualified to serve as a United States District Court Judge.

I hope this letter is of assistance to the Committee.

Very Truly Yours,


Vincent Abbene
Retired NYPD Captain

James F. Castro-Blanco Esq.
85 Windsor Terrace,
Yonkers, NY 10701

January 3, 2013

Hon. Patrick J. Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Leahy:

I am writing regarding the nomination of Judge Nelson Roman to the position of United States District Court Judge for the Southern District of New York. I wholeheartedly support his nomination. My recommendation is based upon my own experiences working with and appearing before Judge Roman as well as numerous conversations I have had with many distinguished members of the legal community. As Chief Deputy County Attorney for Westchester County, and as a former Assistant United States Attorney in the Eastern District of New York, I have had the opportunity to practice before some of the most outstanding jurists in the nation. Judge Roman would be an excellent addition to the Southern District Bench. His judgment, intellect, compassion, experience and character position him to be an outstanding District Court Judge. I am confident that he will serve with distinction.

I have appeared many times before Judge Roman during his tenure on the New York State Supreme Court. I have observed Judge Roman deftly handle complex matters and at the same time, explain to lay persons unfamiliar with court proceedings, how court proceedings worked and how their rights would be protected in his courtroom. I have also been honored to serve as a co-speaker with Judge Roman at Bar Association events and law school forums. His generosity of spirit is evidenced by his tireless commitment to bettering the legal community and assisting junior lawyers. On all occasions during which I have observed and or worked with Judge Roman, he has exhibited a professional and measured approach to every task.

During my tenure as President of the Puerto Rican Bar Association and Scholarship Fund, I worked with Judge Roman to increase opportunities for Hispanic attorneys and to provide scholarship money for Hispanic law students. He has been a mentor to many young attorneys and provided guidance to myself and others who have followed him as PRBA President. His

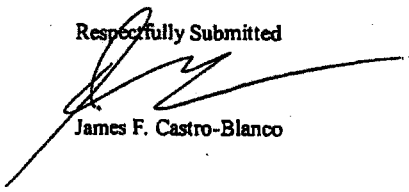
accomplishments have been recognized on numerous occasions by both the legal and business communities.

For several years I had the honor to serve as a Republican member of New York City Mayor Bloomberg's Advisory Committee on the Judiciary. In that role, I have reviewed many judicial applications and interviewed many candidates. I believe that a truly fine judge possesses both the head and heart necessary to mete out justice. A judge should have integrity, proper judicial demeanor, knowledge of the law and a sense of compassion. Judge Roman possesses all these qualities in abundance.

Judge Roman's career demonstrates that the American dream is very much alive. From humble beginnings in the Bronx, Judge Roman became a New York City Police Officer serving and protecting the public. He put himself through law school while maintaining a full time job as a police officer. He became a prosecutor and then a judge in Housing, Civil, Supreme, and Appellate Division Courts. At each step in his career, Judge Roman has served with distinction and brought honor to the bench.

Nelson Roman has been a fair and thoughtful judge who has always followed the law and never tried to legislate from the bench. His experience is broad and his judgment sound. He has a unique set of experiences and skills that allow him to bring a thoughtful and fair approach to crafting decisions. It is my belief that Judge Nelson Roman possesses all the qualities necessary to be an extraordinary District Court Judge and I strongly encourage his confirmation.

Respectfully Submitted



James F. Castro-Blanco



AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

CLERK
Judy Perry Martinez
New Orleans, LA
Mailing Address:
2980 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
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Boston, MA 02109

SIXTH CIRCUIT
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11 Times Square
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THIRD CIRCUIT
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Philadelphia, PA 19104-2806

FOURTH CIRCUIT
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Charlotte, NC 28202-6021

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SEVENTH CIRCUIT
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EIGHTH CIRCUIT
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5th Floor
U.S. Bank Building
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Des Moines, IA 50319-4119

NINTH CIRCUIT
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Suite 1500
500 South Capitol Avenue
Los Angeles, CA 90021

Sheryl J. Willett
Suite 4100
6011 Linn Street
Seattle, WA 98101

TENTH CIRCUIT
John Leahy
Suite 4050
1700 Lincoln Street
Denver, CO 80202-4756

ELEVENTH CIRCUIT
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Suite 1208
1 South Duval Street
Miami, FL 33130-2739

THIRTEENTH CIRCUIT
Richard A. Cook
10561 Fox Forest Drive
Crested Falls, VA 22066

FEDERAL CIRCUIT
Ethel E. Flannery
1 Pennsylvanian Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-692-3761
d.cardman@amccs.abar.org

Please respond to:
Judy Perry Martinez, Esq.
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

VIA EMAIL AND FIRST CLASS MAIL

November 15, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: *Nomination of Analisa N. Torres
To the United States District Court for the Southern District of New York***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Analisa N. Torres who has been nominated for a position on the United States District Court for the Southern District of New York. As a result of our investigation, the Committee is of the opinion that Justice Torres is Unanimously Qualified for this position.

A copy of this letter has been provided to Justice Torres.

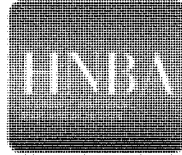
Sincerely,

Judy Perry Martinez
Chair

cc: Analisa N. Torres
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 15, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 15, 2012.



February 13, 2013

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Senator Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member, U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: HNBA Endorsement of Justice Analisa Torres for
Appointment to the United States District Court
for the Southern District of New York**

Dear Mr. President and Senators Leahy and Grassley:

On behalf of the Hispanic National Bar Association ("HNBA"), I write to express our enthusiastic support for the appointment of Justice Analisa Torres to the United States District Court for the Southern District of New York. Based on her lifetime record in professional and public service, Justice Torres would be an asset to the federal bench.

Justice Torres graduated *magna cum laude* from Harvard University and received her J.D. from Columbia Law School. She worked for several years in private practice in some of the top law firms of New York City, practicing real estate law. Since 1992, Justice Torres has worked in the New York State Court system, first as a law clerk, and then as a judge on the New York City Civil and Criminal Courts, and lastly on the New York State Supreme Court. Having over 20 years of judicial experience, Justice Torres is well-qualified for this position. Justice Torres has demonstrated her scholarly aptitude in the legal opinions she has written as a judge. According to litigants who have appeared before her, she is a fair judge, who works hard and is always well-prepared on the bench.

President Obama and Senators Leahy and Grassley
February 13, 2013
Page 2

Over her many years of judicial experience, Justice Torres has developed what one litigant described as the "exact demeanor" one would expect for a federal judge. She is friendly and courteous to all lawyers and their clients who appear before her. Most attorneys who have appeared in her court hold Justice Torres in high regard.

Justice Torres also has been an active member of the local legal community, having served on the Board of Directors of the Puerto Rican Bar Association, and having mentored many Hispanic attorneys aspiring to be judges. She has won a number of awards from the Puerto Rican Bar Association, including the President's Professional Achievement Award (2006) and the Judicial Excellence Award (2010), and was the Judiciary Committee Honoree in 2012. Additionally, in 2012, Justice Torres received the Leon B. Polsky Fellowship.

We are honored to endorse Justice Torres without reservation. We are confident that Justice Torres will serve with distinction. Our endorsement is based on our internal due diligence investigation which included the examination of Justice Torres' legal competency, judicial temperament, reputation in the legal community, integrity and dedication to every endeavor that she undertakes. We respectfully urge that the U.S. Senate confirm her nomination.

The HNBA is an incorporated, not-for-profit, national membership organization that represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, legal assistants, and law students in the United States and its territories. We believe that diversity is critical for our judiciary and strongly believe that Justice Torres would serve the judiciary well, as described above. Should there be any questions, or if further information is required, please feel free to contact me through the HNBA National Office at (202) 233-4777, or directly at (952) 742-5395.

Sincerely,



Peter M. Reyes Jr.
National President, HNBA



Robert Raben
Chair, HNBA Judicial Screening Committee

cc: Miguel Alexander Pozo, HNBA President-Elect
Robert T. Maldonado, HNBA New York Regional President
Senator Chuck Schumer
Senator Kirsten Gillibrand
Hon. Analisa Torres



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

FIRST CIRCUIT
Judy Perry Martinez
New Orleans, LA

2980 Eastwood Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa G. Amoscaff
Suite 1180 North
10 First Office Square
Boston, MA 02109

SECOND CIRCUIT
Betha R. Plevan
11 Times Square
New York, NY 10036-8299

THIRD CIRCUIT
Robert C. Hyatt
Civic Centre
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
E. Fitzgerald Forrest, III
Suite 2100
301 South College Street
Charlotte, NC 28202-6023

FIFTH CIRCUIT
Walter J. Lee
246 Canal Street
New Orleans, LA 70110

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 720
1301 College Street
Syring, NY 42102-0720

SEVENTH CIRCUIT
Patricia Costello Steink
Suite 6600
214 South Wacker Drive
Chicago, IL 60606-6107

EIGHTH CIRCUIT
David L. Blum
5th Floor
U.S. Bank Building
520 Walnut Street
Des Moines, IA 50319-4119

NINTH CIRCUIT
Edith R. Atasha
Suite 1500
503 South Grand Avenue
Los Angeles, CA 90071

Sheri L. Walker
Suite 4101
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Galt
Suite 4050
1700 Lewis Street
Denver, CO 80202-4856

ELEVENTH CIRCUIT
Ramon A. Albadre
Suite 1208
55 South Duval Street
Miami, FL 33156-2198

D.C. CIRCUIT
Ronald A. Cass
10760 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

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Please respond to:

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VIA EMAIL AND FIRST CLASS MAIL

November 15, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Derrick K. Watson*
To the United States District Court for the District of Hawaii

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Derrick K. Watson who has been nominated for a position on the United States District Court for the District of Hawaii. As a result of our investigation, the Committee is of the opinion that Mr. Watson is Substantial Majority Well Qualified, Minority Qualified for this position.

A copy of this letter has been provided to Mr. Watson.

Sincerely,

Judy Perry Martinez
Chair

cc: Derrick K. Watson
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 15, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 15, 2012.

National Asian Pacific American Bar Association



January 22, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for Derrick Kahala Watson, Nominee
for the United States District Court for the District Court of Hawaii

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Asian Pacific American Bar Association ("NAPABA"), we proudly endorse and urge the prompt confirmation of Derrick Kahala Watson to the United States District Court for the District of Hawaii. Mr. Watson possesses the requisite qualities—experience, intellect, and judicial temperament—to be an excellent United States District Court Judge.

NAPABA is the national bar association of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 24th year, NAPABA represents the interests of over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the appointment of qualified Asian Pacific Americans to the federal bench, where Asian Pacific Americans are significantly underrepresented. Of the approximately 875 active Article III judges, only 17 are Asian Pacific American.

Pacific Islanders and Native Americans in particular remain essentially unrepresented in the federal judiciary. No Native Hawaiian or Native Americans currently serve on the federal bench. If confirmed, Mr. Watson would become the only Native Hawaiian serving in the federal judiciary, and only the fourth person of Native Hawaiian ancestry ever to serve as an Article III judge.

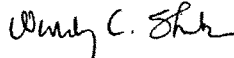
Mr. Watson possesses the qualities and depth of experience necessary to be an excellent federal district court judge. He has experience in both the private sector and in public service, and could easily make the transition to the bench. He has been a member of the U.S. Attorney's Office for the District of Hawaii since 2007, and has served as chief of the Civil Division since January 2009. Prior to government service in Hawaii, he was in private practice at two firms in San Francisco and served for several years in the United States Attorney's Office for the Northern District of California, during which time he served as a Deputy Chief in the Civil Division. Mr. Watson was also a member of the United States Army Reserve, where he served as a Captain in the JAG Corps from 1998-2006. He graduated from Harvard Law School in 1991 and graduated *cum laude* from Harvard College in 1988.

Both for his military and legal service to the country, Mr. Watson has received numerous awards and recognitions. These have included: Bronze Medal, United States Environmental Protection Agency (2010); Certificate and Coin of Commendation, United States Customs & Border Protection, Field Operations (2010); National Defense Service Ribbon (2004); Army Commendation Ribbon (2000); Army Achievement Ribbon (2000); Army Service Ribbon (1999); Director's Award for Superior Performance as an Assistant United States Attorney, United States Department of Justice (1999); Award of Excellence, United States Department of Veterans Affairs, Office of Inspector General (1998); Commendation, United States Army Litigation Division (1996).

Mr. Watson has deep Hawaiian roots and would bring much needed diversity to the federal courts. He attended the Kamehameha Schools in Honolulu from 4th grade until graduating from high school, and he is the first person in his family to attend college. Mr. Watson's family upbringing was modest. As is common in Hawaii, he was raised in a multi-generational household on Oahu that included his mother, who worked at a local bank until her retirement several years ago, his father, who retired from the Honolulu Police Department, and his maternal grandparents, who were frequently the primary caregivers. Mr. Watson continues to stay involved in the Hawaiian community. Among other things, he has served since 2010 on the Board of Directors for the Prince Kuhio Child Care Center/Rainbow School. He also is active in several community and civic clubs.

Based on his qualifications, intellect, and commitment to service NAPABA proudly endorses Mr. Derrick Kahala Watson to serve as a District Judge for the United States District Court for the District of Hawaii.

Sincerely,



Wendy C. Shiba
2012-2013 President



Tina R. Matsuoka
Executive Director

Hugh Fox Jr.
262 Hoover Road
Yonkers, NY 10710

January 15, 2013

Hon. Charles Schumer
United States Senate
322 Hart Senate Office Building
Washington D.C. 20510

Dear Senator Schumer,

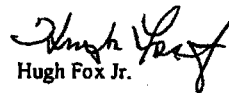
I am writing in support of the nomination of Judge Nelson Roman to the position of United States District Court Judge for the Southern District of New York. As the Chairman of the Westchester County Conservative Party, Regional Vice-Chairman of the New York State Conservative Party and a former President of the Local 628 Yonkers Firefighters Union I.A.F.F., I have had the opportunity to meet many judges and judicial candidates. In my opinion, Judge Roman has the qualities necessary to be an excellent District Court Judge.

As Fire Union President, I have had occasion to be a litigant fighting for the rights of my members. I have observed many judges preside over difficult cases. As Chairman of the Westchester County Conservative Party, I have interviewed many judicial candidates. I look for individuals who embody conservative principles, follow the law and do not take it upon themselves to become judicial activists. I look for individuals whose life experience includes activities that better their communities and who bring real world experience to bear on their decision making. Judge Nelson Roman is such a person.

I have met with Judge Roman, examined his career, and had conversations with many attorneys who appeared before the judge and who practice regularly in federal court. His reputation is that of a judge who is fair and thoughtful. As a former firefighter and union leader, I am heartened that a former New York City police officer who put himself through law school and who has distinguished himself on the bench is poised to become a United States District Court Judge.

His combination of intelligence, a conservative approach to applying the law and an understanding of the lives and struggles of hard working people make him an ideal candidate for United States District Court Judge. It is my belief that Judge Nelson Roman will be a strong and measured District Court Judge and I strongly encourage his confirmation.

Respectfully Submitted


Hugh Fox Jr.

NOMINATIONS OF KENNETH JOHN GONZALES, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO; MICHAEL J. McSHANE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON; NITZA I. QUIÑONES ALEJANDRO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; LUIS FELIPE RESTREPO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; AND JEFFREY L. SCHMEHL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WEDNESDAY, FEBRUARY 13, 2013

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

The Committee met, pursuant to notice, at 10:36 a.m., Room SD-226, Dirksen Senate Office Building, Hon. Mazie Hirono presiding.
Present: Senator Lee.

OPENING STATEMENT OF HON. MAZIE HIRONO, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator HIRONO. This hearing will come to order. Good afternoon, everyone. I'm pleased to call this nominations hearing of the Senate Committee on the Judiciary to order. This is my first nominations hearing, so I'm sure you'll be very kind and all of that. So as a Member of the Committee, my first opportunity to chair a hearing.

I'd like to welcome each of the nominees, their families, and friends to the U.S. Senate and congratulate them on their nominations. I would like to welcome the Senators who are here to testify on behalf of their nominees, Senators Wyden, Merkley, Casey—aloha!—Toomey, Tom Udall is not here yet, and Heinrich. And you are all here to introduce your nominees. I know that Ranking Member Lee will be joining us in a little bit; however, we will proceed.

We'll turn to the introduction of the nominees. I know that you all have pressing other commitments, so when you finish your introductions, please feel free to go to your other appointments.

We shall start with Senator Wyden.

**PRESENTATION OF MICHAEL J. MCSHANE, NOMINEE TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON BY
HON. RON WYDEN, A U.S. SENATOR FROM THE STATE OF OR-
EGON**

Senator WYDEN. Thank you, Madame Chair. I want to say how pleasurable it is to refer to you as Madame Chair. I know this is your first hearing, and we're so glad to have a chance to be here to introduce Judge Michael McShane. For Senator Merkley and I, we take special pride in this nominee. Oregon has been blessed with a long list of distinguished judges, and we have every confidence that Judge McShane is going to join that list.

With your leave, Madame Chair, I'll spare you the filibuster this afternoon and maybe make just a few comments. Then I know we want to hear from my colleague, Senator Merkley, as well.

Judge McShane is a Multnomah County Circuit Court judge. He has worked there since 2001. He graduated magna cum laude from Gonzaga University and went to the Northwestern School of Law, Lewis & Clark College. He was at the top of his class, and he then began a long odyssey of public service. He worked in the metropolitan public defender's office.

He also was appointed by the Oregon Supreme Court as a full-time pro tem judge. He's earned very high marks for his work by his fellow lawyers, by the American Bar Association. He's been singled out for his work by the Oregon State Bar Presidents' program, particularly getting the public service award for his service to the community. That's what I would like to highlight just for a moment, Madame Chair, is the extraordinary community service that Michael McShane has given to particularly his hometown and my hometown of Portland.

I think, for example, what he has done for at-risk kids—we're talking about middle school youngsters, say, sixth grade. He has tutored them, he has been a mentor to them. He has bought clothes for them, Madame Chair, with his own money. He has been there for some of the most vulnerable young people in our community. I think this is really representative of his commitment to service.

In my prepared remarks I list all of the various other areas he's been involved in with the Job Corps internship program, the Cascade AIDS program where he's been a volunteer. But anybody who, on his own time, is involved in practically every good community service cause in our community, extending to the point where, for needy youngsters, he goes out and buys them clothes, that's the kind of role model, that's the kind of person who, when they have the extraordinary professional qualifications that Michael McShane has, that's the kind of person that we would like to see on the Federal bench.

So let me put my prepared remarks into your hearing record, and perhaps just yield to my friend and colleague, Senator Merkley. We do make our judicial recommendations together and we both thought that, without reservation, Michael McShane would make an exceptional judge.

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

Senator HIRONO. Senator Merkley.

PRESENTATION OF MICHAEL J. MCSHANE, 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, Madame Chair. It is an honor to be here to be with my senior Senator to mutually endorse Judge Michael McShane's nomination. Over his entire career, as Senator Wyden has pointed out, he has demonstrated a commitment to the law, a commitment to public service, and a commitment to the State of Oregon.

He first came to Oregon as a member of the Jesuit Volunteer Corps. This is an extraordinary organization where young folks dedicate a year to simple living, direct service to the poor, and spiritual community. Since that time he has remained deeply dedicated, both to Oregon and to public service.

I'm going to pass over the points that Senator Wyden has covered well and I just want to say that in the nearly 15 years he has served on the Circuit Court, Judge McShane has developed a reputation for fairness, for thoroughness, and for accuracy, and he has continued to serve the community as well as an adjunct law professor at Lewis & Clark College, an outstanding school of law.

In a letter of support that I received, one member of the Portland law community summed up his nomination by saying, "What stands out to me is that Judge McShane lives and conducts his personal life with the same integrity, honor, compassion, diligence, and commitment that he displays as a judge." Judge McShane will be an excellent addition to the U.S. District Court for the District of Oregon, and my thanks to the Committee for hearing his nomination today.

Senator HIRONO. Thank you. Senator Toomey.

PRESENTATION OF NITZA I. QUIÑONES ALEJANDRO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; LUIS FELIPE RESTREPO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND JEFFREY L. SCHMEHL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. ROBERT CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CASEY. Madame Chair, thank you very much for this opportunity. Senator Toomey and I will speak about three nominees for the federal bench in Pennsylvania. I'd say by way of summary of all three that they possess all of the qualities we would hope for in a judge.

You could make a long, long list, but just a couple that I try to focus on: the intellect, ability, and the integrity that you need to be a federal judge, also the experience. Each of these three individuals has broad experience. Finally, then, the judicial temperament and the ability to conduct yourself appropriately as a United States District Judge. So, I can say that about all three.

Just by way of a quick summary with their academic and their experience either as lawyers, judges, or both, first, on the list, Nitza Quiñones Alejandro. Judge Quiñones, since 1991, has served as a trial judge in Philadelphia, Philadelphia City—meaning Phila-

delphia County. It's really the same. It's one and the same. So she's been on that bench all those years. She was first nominated for judicial appointment in May 1990 by Governor Casey, someone I knew pretty well. At that time she was the first state court judge that was Hispanic. I remember at the time when that appointment was made, and we were very proud of it at that time, and nothing has happened in the interim to diminish that pride that we have in her work.

Judge Quiñones served as an arbitrator for the Philadelphia Court of Common Pleas. Prior to that, between 1980 and 1991, she was a staff attorney with the Department of Veterans Affairs. She's been very active in the Bar Association, the Hispanic Bar Association in Philadelphia in recruiting young lawyers to serve.

She was a graduate of the University of Puerto Rico School of Business Administration with honors, as well as the University of Puerto Rico Law School. I have no doubt that she'll serve with distinction as a member of the federal bench.

Next, Luis Restrepo, who has had a wide and varied set of experiences: magistrate judge for the United States District Court for the Eastern District of Pennsylvania since June 2006. As you know, Madame Chair, when you serve as a magistrate judge you are chosen by federal judges, so it's a pretty high bar to surmount to get to that position.

Now, prior to that he was a highly regarded attorney and founding member of the Krasner and Restrepo law firm in Philadelphia. He was an assistant federal defender with the Community Federal Defender for the Eastern District of Pennsylvania, a professor at Temple Law School.

I'm skipping over some details, but just by way of his personal background, he's a native of Colombia. Judge Restrepo became a United States citizen in 1993. He earned a Bachelor of Arts degree from the University of Pennsylvania, as well as a law degree from Tulane University. He, as well, I have no doubt, will serve with distinction.

Finally, Jeffrey L. Schmehl has now already served a judge, president judge for the Berks County Court of Common Pleas, since 1998. Berks County is on the eastern side of our State, a very big county, with always complex matters that come before the Common Pleas court in a county like that.

Prior to his service on the bench, Judge Schmehl was a partner at a law firm in Reading, where he worked as an associate since the mid-1980s. He was a County Solicitor for Berks County, had his own law firm in the early 1980s. He was an Assistant District Attorney and prosecutor in Berks County. He's a graduate of Dickinson College, as well as the University of Toledo School of Law in 1980.

Again, I have no doubt that he'll serve with distinction. It's been a great honor to get to know these individuals better, some of whom I knew before, but getting to know them in this process. It's also been a great privilege to work with Senator Toomey on this process, which can be long and laborious, but we're finally here at this point today. Thank you.

Senator HIRONO. Thank you very much, Senator.
Senator Toomey.

PRESENTATION OF NITZA I. QUIÑONES ALEJANDRO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; LUIS FELIPE RESTREPO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND JEFFREY L. SCHMEHL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. PATRICK TOOMEY, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator TOOMEY. Thank you. Good afternoon, Madame Chairman and Ranking Member Lee. I appreciate your giving me this opportunity to help introduce Judges Schmehl, Quiñones, and Restrepo before this Committee. Following my and Senator Casey's recommendation, President Obama nominated these three very qualified individuals last fall, and then re-nominated them on January 3. I appreciate also your timely scheduling of this hearing.

I would like to begin briefly by thanking Senator Casey for his collaboration in recommending these three nominees for the Eastern District of Pennsylvania. Our joint efforts over the last two years have resulted in five successful confirmations for the Keystone State, and he and I are committed to continuing to work together in a bipartisan fashion to fill the remaining Federal District Court vacancies in Pennsylvania.

Having extensively reviewed each of these nominees' records and having personally spoken with each at length, I am confident that they each possess the crucial qualities necessary to be outstanding federal judges: the intelligence, the integrity, and the commitment to public service and respect for the limited role of the judiciary.

Since my colleague, Senator Casey, has already introduced and described some of their background, I just want to take a quick moment to share a couple of additional thoughts.

As you've heard, Judge Schmehl is a well-respected judge who brings a keen intellect and a breadth of experience to the federal court. But in addition to his work on the court, he has really demonstrated a strong commitment to his community, establishing a veterans court in Berks County to assist veterans in need of legal assistance.

If he's confirmed, Judge Schmehl has made a commitment to sit in Reading, in Berks County. That's a courthouse that has not had an active judge in over three years, and it's very important that we fill this vacancy and provide the people of Berks County with the judicial representative that they ought to have.

Judge Quiñones is an accomplished and respected 21-year veteran of the First Judicial District of Pennsylvania Court of Common Pleas. Her record reflects an enduring commitment to the Pennsylvania legal community where, in 1982, she helped found the Hispanic Bar Association of Pennsylvania. She is widely lauded in the community for her commitment to mentoring law students and advancing civic education for high school students.

Our third nominee, Judge Restrepo, is an excellent magistrate judge with a strong record as an attorney in both the public and private sectors. Aside from his legal duties, he has devoted significant time to his community, founding the Police Barrio Project, an organization focused on improving relationships between the Phila-

delphia Police Department and the Latino community in Philadelphia.

The Pennsylvania nominees before you today are highly accomplished in the field of law and exceedingly qualified for the federal bench. They are well-regarded members of their communities, and they possess an admirable sense of civic duty.

Judges Schmehl, Quiñones, and Restrepo's commitments to being impartial and upholding the law will serve them and the Commonwealth of Pennsylvania well, if they are confirmed for the federal bench. I hope that this Committee will favorably report these nominees to the full Senate, and again want to thank you for giving me the opportunity to join you today, as well as giving these qualified judges the opportunity to testify today.

Senator HIRONO. Thank you, Senator Toomey.

Senator Udall, would you like to introduce your nominee.

PRESENTATION OF KENNETH JOHN GONZALES, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO BY HON. TOM UDALL, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator UDALL. Yes. Thank you. Good afternoon. Thank you, Madame Chairwoman Hirono and Ranking Member Senator Lee. I appreciate this opportunity to speak today, along with Senator Heinrich, and I'm very pleased to introduce Mr. Kenneth Gonzales to be U.S. District Judge for the District of New Mexico. Ken is an exceptional candidate, and I congratulate him and his family on this nomination, especially his wife Jennifer, their son Alex, and their daughter Abigail, who I believe are all here today.

Ken is a native of New Mexico. He grew up in the beautiful Pojoaque Valley in northern New Mexico. He was the first in his family to graduate from college. With the help of scholarships and grants, he received his undergraduate and law degrees from the University of New Mexico, a school, I might add, that I am also proud to call my alma mater.

After law school, Ken served as a law clerk to New Mexico Supreme Court Judge Joseph Baca. Then he went to work as a legislative assistance for our esteemed former colleague, Senator Jeff Bingaman. Ken began his career as a federal prosecutor in the U.S. Attorney's Office for the District of New Mexico in 1999.

He has prosecuted a wide range of federal offenses, including immigration, narcotics, and violent crime cases. He also holds the rank of major as a judge advocate in the U.S. Army Reserve, which he joined in September 2001. During his service, he has provided critical legal assistance to hundreds of active and retired soldiers and spouses, both here and overseas.

In 2008, he was called to active duty as a part of Operation Enduring Freedom, where he was away from his family for many months. He was stationed at Ft. Bragg and served as a senior trial counsel in the Office of the Staff Judge Advocate.

Today, Ken is the U.S. Attorney for the District of New Mexico after being unanimously confirmed for that position by the U.S. Senate in 2010. He oversees a broad array of criminal and civil cases and has earned great respect in our legal community in New Mexico.

I'd also like to note that Ken has made Indian country prosecutions a priority in the U.S. Attorney's Office. It's an area he knows well, having grown up in the backyards of Nambe, Pojoaque, and San Ildefonso Pueblos.

During his tenure, he has made a real difference in prosecuting cases of violence against women and children. In his current capacity, Ken serves on the Attorney General's Advisory Committee, Subcommittee on Native American Issues and Southwest Border and Immigration Issues.

He is also a member of the Attorney General's Advisory Committee's Environmental and Natural Resources Working Group. He's a member of the New Mexico Hispanic Bar Association and, if confirmed, he'll join only 56 other Hispanic active District Court judges, less than 10 percent of the country's 677 District Court judgeships.

Ken Gonzales is an exceptionally well-qualified nominee. He has shown a reverence for, and dedication to, the law throughout his career in both civilian and military positions. He has exhibited great expertise, commitment, and depth of judgment. I urge his confirmation. While he will be missed as our U.S. Attorney, I know that he will serve New Mexico well on the federal bench.

I would just ask, Madame Chair, if I could be excused. The Foreign Relations is in the middle of a business meeting, and I'm going to try to make it back because they apparently need my vote. But I'm going to leave you in the very good hands of Senator Heinrich, and with that, thank you very much.

Senator HIRONO. Thank you very much for your testimony.
Senator Heinrich.

PRESENTATION OF KENNETH JOHN GONZALES, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO BY HON. MARTIN HEINRICH, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator HEINRICH. Thank you, Madame Chair, Ranking Member Lee, for allowing me to speak briefly in favor of the nomination of Ken Gonzales to serve as a judge on the U.S. District Court for the District of New Mexico.

I would also like to thank the leadership of this Committee from both sides of the aisle, Senator Leahy and Senator Grassley, for granting Mr. Gonzales a hearing.

I want to echo the remarks that you heard from Senator Tom Udall, our senior Senator, about Mr. Gonzales. I think that Senator Udall and former Senator Jeff Bingaman did a great job of providing the President with a list of very well-qualified candidates to fill a vacancy on the federal bench in New Mexico, but Mr. Gonzales is truly a standout.

I'm pleased that the President has nominated him to fill this vacancy, and I'm pleased to be here today to support him. As we've already heard, Mr. Gonzales has a very long and distinguished record of public service, including service in our military.

Most recently, Mr. Gonzales has served as the U.S. Attorney for New Mexico, as you heard from Senator Udall, a position that he was confirmed to by the Senate in April 2010. His elevation to lead

that office follows more than a decade of service there as an Assistant U.S. Attorney.

I'd like to focus some attention on the work that Ken has done as the head of that office. I think that his efforts there demonstrate not only his character and his intellect, but the dedication that he has to serving his home State and making it a better place for all of our residents.

As U.S. Attorney for New Mexico, Ken has taken an aggressive approach to combatting drug trafficking and the related gun and gang violence that can have a particularly devastating impact on border States like New Mexico.

For example, under his leadership the U.S. Attorney's Office for New Mexico has partnered with State and local law enforcement officials to identify the worst of the worst offenders in their communities so that they can be brought into the federal criminal justice system and face more substantial punishments.

In response to concerns about a particularly alarming drug and gun violence problem in Chaves County, particularly in the city of Roswell, Ken helped develop and implement a strategy that engaged community stakeholders to combat the problem. As a result, more than 80 individuals have been arrested and charged by State and federal prosecutors.

New Mexico also has significant portions of sovereign Native American lands within its borders, for which the U.S. Attorney has responsibility to prosecute criminal activity. Ken has taken the initiative to reorganize and focus the U.S. Attorney's resources to more effectively combat the higher-than-average rates of violent crime, sexual assault, and sexual abuse that plague Indian country.

This includes creating the first Indian country crime section within a U.S. Attorney office. This section includes a team of lawyers responsible for pursuing felony offenses in Indian country. Under his leadership, the office is also collaborating with tribal prosecutors to investigate and prosecute domestic violence occurring in more than 20 Pueblos and tribes located within New Mexico.

In addition to his qualifications as a licensed attorney for more than 20 years, Ken is a long-time New Mexican. He was born and raised there, and all of his accomplishments make me believe that he is more than qualified to serve on the federal bench in New Mexico. But it is his career-long determination and dedication to serving the people of New Mexico that makes me believe that he will make an outstanding addition to the federal bench.

I strongly support his nomination, and I urge this panel to act quickly to move his nomination to the full Senate for a vote. Again, thank you, Senator Hirono and Ranking Member Lee, for this opportunity to speak today.

Senator HIRONO. Thank you very much, Senator Heinrich.

I think we should set up for the panel of nominees now. If our nominees could step up. Please have a seat. Welcome, everyone. As we say in Hawaii, aloha.

There are currently 90 District vacancies in the federal judiciary. This is 50 more vacancies than existed at the same point in George W. Bush's presidency. More than 10 percent of the federal courts are now, or will soon be, vacant.

According to the Congressional Research Service, this is the longest period of historically high vacancy rates in the federal judiciary in more than 35 years. We need to continue to work to confirm judges so that our judiciary is able to resolve cases in an expeditious manner and so all Americans can receive swift access to justice. Most of these vacancies are in the District Courts, which are the courts that Americans look to for their day in court. It is these, of course, that need staffing the most.

This hearing, which I know consists of five District Court nominees, is an important step in the process of filling some of those vacancies and ensuring that the court is able to quickly resolve cases and do the work that the people require of them.

Because federal judges are required to give priority to criminal cases over civil ones and the number of criminal cases has increased 70 percent in the past decade, judges are forced to delay the civil cases, often for years. This means long delays for American individuals and businesses seeking justice.

In a recent interview, senior Judge Dave Ezra of Hawaii compared his decision to quadruple his caseload by moving from Hawaii to a Southwest border State in order to help judges there try criminal and civil cases within a reasonable timeframe, "having a big wildfire in the Southwest border States and firefighters from Hawaii going there to help put out the fire." In other words, this is a crisis situation. I look forward to the Senate's swift action on the President's nominations.

Now I would like to first give Ranking Member Lee an opportunity to say a few words.

STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you, Madame Chair. Thanks to each of you for joining us. It's a pleasure to be part of this process. We take this very seriously. I think, of all of our obligations as Senators, there is none more important than making sure that our federal courts are staffed with good judges. Once those people get nominated, it's our job to review them and proceed from there.

I would like to respond to the point that we do have a number of vacancies. We do need to point out at the same time that currently 54 out of the 90 judicial vacancies open in the United States are not moving forward precisely because we have no nominee. So we are moving forward, I think, pretty expeditiously on those nominees that we have, but we can't move forward where we don't have nominees.

These hearings are an important function for the Senate Judiciary Committee. The Constitution places in the Senate the authority to advise and consent the President on the President's nominees, and we take that obligation very seriously. The oath that each judge of the United States takes, and the oath that each of you will take, should you be confirmed to become Article Three judges, will require you to take an oath to affirm that you will administer justice without respect to persons, that you'll do equal right to the rich and the poor, and that you'll faithfully and impartially discharge and perform all duties incumbent upon a federal judge under the Constitution and laws of the United States.

As Senators fulfilling our constitutional role, we look to ensure that a nominee is prepared to honor this oath. I look forward to hearing from each of you throughout this hearing. Thank you.

Senator HIRONO. Thank you.

Now I'd like to ask all of you to stand so that I can administer the oath.

[Whereupon, the nominees were duly sworn.]

Senator HIRONO. Thank you. Please be seated. Let the record show that the nominees have answered in the affirmative.

I would now like to invite each of the nominees to give an opening statement and to recognize your loved ones and supporters. We will start with Nominee Gonzales and then we'll proceed to my right.

**STATEMENT OF KENNETH JOHN GONZALES, NOMINEE TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO**

Mr. GONZALES. Well, thank you very much, Madame Chair, and thank you very much, Ranking Member Lee, for holding this hearing and inviting me to be here. I don't have an opening statement. I would like to introduce, though, my family, if I may. With me here is my wife of 25 years, Jennifer Gonzales. My being here has just as much to do with Jennifer as it does with anything I've done.

And in addition, I have my son Alex, who is 15 years old. He's a sophomore in high school. And my daughter Abigail, who is eight years old. She is a second grader.

With me also is a good friend of mine who also happens to be my mother-in-law, Anita Poots, and some very good friends who have made it to be here, Dan Alpert and Anne Franke, who live here in Washington and are very good friends of mine, and I'm so glad that they are here. Virginia White, who, after 30 years of service to Senator Bingaman and to the people of New Mexico, we are proud of her. She has as much of a legacy as anybody in New Mexico, and I'm so glad that she is here, as well as Rhonda Oye-Brochner, who lives here as well, and I'm very glad that she is here. And Anna Marie Baca, who is here as well, and I'm very glad she is here.

Of course, Madame Chair, I'd like to thank Senator Udall and Senator Heinrich for their very kind words when they introduced me today, and for their strong support of me in this process. I'd like to thank, of course, the President for the nomination and the confidence that he has placed in me, both in the nomination to be U.S. Attorney and then now to be District judge.

I would certainly like to thank Senator Bingaman, who just retired just very recently, for the strong support that he has shown me over the years, and including support for this nomination.

Madame Chair, there are a lot of people that are not here that I'd like to acknowledge as well and I believe are watching on the Webcast. First and foremost, my parents: my father, Santiago Gonzales, Jr., 82 years old, Korean War veteran and my personal hero; my mother, Florence Gonzales, who is defined, I think, by how she has put her children and grandchildren ahead of herself in every way; my siblings, my six siblings, Donna, her husband Clint; Monica, her husband John; Dennis, my brother and his wife Charlene; my sister Carol and her husband Curt; my sister

Katrina, her husband Ward; and my brother Steve and his wife Mandi, as well as my 22 nieces and nephews.

I'd also like to acknowledge, Madame Chair, the man who set me on this course years ago by giving me the first job I had out of law school, and that was the now-retired Chief Justice of the New Mexico Supreme Court, Joseph Baca. I very much appreciate everything that he did for me. I learned so much from him and it was by his example that I really saw how honorable the judges and the judiciary are in our system of government. He and his wife, Dorothy, could not be here, but they are represented by their daughter, Anna Marie Baca. I'm very glad that she is here.

Last, Madame, I'd like to acknowledge all the outstanding men and women in the U.S. Attorney's Office in the District of New Mexico, as well as my colleagues in the United States Army. Thank you very much.

Senator HIRONO. Judge McShane.

[The biographical information of Mr. Gonzales follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

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

United States District Judge for the District of New Mexico
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.

201 Third Street, NW, Suite 900
Albuquerque, New Mexico 87102
4. **Birthplace:** State year and place of birth.

1964; Espanola, New Mexico
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1991 – 1994; University of New Mexico School of Law; J.D., 1994

1983 – 1988; University of New Mexico; B.A., 1988
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1999 – Present
United States Attorney's Office for the District of New Mexico
201 Third Street, NW, Suite 900
Albuquerque, New Mexico 87102

United States Attorney (2010 – Present)
Assistant United States Attorney (1999 – 2010)

1996 – 1999
United States Senate, Office of Senator Jeff Bingaman
703 Hart Senate Office Building
Washington, DC 20510
Legislative Assistant

1994 – 1996
New Mexico Supreme Court
Chambers of Chief Justice Joseph F. Baca
237 Don Gaspar Avenue
Santa Fe, New Mexico 87501
Judicial Law Clerk

Fall 1992, Spring 1994
University of New Mexico School of Law
1117 Stanford NE
Albuquerque, New Mexico 87131
Teaching Assistant/Tutor

1993 – 1994
Office of University Counsel
University of New Mexico
Albuquerque, New Mexico 87131
Law Clerk

Summer 1993
Hinkle, Cox, Eaton, Coffield & Hensley, L.L.P.
formerly at 500 Marquette Avenue, NW
Albuquerque, New Mexico 87120
Law Clerk

Summer 1992
Sheehan, Sheehan, & Stelzner, P.A.
40 First Plaza, Suite 740
Albuquerque, New Mexico 87120
Law Clerk

1989 – 1991
University of New Mexico Office of Student Financial Aid
MSC11 6315, Mesa Vista Hall
Albuquerque, New Mexico 87131
Financial Aid Counselor

1988 – 1989
 Souper Salad
 1606 Central Avenue SE
 Albuquerque, New Mexico 87106
 Waiter

Other Affiliations (uncompensated):

2010 – present
 New Mexico High Intensity Drug Trafficking Board of Directors
 2450 Lakeside Drive, Building A
 Las Cruces, New Mexico 88007
 Member (2010 – present)
 Chairman (2010 – 2011)

1992 – 1996; 2005 – 2009
 New Mexico Hispanic Bar Association
 P.O. Box 26326
 Albuquerque, New Mexico 87125
 Board Member at-large (1994 – 1996; 2005 – 2009)
 Board Member, Law Student Representative (1992 – 1994)

1995 – 1996; 2000 – 2010
 University of New Mexico School of Law Alumni Association
 1117 Stanford Drive NE, MSC11 6070
 Albuquerque, New Mexico 87131
 Board Member at-large

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.

2010 – present
 United States Army Reserve
 The Judge Advocate General's Legal Center and School
 600 Massie Road
 Charlottesville, Virginia 22903
 Major, Adjunct Criminal Law Professor

2008 – 2009
 United States Army
 Office of the Staff, Judge Advocate, XVIII Airborne Corps
 Attn: AFZA-JA
 2175 Reilly Road, Stop A
 Fort Bragg, North Carolina 28310

Major, Senior Trial Counsel
Honorable Discharge

2005 – 2010
United States Army Reserve
The Judge Advocate General's Corps
1st Legal Support Organization
1920 Harry Wurzbach
San Antonio, Texas 78209
Captain, Administrative Law Attorney

2001 – 2005
United States Army Reserve
The Judge Advocate General's Corps
5035th Garrison Support Unit (de-activated)
Fort Bliss, Texas 79906
First Lieutenant, Legal Assistance Attorney

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.

Army Commendation Medal (2004, 2007, 2009, 2010)
Army Reserve Component Achievement Medal (2004, 2007, 2010)
Operation Enduring Freedom Medal (2009)
National Defense Service Ribbon (2009)
Drug Enforcement Administration, Appreciation Award (2008)
Overseas Training Service Ribbon (2008)
United States Attorney's Office Sustained Superior Performance Award (2004, 2005, 2006, 2007, 2008)
Army Achievement Medal (2003, 2008)
United States Attorney's Office Special Act or Service Award (2004, 2008)
Drug Enforcement Administration, Appreciation Award (2006)
Federal Bureau of Investigation, Appreciation Award (2006)
United States Border Patrol, Appreciation Award (2006)
United States Attorney's Office On-the-Spot Award (2002)
New Mexico Hispanic Bar Association Bar Examination Scholarship (1994)
University of New Mexico School of Law, Dean's Award (1994)
University of New Mexico Graduate Fellow (1991 – 1994)

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.

Attorney General's Advisory Committee subcommittees and working groups:
Native American Issues Subcommittee (2010 – present)

Border & Immigration Subcommittee (Co-chair) ((2010 – present)
 Civil Rights Subcommittee (2012 – present)
 Controlled Substance & Asset Forfeiture Working Group (2010 – present)
 Environmental Issues Working Group (2010 – present)
 Medical Marijuana Working Group (2011 – present)
 Service Members and Veteran’s Rights Working Group (2012 – present)
 Resource Allocation Working Group (2012 – present)

District of New Mexico Anti-Terrorism Advisory Committee Coordinator (2004 – 2006)

District of New Mexico Joint Terrorism Task Force Liaison (2004 – 2006)

District of New Mexico International Issues Coordinator (2007 – 2010)

H. Verle Payne Inn of Court (1994 – 1995)

New Mexico Anti-Terrorism Task Advisory Committee (2010 – present)

New Mexico High Intensity Drug Trafficking Area Board of Directors (2010 – present)
 Chairman (2010 – 2011)

New Mexico Hispanic Bar Association
 Board of Directors, at-large (1994 – 1996; 2005 – 2009)
 Board of Directors, Law Student Representative (1992 – 1994)

New Mexico Joint Terrorism Task Force Executive Committee (2010 – present)

Oliver Seth Inn of Court (1994 – 1996)

10. **Bar and Court Admission:**

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

New Mexico, 1994

There have been no lapses in membership.

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

United States Court of Appeals for the Tenth Circuit, 2001
 United States District Court for the District of New Mexico, 1999
 New Mexico State Courts, 1994

There have been no lapses in membership.

11. Memberships:

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

Boy Scouts of America, Yucca Council
Assistant (Cub Scouts) Den Leader (2004 – 2006)

Las Cruces Country Club (2001 – 2003)
Family swim membership (2001 – 2003)

Phi Alpha Delta Law Fraternity (1991 – Present)

University of New Mexico School of Law Alumni Association (1994 – 2010)
Board of Directors, at-large (1995 – 1996; 2000 – 2010)

Wolf Pack Club, University of New Mexico athletics (1994 – 1996)

- 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 Boy Scouts of America limits certain programs to males. Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

- 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.

Prescription Drugs Too Often Opening Gateway. The Albuquerque Journal, July 25, 2011. Copy supplied.

Summit Brings Native Youth Into Discussion of Future, The Santa Fe New Mexican, July 23, 2011. Copy supplied.

Message from the United States Attorney, Indian Country Newsletter, United States Attorney's Office for the District of New Mexico, July 2011. Copy supplied.

Join the Battle Against Sexual Violence, The Albuquerque Journal, April 22, 2011. Copy supplied.

Message from the United States Attorney, Indian Country Newsletter, United States Attorney's Office for the District of New Mexico, April 2011. Copy supplied.

Message from the United States Attorney, Indian Country Newsletter, United States Attorney's Office for the District of New Mexico, June 2010 – December 2010. Copy supplied.

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

I have never prepared any reports, memoranda, or policy statements for any bar association, committee, conference, or organization outside my work for the Department of Justice.

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

I have never prepared any such materials.

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

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

December 6, 2012: Speaker, Welcome remarks, FBI New Mexico Field Office All-Hands meeting, Kirtland Air Force Base, Albuquerque, New Mexico. Copy supplied.

November 8, 2012: Speaker, "Choices - Rewards and Consequences," Isleta Pueblo Elementary School, Isleta Pueblo, New Mexico. My remarks included a description of how young people make choices every day and illustrated the point by using the familiar number line to show how some choices lead to rewards (positive numbers) or consequences (negative numbers). I also described how negative choices often lead to addiction, jail, and separation of parents from children, and how positive choices can lead to strong bodies, healthy families and enjoyable life experiences. I used no notes, but generally followed a number-line illustration on a PowerPoint slide show, a copy of which is supplied for the July 25, 2011 event.

October 30, 2012: Speaker, Leadership New Mexico, Albuquerque Chamber of Commerce, Albuquerque, New Mexico. Copy supplied.

October 17, 2012: Speaker, "Moving Towards Civility," Teacher Training Conference on Bullying, New Mexico Human Rights Project, Albuquerque, New Mexico. Copy supplied and video is available at:
<http://youtu.be/MaF1vMQom8I>.

October 10, 2012: Speaker, Rocky Mountain Investor Fraud Summit, Denver, Colorado. I delivered impromptu welcoming remarks for participants as well as a summary of significant investor fraud prosecutions in the District of New Mexico. I have no notes, transcript or recording. The event was sponsored by the Colorado University Denver School of Public Affairs, 1250 14th Street, Denver, Colorado 80202; the American Association of Retired People Foundation Colorado Programs/AARP Elderwatch, 303 East 17th Avenue, Denver, Colorado 80203; and the Better Business Bureau, 1020 Cherokee Street, Denver, Colorado 80204.

September 26, 2012: Facilitator/moderator, United States Attorney's Tribal Listening Session, Indian Pueblo Cultural Center, Albuquerque, New Mexico. Copy supplied.

August 28, 2012: Speaker, 20th Annual Four Corners Indian Country Conference, Pojoaque Pueblo, New Mexico. Copy supplied.

August 3, 2012: Facilitator/moderator, joint United States Attorney - Department of Justice, Environmental and Natural Resources Division Tribal listening session

on environmental justice. Bureau of Indian Affairs. Albuquerque, New Mexico. Copy supplied.

April 21, 2012: Panelist. Federal Law Enforcement, National Association of Hispanic Journalists Regional Conference. Albuquerque, New Mexico. Copy supplied.

April 16, 2012: Speaker. 3rd Annual Northern New Mexico Anti-Drug Summit. Pojoaque High School. Pojoaque, New Mexico. Copy supplied.

April 11, 2012: Speaker. "Choices – Rewards and Consequences." Escalante High School, Tierra Amarilla, New Mexico. My remarks included a description of how young people make choices every day and illustrated the point by using the familiar number line to show how some choices lead to rewards (positive numbers) or consequences (negative numbers). I also described how negative choices often lead to addiction, jail, and separation of parents from children, and how positive choices can lead to strong bodies, healthy families and enjoyable life experiences. I used no notes, but generally followed a number-line illustration on a PowerPoint slide show, a copy of which is supplied for the July 25, 2011 event.

March 27, 2012: Panelist, Tribal Listening Session, Office of United States Senator Jeff Bingaman, Office of Special Trustee, United States Department of Interior, Albuquerque, New Mexico. Copy supplied.

February 8, 2012: Speaker. Tribal Prescription Drug Abuse & Drug Endangered Children Training Conference. Albuquerque, New Mexico. Copy supplied.

January 31, 2012: Speaker. Field Hearing, United States Attorney General's Defending Childhood Task Force. Albuquerque, New Mexico. Copy supplied.

January 18, 2012: Speaker, Sheriffs' Affiliate, New Mexico Association of Counties. Santa Fe, New Mexico. Copy supplied.

January 17, 2012: Speaker. Cyberbullying and Prescription Drug Awareness and Training Workshop. Pojoaque High School. Pojoaque, New Mexico. Copy supplied.

December 13, 2011: Speaker. Interdepartmental Tribal Justice, Safety & Wellness Conference, Santa Ana (Bernalillo), New Mexico. Copy supplied.

November 19, 2011: Speaker. Roadrunner Food Bank Holiday Food Drive, Albuquerque, New Mexico. Copy supplied.

November 16, 2011: Speaker. All Indian Pueblo Council monthly meeting, Taos Pueblo, New Mexico. Copy supplied.

October 26, 2011: Speaker, "Choices - Rewards and Consequences." Mesa Vista High School, Ojo Caliente, New Mexico. My remarks included a description of how young people make choices every day and illustrated the point by using the familiar number line to show how some choices lead to rewards (positive numbers) or consequences (negative numbers). I also described how negative choices often lead to addiction, jail, and separation of parents from children, and how positive choices can lead to strong bodies, healthy families and enjoyable life experiences. I used no notes, but generally followed a number-line illustration on a PowerPoint slide show, a copy of which is supplied for the July 25, 2011 event.

October 24, 2011: Speaker, Department of Justice Gangs in Indian Country Training Conference, Santa Ana (Bernalillo), New Mexico. Copy supplied.

October 20, 2011, Speaker, Albuquerque Bench, Bar and Media Association luncheon, United States Attorneys Office, Albuquerque, New Mexico. PowerPoint copy supplied.

October 18, 2011: Speaker, Solo & Small Firm Practice Section Luncheon, New Mexico State Bar Association, Albuquerque, New Mexico. Copy supplied.

October 12, 2011: Speaker, Community Meeting, Albuquerque Heroin Awareness Committee, Albuquerque, New Mexico. Copy supplied.

October 11, 2011: Speaker, Panel Discussion at U.S. District Judge William Johnson's Law Class, Albuquerque, New Mexico. Copy Supplied.

September 30, 2011: Speaker, National Association of Former United States Attorneys Annual Conference, Santa Fe, New Mexico. Copy supplied.

September 13, 2011: Speaker, 19th Annual Four Corners Indian Country Conference, Southern Ute Indian Reservation, Colorado. Copy supplied.

August 31, 2011: Speaker, US/Mexico Bi-National Meeting, Federal Prosecutors Working Group Meeting, San Diego, California. Copy supplied.

August 22, 2011: Speaker, Rotary Club of Albuquerque, Albuquerque, New Mexico. Copy supplied.

August 19, 2011: Speaker, Border Security Center for Research Training and Technical Assistance Meeting. Copy supplied.

July 25, 2011: Speaker, Annual Inter-Tribal Youth Summit, Santa Fe Indian School, Santa Fe, New Mexico. My remarks included a description of how young people make choices every day and illustrated the point by using the familiar number line to show how some choices lead to rewards (positive numbers) or consequences (negative numbers). I also described how negative choices often

lead to addiction, jail, and separation of parents from children, and how positive choices can lead to strong bodies, healthy families and enjoyable life experiences. I used no notes, but generally followed a number-line illustration on a Power Point slide show, a copy of which I have supplied.

June 28, 2011: Speaker, Isleta Indian Pueblo Youth and Community Public Safety Seminar, Isleta Pueblo, New Mexico. Impromptu remarks relating to choices that young people have to make relating to drugs, gangs, bullying, as well as the consequences from bad choices and rewards from good choices. I have no notes, transcript or recording. The event was sponsored by Isleta Pueblo and held at the Isleta Pueblo Recreation Center, Tribal Road 40, Building 60, Isleta Pueblo, New Mexico.

June 23, 2011: Speaker, Tribal SAUSA MOU Signing Ceremony, Albuquerque, New Mexico. Copy supplied.

June 23, 2011: Speaker, Camp Triumph Youth graduation ceremony. I delivered impromptu welcoming remarks for middle-school age participants and their parents. I have no notes, transcript or recording. The event was sponsored by the United States Attorney's Office Project Safe Neighborhood Program, 201 Third Street, NW, Suite 900, Albuquerque, New Mexico 87102.

June 23, 2011: Speaker, 13th Judicial District Attorney's Office 3rd Annual Gangs, Drugs and Prosecution Conference, Belen, New Mexico. Copy supplied.

June 14, 2011: Speaker, FBI Civil Rights Town Hall Meeting, Gallup, New Mexico. Copy supplied.

June 4, 2011: Speaker, Pojoaque High School Graduation Ceremony, Pojoaque High School, Pojoaque, New Mexico. Copy supplied.

May 24, 2011: Speaker, Offender Reentry Provisions in Tribal Law and Order Act of 2010 and Interagency Agreements Webinar, Albuquerque, New Mexico. Copy supplied.

May 24, 2011: Speaker, Tribal Prescription Drug Abuse and Endangered Children Training and Technical Assistance Conference, Albuquerque, New Mexico. Copy supplied.

May 13, 2011: Speaker, Naturalization Ceremony, Albuquerque, New Mexico. Copy supplied.

May 12, 2011: Speaker, FBI Civil Rights Conference, University of New Mexico, Albuquerque, New Mexico. Copy supplied.

May 6, 2011: Speaker, New Mexico District Attorneys Association Annual Conference, Santa Clara (Bernalillo), New Mexico. Copy supplied.

May 4, 2011: Speaker, District of New Mexico Special Agents in Charge Meeting on Officer Safety, United States Attorney's Office, Albuquerque, New Mexico. Copy supplied.

April 28, 2011: Speaker, Roswell/Chavez County Public Safety Meeting, Espanola, New Mexico. Copy supplied.

April 20, 2011: Speaker, 2nd Annual Northern New Mexico Anti-Drug Summit, Espanola, New Mexico. Copy supplied.

April 12, 2011: Speaker, Prescription Drug Abuse Epidemic Training Conference, Drug Enforcement Administration, Albuquerque, New Mexico. Copy supplied.

March 25, 2011: Speaker, 75th Annual New Mexico Sheriffs and Police Officers Association Conference, Albuquerque, New Mexico. Copy supplied.

March 7, 2011: Speaker, 13th Annual National Consumer Protection Week Conference, Albuquerque, New Mexico. Copy supplied.

February 24, 2011: Speaker, New Mexico Analysts Working Group Inaugural Meeting, Albuquerque Police Department substation, 2nd Street, Albuquerque, New Mexico. Copy supplied.

January 4, 2011: Speaker, Albuquerque Bar Association Luncheon, Albuquerque, New Mexico. Copy supplied.

December 3, 2010: Speaker, FBI All-Hands Meeting, Kirtland Air Force Base, Albuquerque, New Mexico. Copy supplied.

November 30, 2010: Speaker, District of New Mexico First Annual Tribal Consultation, Indian Pueblo Cultural Center, Albuquerque, New Mexico. Copy supplied.

October 25, 2010: Speaker, "Gangs in Indian Country" Training Conference, Department of Justice, Gallup, New Mexico. Copy supplied.

September 21, 2010: Speaker, Use of Statistics for Law Enforcement, 2010 Uniform Crime Reporting and National Incident Based Reporting Training Conference, Albuquerque, New Mexico. Copy supplied.

September 14, 2010: Speaker, "Choices – Rewards and Consequences," Zia Middle School, Artesia, New Mexico. I delivered impromptu remarks to middle school children relating to choices that young people have to make relating to

drugs, gangs, and bullying, as well as the consequences from bad choices and rewards from good choices. I have no notes, transcript or recording. The event was sponsored by the United States Attorney's Office for the District of New Mexico, Project Safe Neighborhood Program, 201 Third Street NW, Suite 900, Albuquerque, New Mexico 87102.

September 13, 2010: Speaker, New Mexico Gang Task Force Training/Town Hall, Artesia Community Center, Artesia, New Mexico. Copy of notes, PowerPoint, and handout supplied.

September 10, 2010: Panelist, "Sentencing in a Post-Booker World," Hispanic Bar Association Annual Conference, Minneapolis, Minnesota. PowerPoint supplied.

July 21, 2010: Panelist, 2012 National Inter-Tribal Youth Summit Listening Session. I made impromptu remarks to a select group of youth participants to congratulate them for their leadership in their home communities and schools and for overcoming adversity of many varieties to become role models for younger people. I have no notes, transcript, or recording. The event was sponsored by the Institute of American Indian Arts, 83 Avan Nu Po Road, Santa Fe, New Mexico 87508.

May 28, 2010, Speaker, Naturalization Ceremony, Las Cruces, New Mexico. I used the same notes supplied for the May 13, 2011 event.

April 16, 2010: Speaker, Naturalization Ceremony, Albuquerque, New Mexico. I used the same notes supplied for the May 13, 2011 event.

June 22, 2006: Speaker, "Preparing for Pandemic Influenza," 2nd Annual Border Emergency Preparedness Summit, El Paso, Texas. Copy supplied.

2003 - 2006: Guest lecturer, Mayfield High School, Las Cruces, New Mexico. I spoke to the Government class each Spring semester, and the Law class each Fall semester. On each occasion, my remarks were limited to explaining the separation of powers between the branches of government, as well as giving a general description of the functions of each branch, with a particular focus on the Department of Justice and the United States Attorney's Office. I have no notes, transcript, or recording. Mayfield High School is located at 1955 North Valley Drive, Las Cruces, New Mexico 88007.

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. In my official capacity as U.S. Attorney, I periodically give interviews to local radio, television and print media reporters. I do not recall all the interviews I have given or the dates on which I gave those interviews. The interviews have centered on particular cases my office has prosecuted during my term, law enforcement initiatives, community and Tribal outreach initiatives, and Department initiatives as they have related to the District of New Mexico. I have located the following interviews, press conferences, and press releases listed below.

Interviews:

Colleen Keane, *Justice Denied. A Tangled Bureaucracy Has Left Tribal Communities Facing an Epidemic of Violent Crime*, The Santa Fe Reporter, October 2, 2012. Copy supplied.

Bill Diven and Alex Goldsmith, *Vaughan Sentenced in Massive Swindle*, KRQE TV, September 6, 2012. Video available at: <http://www.krqe.com/dpp/news/crime/vaughan-sentenced-in-massive-swindle>.

Mike Gallagher, *Deadly Addiction – New Mexico’s Love Affair with Drugs*, The Albuquerque Journal, August 12 – 15, 2012. Copy supplied.

Deanna Saucedo, *Feds Indict Guards in Inmate Beating*, KRQE TV, June 29, 2012. Video available at: <http://www.krqe.com/dpp/news/crime/feds-indict-guards-in-inmate-beating>.

Profile: Kenneth Gonzalez, New Mexico Hispanic Bar Association Monthly Newsletter, March 29, 2012. Copy supplied.

Man Gets 2 Years for Semen Sample at Sunflower Market, KOAT TV, March 1, 2012. Copy supplied.

Nicole Brady, interview related to the prescription drug overdose problem in New Mexico, KOB TV, February 2012. DVD supplied.

Kevin McDonald, *New Mexico in Focus*, KNME TV, February 2012. Video available at: http://www.youtube.com/watch?v=nEFZboPvNcc&playnext=1&list=PLA50589FAC78BB9BF&feature=results_main and <http://www.youtube.com/watch?v=JqT6hRnfWds>.

Alex Goldsmith, *NM Hosts Federal Task Force on Abuse*, KRQE TV, January 31, 2012. Video available at: http://www.kasa.com/dpps/news/crime/task-force-aims-to-cut-down-on-abuse_4059028.

Deanna Saucedo, *Feds Want to Put Away Worst Offenders*, KRQE TV, January 30, 2012. Video available at: <http://www.krqe.com/dpp/news/crime/feds-want-to-put-away-worst-offenders>.

Journey Through Indian Country, Federal Bureau of Investigation, 2012. My statement can be found at: http://www.fbi.gov/news/stories/2012/june/indian-country_060112/kenneth-gonzales.

Doug Vaughan Pleads Guilty, Faces Prison Time, KOAT TV, December 21, 2011. Copy supplied.

November 19, 2011: I gave a brief on-camera interview to KOB-TV news anchors Nicole Brady and Tom Joles during the Roadrunner Food Bank Holiday Food Drive, ABQ Uptown shopping center, Albuquerque, New Mexico. I have been unable to obtain a transcript or recording from the television station.

Staff Reporter, *No Charges Filed in Bicyclist's Death*, The Albuquerque Journal on-line, September 30, 2011. Copy supplied.

Diane J. Schmidt, *Summit: Youth Can Lead the Grassroots*, Gallup Independent, August 4, 2011. Copy supplied.

Media Conference Call regarding one-year anniversary of the Tribal Law and Order Act, July 27, 2011. I have been unable to obtain a transcript or recording of the interview.

Nico Roesler, *Indian Country Teens Gather in Santa Fe for Summit to Focus on Tribes' Toughest Issues*, Santa Fe New Mexican, July 25, 2011. Copy supplied.

2011 National Intertribal Youth Summit (NIYS) in Santa Fe, New Mexico, The Department of Justice, July 25, 2011. Video available at: <http://www.youtube.com/watch?v=U0Ga9UrMyi8>.

Alex Tomlin, *13 Busted in Heroin Ring Targeting Kids*, KRQE TV, July 22, 2011. Video available at: <http://www.krqe.com/dpp/news/crime/13-busted-in-heroin-ring-targeting-kids>.

Jeri Clausing, *US Attorney Hires Tribal Prosecutor*, Associated Press, May 28, 2011. Copy supplied.

Alex Tomlin, *Child Sex Predators Come to NM for Sex*, KRQE TV, May 24, 2011. Video available at: <http://www.krqe.com/dpp/news/crime/child-sex-predators-come-to-nm-for-sex>.

Crystal Gutierrez, *Father and Son Admit to Drug Pushing*, KRQE TV, May 13, 2011. Video available at: <http://www.krqe.com/dpp/news/crime/father-and-son-admit-to-drug-pushing>.

Michael Martinez, *Federal Gun Raid Leaves Border Town Without Mayor, Police Chief*, CNN, March 10, 2011. Copy supplied.

Vaughan's Neighbors Have Noticed Investigators in Area, KOB TV, February 25, 2011. Video available at: <http://www.youtube.com/watch?v=DQK-oBC71PA&feature=plcp>.

Interview of U.S. Attorney Kenneth J. Gonzales, Defense News, New Mexico Defense Lawyers Association Newsletter, December 14, 2010. Copy supplied.

Jeff Todd, *Ariz. Judge Keeps N.M. Murder Suspects*, KRQE, October 28, 2010. Video available at: <http://www.krqe.com/dpp/news/crime/az-judge-keeping-accused-nm-killers>.

73 Armenian Arrested for Biggest Medicare Fraud in USA History, KOB TV, October 2010. A portion of the interview was reported in a story that can be found at: <http://www.youtube.com/watch?v=D1PpRZ43vYY&feature=fvsr>.

Feds Prep for 'Heftier' Alien Caseload: Immigration Screenings Will Mean More Work, KRQE TV, May 20, 2010. Copy supplied.

Jay Root, *Suspect in Mexican Killings Underscores Revolving Door at US-Mexico Border*, McClatchy-Tribune News Service, August 24, 2006. Copy supplied.

Press Conferences:

On November 27, 2012, I held a press conference with Tom Perez, Assistant Attorney General for the Civil Rights Division (CRD) of the Department of Justice, Richard Berry, Mayor of the City of Albuquerque, and Ray Schultz, Chief of Police, for the purpose of announcing the CRD's decision to launch a "pattern or practice" civil rights investigation into the Albuquerque Police Department. My remarks were limited to welcoming the attendees and introducing the speakers. Copy supplied.

August 9, 2012: I held a press conference with District Attorney Richard Flores to announce federal charges against 25 individuals in a DEA-led drug trafficking investigation in San Miguel County. Notes supplied.

July 20, 2012: I held a press conference to announce federal charges in *United States v. Armenta, et al.*, against 23 individuals as a result of a joint ATF-Farmington Gang Unit investigation in San Juan County. Notes supplied and video is available at:

<http://www.krqe.com/dpp/news/crime/gun-sweep-targets-four-corners-felons>.

June 28, 2012: I held a press conference to announce federal charges in *United States v. Erives-Lopez, et al.*, against 14 Santa Fe area men for cocaine trafficking. Notes supplied.

August 18, 2011: I held a press conference to announce guilty pleas of three defendants in *United States v. Beebe, et al.*, for racially-motivated assault on Navajo man. Notes supplied.

February 25, 2011: I held a press conference to announce a federal indictment in *United States v. Vaughn*, a \$74 million "Ponzi" scheme. Notes supplied and videos are available here: <http://www.youtube.com/watch?v=HW1VlzsdMcA> and http://www.youtube.com/watch?v=suK_C1M1fbc.

September 17, 2010: I held a press conference to announce a federal indictment in *United States v. Mascheroni, et al.*, against a retired Los Alamos National Laboratory physicist and his spouse for transmitting classified data to injure the United States. Notes supplied and videos are available at: <http://www.youtube.com/watch?v=iXxWeLcus2w> and <http://www.krqe.com/dpp/news/crime/ex-lanl-couple-charged-in-nuke-case>.

August 23, 2010: I held a press conference to announce federal charges filed in *United States v. McCluskey, et al.*, against three individuals for causing the deaths of an Oklahoma couple traveling through New Mexico. Notes supplied.

June 10, 2010: I held a press conference to announce the results of a Drug Enforcement Administration operation in Espanola, New Mexico. Notes for the DEA operation announcement supplied.

June 10, 2010: At my request, Assistant United States Attorney Renee Camacho read a statement on my behalf at a press conference in El Paso, Texas, to announce a 36-count federal indictment of Southern New Mexico drug trafficking organization. Copy supplied.

May 4, 2010: I held a press conference to announce my priorities for the District of New Mexico. The press conference was held at the United States Attorney's Office in Albuquerque, New Mexico. Copy supplied.

March 5, 2010: I held a brief press conference in response to the President's announcement that he was nominating me to be the United States Attorney for the District of New Mexico. The press conference was held on the front steps of the Pete V. Domenici United States Courthouse in Albuquerque, New Mexico. It was covered by television and print news media. My comments were very brief, focused on thanking the President as well as United States Senators Jeff

Bingaman and Tom Udall. I have been unable to locate any notes, transcript or recording.

Press Releases:

Press release, *Nineteen Members of New Mexico Drug Trafficking Organization Indicted on Drug Trafficking and Money Laundering Charges*, United States Attorney's Office for the District of New Mexico, December 17, 2012. Copy supplied.

Press release, *U.S. Attorney's Office Collects Almost \$10 Million in Civil & Criminal Actions in FY 2012*, United States Attorney's Office for the District of New Mexico, December 10, 2012. Copy supplied.

Press release, *Justice Department Launches Investigation of the Albuquerque Police Department's Use of Force*, United States Attorney's Office for the District of New Mexico, November 27, 2012. Copy supplied.

Press release, *Former San Juan County Sheriff's Deputy Pleads Guilty to Violating Civil Rights of Man by Assaulting Him with a Flashlight*, United States Attorney's Office for the District of New Mexico, October 24, 2012. Copy supplied.

Press release, *Former Shiprock Corrections Officer Sentenced for Sexually Assaulting Inmate*, United States Attorney's Office for the District of New Mexico, October 22, 2012. Copy supplied.

Press release, *U.S. Attorney Kenneth J. Gonzales Names District Election Officer*, United States Attorney's Office for the District of New Mexico, October 17, 2012. Copy supplied.

Press release, *Armed Career Criminal from Roswell Sentenced to Almost 25 Years in Prison*, United States Attorney's Office for the District of New Mexico, September 19, 2012. Copy supplied.

Press release, *Douglas F. Vaughn Sentenced to 12 Years for Federal Wire and Mail Fraud Charges Involving "Ponzi" Scheme*, United States Attorney's Office for the District of New Mexico, September 5, 2012. Copy supplied.

Press release, *Federal Indictments Charge Seventeen Defendants for Trafficking Drugs in Lincoln and Otero Counties*, United States Attorney's Office for the District of New Mexico, August 17, 2012. Copy supplied.

Press release, *Twenty-five Charged with Federal Narcotics Trafficking Offenses as a Result of DEA-led Investigation in San Miguel County*, United States

Attorney's Office for the District of New Mexico, August 9, 2012. Copy supplied.

Press release, *Four Albuquerque Residents Arrested in Connection with Nationwide Synthetic Designer Drug Takedown*, United States Attorney's Office for the District of New Mexico, July 26, 2012. Copy supplied.

Press release, *Twenty-three Individuals Charged as a Result of Joint ATF-Farmington Gang Unit Investigation in San Juan County*, United States Attorney's Office for the District of New Mexico, July 20, 2012. Copy supplied.

Press release, *Former Shiprock Detention Officer Pleads Guilty to Civil Rights Violations of Inmate*, United States Attorney's Office for the District of New Mexico, July 12, 2012. Copy supplied.

Press release, *Former San Juan County Sheriff's Deputy Indicted for Using Excessive Force*, United States Attorney's Office for the District of New Mexico, June 29, 2012. Copy supplied.

Press release, *Three Albuquerque Men Indicted on Federal Civil Rights and Obstruction Charges*, United States Attorney's Office for the District of New Mexico, June 29, 2012. Copy supplied.

Press release, *Fourteen Santa Fe-Area Men Face Cocaine Trafficking Charges as a Result of Multi-Agency Investigation*, United States Attorney's Office for the District of New Mexico, June 28, 2012. Copy supplied.

Press release, *Operation Artemis: A Multi-Agency Statewide Operation Targeting Child Pornography Offenders*, United States Attorney's Office for the District of New Mexico, March 30, 2010. Copy supplied.

Press release, *NMSU Student Charge with Making False Bomb Threat*, United States Attorney's Office for the District of New Mexico, March 28, 2012. Copy supplied.

Press release, *Kevin Garner Receives 115-Month Prison Sentence for Drug Trafficking Offense Involving 1/4 Ounce of Methamphetamine*, United States Attorney's Office for the District of New Mexico, March 28, 2012. Copy supplied.

Press release, *Former New Mexico Corrections Department Official Sentenced to 70 Months for Bribery Conviction*, United States Attorney's Office for the District of New Mexico, March 20, 2012. Copy supplied.

Press release, *Former Officers of New Mexico-based Defense Contractor Charged in Fraud and Money Laundering Schemes Related to Rebuilding Efforts in Iraq*.

United States Attorney's Office for the District of New Mexico, March 2, 2012. Copy supplied.

Press release, *Federal Indictment Charges Fifteen with Methamphetamine Trafficking Charges*, United States Attorney's Office for the District of New Mexico, March 2, 2012. Copy supplied.

Press release, *Albuquerque Man Sentenced to 24 Months in Prison for Adulterating Yogurt with Semen*, United States Attorney's Office for the District of New Mexico, March 1, 2012. Copy supplied.

Press release, *Federal Indictment Charges Eight Albuquerque Residents with Illegal Distribution of Prescription Drugs*, United States Attorney's Office for the District of New Mexico, February 23, 2012. Copy supplied.

Press release, *Attorney General Eric Holder's Task Force Examines Children's Exposure to Violence in Rural and Tribal Communities*, United States Attorney's Office for the District of New Mexico, January 31, 2012. Copy supplied.

Press release, *Federal Indictment Charges Fifteen Men from Albuquerque and Edgewood with Drug Trafficking and Financial Crimes*, United States Attorney's Office for the District of New Mexico, January 27, 2012. Copy supplied.

Press release, *Federal Agents Dismantle Anthony, N.M., Drug Trafficking Ring*, United States Attorney's Office for the District of New Mexico, January 27, 2012. Copy supplied.

Press release, *Two Men Sentenced for Racially-motivated Assault in Farmington, New Mexico*, United States Attorney's Office for the District of New Mexico, January 25, 2012. Copy supplied.

Press release, *Silver City Man Indicted for Using Stolen Identities to Obtain Tax Refunds*, United States Attorney's Office for the District of New Mexico, January 24, 2012. Copy supplied.

Press release, *Douglas F. Vaughan Pleads to Federal Wire and Mail Fraud Charges Involving "Ponzi" Scheme*, United States Attorney's Office for the District of New Mexico, December 21, 2011. Copy supplied.

Press release, *Federal Investigation Dismantles Major Methamphetamine Trafficking Operating in Southern New Mexico*, United States Attorney's Office for the District of New Mexico, November 30, 2011. Copy supplied.

Press release, *Repeat Offender Sentenced to 292 Months Imprisonment for Federal Narcotics and Firearms Conviction*, United States Attorney's Office for the District of New Mexico, November 30, 2011. Copy supplied.

Press release, *Albuquerque Man Pleads Guilty to Adulterating Yogurt with Semen*, United States Attorney's Office for the District of New Mexico, October 6, 2011. Copy supplied.

Press release, *84 Defendants Charged with Drug Trafficking Offenses as a Result of DEA "MET" Operation in Roswell, New Mexico*, United States Attorney's Office for the District of New Mexico, September 23, 2011. Copy supplied.

Press release, *Former APD Officer Sentenced to Twelve Months for Federal Obstruction of Justice Conviction*, United States Attorney's Office for the District of New Mexico, September 19, 2011. Copy supplied.

Press release, *El Paso Man Charged with Causing the "Last Chance Fire" in Lincoln National Forest*, United States Attorney's Office for the District of New Mexico, September 2, 2011. Copy supplied.

Press release, *Owners/Operators of Gun Shop in Deming, NM Arrested on Federal Firearms Smuggling and Money Laundering Charges*, United States Attorney's Office for the District of New Mexico, August 30, 2011. Copy supplied.

Press release, *Federal Jury Finds Jeremiah Jackson Guilty of Bank Robbery and Killing Two Women*, United States Attorney's Office for the District of New Mexico, August 24, 2011. Copy supplied.

Press release, *Farmington Men Plead Guilty to Racially-Motivated Assault*, United States Attorney's Office for the District of New Mexico, August 18, 2011. Copy supplied.

Written public statement, *White (forest) Fire investigation, Lincoln National Forest*, August 4, 2011. Copy supplied.

Press release, *Consultants to Former New Mexico Secretary of State Charged with Theft of Government Property and Obstruction of Justice in Federal Superseding Indictment*, United States Attorney's Office for the District of New Mexico, July 28, 2011. Copy supplied

Press release, *Students from Jemez and Taos Pueblos Selected to Attend National Inter-Tribal Youth Summit*, United States Attorney's Office for the District of New Mexico, July 22, 2011. Copy supplied.

Press release, *Thirteen Facing Federal Charges for Trafficking Heroin in Northeast Heights of Albuquerque*, United States Attorney's Office for the District of New Mexico, July 21, 2011. Copy supplied.

Press release, *United States Attorney and United States Marshal Establish New Asset Recovery Unit*, United States Attorney's Office for the District of New Mexico, July 20, 2011. Copy supplied.

Press release, *Federal Grand Jury Indicts Albuquerque Man on Federal Charges for Adulterating Yogurt With Semen*, United States Attorney's Office for the District of New Mexico, July 14, 2011. Copy supplied.

Press release, *Five Residents of Valencia and Socorro Counties Arrested on Federal Methamphetamine Trafficking Charges*, United States Attorney's Office for the District of New Mexico, July 1, 2011. Copy supplied.

Press release, *Justice Department Reaches Agreement to Protect Rights of Military and Overseas Voters in New Mexico*, United States Attorney's Office for the District of New Mexico, June 30, 2011. Copy supplied.

Press release, *Carlsbad Physician and Wife Sentenced on Federal Tax Evasion Conviction*, United States Attorney's Office for the District of New Mexico, May 17, 2011. Copy supplied.

Press release, *Albuquerque Man Receives 10-Year Prison Sentence for Drug Trafficking Conviction*, United States Attorney's Office for the District of New Mexico, May 5, 2011. Copy supplied.

Press release, *Former New Mexico Corrections Department Official Indicted on Federal Bribery Charges*, United States Attorney's Office for the District of New Mexico, April 14, 2011. Copy supplied.

Press release, *Police Chief, Mayor, Village Trustee of Columbus, New Mexico Indicted in Federal Firearms Trafficking Case*, United States Attorney's Office for the District of New Mexico, March 10, 2011. Copy supplied.

Press release, *Corrales Man Pleads Guilty to Federal Wire Fraud Offense*, United States Attorney's Office for the District of New Mexico, March 3, 2011. Copy supplied.

Press release, *Former Youth Minister Receives 18-year Sentence for Federal Child Pornography Conviction*, United States Attorney's Office for the District of New Mexico, March 3, 2011. Copy supplied.

Press release, *Los Lunas Man Receives 37-Month Prison Sentence for Federal Firearms Conviction*, United States Attorney's Office for the District of New Mexico, March 2, 2011. Copy supplied.

Press release, *Jicarilla Man Receives 27-Month Sentence for Federal Firearms Convictions*, United States Attorney's Office for the District of New Mexico, March 1, 2011. Copy supplied.

Press release, *United States v. Korzec – Lamy Man Receives 24-month Sentence for Federal Attempted Bank Robbery Conviction*, United States Attorney's Office for the District of New Mexico, March 1, 2011. Copy supplied.

Press release, *Douglas F. Vaughan Indicted in "Ponzi" Scheme*, United States Attorney's Office for the District of New Mexico, February 25, 2011. Copy supplied.

Press release, *Dexter Man Sentenced for Federal Firearms Offense*, United States Attorney's Office for the District of New Mexico, February 16, 2011. Copy supplied.

Press release, *Albuquerque Man Receives 100-month Prison Sentence for Assaulting Federal Officer*, United States Attorney's Office for the District of New Mexico, February 9, 2011. Copy supplied.

Press release, *Federal Prosecutor Appointed to Violence Against Women Federal and Tribal Prosecution Task Force*, United States Attorney's Office for the District of New Mexico, January 21, 2011. Copy supplied.

Press release, *Roswell Man Convicted of Federal Firearms Charge*, United States Attorney's Office for the District of New Mexico, January 21, 2011. Copy supplied.

Press release, *Navajo Man Receives Life Sentence for Murder of Common-Law Wife*, United States Attorney's Office for the District of New Mexico, January 11, 2011. Copy supplied.

Press release, *U.S. Attorneys' Office Contributed to \$6.68 Billion in Civil & Criminal Collections in Fiscal Year 2010*, United States Attorney's Office for the District of New Mexico, December 16, 2010. Copy supplied.

Press release, *Former APD Officer Convicted on Obstruction of Justice Charge*, United States Attorney's Office for the District of New Mexico, December 16, 2010. Copy supplied.

Press release, *Navajo Man Receives 20-Year Sentence on Homicide and Robbery Conviction after Competency Proceedings*, United States Attorney's Office for the District of New Mexico, December 2, 2010. Copy supplied.

Press release, *DEA Operations Dismantle Two Major Heroin Trafficking Organizations*, United States Attorney's Office for the District of New Mexico, November 18, 2010. Copy supplied.

Press release, *Deming Man Pleads Guilty to Assaulting Border Patrol Agent*, United States Attorney's Office for the District of New Mexico, November 18, 2010. Copy supplied.

Press release, *Federal Indictment Prompts Arrests of Drug Traffickers in Southern New Mexico and El Paso, Texas*, United States Attorney's Office for the District of New Mexico, November 16, 2010. Copy supplied.

Press release, *Former Pojoaque Pueblo Official Sentenced to a Year Imprisonment on Federal Conviction*, United States Attorney's Office for the District of New Mexico, November 2, 2010. Copy supplied.

Press release, *Former Insurance Salesman Charged with Fraud*, United States Attorney's Office for the District of New Mexico, October 28, 2010. Copy supplied.

Press release, *Statement by U.S. Attorney Kenneth J. Gonzales Regarding Extradition of McCluskey Defendants*, United States Attorney's Office for the District of New Mexico, October 28, 2010. Copy supplied.

Press release, *Roswell Man Pleads Guilty to Federal Firearms Charges*, United States Attorney's Office for the District of New Mexico, October 25, 2010. Copy supplied.

Press release, *United States Attorney Names District Election Officer*, United States Attorney's Office for the District of New Mexico, October 25, 2010. Copy supplied.

Press release, *Jicarilla Apache Woman Charged with DUI-Related Vehicular Homicide*, United States Attorney's Office for the District of New Mexico, October 22, 2010. Copy supplied.

Press release, *Albuquerque Man Sentenced on Bankruptcy Fraud Conviction*, United States Attorney's Office for the District of New Mexico, October 21, 2010. Copy supplied.

Press release, *Man Pleads Guilty to Silver City Attempted Carjacking*, United States Attorney's Office for the District of New Mexico, October 19, 2010. Copy supplied.

Press release, *Nine Drug Traffickers in McKinley County Charged with Federal Drug Trafficking Offenses*, United States Attorney's Office for the District of New Mexico, October 19, 2010. Copy supplied.

Press release, *Members of Organized Crime Enterprise Charged with Federal Health Care Fraud Offenses*, United States Attorney's Office for the District of New Mexico, October 13, 2010. Copy Supplied.

Press release, *Navajo Man Faces Attempted Murder Charges*, United States Attorney's Office for the District of New Mexico, October 8, 2010. Copy supplied.

Press release, *Carlsbad Physician and Wife Convicted on Federal Tax Charges*, United States Attorney's Office for the District of New Mexico, September 30, 2010. Copy supplied.

Press release, *Operation Predator: Multi-Agency Statewide Operation Targeting Child Pornography Offenders*, United States Attorney's Office for the District of New Mexico, September 29, 2010. Copy supplied.

Press release, *United States and Santa Fe Waste Management Reach Settlement in Unauthorized Mineral Sale*, United States Attorney's Office for the District of New Mexico, September 24, 2010. Copy supplied.

Press release, *Former CYFD Official Sentenced in Federal Court on Child Pornography Offense*, United States Attorney's Office for the District of New Mexico, September 23, 2010. Copy supplied.

Press release, *Former Workers at Los Alamos Charged with Transmitting Classified Nuclear Weapons Data to Injure the United States*, United States Attorney's Office for the District of New Mexico, September 17, 2010. Copy supplied.

Press release, *Navajo Man Guilty of Murdering Common-Law Wife*, United States Attorney's Office for the District of New Mexico, September 15, 2010. Copy supplied.

Press release, *Former LANL Employee Sentenced for Stealing Irradiated Gold*, United States Attorney's Office for the District of New Mexico, August 31, 2010. Copy supplied.

Press release, *Retired Attorney Pleads Guilty to Receipt of Child Pornography*, United States Attorney's Office for the District of New Mexico, August 30, 2010. Copy supplied.

Press release, *Arizona Fugitives Charged with Causing the Deaths of Oklahoma Couple*, United States Attorney's Office for the District of New Mexico, August 23, 2010. Copy supplied.

Press release, *Albuquerque Man Guilty of Assaulting Federal Officer*, United States Attorney's Office for the District of New Mexico, August 22, 2010. Copy supplied.

Press release, *Las Cruces Jury Convicts Farmington Gang Member of Federal Drug Trafficking and Firearms Charges*, United States Attorney's Office for the District of New Mexico, August 17, 2010. Copy supplied.

Press release, *Nurse Practitioner and Associates Arrested on Federal Drug Charges*, United States Attorney's Office for the District of New Mexico, July 22, 2010. Copy supplied.

Press release, *Three Charged with Manipulating Drug Tests for Criminal Defendants*, United States Attorney's Office for the District of New Mexico, July 19, 2010. Copy supplied.

Press release, *Justice Department Announces Local Recipient of Annual Project Safe Neighborhoods Achievement Award*, United States Attorney's Office for the District of New Mexico, July 14, 2010. Copy supplied.

Press release, *Silver City Man Sentenced in Federal Court Today for Excavating Archeological Artifacts in the Gila National Forest*, United States Attorney's Office for the District of New Mexico, June 30, 2010. Copy supplied.

Press release, *DEA "MET" Hits Drug Traffickers in Espanola Valley*, United States Attorney's Office for the District of New Mexico, June 10, 2010. Copy supplied.

Press release, *Thirty-six Count Federal Indictment Prompts Arrests of Local Drug Traffickers*, United States Attorney's Office for the District of New Mexico, June 10, 2010. Copy supplied.

Press release, *U.S. Attorney's Office to Receive New Resources to Combat Crime and Improve Communication in Indian Country*, United States Attorney's Office for the District of New Mexico, May 6, 2010. Copy supplied.

Press release, *United States Attorney Kenneth J. Gonzales Announces Priorities for his Administration*, United States Attorney's Office for the District of New Mexico, May 4, 2010. Copy supplied.

Press release, *U.S. Senate Confirms Appointment of Kenneth J. Gonzales to position of U.S. Attorney*, United States Attorney's Office for the District of New Mexico, April 30, 2010. Copy supplied.

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

I have never held judicial office.

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

- i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

I have never held judicial office.

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

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

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

I was appointed as the United States Attorney for the District of New Mexico on April 30, 2010, by President Barack Obama.

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

I have not held office in or provided services to a political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

From 1994 to 1996, I served as a law clerk to the Honorable Joseph F. Baca, Chief Justice of the New Mexico Supreme Court.

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

I have not practiced law alone.

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

1996 – 1999
United States Senate
Office of Senator Jeff Bingaman
703 Hart Senate Office Building
Washington, D.C. 20510
Legislative Assistant

2001 – 2005
United States Army Reserve
The Judge Advocate General's Corps
5035th Garrison Support Unit (de-activated)
Fort Bliss, Texas 79901
Captain, Legal Assistance Attorney

2005 – 2010
United States Army Reserve
The Judge Advocate General's Corps
1st Legal Support Organization
1920 Harry Wurzbach
San Antonio, Texas 78209
Captain, Legal Assistance Attorney

2008 – 2009
United States Army

The Judge Advocate General's Corps
Office of the Staff, Judge Advocate
HQ, XVIII Corps
Attn: AFZA-JA, Stop A
Fort Bragg, North Carolina 28310
Captain, Senior Trial Counsel

2010 – Present
United States Army Reserve
The Judge Advocate General's Corps
The Judge Advocate General's Legal Center and School
600 Massie Road
Charlottesville, Virginia 22903
Major, Adjunct Criminal Law Professor

1999 – Present
United States Attorney's Office – District of New Mexico
201 Third Street, NW, Suite 900
Albuquerque, New Mexico 87102
United States Attorney (2010 – Present)
Assistant United States Attorney (1999 – 2010)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

Legislative Assistant

From 1996 to 1999, I worked for United States Senator Jeff Bingaman in Washington, DC, as a Legislative Assistant. My legislative portfolio included such policy areas as criminal and juvenile justice, Indian affairs, transportation, small business, rural development and infrastructure. The duties included drafting and monitoring pending legislation relating to those policy areas. In addition, my duties included acting as primary liaison with corresponding legislative committees and Executive agencies as well as constituents.

United States Army Reserve – Judge Advocate General’s Corps

Since 2001, I have served as a Reserve officer with the United States Army – Judge Advocate General’s Corps (JAGC). The general character of my work in the JAGC has been as Adjunct Professor of Criminal Law, Legal Assistance Attorney, Trial Counsel, Administrative Law Attorney, and Operations Law Attorney.

As an Adjunct Professor of Criminal Law, I provide classroom and mock trial instruction at The Judge Advocate General’s Legal Center & School in Charlottesville, Virginia. The subject areas include primarily Military Rules of Evidence and Trial Advocacy. The students include junior officers in the Army Judge Advocate General’s Corps as well as inexperienced Trial and Defense Counsel in Active, Reserve, and National Guard components of the Army, as well as Navy, Air Force, Marines, and Coast Guard. I also teach courses at the annual Criminal Law Advocacy Course/Intermediate Trial Advocacy Course each September and the Officers Basic Training Course each February/March.

As a Legal Assistance Attorney, I provide counsel to individual Active and Reserve soldiers and spouses, as well as to retired military members and spouses. The vast amount of legal assistance has been with estate planning (wills) for deploying soldiers, although it has included legal counsel regarding marriage separation and divorce, landlord-tenant matters, Service members Civil Relief Act (SCRA) and the Uniform Service members Employment Rights Act. As Operations Law Attorney, I have briefed large groups of soldiers deploying in support of Operation Enduring Freedom or Operation Iraqi Freedom on the Law of Armed Conflict, Standard Rules of Engagement, and the Code of Conduct.

As Trial Counsel, I have investigated and prosecuted violations of the Uniform Code of Military Justice, including financial fraud and prescription fraud offenses, and have prosecuted administrative separations actions. In 2002 and again in 2003, I was tasked in my Army Reserve capacity to serve as Trial Counsel in the Office of the Staff Judge Advocate, Fort Bliss, Texas, to prosecute two separate General Courts Martial, one soldier for drug trafficking and another for sexual assault.

In November 2008, I was mobilized to active duty as part of Operation Enduring Freedom and stationed at Fort Bragg, North Carolina, to augment the 18th Airborne Corps, Office of the Staff Judge Advocate and assigned to the Administrative Law Section. My duties included legal reviews, including official responses to requests made under the Freedom of Information Act, Army Regulation 15-6 investigations, and property accountability investigations. In addition, I advised officers who were tasked with conducting investigations under Army Regulation 15-6 and

UCMJ art. 32. In December 2008 I was reassigned to the Military Justice Section to serve as Senior Trial Counsel because of a shortage of manpower due to deployments and my experience as a prosecutor. As Senior Trial Counsel, I was assigned to handle criminal cases originating from the Womack Army Medical Hospital and the Warrior Transition Battalion, including, for example, financial and prescription fraud offenses.

United States Attorney's Office

I served as an Assistant United States Attorney for the District of New Mexico from 1999 to 2010, where my primary responsibility was criminal prosecution. In March 1999, I joined the Las Cruces branch office where I prosecuted large-scale drug trafficking cases with the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI) and United States Border Patrol (USBP), criminal immigration cases with the USBP and Immigration and Customs Enforcement (ICE), and firearms cases with the Bureau of Alcohol, Tobacco & Firearms (ATF). During that time I also prosecuted a small number of violent crime cases originating in the Mescalero Apache Reservation. I also investigated and prosecuted large-scale, long-term and complex drug trafficking cases as part of the Department of Justice Organized Crime Drug Enforcement Task Force (OCDETF).

In August 2006, I transferred to the main office in Albuquerque and into the Violent Crime (VC) Section. The nature of my work in VC was the investigation and prosecution of violent crime occurring on Indian Reservations, working closely with the FBI, Bureau of Indian Affairs (BIA) and Navajo Criminal Investigations Division. I also handled several bank robbery and firearms-related cases with the FBI and ATF respectively that originated in the Albuquerque area.

In April 2008, I transferred into the Narcotics section as a designated OCDETF attorney. The nature of my work was primarily large-scale, long-term and complex narcotics trafficking investigations and prosecutions that resulted in the seizure of significant quantities of marijuana, methamphetamine, heroin, and cocaine.

Since 2010, when I became the United States Attorney for the District of New Mexico, the general character of my work has been multi-dimensional, including the supervision of all administrative, personnel and operational activity in the United States Attorney's Office; all federal criminal investigations, prosecutions and appeals taking place in the jurisdiction; all civil defensive and affirmative litigation in which the United States is a party; all communication and coordination with the

Department of Justice; as well as all law enforcement coordination and community and media outreach.

My duties as United States Attorney also include working directly with 93 other United States Attorneys, the Executive Office for United States Attorneys and the Department of Justice to address major justice policy issues and develop policy strategies and implementation. The Attorney General relies heavily on the United States Attorneys, including the Attorney General's Advisory Committee and its various subcommittees to keep him apprised of public safety and policy issues to assist in the development of Departmental policy as it impacts each of the 94 Districts nationwide.

In general, my duties in the United States Attorney's Office have included significant litigation of Fourth, Fifth, and Sixth Amendment rights, in-court appearances for hearings and trials, as well as occasional appellate brief writing and appellate argument.

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

As a Legislative Assistant, I worked for the Senator and Senator's New Mexican constituents. I specialized in the policy areas of criminal and juvenile justice, Indian affairs, rural development, as well as transportation and housing.

As a Judge Advocate, Legal Assistance Attorney in the United States Army Reserve, my clients included Retired, Active, and Reserve Component military personnel, as well as Department of Defense civilians. I specialized in the area of estate planning, as well as soldier civil and employment rights. As Trial Counsel, my clients included unit commanders exercising criminal jurisdiction over soldiers within their command. I specialized in the area of criminal prosecution.

As the United States Attorney and as an Assistant U.S. Attorney, my only client has been the United States government. Currently, I have responsibility over all federal criminal investigations and prosecutions as well as responsibility to represent the United States in all civil cases within the District of New Mexico.

- 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: | 97% |
| 2. state courts of record: | 0% |
| 3. other courts: | 2% |
| 4. administrative agencies: | 1% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 0-3% |
| 2. criminal proceedings: | 97% |

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

I have tried approximately 15 cases to verdict. In approximately 10 of these cases I was chief counsel and in five I was associate counsel.

i. What percentage of these trials were:

- | | |
|--------------|---------------------------------|
| 1. jury: | 90% |
| 2. non-jury: | 10% (military separation board) |

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 appeared before the Supreme Court of the United States.

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

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Torres-Larranega, et al.*, Case No. 03-CR-2122 MV (D-NM Feb. 2005); *aff'd*, *United States v. Torres-Larranega*, 476 F.3d 1148 (10th Cir. 2007); *United States v. Francisco-Diaz*, 213 Fed. Appx. 647 (10th Cir. 2007); *United States v. Mendivil*, 208 Fed. Appx. 647 (10th Cir. 2006).

This matter stemmed from the investigation of a criminal organization that transported multi-ton quantities of marijuana from Mexico, through New Mexico and to the Chicago area. The organization, set up as a sham trucking company, used a sophisticated system of tractor-trailers, residences, warehouses, drivers, and laborers to load and off-load marijuana, as well as mid-tier managers who recruited drivers, forged documents, and managed proceeds in furtherance of the criminal activity. The investigation was led by the FBI and included multiple federal, state, and local law enforcement agencies from New Mexico, Texas, Oklahoma, Missouri, Illinois and Indiana. The FBI successfully penetrated the organization using a well-placed confidential informant, court-authorized wiretaps, and extensive surveillance, making four seizures of marijuana in New Mexico, Texas, and Indiana totaling approximately six tons. Approximately 12 organizational members were arrested and charged with conspiracy, including the leader who was charged with Continuing Criminal Enterprise. The case included significant litigation, including unsuccessful defense challenges to the legality of the wiretap and the search and seizure of evidence and defendants' statements, as well as attempts to sever. Even though many of the defendants pled guilty, four organizational leaders opted instead for trial and were found guilty. The case was tried in January to February 2005, for which I served as lead counsel. The convictions were affirmed on appeal.

Presiding Judge: Honorable Martha Vazquez, United States District Court for the District of New Mexico

Co-Counsel:

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2. *United States v. Lauder, et al.*, Case No. 02-CR-2262 BB (D-NM Aug. 2003), *aff'd*, 409 F.3d 1254 (10th Cir. 2005).

This matter was one of several that resulted from an intense investigation by the DEA and the Lea County Drug Task Force. The investigation was warranted by an influx in the community of drug traffickers from out of state that brought increased cocaine and crack cocaine to Southeastern New Mexico, including the communities of Lovington and Hobbs. The investigation revealed that Lauder and his associates transported significant amounts of powder cocaine from San Bernardino, California to Hobbs, New Mexico where he cooked it into rock form and distributed it with the assistance of several area females. Lauder was charged for his supervisor role in the conspiracy, as well as others who distributed the cocaine on a street-level. Lauder was convicted after a lengthy trial. I served as lead counsel and first chair at trial. The conviction and sentence were affirmed on appeal.

Presiding Judge: Honorable Bruce Black, United States District Court for the District of New Mexico

Co-Counsel:

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(575) 522-2304

Defense Counsel:

Ken del Valle (for defendant)
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3. *United States v. Snid*, United States Army Military Court, Fort Bliss, Texas (Dec. 2003)

This General Court Martial was brought against a senior enlisted soldier who used his position of authority to sexually assault three female junior enlisted soldiers. The offenses occurred while SFC Snid was the Retention and Recruitment Non-Commissioned Officer in the 647th Area Support Group in El Paso, Texas. SFC Snid was charged with three specifications of violating the Uniform Code of Military Justice, one specification for each victim. The challenges to the prosecution included one female victim had already been discharged from the Army and another had been deployed to the Middle East on the eve of the 2003 Invasion of Iraq. The pre-trial investigation included revelations of similar previous conduct by SFC Snid while working as a civilian in the San Antonio, Texas Independent School District. The case involved significant pre-trial litigation relating to the admission of evidence, including that from the San Antonio Schools. In December 2003 and after a lengthy trial, SFC Snid was found guilty and sentenced in United States Army Military Court. I was detailed in my Army Reserve capacity to serve as lead Trial Counsel. The defendant did not appeal his conviction or sentence.

Presiding Judge: COL/Judge Mark Sposato

Co-Counsel:

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United States Army, Judge Advocate General's Corps
Office of Staff Judge Advocate
Fort Campbell, Kentucky

CPT Damon Martinez
United States Army Reserve
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Defense Counsel:

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LWJC
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Theresa Caballero
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 (915) 564-4494

4. *United States v. Moran*, Case No. 05-CR-1547 WJ (D-NM Feb. 2006), *aff'd*, 503 F.3d 1135 (10th Cir. 2007), *cert. denied*, 128 S. Ct. 2424 (2008).

The matter was brought after the defendant was found with a rifle in his possession, a felony offense for a previously-convicted felon. Indeed, the defendant had two previous felonies in his record, including a prior conviction for being a felon in unlawful possession of a firearm. The defendant was arrested by State Game officers and County Sheriff's Deputies after he was reported to have repeatedly trespassed on private ranch land in Mayhill, New Mexico during a state-authorized deer bow hunt. Although the defendant had a bow in his possession, the State Game officers suspected he had been poaching deer utilizing the rifle, a common scheme among game poachers in the area. The defendant was charged federally with possession of a firearm by a convicted felon. The defense vigorously but unsuccessfully challenged the defendant's arrest by local law enforcement and the seizure of evidence from his vehicle and included significant litigation relating to the admission of the defendant's previous felony conviction as evidence at trial. The case resulted in a lengthy trial in which I served as lead counsel. The conviction was affirmed on appeal.

Presiding Judge: Honorable William Johnson, United States District Court for the District of New Mexico

Defense Counsel:

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 Assistant Federal Public Defender
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5. *United States v. Varela*, Case No. 06-CR-1022 RB (Aug. 2007), *aff'd*, 586 F.3d 1249 (10th Cir. 2009).

The matter was brought after a lengthy and intense investigation by the Luna County Drug Task Force, the Bureau of Alcohol, Tobacco & Firearms, the DEA, and the Hidalgo County Sheriff's Office. The defendant, a twice-convicted narcotics trafficker, was long-suspected of transporting multi-kilogram quantities of crystal methamphetamine from Phoenix, Arizona to the otherwise quiet community of Lordsburg, New Mexico where he was a principal drug distributor. After employing a confidential informant who made several purchases of methamphetamine from the defendant at the defendant's residence, the Task Force obtained a warrant for the defendant's arrest. The defendant was arrested

after leading two Lordsburg police officers on a high-speed vehicle chase through town to his residence and after scuffling with both officers in his driveway. A search warrant of the defendant vehicle led to the discovery of a significant amount of methamphetamine as well as multiple loaded firearms. The search of his residence resulted in the seizure of a horde of multiple other firearms, thousands of rounds of ammunition, as well as several hand grenades, some of which were set up in the residence as a booby-trap. Officers also discovered police scanners, surveillance cameras and monitors and digital scales used for street-level drug sales. The defense vigorously but unsuccessfully challenged the defendant's arrest and the seizure of evidence, and attempted to compel the disclosure of the confidential informant's identity. The case resulted in two trials. The first resulted in a mistrial in February 2007 and the second trial in August 2007 resulted in a guilty verdict on the firearms charges. I served as lead counsel for both trials. The conviction and sentence were affirmed on appeal.

Presiding Judge: Honorable Robert C. Brack, United States District Court for the District of New Mexico

Co-Counsel:

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Defense Counsel:

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6. *United States v. Van Hook*, Case No. 03-CR-420 MV (Jul. 2003), *aff'd*, 130 Fed. Appx. 277 (10th Cir. 2005).

This is one of several matters charged federally that stemmed from an intense investigation by the Lea County Drug Task Force in Hobbs, New Mexico. The defendant in this case was a prior convicted drug trafficker and significant crack cocaine distributor in Hobbs, New Mexico who had moved in from southern California. He was charged with federal firearms offenses as well as conspiring with his associates to distribute crack cocaine in the area of an elementary school. The case included a lengthy trial that resulted in a guilty verdict. I served as lead counsel. The conviction was affirmed on appeal.

Presiding Judge: Honorable William F. Downes, United States District Court for the District of New Mexico

Co-Counsel:

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Defense Counsel:

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7. *United States v. Cantu*, Case No. 02-CR-1841 (May 2003)

This matter resulted from a tip from a reliable informant that the defendant, an oil field worker, had been distributing large amounts of methamphetamine from his residence in Hobbs, New Mexico. The tip led to a search warrant for the defendant's home by the Lea County Drug Task Force and the DEA, which led to the discovery of a large amount of high-grade methamphetamine and a digital scale used for drug distribution. The defendant was charged with federal drug and firearms offenses. The defense vigorously but unsuccessfully challenged the search of the defendant's residence and seizure of evidence. The case resulted in a guilty plea during trial to the charges. I served as lead counsel. The defendant did not appeal his conviction or sentence.

Presiding Judge: Honorable William Johnson, United States District Court for the District of New Mexico

Defense Counsel:

Jess R. Lilley
1014 South Main Street
Las Cruces, New Mexico 88005
(575) 524-7809

8. *United States v. Fields*, Case No. 02-CR-2262 JP (2003)

This matter is one of several charged federally and resulting from an intense investigation by the Lea County Drug Task Force and the DEA relating to significant cocaine and crack cocaine distribution. The defendant, who had previously been convicted for drug distribution, was one of several who had moved into Hobbs from out of state to distribute large amounts of cocaine. The defendant was charged for his part in the drug distribution conspiracy, as well as his possession of a firearm in furtherance of the drug trafficking

activities. This case resulted in guilty plea to the charges and a significant sentence. I served as lead prosecutor. The defendant did not appeal his conviction or sentence.

Presiding Judge: Honorable John Conway, United States District Court for the District of New Mexico

Defense Counsel:

Mario A. Esparza
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9. *United States v. Mantilla et al.*, Case No. 08-CR-2085 BB (2008)

This matter resulted after a long-term and intense investigation by the DEA in New Mexico, Oklahoma, and Indiana into the drug-trafficking activities of an organization centered in Albuquerque. The organization imported multi-hundred pound quantities of marijuana from Mexico to Albuquerque where it was off-loaded, stored, and re-packaged for shipment to the Midwest. The marijuana was then loaded into personal vehicles and driven to client distributors, including those in Oklahoma and Indiana. The DEA utilized a series of court-authorized telephone wiretaps to penetrate the organization and seize a thousand pounds of marijuana in one instance and over \$100,000 in bulk cash in another. The DEA also analyzed previous seizures of marijuana in the El Paso and New Mexico trafficking corridors to link additional amounts of marijuana to the same organization. All defendants pleaded guilty. I served as lead prosecutor. No defendant appealed their convictions or sentences.

Presiding Judge: Honorable Bruce Black, United States District Court for the District of New Mexico

Defense Counsel:

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10. *United States v. Tsosie*, Case No. O6-CR-1444BB (March 2007), *aff'd*, 288 Fed. Appx. 496 (10th Cir. 2008).

The matter was brought after the victim, a former United States Marine, was beaten by a group of young but violent individuals. The victim had arrived home on the Navajo Indian Reservation after working a swing-shift at a corrections facility when he heard a window being shattered. The victim walked to his driveway to investigate and found that someone had thrown a large rock through the window of his vehicle. As he walked up the residential street, he was attacked by the responsible group, which beat him with a baseball bat, fists, and rocks, inflicting serious head and bodily injuries. The victim's spouse watched from her house before calling the police. The members of the group who could be identified were charged either as adults or juveniles with assault with a dangerous weapon and assault resulting in serious bodily injury; all except for the

defendant pled guilty. After a lengthy trial during which several of the defendant's co-assailants testified, the defendant was found guilty on all counts. My role was co-counsel and second chair at trial. The conviction was affirmed on appeal.

Presiding Judge: Honorable William Johnson, United States District Court for the District of New Mexico

Lead counsel:

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Defense Counsel:

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

Shortly after I was sworn in as United States Attorney in May 2010, the USAO embarked on several important priority initiatives. For example, I have prioritized the work we do in Indian Country, including that relating to drug trafficking, domestic violence, and community outreach. The rates of violent crime, sexual assaults, and child sexual abuse in Indian Country are far above the national average. I have eliminated all intake thresholds for drug trafficking and distribution cases so, in effect, we have a zero tolerance policy. In addition, we are collaborating with the Laguna Pueblo as part of an anti-domestic violence strategy whereby I have designated a Tribal Prosecutor as a Special Assistant United States Attorney who will investigate and prosecute domestic violence offenses occurring in all 22 Pueblos and Tribes in the District of New Mexico. In addition, I recently hired a Navajo attorney and a victim-witness specialist as two essential parts of a "Community Prosecution Team" (CPT) that will be deployed to the Navajo Reservation. The CPT will be responsible for working with Navajo Nation Department of Justice attorneys and prosecutors, law enforcement, social service providers, medical providers and the community in and around the Gallup and Crownpoint area in order to develop better criminal investigations and prosecutions as well as crime prevention strategies. The Indian Country Crime Section in my office is a

first-of-a-kind in the country and includes a team of AUSAs that are responsible for investigating and prosecuting felony offenses occurring in Indian Country. Each AUSA in this section is responsible for outreach to at least one Pueblo or Tribe to engage with community leadership, law enforcement, and the public as an improved method to better understand the issues and to develop an effective law enforcement response.

In response to a request from community leaders concerned with significantly high drug and gun violence in Chavez County and the City of Roswell, I have developed and begun to implement a strategy to combat drug, gun, and gang violence. The initiative includes the organization of a community-wide Task Force made up of federal, state, and local law enforcement, city and county government representatives, school administrators and neighborhood association representatives. The initiative includes a multi-jurisdictional, multi-agency law enforcement operation that resulted in the arrest of 84 individuals who were charged and prosecuted by federal and state prosecutors. In addition, I have collaborated with the District Attorney in the 5th Judicial District to address firearms and drug offenses, designating an Assistant District Attorney as a Special Assistant United States Attorney who works one-half time as a federal prosecutor and one-half time as a state prosecutor, focusing on offenses in Roswell as well as Eddy, Lea, and Chavez Counties.

As part of a state-wide anti-violence initiative, I have collaborated with District Attorneys, Sheriffs and local police chiefs to identify the "worst of the worst" offenders in their respective communities. The initiative is aimed at addressing the repeat serious offenders who cycle through local criminal justice systems and yet continue to perpetrate violence and drug-related offenses. Federal sentences are such that these offenders, if convicted of federal firearms or drug offenses, can be removed from the community for a more meaningful period of time. The USAO has brought several such cases in the past two years with very positive results.

In response to a significant and startling upward trend in heroin and prescription drug abuse rates in Bernalillo, Rio Arriba, and Santa Fe Counties, my office, the FBI and DEA as well as local law enforcement have initiated an enforcement effort targeting distributors, including pharmacies, nurses, and physicians. In addition, I have initiated a public-awareness campaign by collaborating with the Heroin Action Committee, an organization of parents whose children have become addicted to heroin or prescription drugs or overdosed. The object is to educate students, parents, teachers, coaches, and the community at large on the dangers surrounding prescription drug abuse.

As part of an increased effort to prepare communities for a pandemic, the Department of Homeland Security and the Centers for Disease Control & Prevention organized a US/Mexico border health conference with collaboration between the states of Texas and New Mexico, as well as the cities of El Paso, Texas and Juarez, Mexico. The objective was to discuss and begin intensive collaboration toward a plan addressing the effects a pandemic would have on the border region, including the communities of El Paso, Juarez and Las Cruces, New Mexico.

As part of my work at the Office of the Staff Judge Advocate (OSJA), United States Army Reserve Command (USARC), Fort McPherson, Georgia, I was tasked with identifying the various General (GCMCA) and Special Court-Martial Convening (SPCMCA) Authorities that were expected to exercise jurisdictional authority in the new Army Reserve force structure. The GCMCA and SPCMCA authorize criminal charges against service members. The project included extensive research to identify the forthcoming changes relating to the United States Army Reserve (USAR) transformation and developing a jurisdictional scheme to meet the justice needs of the USAR. This project was conducted while I was on training duty at OSJA, USARC in September 2006.

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 November 2010, I was assigned to The Judge Advocate General's Legal Center and School, where I serve as an adjunct professor of Criminal Law in my capacity as an Army Reserve Judge Advocate. Since then, I have taught basic Trial Advocacy in the Judge Advocate Officer Basic Course as well as Criminal Law Advocacy/Intermediate Trial Advocacy to Judge Advocates. I teach Judge Advocates in small workshop sessions in which we cover Military Rules of Evidence, Court Martial procedures, and trial techniques, including case analysis, voir dire, opening statements, direct and cross-examination, impeachment, witness interviews, experts, and closing arguments. September 2012 course description supplied.

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

None.

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

I have been a commissioned officer in the United States Army Reserve, Judge Advocate General Corps for almost 12 years, serving in a variety of capacities in Reserve and Active status including some that do not involve the practice of law. Contingent on such service being permissible under the Code of Conduct for United States Judges, and if it does not unduly impact my judicial duties, I hope to continue my service if I am confirmed. I have no commitment or agreement to do so, and no other plans for outside activities.

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 any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions.

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

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

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

Because most of my career has been in public service as a prosecutor, I have not provided any *pro bono* legal services. However, I have tried to serve the disadvantaged and my community in other ways.

From 1994 to 1996 and 2004 to 2009, I served on the Board of Directors for the New Mexico Hispanic Bar Association. The NMHBA raises funds for a Law Student Bar Exam scholarship fund, to which I contribute and for which I have assisted organizing an annual reception where scholarships are awarded to select law students. In addition, I

assisted the NMHBA organize a block of Continuing Legal Education seminars as part of the National Hispanic Bar Association 2009 Annual Conference in Albuquerque.

I have served as an assistant coach for several youth sports teams, including Las Cruces Youth Soccer from 2004 to 2005, Las Cruces Coach-pitch baseball League in 2006, and Albuquerque Altamonte Little League from 2007 to 2008.

I participated in the Cub Scouts, Yucca Council (Las Cruces, New Mexico/El Paso, Texas) from 2004 to 2006. I assisted the Den leader in organizing weekly scout meetings, including teaching scouts bicycle repair and road safety, cooking skills, wildlife conservation, recycling, as well as weekend outings (bowling, hiking, etc.).

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 June 12, 2012, New Mexico's United States Senators announced that Chief Judge Bruce D. Black would retire from the federal bench and that interested candidates could apply for the judgeship through an application on their websites. After consulting with the Department's General Counsel on July 5, 2012, I submitted an application. On July 30, 2012, I interviewed with both Senator Bingaman and Senator Tom Udall in Washington, DC, along with staff members from each of their offices. On September 10, 2012, I was notified by Senator Bingaman's staff that I was among five names being sent to the White House for consideration.

Since September 17, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On October 19, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 14, 2012, 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.

478

No.

AO 10
Rev. 1/2012

**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) Gonzales, Kenneth J.	2. Court or Organization District Court - New Mexico	3. Date of Report 11/14/2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 11/14/2012 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/01/2011 to 11/01/2012
7. Chambers or Office Address 201 Third Street, NW, Suite 900 Albuquerque, New Mexico 87102		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE *(No reportable positions.)*

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1.		
2.		
3.		
4.		
5.		

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

NONE *(No reportable agreements.)*

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Gonzales, Kenneth J.	Date of Report 11-14-2012
--	------------------------------

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 <i>(yours, not spouse's)</i>
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 bonuses.)*

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

DATE	SOURCE AND TYPE
1	
2. 2011	Griffis Davall, PC, Real Estate Appraisers, Real Estate Appraising
3. 2011	Trattel Court Reporting Staffing Solutions, Court Reporting Services and Temporary Office Services
4. 2012	Griffis Dufall, PC Real Estate Appraisers, Real Estate Appraising
5. 2012	Trattel Court Reporting, Court Reporting Services

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 23-27 of filing instructions.)*

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Gonzales, Kenneth J.	Date of Report 11-14-2012
--	------------------------------

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

NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.			
2.	Exempt		
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.	Sandia Preparatory High School	Tuition	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Gonzales, Kenneth J.	Date of Report 11/14/2012
--	------------------------------

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 14-60 of filing instructions.)

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

Place "X" after each asset exempt from prior disclosure	A Description of Assets (including trust assets)	B Income during reporting period		C Gross value at end of reporting period			D Transactions during reporting period					
		(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)		
		Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)		
	1 The Education Plan School Years Index Portfolio - 529		None	K	T	Exempt						
	2 Farmers Universal Life Insurance #1	A	Interest	J	T	Exempt						
	3 Farmers Universal Life Insurance #2	A	Interest	J	T	Exempt						
	4 Farmers Universal Life Insurance #3	A	Interest	J	T	Exempt						
	5											
	6											
	7											
	8											
	9											
	10											
	11											
	12											
	13											
	14											
	15											
	16											
	17											

1. Income Gain Codes: A: \$1,000 or less; B: \$1,001 - \$2,500; C: \$2,501 - \$5,000; D: \$5,001 - \$15,000; F: \$15,001 - \$50,000
 (See Columns H and I)
 2. Value Codes: E: \$50,001 - \$100,000; G: \$100,001 - \$1,000,000; H: \$1,000,001 - \$5,000,000; I: More than \$5,000,000
 (See Columns C and D)
 3. Value Method Codes: J: \$15,000 or less; K: \$15,001 - \$50,000; L: \$50,001 - \$100,000; M: \$100,001 - \$250,000; N: \$250,001 - \$500,000; O: \$500,001 - \$1,000,000; P: \$1,000,001 - \$5,000,000; Q: \$5,000,001 - \$25,000,000; R: Cost (Real Estate Only); S: Assessment; T: Cash/Market
 U: Book Value; V: Other; W: Unstated

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Gonzales, Kenneth J.	11/14/2012

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Gonzales, Kenneth J.	11/14/2012

IX. CERTIFICATION.

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

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

Signature: *s/* **Kenneth J. Gonzales**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		3	100	Notes payable to banks-secured (autos)		39	824
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		21	020	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	241
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		254	163
Real estate owned - personal residence		285	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		56	000				
Cash value-life insurance		2	519				
Other assets itemize:							
Thrift Savings Plan		269	868				
				Total liabilities		295	228
				Net Worth		342	379
Total Assets		637	507	Total liabilities and net worth		637	607
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

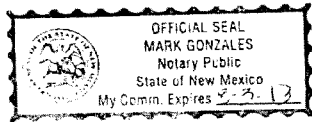
<u>Listed Securities</u>	
The Education Plan 529 College Savings Plan	
School Years Index Portfolio	<u>\$ 21,020</u>
Total Listed Securities	<u>\$ 21,020</u>

AFFIDAVIT

I, Kenneth J. Gonzales, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

17 November 2012
(DATE)

Kenneth J. Gonzales
(NAME)



Mark Gonzales
(NOTARY)
New Mexico
Bernalillo

**STATEMENT OF MICHAEL J. McSHANE, NOMINEE TO BE U.S.
DISTRICT JUDGE FOR THE DISTRICT OF OREGON**

Judge MCSHANE. Thank you, Chair Hirono and Ranking Member Lee. I'd like to thank both of you, as well as the other Members of the Judiciary Committee and their staffs, for your work on this important matter.

I would like to thank President Obama for giving me this opportunity. I'd like to thank Senators Wyden and Merkley for their kind and warm remarks here today, and I appreciate it very much.

I have no statement to make. I would like to introduce some family members who are here with me. First and foremost is Jeannine McShane, my mother, who is directly behind me. She's been praying to St. Jude for many years for me, which, if you don't know, is for desperate causes, the patron of. But I'm so proud that she could be here, and I'm so lucky to have her and my father's guidance.

Also, family members who are with me is my oldest brother Jim McShane, my oldest sister Colleen McShane, my youngest sister—Jim is from L.A., Colleen is from Seattle. My youngest sister, who has recently moved to Boston from the West Coast, has come down with—Katie McShane has come down with her husband, Michael Peters.

My niece—nieces that are here are Clara and Parker Peters, as well as Claire McShane. Then my immediate home group is—my partner, Greg Ford, is here, and our nephew, Trevor Nyce. I would like Trevor to stand for just a moment. He's here. Trevor is so excited to be here. This is the first suit he's ever worn.

[Laughter.]

Judge MCSHANE. It's been a big excitement for him, and I'm so glad he could participate in this. Thank you.

Senator HIRONO. Judge Quiñones.

[The biographical information of Justice McShane follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Jerome McShane

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.

Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, Oregon 97204

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

1961; Pittsburgh, Pennsylvania

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

1985 – 1988, Northwestern School of Law at Lewis and Clark College; J.D. (with honors), 1988

1979 – 1983, Gonzaga University; B.A. (*magna cum laude*), 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.

2001 – present
Oregon Judicial Department, Fourth Judicial District
1021 SW Fourth Avenue

Portland, Oregon 97204
Circuit Court Judge

2003 – present
Northwestern School of Law at Lewis and Clark College
10015 SW Terwilliger Boulevard
Portland, Oregon 97219
Adjunct Professor

1997 – 2001
Oregon Judicial Department, Fourth Judicial District
1021 SW Fourth Avenue
Portland, Oregon 97204
Circuit Court Judge Pro tem

1988 – 1997
Metropolitan Public Defender
630 SW Fifth Avenue, Suite 500
Portland, Oregon 97204
Staff Attorney (1988 – 1990)
Senior Felony Attorney (1990 – 1995)
Misdemeanor Supervisor (1995 – 1997)

1987 – 1988
Hoevet and Snyder
1000 SW Broadway Suite 1500
Portland, Oregon 97205
Law Clerk

1987
Clark County Prosecuting Attorney's Office
1013 Franklin Street, P.O. Box 5000
Vancouver, Washington 98666
Certified Law Student

1986 – 1987
Northwestern School of Law at Lewis and Clark College
Boley Law Library
10015 SW Terwilliger Boulevard
Portland, Oregon 97219
Librarian

1983 – 1984
Jesuit Volunteer Corps Northwest
3928 North Williams Avenue

Portland, Oregon 97208
Resource coordinator for homeless parolees and probationers

Other Affiliation (uncompensated):

2003 – 2009
St. Andrew Nativity School
4925 NE Ninth Avenue
Portland, Oregon 97211
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 have 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.

Oregon State Bar President's Award for Public Service (2012)

Oregon National Guard Youth Challenge Mentor Appreciation (2010)

Mentor of the Year, Northwestern School of Law at Lewis and Clark College Mentorship Program (2009)

Career Service Award, Metropolitan Public Defender (1997)

Best Oral Advocate, Northwestern School of Law at Lewis and Clark (1985)

Honors Program Graduate, Gonzaga University (1983)

Fiction Writing Award, Gonzaga University (1983)

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.

Multnomah Bar Association

Multnomah County Circuit Court Judicial Outreach Committee

National Council of Juvenile and Family Court Judges

Oregon Circuit Court Judges Association
Oregon Criminal Defense Lawyers Association
Oregon Gay and Lesbian Law Association
Oregon Judicial Conference, Judicial Education Committee
Oregon Judicial Conference, Criminal Law Committee
Oregon State Bar
Oregon Women Lawyers

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, 1988

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.

Oregon State Courts, 1988

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.

Governor's Prisoner Re-entry Council (2007 – present)
Steering Committee (2007 – present)

HIV Services Planning Council (2000 – 2004)

Multnomah County Jail Capacity Review Committee (2009 – 2010)

Oregon Rugby Sports Union
Team member, Portland Avalanche (2008)

Saint Andrew Nativity School, Multnomah County
Board member (2003 – 2009)
Volunteer (2003 – present)

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

To the best of my knowledge, none of the organizations listed in response to 11a currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

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

Voter Pamphlet Statement, May 2008. Copy supplied.

Michael McShane. Letter to the Editor, *Don't Dawg the Deputies*, WILLAMETTE WEEK, Feb. 20, 2008. Copy supplied.

DUII/ DWS Deskbook for Oregon Courts. Revised 2001 edition. I edited and supervised the project. Cover sheet and table of contents provided.

Oregon Judges Criminal Law Benchbook, Chapter Two: Pretrial Motions, 2005. Oregon Judicial Department. Copy supplied.

Oregon Judges Criminal Law Benchbook, Chapter Fifteen: Posttrial Motions, 2005. Oregon Judicial Department. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Signatory to the Multnomah Bar Association Statement of Diversity Principles, 2009. Copy supplied.

Expedited DUI Plea Option – DUI Policy for First Time Offenders (Apr. 2010). Copy supplied.

Orientation video for first time DUI offenders (Apr. 2010). Video available at <http://courts.oregon.gov/Multnomah/media/expeditedduiipleaoptionprogramexpla nation.wmv>.

Multnomah County Circuit Court (Oregon Judicial Department, Fourth Judicial District) Vision Statement (Dec. 10, 2009). Copy supplied.

The decision log of the Governor’s Re-entry Council, Steering Committee (Apr. 1, 2009). Copy supplied.

Jury Selection Memorandum for Aggravated Murder Cases – Internal memorandum for Oregon Judicial Department, Fourth Judicial District (2005). Copy supplied.

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

The Governor’s Re-entry Council meeting minutes, ranging from November 21, 2007 to November 29, 2011, are available at <http://tinyurl.com/REC-Minutes>. The Re-entry Council Steering Committee minutes, ranging from December 20, 2007 to February 1, 2012, are available at <http://tinyurl.com/RECSC-Minutes>.

On February 15, 2007, I testified before the Oregon Senate Committee on the Judiciary as to the need for funding for court reporters in capital cases. The testimony can be found here: <http://www.leg.state.or.us/listn/archive/archive.2007s/SJUD-200702151300.ram>.

On February 8, 2007, I testified before the Public Defense Services Commission about issues related to the delivery of services for death penalty cases in Multnomah County. Minutes supplied.

On January 23, 2007, I was on a panel presenting an overview to the Oregon Senate and House Judiciary Committees on the criminal justice system. The testimony can be found here:

<http://www.leg.state.or.us/listn/archive/archive.2007s/JWMPS-200701230831.ram>.

On October 23, 2007, I gave a presentation at the Multnomah County Circuit Court's Legislative Open House regarding mental health issues for defendants. Presentation materials supplied.

On October 25, 2006, I gave a presentation at the Multnomah County Circuit Court's Legislative Open House regarding sentencing issues and community resources. The presentation was at the Multnomah County Courthouse in Portland, Oregon. Presentation materials supplied.

In 2006, I issued an official statement in support of Oregon Circuit Court judicial nominee Trung D. Tu. Copy supplied.

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

June 20, 2012: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I teach this class every year to new judicial officers on both the trial and appellate courts in Oregon. The class focuses on exhibit management and the basic concepts of hearsay, relevance, and scientific evidence. PowerPoint supplied.

June 14, 2012: The Appellate Zone: Stop in the Name of *Rodgers/Kirkeby*, presented in Bend, Oregon, at the Oregon Criminal Defense Lawyer's 2012 Annual Conference. This presentation consists of a series of skits and commentary that I authored to illustrate recent cases on search and seizure out of our appellate courts. PowerPoint and outline supplied.

May 11, 2012: Shreds of Evidence, the Oregon Evidence Code in Administrative Proceedings, presented at the Worker's Compensation Section Annual Meeting in Salishan, Oregon. The presentation focused on the applicability and use of the Oregon Evidence code in administrative proceedings. PowerPoint handouts supplied.

April 7, 2012: During the Spring Awards Reception for the Lewis and Clark Law School Mentoring Program, hosted in Portland, OR, I made brief remarks about my mentee, Michal Hsu, who had been awarded the "Mentee of the Year Award."

I have no notes, transcript, or recording, but press coverage is supplied. The address of Lewis and Clark Law School is 10015 SW Terwilliger Boulevard, Portland, OR 97219.

February 11, 2012: Cross Examination for the New Lawyer, presented in Portland, Oregon, at the Oregon Criminal Defense Lawyers Association's New Lawyer Seminar. Outline supplied.

October 19, 2011: Judicial Settlement in Criminal Cases, presented in Salem, Oregon, at the 2011 Judicial Conference. I was part of a panel of judges discussing best practices during settlement. The conference was chaired by the Chief Justice of the Oregon Supreme Court. I have no notes, transcript, or recording. The address of the Oregon Supreme Court is 1163 State Street, Salem, OR 97301.

June 22, 2011: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I used the PowerPoint supplied for the June 20, 2012 event.

April 1, 2011: The Appellate Zone. Stop in the Name of *Rodgers/ Kirkeby*, presented in Tigard, Oregon, at the offices of the Criminal Law Section of the Oregon State Bar. I used the outline and skits supplied for the June 14, 2012 event.

January 29, 2011: Cross Examination for the New Lawyer, presented in Portland, Oregon, at the Oregon Criminal Defense Lawyers Association's New Lawyer Seminar. I used the outline supplied for the February 11, 2012 event.

October 20, 2010: The Appellate Zone. Stop in the Name of *Rodgers/Kirkeby*, presented in Salem, Oregon, at the 2010 Judicial Conference. I used the outline and skits supplied for the June 14, 2012 event.

June 23, 2010: Evidence for the New Judge, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I used the PowerPoint supplied for the June 20, 2012 event.

June 23, 2010: The Basics of Search and Seizure, presented in Salem, Oregon, at the Oregon Judicial Department's New Judge's College. I created the curriculum for this course and presented it at the New Judge's College with the Hon. Eric Bergstrom. Handouts supplied.

June 19, 2010: Blink: Judicial Decision Making, presented in Sun River, Oregon, at the Oregon Association of Defense Counsel's 2010 annual conference. This panel presentation explored intuitive and deductive thinking and how attorneys can influence judicial decision-making in civil trial and motion practice. I have no

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Jerome McShane
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.

Multnomah County Courthouse
1021 SW Fourth Avenue
Portland, Oregon 97204
4. **Birthplace:** State year and place of birth.

1961; Pittsburgh, Pennsylvania
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1985 – 1988, Northwestern School of Law at Lewis and Clark College; J.D. (with honors), 1988

1979 – 1983, Gonzaga University; B.A. (*magna cum laude*), 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.

2001 – present
Oregon Judicial Department, Fourth Judicial District
1021 SW Fourth Avenue



CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123

MICHAEL J. McSHANE
JUDGE

PHONE (503) 988-3214
FAX (503) 276-0981

January 16, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

On January 8, 2013 I submitted a letter to the Committee, updating the questionnaire I submitted in connection with my September 9, 2012, nomination to the United States District Court for the District of Oregon.

In response to question 13(f), I provided an additional case where my decision was reversed. After submitting my update letter, it came to my attention that I failed to include a very recent reversal in the Oregon Court of Appeals. The case is *State v. Damon James Naudain*, COA No A144918 (Dec. 12, 2012). In this capital case, the defendant broke into a home with others and shot the victim in the head during the robbery. Although the defendant was not entitled to argue self defense, the Court of Appeals held it was error for me to instruct the jury as to this fact. The case is pending cert before our Supreme Court. A copy of the opinion has been provided.

Please accept my apologies for this oversight. I appreciate the Committee's consideration of my nomination and regret that I overlooked this case among the most recent opinions that had come out of our appellate courts in December.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McShane".

Michael McShane

FILED: December 12, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DAMON JAMES NAUDAIN,
Defendant-Appellant.

Multnomah County Circuit Court
080432001

A144918

Michael J. McShane, Judge.

Submitted on April 30, 2012.

Peter Gartlan, Chief Defender, and Susan Fair Drake, Senior Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Tiffany Keast, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Haselton, Chief Judge, and Duncan, Judge.

ARMSTRONG, P. J.

Reversed and remanded.

1 ARMSTRONG, P. J.

2 Defendant was convicted, following a jury trial, of two counts of
3 aggravated murder, stemming from a home-invasion robbery. On appeal, defendant
4 raises multiple assignments of error. We write to address only defendant's contention
5 that the trial court erred when it instructed the jury on self-defense. Defendant argues
6 that, because he had not raised a defense of self-defense, that instruction amounted to
7 impermissible comments on the evidence by the trial judge. We agree. Our resolution of
8 that contention obviates our need to address defendant's remaining assignments of error,
9 except defendant's assignment on the denial of his suppression motion, which we reject
10 without discussion. Accordingly, we reverse and remand.

11 Because defendant is challenging the trial court's jury instructions, and not
12 the sufficiency of the evidence supporting his conviction, we review all pertinent parts of
13 the record. See *State v. Naylor*, 291 Or 191, 193-94, 629 P2d 1308 (1981); *State v.*
14 *Cunningham*, 179 Or App 359, 361 n 2, 40 P3d 1065, *adh'd to on recons*, 184 Or App
15 292, 57 P3d 149 (2002), *rev'd and rem'd on other grounds*, 337 Or 528, 99 P3d 271
16 (2004), *cert den*, 544 US 931 (2005).

17 In 1998, defendant and five other individuals, while intoxicated on
18 methamphetamine, drove to a home in southeast Portland to rob people of what they
19 believed to be a significant amount of drugs and cash. While two people remained in the
20 car, defendant and three other men approached the house, unscrewed the porch light, and
21 gathered by the front door. The men were wearing baseball hats that said "DEA," two

1 had security badges, and all of them but defendant had bandanas over their faces. Three
2 of the men--including defendant--were armed with handguns and the fourth with a
3 machete.

4 One of the four intruders, Jump, kicked open the front door, and all four
5 entered the house, yelling, "police." Upon entry, the intruders split up. The man with the
6 machete, James, ran upstairs, confronted one of the residents in a bedroom, and ordered
7 him down the stairs. At the same time, a second intruder, Turner, confronted a woman
8 who was asleep on a couch in the front room of the house. Turner grabbed the woman
9 and told her, "If you say one thing, I will peel your cap, bitch." He then dragged her up
10 the stairs. James and Turner, with their respective hostages, met on the staircase--
11 blocking each other's paths--where they remained for the duration of the robbery.

12 Meanwhile, defendant and Jump went to the bedroom where they had been
13 told that drugs and cash would be found inside a safe. Once there, defendant and Jump
14 encountered H, his girlfriend, and their infant son. Although there is conflicting evidence
15 over the precise nature of the events that occurred inside the bedroom, it is undisputed
16 that defendant shot H in the head, ordered H's girlfriend to open the safe, emptied the
17 contents of the safe, and immediately left the house, along with his three associates. An
18 autopsy revealed that H had died instantaneously from a gunshot wound to the temple
19 and that the gun had been placed against H's head when it fired. A few days after the
20 robbery, defendant moved to California with his girlfriend and began using a different
21 last name.

1 In 2007, Detective McGetrick of the Portland Police Bureau Cold Case
2 Homicide Unit began investigating H's death. By 2008, McGetrick had identified
3 defendant as a suspect in the homicide and had learned that defendant was living in
4 California. McGetrick eventually obtained an arrest warrant for defendant and forwarded
5 it to the San Diego County Fugitive Task Force, which ultimately arrested defendant at
6 his home. The day after defendant was arrested, McGetrick interviewed defendant in San
7 Diego, and defendant confessed his involvement in the robbery and in H's death.

8 According to that confession, the robbery had begun to go wrong as soon as
9 defendant entered the bedroom. Defendant explained that he had not expected there to be
10 a woman and a child in the room, and so he was put off guard. At the same time, H was
11 telling defendant that there were no drugs or money in the safe. As defendant was
12 realizing that "the stuff that [he] was told was there was not there," Jump reached around
13 defendant and punched H in the face, knocking him down. Defendant then explained:

14 "[Defendant:] I was told that this individual did have a weapon, I
15 asked him--I then pointed my weapon at him and I asked him not to move.
16 As he was coming up from the bed on the floor, I--I basically felt that he
17 had a weapon.

18 "[McGetrick:] And why did you feel that way? Was his hand
19 someplace out of sight, or what?

20 "[Defendant:] Yes. His hand was out of sight, and I--all I can say is
21 that I thought I saw a shine of some sort. I'm not quite sure what that shine
22 was, but from what I was told, and because of the fact that I was also highly
23 intoxicated with methamphetamines, that I jumped. And I've--and I--and I,
24 between the drugs and being nervous and the information that was told to
25 me, I panicked and I freaked out. And then the inevitable happened."

26 Defendant was extradited to Oregon, where he was indicted and charged

1 with two counts of aggravated murder. Defendant pleaded not guilty and proceeded to a
2 jury trial. He did not dispute that he had participated in the robbery or that he had shot H.
3 Instead, the only contested issue at trial was whether defendant had intended to fire the
4 shot.

5 The state presented evidence that defendant had shot H as H was reaching
6 under the bed. McGetrick testified regarding defendant's statements to him and noted
7 that defendant told him that he had seen H "reach under the bed, believed there to be an
8 object in [H's] hand[.]" and "panicked." The state introduced an audio recording of
9 McGetrick's interview with defendant in California to that effect, which contained the
10 exchange set out above. The state also called James, who testified that, as he was making
11 his way up the staircase with the machete, he walked by the bedroom door and saw
12 defendant holding a gun and standing over H. James also testified that, while he was
13 standing on the staircase with Turner and their hostages, he heard someone in the
14 bedroom yell, "Get your hand out from under the bed," followed by "a pop, like a
15 gunshot." Finally, the state called Guzman, who had stayed in the car during the robbery.
16 Guzman testified that, at some point after the robbery, defendant had told her that H
17 "went to reach under the bed to pull something out," and that defendant had shot him--
18 though she testified that defendant did not mean to fire.

19 Defendant, in turn, testified that he had accidentally shot H while he was
20 frantically looking around the room. Defendant testified that he had not felt threatened
21 by H and that he had not seen H reach for a gun--though defendant had told H to get his

1 hand out from underneath the bed. Defendant repeatedly emphasized that he had been
2 highly intoxicated at the time of the robbery and described a chaotic scene: Everyone in
3 the house was "freaking out." Defendant, H, Jump, and people outside the room were all
4 yelling. Jump had punched H, causing him to fall to the floor. Defendant testified that he
5 was pointing his gun at H as H was slowly getting up:

6 "And I'm looking back. I'm like--I'm panicking bad. I mean, I'm--
7 I'm freaking out. And so everyone's freaking out, but I'm not--I'm not there,
8 like, I'm not (indiscernible) or I'm not very clear, I'm not--can't focus and so
9 I keep looking back thinking--just so much going on * * * .

10 * * * * *

11 "So I--but I'm turning, looking back--and I--so I don't know what
12 happened. I don't know. And I shot him. Now, I--I didn't mean to."

13 According to defendant, he did not even remember pulling the trigger.

14 The state's theory of intent, set out during opening arguments, was that
15 defendant shot H in response to a perceived threat--viz., defendant believed that H was
16 reaching for a gun. Thus, the state argued that, during his initial confession, defendant
17 had "effectively claimed self-defense." According to the state, when defendant learned
18 that he was not justified in employing self-defense, he shifted his story, instead claiming
19 that the shot had been an accident. In its closing, the state reiterated that theory and
20 highlighted the differences between defendant's initial statements to McGetrick in 2008
21 and his testimony at trial. The state explained that discrepancy in the context of self-
22 defense:

23 "Now, there has been some discussion about self-defense. You need
24 to understand that under Oregon law, [defendant] had absolutely no legal

1 right to defend himself from what he may have perceived as a potential
2 threat from [H].

3 "On the other hand, [H] had every right, every legal right to defend
4 himself and his family. He didn't. He didn't have a chance. Because this
5 one panicked and shot.

6 "He now knows, [defendant], that he has absolutely no right to
7 defend himself. So his only hope is to offer it up to you that it was an
8 accident. In four hours of interviewing, the word accident is uttered by
9 [defendant], count it, one time."

10 Defendant, for his part, emphasized that he had never raised the issue of
11 self-defense, even during his initial interview with McGetrick. In his closing, he noted:

12 "And the state keeps bringing up this notion of self-defense. They
13 mentioned it in their opening. Not one witness, nobody from the defense
14 team and [defendant] has ever said that he was acting in self-defense.
15 [Defendant] told you himself, I never felt threatened by [H]. I never
16 actually saw a gun. I never actually saw a weapon.

17 * * * * *

18 "And all this talk about get your hand out from under the bed, you'll
19 hear his taped statement and what it says is I saw a shine of some sort. Not
20 quite sure what that shine was, but from what I was told because of the fact
21 that I was highly intoxicated with methamphetamines, I jumped. I jumped,
22 is what it says. Listen to it for yourselves."

23 At the close of trial, the state requested a self-defense jury instruction.
24 Defendant objected on the grounds that he had not claimed self-defense. Thus, defendant
25 argued, the proposed self-defense instruction would be a misstatement of the law and a
26 misapplication of the law to the facts of the case. The trial court decided, however, that a
27 self-defense instruction was necessary to "clarif[y] that, in fact, [defendant] cannot, under
28 these circumstances, raise self-defense."

29 Accordingly, the trial court gave the following instruction:

1 "Self-defense [is] not applicable in certain situations. Under Oregon
2 law, a resident in a home is justified in using physical force, even deadly
3 physical force, against an intruder when the intruder is committing a felony
4 involving force or violence.

5 "Under Oregon law, an intruder who is committing or attempting to
6 commit a felony involving force or violence in a residence is an initial
7 aggressor. An initial aggressor cannot justify the use of physical force
8 against another person in self-defense unless the initial aggressor first
9 withdraws from the encounter. In the present case, [defendant] has not
10 raised the defense of self-defense."

11 Defendant excepted to the instruction after the jury retired.

12 The jury found defendant guilty of two counts of aggravated murder. After
13 a sentencing-phase trial, the trial court sentenced defendant to life in prison without the
14 possibility of parole.

15 On appeal, defendant argues that the trial court erred by giving the self-
16 defense instruction because that instruction constituted a comment on the evidence. In
17 essence, defendant argues that the instruction carried a negative inference that defendant
18 acted intentionally--viz., the instruction implied that defendant acted in self-defense (an
19 intentional action), although he was not legally justified in doing so. The state makes the
20 cursory contention that defendant failed to preserve his argument and argues that, in any
21 event, the instruction was not a comment on the evidence because it did not direct the
22 jury toward any particular facts or instruct the jury to draw an impermissible inference.
23 For the reasons discussed below, we agree with defendant.

24 It is well established in Oregon that a trial court is not permitted to
25 comment on the evidence. *State v. Hayward*, 327 Or 397, 410, 963 P2d 667 (1998);

1 ORCP 59 E ("The judge shall not instruct with respect to matters of fact, nor comment
2 thereon."); ORS 136.330(1) (ORCP 59 E is applicable in criminal cases). A court
3 impermissibly comments on the evidence when it instructs the jury how specific evidence
4 relates to a particular legal issue or that it can draw an inference against the defendant
5 that shifts the burden of proof from the state. *Hayward*, 327 Or at 410-11. We review
6 whether a jury instruction is a comment on the evidence for legal error. *State v.*
7 *Blanchard*, 165 Or App 127, 130, 995 P2d 1200, *rev den*, 331 Or 429 (2000).

8 Before addressing the merits of defendant's claim, we first turn to the issue
9 of preservation. Before a criminal defendant may seek review of an asserted trial court
10 error in giving a jury instruction, the defendant must "identif[y] the asserted error to the
11 trial court" and make "a notation of exception immediately after the court instruct[s] the
12 jury." ORCP 59 H(1); ORS 136.330(2) (ORCP 59 H is applicable in criminal cases). If
13 the defendant fails to comply with those requirements, the instruction is unreviewable,
14 even for plain error. *See, e.g., State v. Edwards*, 251 Or App 18, 21, 281 P3d 675, *rev*
15 *den*, 352 Or 665 (2012).

16 Here, defendant articulated his objection to the self-defense instruction as
17 "confusing" and a "misstatement of the law"--not as an improper comment on the
18 evidence. Nevertheless, the substance of defendant's objection fairly presented his
19 argument on appeal. In essence, the basis for defendant's objection at trial was that the
20 instruction impermissibly instructed the jury on how the evidence of the robbery related

1 to the legal issue of self-defense¹ and that it implicitly instructed the jury to draw an
2 inference against defendant that shifted the burden of proof from the state.²

3 Because defendant explained his objection to the trial court, thus giving the
4 court the opportunity to alter or omit the instruction, and because defendant renewed his
5 objection by excepting to it after the trial court gave the self-defense jury instruction,
6 defendant adequately preserved his argument. See *Jett v. Ford Motor Co.*, 335 Or 493,
7 502-03, 72 P3d 71 (2003); see also *Delaney v. Taco Time Int'l.*, 297 Or 10, 18, 681 P2d
8 114 (1984) (purpose of requiring exceptions to jury instructions is to give trial court
9 opportunity to correct instruction).

10 We turn to the merits. As noted, defendant argues that the self-defense
11 instruction had the effect of informing the jury that defendant had initially claimed self-
12 defense but that defendant could not prevail on that defense. As a result, defendant
13 contends, the instruction implied that defendant had acted intentionally when he shot H.
14 In response, the state argues that the instruction had the opposite effect: it expressly set
15 out that defendant had not raised a self-defense defense. Further, the state contends that
16 the instruction was not a comment on the evidence because it neither expressly directed
17 the jury toward particular facts nor instructed the jury to draw any inference--the two

¹ As defendant explained, "I believe that when a person reads this instruction, the average person reads this instruction that whenever you see the word intruder or whenever you see the word initial aggressor, you can fill in [defendant's name]."

² Defendant told the court, "I think it actually relieves the State of some of their burden in this case of having to prove that it was--the element of intent, of having to do that. I think that it's confusing because we're not raising self-defense."

1 types of impermissible comments identified in *Hayward*. Finally, the state argues that, in
2 any event, the instruction was harmless.

3 Although we do not agree with defendant's characterization of the jury
4 instruction--specifically, the instruction did not inform the jury that defendant initially
5 claimed self-defense, as defendant claims--the jury instruction nonetheless performed a
6 very specific, impermissible role. As articulated by the trial court, the instruction
7 "clarified that, in fact, [defendant] cannot, *under these circumstances*, raise self-defense."
8 (Emphasis added.) That is to say, the instruction told the jury how specific evidence
9 (defendant's status as an initial aggressor) relates to a particular legal issue (defendant's
10 ability to successfully raise self-defense). As such, the instruction was impermissible.
11 *See Hayward*, 327 Or at 410-11 ("A court impermissibly comments on the evidence
12 when it gives a jury instruction that tells the jury how specific evidence relates to a
13 particular legal issue."); *State v. Maciel-Cortes*, 231 Or App 302, 305, 218 P3d 900
14 (2009) (same).

15 To be sure, the jury instruction performed that role in relatively generic
16 terms, and, as the state notes, it did not *expressly* direct the jury's attention toward any
17 particular facts. *Cf. State v. Brown*, 310 Or 347, 372-73, 800 P2d 259 (1990) (rejecting
18 as impermissible comments on the evidence instructions that directed the jury to
19 consider, *inter alia*, "whether [the victim] took her purse with her," and "whether the
20 defendant was given a key to the premises by [the victim]"); *Maciel-Cortes*, 231 Or App
21 at 305-09 (holding that an instruction that "[d]riving under the influence of intoxicants is,

1 itself, evidence that a person created a substantial risk of physical injury to passengers"
2 was an impermissible comment on the evidence). That the instruction did not expressly
3 identify particular facts, however, has little effect on our conclusion that the instruction
4 was improper, given its context and the trial court's purpose in giving the instruction.

5 That context is that, throughout trial, defendant did not dispute that he went
6 to H's house, while armed, in order to commit a robbery. Or, articulated in the terms of
7 the jury instruction, defendant did not dispute that he was an initial aggressor. Thus, the
8 generic phrasing of the instruction did little, if anything, to undercut its effect: The
9 instruction implicitly directed the jury's attention to that undisputed evidence and
10 explained that it precluded defendant from being able to raise self-defense. As noted, that
11 was the trial court's express purpose in giving the instruction, and it was improper. *See*
12 *Hayward*, 327 Or at 410-11.

13 We turn, finally, to whether the jury instruction prejudiced defendant. The
14 state argues that no reversible error occurred because, considering the jury instructions in
15 their entirety, defendant was not prejudiced by the instruction. *See State v. Bowen*, 340
16 Or 487, 516, 135 P3d 272 (2006) ("[A] jury instruction does not constitute reversible
17 error unless it prejudiced the defendant when the instructions are considered as a
18 whole."). Under the state's view, the instruction did not prejudice defendant because the
19 last sentence unambiguously informed the jury that defendant had not claimed self-
20 defense. That sentence, the state argues, advised the jury to disregard any evidence
21 relating to self-defense. Thus, because defendant sought to exclude evidence of self-

1 defense, the state contends that the instruction was, if anything, helpful to defendant's
2 case. We disagree.

3 The state is correct that the jury instruction unambiguously informed the
4 jury that defendant *had not* raised self-defense. However, it fails to acknowledge that the
5 challenged instruction also informed the jury that defendant *could not* raise self-defense--
6 at least not successfully. As noted, at trial, the state heavily relied on defendant's
7 inability to successfully raise self-defense. During its opening argument, the state
8 suggested that defendant had shot H in response to a perceived threat but that, once he
9 realized he could not prevail on a defense of self-defense, defendant changed his story
10 and claimed that he had accidentally fired the shot. The state reiterated that theory during
11 its closing argument: "He now knows, [defendant], that he has absolutely no right to
12 defend himself. So his only hope is to offer it up to you that it was an accident." By
13 effectively instructing the jury that defendant was not justified in employing self-defense,
14 the challenged jury instruction bolstered the state's argument. Accordingly, we conclude
15 that the instruction prejudiced defendant.

16 Reversed and remanded.

Michael J McShane
1021 SW Fourth Avenue
Portland, OR 97204

January 3, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 19, 2012, to be a United States District Judge for the District of Oregon. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Question 12 d:

On October 31, 2012, I delivered a two-hour presentation on cross-examination through the Multnomah Bar Association. The presentation was entitled "Effective Cross Examination with Judge Michael McShane and Judge Eric Bergstrom" and was held at the World Trade Center in Portland, Oregon. The materials that I used for the presentation were the same materials provided for the February 11, 2012, presentation on cross examination.

Question 13 a:

Since September 19, 2012, I have presided over three jury trials and approximately 25 court trials that have gone to verdict or judgment.

Question 13 f:

I was reversed by the Oregon Court of Appeals in *State v Randy Richardson/ State v Sean Penn*, Court of Appeals No A143148 (Oct. 24, 2012). At issue were the victim's statements that the defendants were trying to take her home away. The victim was elderly and died prior to trial. I allowed the statements in as a "state of mind" exception to the hearsay rule. The case is pending cert before the Oregon Supreme Court. The opinion of the Court of Appeals has been provided.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Michael McShane

cc

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

STATE v. RICHARDSON

STATE Of Oregon, Plaintiff–Respondent, v. Randy Ray RICHARDSON, Defendant–Appellant.

080632798; A143148.

Argued and Submitted Feb. 23, 2012. -- October 24, 2012

Before ARMSTRONG, Presiding Judge, and HASELTON, Chief Judge, and DUNCAN, Judge.

Lawrence Matasar argued the cause and filed the brief for appellant. Shannon Terry Reel, Assistant Attorney General, argued the cause for respondent. With her on the brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General.

Defendant appeals a judgment convicting him of aggravated theft in the first degree, ORS 164.057, and obtaining execution of a document by deception, ORS 165.102, raising a number of assignments of error. We write to address his first three assignments, in which he challenges the admission of statements by the victim of the theft that the court admitted under the state-of-mind exception to the hearsay rule, OEC 803(3).¹ Because we agree with defendant that the statements were not admissible under that exception—a resolution that obviates the need to address defendant's other assignments of error—we reverse and remand.

The victim of the theft was an elderly woman who owned her home but who had recently been admitted to a nursing home at the behest of members of her family. After her admission to the nursing home, she regularly expressed her displeasure about being there and said that she wanted someone to take her home.

Penn, who was the victim's great-nephew, arrived one day at the nursing home and offered to take the victim home. His offer came as a surprise to the victim's granddaughters, whom the victim had raised, because they had never met Penn and were uncertain, despite his statements to the contrary, that Penn and the victim had previously met.

After Penn began to take steps to have the victim discharged from the nursing home, he and defendant visited the victim. They had a nurse verify the victim's identity and, despite the nurse telling them that the victim should not sign documents because she was taking morphine, they had the victim execute a power of attorney and a quit claim deed to the victim's home in favor of Penn. Defendant had prepared both documents and claimed to represent the victim regarding the execution of them.

Two days later, the victim was discharged from the nursing home with Penn. However, Penn returned to the nursing home with the victim the following day and had her readmitted. Once she returned to the nursing home, the victim was anxious and upset. She told several people that Penn and defendant had taken or were trying to take her home from her.

The victim and her family members sought to have the home returned to the victim, and, after the victim died, the home was returned to her estate as the result of litigation brought against Penn by the personal representative of the estate. Penn and defendant were subsequently indicted for aggravated theft and obtaining execution of documents by deception.

Before trial, defendant moved to exclude some of the state's exhibits, contending that a number of them contained inadmissible hearsay, and the court held a hearing on the motion. At the hearing, defendant objected to the admission of statements by the victim that were in the nursing home's records, including the statements "Please don't let them take my house," and "My nephew took my house and car from me."² Defendant also objected to the admission of an audio recording in which the victim's attorney asked the victim, "Did you want [Penn] to [put the home in his name]?" to which the victim responded, "No." Finally, defendant objected to witnesses testifying that the victim had said that she had been robbed or that her home had been taken from her.

In anticipation of the state's argument to the contrary, defendant specifically contended that the statements were not admissible under the state-of-mind exception to the hearsay rule, OEC 803(3). He characterized the victim's statements as her belief about events that had occurred in the past—viz., her lack of assent to convey her home to Penn—which OEC 803(3) explicitly excludes from admission under the state-of-mind exception, and contrasted them with statements relating to a present state of mind or future intention, which are admissible under OEC 803(3).

The state responded that the victim's statements were admissible under OEC 803(3), explaining that it intended to use the statements to support its contention that the victim had not intended to convey her home to Penn and that the victim had not been mentally competent at the time that she signed the documents. The state contended that the statements that the victim made reflected how she felt at the time that she made them and indicated that transferring the home to Penn was not consistent with her intent and plan regarding her home.

The trial court concluded that the statements were admissible under OEC 803(3) and denied defendant's motion to exclude them. The court explained that defendant's defense would be that the victim had made a competent, intentional decision to convey her home to Penn and concluded that the challenged statements were admissible because they were statements establishing that the victim did not intend to do that and that she did not understand that she had taken that action.

Defendant appeals, contending that the trial court erred in denying his motion to exclude the victim's statements that were contained in the nursing home records and the audio tape. Defendant also contends that testimony by two nurses that the victim said, "They took my house," and "My nephew took my house," should have been excluded pursuant to defendant's pretrial motion. Defendant specifically contends that the victim's statements conveyed her beliefs and memories about whether she had intended to transfer her home to Penn and, consequently, that the statements were not admissible under the state-of-mind exception to the hearsay rule.

The state responds that the victim's statements constituted evidence of her state of mind at the time that she signed the quit claim deed and rebutted defendant's assertion that the victim was

competent when she signed the documents. In essence, the state argues that the victim's statements were of her state of mind because they establish that she did not intend to transfer her home to Penn and that she was not competent when she signed the documents.

OEC 803(3) provides that a statement is not excluded as hearsay if it is a “statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed[.]” The state-of-mind exception to the hearsay rule admits “statements of existing mental or emotional condition to prove the mental or emotional condition of the declarant at the time the statements were made[.]” Laird C. Kirkpatrick, *Oregon Evidence* § 803.3[3] [a], at 731 (5th ed 2007) (emphasis added). Here, the state did not seek to admit the victim's statements to establish her mental condition at the time that she made the statements but, instead, to establish that she did not intend to convey her home to Penn or that she was not competent at the time that she signed the documents, both of which concerned her mental condition at a time preceding when she made the statements.³

Furthermore, OEC 803(3) specifically excludes statements “of memory or belief to prove the fact remembered or believed[.]” In each of the challenged statements, the victim is reflecting on a past event, viz., her transfer of her home to Penn, and reaching the conclusion that Penn took her home contrary to her wishes. Thus, the statements relate her recollection of her intention in the past and her present conclusions, based on her reflection on the past, about a past event. We therefore conclude that the victim's statements were not statements of her then existing state of mind but, instead, were statements of memory and belief. Consequently, they are not excepted by OEC 803(3) from the hearsay rule, and the trial court erred in admitting them.

The state contends that any error in admitting the statements was harmless because the statements were cumulative of other evidence that the state offered on the victim's competence and intent. It relies for that point on evidence that the victim was heavily medicated on morphine at the time that defendant and Penn had her sign the quit claim deed and evidence that she was forgetful and confused about where she was and who people were. It also contends that the victim's statements were cumulative of evidence that Penn had repeatedly lied about taking the victim's home and had obtained the home by making a false promise to return the victim to her home so that she could live there.

A trial court's error in admitting or excluding evidence is harmless—and we therefore must affirm the defendant's conviction despite the error—if there is little likelihood that the error affected the jury's verdict. OEC 103(1); *State v. Davis*, 336 Or. 19, 32, 77 P.3d 1111 (2003). Here, the erroneously admitted evidence went to the heart of the state's case and is qualitatively different from other evidence that supported it. It consists of statements by the deceased victim explicitly stating the crux of the state's case, viz., that defendant and Penn had taken her home from her without her agreement. Those statements are qualitatively different from evidence that the victim was medicated, that Penn had lied about taking the victim's home, and that Penn had obtained the home by making a false promise. The statements are not cumulative of other evidence and, given their nature, we cannot say that there is little likelihood that they affected the jury's verdict. See, e.g., *State v. Morgan*, 251 Or.App. 99, 108–09, 284 P.3d 496 (2012).

Reversed and remanded.

FOOTNOTES

1. OEC 803(3) provides that a statement is not excluded as hearsay if it is “of the declarant’s then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed[.]”
2. The nursing home records contain other statements by the victim. However, because defendant specifically identified those two statements in his objection, our analysis focuses on whether the court erred in admitting the two statements.
3. At oral argument, the state contended that it offered the statements to establish that, at the time that the victim made the statements, she was confused and scared because she did not remember transferring her home to Penn, which would thereby constitute evidence that she was not mentally competent at the time that she signed the documents. The challenged statements assert that someone took the victim’s home and that she did not want to convey her home to Penn. Nothing in those statements establishes that the victim did not remember signing the documents, nor is that a reasonable inference to draw from the statements. Furthermore, the statements do not establish present confusion but indicate, instead, that the victim had reflected on past events and reached the same conclusion that the state sought to prove at trial, viz., that Penn, with defendant’s assistance, had taken advantage of the victim by having her convey her home to Penn.

ARMSTRONG, P.J.

AO 10
Rev. 1/2012

**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) McShane, Michael J.	2. Court or Organization U.S. District Court, Oregon	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/31/2012
7. Chambers or Office Address Multhoman County Courthouse 1021 SW Fourth Avenue Portland, Oregon 97204		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Adjunct Professor	Northwestern School of Law at Lewis and Clark College
2. Circuit Court Judge	Oregon Judicial Department
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 7

Name of Person Reporting McShane, Michael J.	Date of Report 01/03/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.		
2. 2011	Northwestern School of Law at Lewis and Clark College, teaching	\$2,000.00
3. 2012	Northwestern School of Law at Lewis and Clark College, teaching	\$1,200.00
4. 2012	Oregon State Bar Worker's Compensation Section, lecture	\$500.00
5. 2011	Oregon Judicial Department, salary	\$106,000.00
6. 2011	Oregon Judicial Department, salary	\$106,000.00
7.		
8.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>
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.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting	Date of Report
McShane, Michael J.	01/03/2013

- 4. _____
- 5. _____

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting McShane, Michael J.	Date of Report 01/03/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting McShane, Michael J.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Brown Forman Class B common stock	A	Dividend	K	T	Exempt				
2. United States Series I bonds	A	Interest	J	T					
3. Oregon Public Employee Retirement System Account	D	Interest	M	T					
4. OnPoint Community Credit Union Cash Accounts	A	Interest	J	T					
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: A = \$1,000 or less; B = \$1,001 - \$2,500; C = \$2,501 - \$5,000; D = \$5,001 - \$15,000; E = \$15,001 - \$50,000
 (See Columns B1 and D4) F = \$50,001 - \$100,000; G = \$100,001 - \$1,000,000; H1 = \$1,000,001 - \$5,000,000; H2 = More than \$5,000,000
 2. Value Codes: J = \$15,000 or less; K = \$15,001 - \$50,000; L = \$50,001 - \$100,000; M = \$100,001 - \$250,000
 (See Columns C1 and D3) N = \$250,001 - \$500,000; O = \$500,001 - \$1,000,000; P1 = \$1,000,001 - \$5,000,000; P2 = \$5,000,001 - \$25,000,000
 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 6 of 7

Name of Person Reporting	Date of Report
McShane, Michael J.	01/03/2013

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 7

Name of Person Reporting	Date of Report
McShane, Michael J.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/* **Michael J. McShane**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		12	100	Notes payable to banks-secured (auto)		8	000
U.S. Government securities -- see schedule		6	350	Notes payable to banks-unsecured			
Listed securities -- see schedule		27	140	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 -- personal residence		282	173
Real estate owned -- personal residence		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		15	000				
Cash value-life insurance							
Other assets itemize:							
Oregon PERS		133	947				
				Total liabilities		290	173
				Net Worth		354	364
Total Assets		644	537	Total liabilities and net worth		644	537
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

U.S. Government Securities

United States Savings Bonds – Series I	\$ 6,350
Total U.S. Government Securities	\$ 6,350

Listed Securities

Brown-Forman common stock	\$ 27,140
Total Listed Securities	\$ 27,140

**STATEMENT OF NITZA I. QUIÑONES ALEJANDRO, NOMINEE TO
BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

Judge QUIÑONES. Thank you, Madame Chair. I'd like to thank Senator Leahy for having convened this hearing, and you for having—presided over it, as well as you, Senator Lee, the Ranking Member of this Committee.

I also would like to thank Senator Robert P. Casey, as well as Pat Toomey, for their warm words of encouragement and introduction, as well as their bipartisan support, and their nomination to the President as well. I'd like to thank the President also for having nominated me for your consideration.

With me today are my partner of 23 years, Sanjuanita Gonzalez, who is the managing partner of her law firm, Cohen, Floor, Gonzalez, and Panillos; my friend and judicial assistant—I'm sorry, judicial secretary, Carey D. Widman, my law clerk, Christine Millan—I'm sorry, Christine Beck Millan. She just recently got married. And my court officer, Alfredo Jennings and his wife, Sondra.

There are members of my family who were not able to come but who are probably watching on Webcast: my brother, a retired Colonel, Algonzo Emilio Quiñones Alejandro; his wife, Maria Cruz Quiñones; my sister, Iliaudis Quiñones Alejandro; my nephews. I have four nephews and family members in Puerto Rico, New York, Pennsylvania, and New Jersey.

Last, I would like to mention my parents, they're both deceased, Emilio Quiñones Figueroa, and my mother, Iliá Maria Alejandro Dis. They worked so hard to provide us an education and to motivate us for public service. I'm sure they would be so extremely proud of me today.

Last, I want to thank you again for the opportunity of appearing before you, and I welcome any questions.

Senator HIRONO. Thank you.

[The biographical information of Justice Quiñones follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Nitza Ileana Quiñones Alejandro
Nitza I. Quiñones Alejandro
Nitza I. Quiñones

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

United States District Judge for the Eastern District of Pennsylvania

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.

First Judicial District of Pennsylvania
Criminal Justice Center
1301 Filbert Street, Suite 1417
Philadelphia, Pennsylvania 19107

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

1951; Hato Rey, Puerto Rico

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.

1972 – 1975, University of Puerto Rico School of Law; J.D., 1975

1968 – 1970, 1971 – 1972, University of Puerto Rico, School of Business Administration; B.B.A. (*cum laude*), 1972

1970 – 1971, University of Central Michigan, School of Business Administration; no degree (exchange student)

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.

1991 – present
First Judicial District of Pennsylvania, Court of Common Pleas
Criminal Justice Center
1301 Filbert Street, Suite 1417
Philadelphia, Pennsylvania 19107
Judge

1991
801 Arch Street
Philadelphia, Pennsylvania 19107
Solo Practitioner

1980 – 1991
Arbitration Center, Philadelphia Court of Common Pleas
1500 Chestnut Street,
Philadelphia, Pennsylvania 19102
Arbitrator

1979 – 1991
United States Department of Veterans Affairs
Office of the District Counsel
5000 Wissahickon Avenue
Philadelphia, Pennsylvania 19144
Staff Attorney

1977 – 1979
United States Department of Health and Human Services
Bureau of Hearings and Appeals
1528 Walnut Street
Philadelphia, Pennsylvania 19102
Attorney Advisor

1975 – 1977
Community Legal Services, Inc.
The Beury Building
3701-03 North Broad Street
Philadelphia, Pennsylvania 19140
Staff Attorney

1973 – 1974
Legal Aid Society
University of Puerto Rico

Rio Piedras, Puerto Rico
Legal Intern

Summer 1972
Job Corp
Rio Piedras, Puerto Rico
Junior Accountant

Other Affiliations (uncompensated):

1989 – 2012
North Philadelphia Health Systems
Eighth Street and Girard Avenue
Philadelphia, Pennsylvania 19122
Board of Trustees

1991 – 2012
Girard Medical Center
Eighth Street and Girard Avenue
Philadelphia, Pennsylvania 19122
Board of Directors

1995 – 2010
Philadelphia Legal Assistance
42 South 15th Street, Suite 500
Philadelphia, Pennsylvania 19102
Board of Directors

1999 – 2005
Young Scholars Charter School
900 N. Marshall Street
Philadelphia, Pennsylvania 19123
Board of Directors

1988 – 1997
Private Industry Council of Philadelphia
5740 Market Street
Philadelphia, Pennsylvania 19139
Board of Directors (1988 – 1997)
Secretary, Board of Directors (1993 – 1997)

1994 – 1996
Council for Spanish Speaking Organizations
705-09 North Franklin Street
Philadelphia, Pennsylvania 19123
Board of Directors

1995

Tú Plan Médico, Inc.
1060 First Avenue
King of Prussia, Pennsylvania 19406
Board of Directors

1989 – 1993

Fellowship Commission
Unknown/unlisted address
Board of Directors

1982 – 1991

Hispanic Bar Association of Pennsylvania
P.O. Box 59106
Philadelphia, Pennsylvania 19102
Board of Directors (1982 – 1991)
Vice President (1988 – 1990)
Treasurer (1987)

1988 – 1991

Hispanic Bar Association of Pennsylvania Legal Education Fund
P.O. Box 59106
Philadelphia, Pennsylvania 19102
President

1983 – 1989

Hunting Park Community Development Corporation
3961 North Ninth Street
Philadelphia, Pennsylvania 19140
Board of Directors

1976 – 1984

Aspira, Inc. of Pennsylvania
4322 North Fifth Street
Philadelphia, Pennsylvania 19140
Board of Directors (1976 – 1984)
Secretary (1978 – 1984)

Early 1980s

Mid-City Branch of the YMCA of Philadelphia (no longer exists)
20th and Chestnut Street
Philadelphia, Pennsylvania 19107
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 was 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.

Latino Law Students Association of Rutgers School of Law, Camden, Alianza's 3rd Annual Campeones de la Justicia Award (2006)

Hispanic Bar Association of Pennsylvania Legal Education Fund Founders Award for establishing the Hispanic Bar Association Inc. of Pennsylvania (2003)

United States Army Corps of Engineers, Philadelphia District, Certificate for participation in its observance of National Hispanic Heritage Month (2000)

United States Department of Justice, Drug Enforcement Administration, Certificate of Appreciation for Outstanding Contributions in the field of drug law enforcement (1999)

Latin American Law Students Association of Temple University, School of Law, a Lifetime Mentor's Award (1998)

Hispanic Bar Association of Pennsylvania Legal Education Fund (HBALEF), Eleventh Annual Scholarship Dinner honoree (1997)

Governor Tom Ridge's Advisory Commission on Latino Affairs Pride Award (1997)

National Image, Inc., Women's Action Committee Woman of the Year award (1995)

Asociación de Empleados de ELA de Puerto Rico (Association of Employees of the Commonwealth of Puerto Rico) recognized my achievements and dedication to the advancement of Puerto Rican ideals (1994)

Latin American Law Students Association of Villanova Law School award for personal achievements (1994)

Iberoamerican Foundation recognition award for contributions to the Iberoamerican community in the judicial field (1993)

Council for Spanish Speaking Organizations' (CONCILIO) Puerto Rican Week Festival Committee, Citizen of the Year (1993)

Hispanic Bar Association of Pennsylvania recognition for outstanding leadership of and commitment to its Legal Education Fund (1991)

Department of Veterans Affairs, Office of the District Counsel, superior or excellent achievement awards for performance as a staff attorney (1979 – 1990)

Aspira, Inc. of Pennsylvania, recognition award for contributions to the development and advancement of the Puerto Rican community of Philadelphia (1987)

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

Federal Bar Association

First Judicial District, Court of Common Pleas Judicial Education Committee

Hispanic Bar Association of Pennsylvania

Board Member (1982 – 1991)

Vice President (1988 – 1990)

Treasurer (1987)

Special Committee for Judicial Nominations (2003)

Hispanic Bar Association of Pennsylvania Legal Education Fund

Founding Member

President (1988 – 1991)

National Association of Women Judges

Pennsylvania Bar Association

House of Delegates (1991)

Minority Bar Committee (1989 – 1990)

Philadelphia Bar Association

Advancing Civics Education Program (2009)

Gender Fairness Task Force (1997)

Task Force on Racial and Ethnic Bias in the Justice System (1996)

Special Committee on Racial Bias in the Justice System (1993)

Fed 2000 Committee

Pennsylvania Conference of State Trial Judges

Ethics Committee (2011 – present)

Education Committee (1995 – 1998)

Philadelphia Bar Foundation Gala Committee

Supreme Court of Pennsylvania Committee on Racial and Gender Bias in the Justice System

Supreme Court of Pennsylvania Ethics Committee

Third Judicial Circuit of the United States Conference, Lawyer Delegate

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.

Puerto Rico, 1975 (inactive status)
Pennsylvania, 1976

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, 1983
United States Court of Appeals for the Third Circuit, 1981
United States District Court for the Eastern District of Pennsylvania, 1977
United States District Court for the District of Puerto Rico, 1977
Supreme Court of Pennsylvania, 1977
Supreme Court of Puerto Rico, 1975

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.

Aspira, Inc. of Pennsylvania
Board of Directors (1976 – 1984)
Secretary (1978 – 1984)

Council for Spanish Speaking Organizations

Board of Directors (1994 – 1996)

Puerto Rican Week Festival Committee (1994 – 1997)

Puerto Rican Week Festival Committee Fiscal Officer (1995 – 1997)

Fellowship Commission

Board of Directors (1989 – 1993)

Committee to Monitor the Mayoral Campaign (1987)

Girard Medical Center

Board of Directors (1991 – 2012)

Hunting Park Community Development Corporation

Board of Directors (1983 – 1989)

Ladies Executive Golf Group (1996 – present)

Mayor's Commission on Puerto Rican/Latino Affairs (1992 – 1994)

Mayor's Election Reform Task Force (1994 – 1995)

North Philadelphia Health Systems

Board of Trustees (1989 – 2012)

Chair of Latino Advisory Board (1989 – 2012)

Philadelphia Legal Assistance

Board of Directors (1995 – 2010)

Private Industry Council of Philadelphia

Board of Directors (1988 – 1997)

Secretary, Board of Directors (1993 – 1997)

Chair, Latino Task Force (1992 – 1997)

Tú Plan Médico, Inc.

Board of Directors (1995)

Mid-City Branch of the YMCA of Philadelphia

Board of Directors (early 1980s)

Young Scholars Charter School

Board of Directors (1999 – 2005)

- 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 Ladies Executive Golf Group is an informal group comprised only of women. Otherwise, to the best of my knowledge, none of the organizations listed in response to question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

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

To the best of my recollection, I have not written or edited any books, articles, reports, letters to the editor, editorial pieces, or other published material.

- 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.

First Judicial District 2009 Judicial Education Report. Copy supplied.

Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System (2003). In 1999, I was appointed by the Supreme Court of Pennsylvania to the Committee on Racial and Gender Bias in the Justice System. As a member of this Committee, my name appears in the report listed above. I participated in the discussions and research for the report, but was not involved in the drafting of the report. Copy supplied.

In 1995, the Mayor's Election Reform Task Force, in conjunction with the Committee of Seventy, issued a report concluding that the City should move as expeditiously as feasible to procure a Direct Recording Electronic system with full ballot-face display capability, paper audit-trail printing, and a physically durable design. Copy supplied.

Hispanic Bar Association of Pennsylvania and the Hispanic Bar Association of Pennsylvania Legal Education Fund mission statements. Copy supplied.

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

To the best of my recollection, I have not provided nor has anyone provided, on my behalf, testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

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

The following list represents my best efforts, through searches of my own records calendar and/or other sources available to me, and publically available databases, to identify speaking events or panel discussions in which I have participated.

In addition to the items listed below, in connection with my involvement with youth, I have been a keynote speaker at various high school or vocational programs' graduations and award presentation ceremonies. The majority of these speeches were motivational in nature and/or in appreciation for the award being received. I have spoken of my upbringing as a military dependent, my family, the need to establish firm goals, the importance of an education and the determination to pursue one's goals. I did not retain records of the dates or locations of these events, and I have no notes, transcripts or recordings. In general, it is my practice to speak from notes jotted in an outline format highlighting facts I wish to convey to the particular audience and I do not retain a copy of the notes or remarks after the talk was delivered.

Throughout my judicial career, I have given numerous presentations to colleagues at Conferences for the Association of Pennsylvania Trial Judges. Presentations for which I am able to recall specific dates or subjects are listed individually below, but I believe I have made additional presentations that I am not able to recall and for which I have no notes, transcripts or recordings.

October 5, 2012: Participant on a panel entitled "Oyeh Oyeh: New Order in the Court" at the Philadelphia Bar Association's Bench-Bar Annual Conference in Atlantic City, New Jersey. The subject of the panel discussion was an overview of new civil procedures instituted in the Day Forward 2010 Program in the Court

of Common Pleas. I have no notes, transcript or recording. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

April 4, 2012: Panelist at the Philadelphia Bar Association Rule and Procedure Committee luncheon meeting, Philadelphia, Pennsylvania. I spoke to lawyers about motion practices in my courtroom. I have no notes, transcript or recording, but Philadelphia Bar Association coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

May 7, 2010: Panelist at the Pennsylvania Association for Justice CLE course, "View from the Bench," Philadelphia, Pennsylvania. This presentation was for attorneys who routinely represent plaintiffs, although other attorneys were present. The topic was motion practice in my courtroom, discovery court, and disposition of cases. I have no notes, transcript or recording. The office address of the Pennsylvania Association of Justice is 121 South Broad Street, Suite 600, Philadelphia, PA 19107.

March 26, 2009: Presentation with another judge to colleagues entitled "Proper verdict sheet format under M-CARE law" during a lunch meeting, Philadelphia, Pennsylvania. I have no notes, transcript or recording. The presentation was in 515 City Hall, Philadelphia, PA 19107.

September 19, 2008: Panelist at the Bench-Bar Annual Conference "Wake Up Everybody, Race & the Law, A Conversation about Diversity," held in Atlantic City, New Jersey. The presentation was made during a lunch meeting attended by lawyers, court administrators, and judges. The remarks made by the panelists, including me, were constructive comments on how to identify racism, some based on life experiences. I have no notes, transcript or recording, but Philadelphia Bar Association coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

September 19, 2008: Panelist at the Bench-Bar Annual Conference in Atlantic City, New Jersey. The subject of discussion was the Communication Decency Act, codified at 47 U.S.C § 230, and an opinion I issued in the matter of *D'Alonzo v. Truscello*, on a claim of defamation for posting a newspaper article on the computer. I have no notes, transcript or recording. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

May 28, 2008: Panelist at the Pennsylvania Association of Justice's 26th Annual Auto Law Seminar, Philadelphia, Pennsylvania. The subject matter was the court's views and expectations on how attorneys should prepare motor vehicle cases. I have no notes, transcript or recording. The address of the Pennsylvania Association of Justice is 121 South Broad Street, Suite 600, Philadelphia, PA 19107.

April 24, 2008: Participant at Pennsylvania Bar Association Minorities in the Profession Conference, 20th Anniversary Celebration, "Yesterday, Today and Tomorrow: Assessing Progress in the Legal Profession," Philadelphia, PA. I introduced the dinner panelists. The audio is available at <http://www.pabar.org/public/about/suskoaudio.asp>.

November 7, 2007: Speaker in the Pennsylvania Bar Institute's staging of "Maxims, Monarchy and Sir Thomas More," in Philadelphia, Pennsylvania. The subject matter of the panel discussion was ethical issues in the legal practice. I have no notes, transcript or recording. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, PA 17055.

September 28, 2007: Panelist at the Bench-Bar Annual Conference in Atlantic City, New Jersey. The subject of discussion was the documentary "Soul of Justice: Thelton Henderson's American Journey." The audio is available at <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/BB07part1.mp3> and <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/BB07part2.mp3>.

June 14, 2007: Speaker at the Widener Women's Network luncheon speaker on the topic of "Judicial Insight and Guidance for Effective Advocacy" sponsored by the law firm Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, Philadelphia, Pennsylvania. I have no notes, transcript or recording. The Widener Women's Network is located at Harrisburg Campus, 3800 Vartan Way, P.O. Box 69381, Harrisburg, PA 17106.

October 26, 2006: Panelist at the Philadelphia Bar Association's Minorities in the Profession Committee program "Minority Judges: How They Ascended to the Bench," Philadelphia, Pennsylvania. Philadelphia Bar Association coverage is supplied, and the audio is available at <http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/MIP102606.mp3>.

October or November, 2004: Panelist at the Philadelphia Bar Association's Minorities in the Profession Committee program wherein the panel of judges offered practice tips and thoughts on their path to the bench, Philadelphia, Pennsylvania. I have no notes, transcript or recording, but Philadelphia Bar Association coverage is supplied. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

November 6, 2004: Panelist at the Bench-Bar Annual Conference held in Atlantic City, New Jersey, on the subject of "Unique Perspective from the Bench: The Judiciary and the Election Code." I have no notes, transcript or recording. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

October 28, 2004: Presenter for the Administrative Office of Pennsylvania Courts for a Medical Malpractice Case Management Seminar, in Plymouth Meeting, Pennsylvania. Copy of recording supplied.

April 30, 2002: Panelist at Philadelphia Bar Association's Minorities in the Profession Committee, in Philadelphia, Pennsylvania. The subject of discussion was life on the bench and judicial advice. I have no notes, transcript or recording. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

2001: Served as Judge for Clifford E. Haines Academy of Advocacy Program evaluating the performance of the lawyers who presented a mock trial. I have no notes, transcript or recording. Haines & Associates is located at 1835 Market Street, Philadelphia, PA 19103.

April 7, 2000: Panelist at Pennsylvania Bar Association's Twelfth Annual Minority Attorney Conference, Philadelphia, Pennsylvania. The topic was "Meet the Judges: Tips & Insight." I have no notes, transcript or recording. The address of the Pennsylvania Bar Institute is 5080 Ritter Road, Mechanicsburg, PA 17055.

December 10, 1997: Honoree at the Eleventh Annual Scholarship Dinner of the Hispanic Bar Association of Pennsylvania Legal Education Fund (HBALEF), held in Philadelphia, Pennsylvania. I gave a brief acceptance speech and congratulatory remarks on HBALEF's growth and success. I have no notes, transcript or recording. The Hispanic Bar Association of Pennsylvania is located at P.O. Box 59106, Philadelphia, PA 19102.

November 13, 1996: Participant at town hall meeting sponsored by the Police-Barrio Relations Project and the Philadelphia Bar Association Task Force on Racial and Ethnic Fairness in the Justice System to discuss the issue of bias in the courts, Philadelphia, PA. It appears that I was scheduled to participate in this event, but I do not recall whether I actually did. I have no notes, transcript or recording. The address of the Philadelphia Bar Association is 1101 Market Street, Philadelphia, PA 19107.

1993: Presenter for the Administrative Office of Pennsylvania Courts' New Judges' School in Plymouth Meeting, Pennsylvania. The subject matter was the Code of Judicial Conduct to an audience of newly elected or recently appointed Judges to the Court of Common Pleas in the Commonwealth of Pennsylvania. I have no notes, transcript or recording. The address of AOPC is 1515 Market Street, Philadelphia, PA 19107.

1991: Presented a training course entitled "Unfair Labor Practices" in Atlanta, Georgia to union employees of the Veterans Administration. I have no notes, transcript or recording. I do not recall the organization that sponsored the event.

1980 – 1991: Provided in-house training to management, medical professionals and other employees in matters of Freedom of Information request, medical and employment issues, and contract disputes, Philadelphia, Pennsylvania. These training sessions were part of my duties as a staff attorney who specialized in those areas of the law. I have no notes, transcript or recording. The trainings were held at one of the regional VA Medical Centers, which include Wilkes-Barre VAMC, Lebanon VAMV, Philadelphia VAMC, Coatesville VAMC, Delaware VAMC or the Philadelphia VA Regional Office, 5000 Wissahickon Avenue, Philadelphia, PA 19140.

- 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.

John M. Baer, "Politics Snarls Fight for Judgeship; Hispanic Woman Attorney Counts on Grass-Roots Support," Philadelphia Daily News, Feb. 15, 1991. Copy supplied.

Mark McDonald, "Judge Diaz Gets Major Court Job," Philadelphia Daily News, Jan. 17, 1991. Copy supplied.

Mark McDonald, "Why Few Latinos Serve on Juries," Philadelphia Daily News, Aug. 14, 1990. Copy supplied.

Paul Maryniak, "The Case Against Comparison: Crespo, Daily Trials Not Same – Lawyers," Philadelphia Daily News, Aug. 13, 1990. Copy supplied.

To the best of my recollection, I was interviewed by Dan Geringer, a writer for the Philadelphia Daily News in early 1990, regarding my state judicial nomination announced by the Honorable Robert P. Casey, Sr. I am unable to find a copy of the newspaper article.

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 May 1990, I was nominated by the Governor of Pennsylvania, the Honorable Robert P. Casey, Sr., for an appointment to the Court of Common Pleas for the First Judicial District of Pennsylvania, a court of general jurisdiction. I was confirmed in December 1991. However, in the interim, I engaged in a judicial election process and was elected to a ten-year term commencing January 1992. I was retained for additional ten-year terms in November 2001 and in November 2011.

As a court of general jurisdiction, my assignments have been in the criminal and civil trial divisions. I have presided over nonjury and jury civil and criminal trials, and have disposed of hundreds of pleadings, including, *inter alia*, preliminary objections, motions

for judgment of the pleadings, summary judgment, discovery court matters, and post-trial motions. Pursuant to the rules of civil procedure, I prepare written opinions when an appeal is filed, addressing the allegations of error. I served as Team Leader of the Day Forward Program – a case management program for major civil jury cases – from 1997 to 2000 and again from 2012 to present. The role of Team Leader includes additional administrative responsibilities such as ensuring case management orders are followed, assigning motions and cases to judges within the team, presiding over Discovery Court, ruling on pre-trial matters, conducting pre-trial and settlement conferences and presiding over assessment of damage hearings and bench trials.

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

Approximately 1,500 criminal trials and 300 civil trials.

- i. Of these, approximately what percent were:

jury trials:	70%
bench trials:	30%
civil proceedings:	80%
criminal proceedings:	20%

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

See attachment.

- 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. *Maya v. Johnson & Johnson*, No. 2879, February Term, 2009. Opinion supplied.

This civil action is a product liability case involving Children's Motrin, the first of this kind to be tried in the Philadelphia court system. Minor plaintiff claims that the warnings on the label of the over-the-counter Children's Motrin failed to warn of the danger of developing Stevens Johnson Syndrome and Toxic Epidermal Necrolysis, a rare but life-threatening disease that causes severe blistering and consequent sloughing off of skin, together with serious damage to the mouth, eyes, throat, and esophagus. Minor plaintiff was three years old when she ingested the medication with devastating results. The case was tried before a jury over a period of nine weeks in 2011, resulting in a \$10 million verdict in favor of

plaintiff. Post-trial motions were denied. Johnson & Johnson filed an appeal, which is pending.

Plaintiff's lead counsel:
Keith Jensen, Esquire
Jensen & Associates PLLC
1024 North Main Street
Fort Worth, TX 76164
817-334-0762

Defense lead counsel:
Christy D. Jones, Esquire
Butler Snow
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157
601-985-4523

David F. Abernethy, Esquire
Drinkler Biddle & Reath
One Logan Square, Suite 2000
Philadelphia, PA 19103
215-988-2503

2. *Goldman v. Southeastern Pennsylvania Transportation Authority (SEPTA)*, No. 3034, January Term, 2006; consolidated with *Wiza v. SEPTA*, No. 3576, October Term, 2006, and *Maguire v. SEPTA*, No. 3088, October Term, 2006, *rev'd*, 980 A.2d 709 (Pa. Commw. 2009), *appeal granted*, 10 A.3d 898 (Pa. 2010), *rev'd and remanded*, 2012 Pa. LEXIS 2923 (Pa. Dec. 19, 2012). Opinion supplied.

This was a case of first impression in the state court system is an action brought pursuant to the Federal Employer's Liability Act (FELA), wherein plaintiff alleged work-related injuries, and SEPTA claimed sovereign immunity from this type of tort action. The matter was assigned to me initially as a motion for judgment on the pleadings and, subsequently, as a motion for summary judgment. Following the presentation of evidence, I determined that SEPTA was not entitled to sovereign immunity. On appeal, the Superior Court disagreed. The matter was recently decided by the Pennsylvania Supreme Court, which reversed the Superior Court and held that SEPTA was not entitled to sovereign immunity in FELA cases.

Plaintiff's lead counsel:
James J. McEldrew, III, Esquire
James J. McEldrew, III, and Associates
123 South Broad Street, Suite 1920

Philadelphia, PA 19109
215-545-8800

Defense lead counsel:
Dolores Rocco Kulp, Esquire
Law Office of Dolores Rocco Kulp
2300 Chestnut Street, Suite 340
Philadelphia, PA 19103
215-468-5444

3. *Lindsay v. Mitchell*, 2007 Phila. Ct. Com. Pl. LEXIS 339

This was a professional liability case asserting claims for dental malpractice, breach of contract, battery, negligent misrepresentation and breach of warranty. Prior to the commencement of trial, I entertained a motion *in limine* deemed it to be a motion for summary judgment. The motion was granted and the case dismissed since plaintiff did not have an expert in support of his claims. Plaintiff filed an appeal, after which I filed a written opinion. Shortly thereafter, plaintiff discontinued the appeal.

Plaintiff's lead counsel:
Marshall L. Williams Esquire
Marshall L. Williams & Associates
1201 Sansom Street
Philadelphia, PA 19107
215-733-0800

Defense lead counsel:
Alexander Z. Talmadge, Jr., Esquire
7149 Ardleigh Street
Philadelphia, PA 19119
215-498-3763

4. *Dooner v. DiDonato*, 82 Pa. D. & C.4th 492, *vacated*, 943 A.2d 326 (Pa. Super. 2007), *appeal granted, in part*, 946 A.2d 640 (Pa. 2008), *rev'd and remanded*, 971 A.2d 1187 (Pa. 2009), *on remand*, 991 A.2d 365 (Pa. Super. 2010).

This civil action arose out of a 2002 altercation between Dooner and DiDonato, two traders working on the floor of the Philadelphia Stock Exchange. After the incident, Dooner was diagnosed with whiplash and a sprain. Dooner and his wife sued DiDonato, as well as the Philadelphia Stock Exchange, alleging negligent and intentional torts. I dismissed all claims for intentional torts and punitive damages against the Philadelphia Stock Exchange, and allowed the remaining claims to go to the jury, which found that Dooner, DiDonato, and the Philadelphia Stock Exchange all acted negligently. The jury awarded Dooner \$1.8 million and

his wife \$135,000. The jury assessed Dooner to be 20% negligent, DiDonato to be 30% negligent, and the Philadelphia Stock Exchange to be 50% negligent. I denied the Stock Exchange's post-trial motion for judgment notwithstanding the verdict and/or for a new trial, and held that claims against the Stock Exchange were not preempted by federal law. The Superior Court reversed, but the Supreme Court reversed the Superior Court, finding that the Philadelphia Stock Exchange was not entitled to immunity. The matter was remanded to the Superior Court for further proceeding, which in an unpublished opinion of January 19, 2010, affirmed my rulings.

Plaintiff's lead counsel:
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215-940-9450

Defense lead counsel:
Thomas Kuzmick, Esquire
Rawle & Henderson LLP
The Widener Building, One Penn Square
1339 Chestnut Street, 16th Floor
Philadelphia, PA 19107
215-575-4262

Scott W. Reid, Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
215-665-2152

5. *Sutherlin v. Magilner*, 2008 Phila. Ct. Com. Pl. LEXIS 260, *aff'd*, 6 A.3d 554 (Pa. Super. 2010), *re-argument denied*, 2010 Pa. Super. LEXIS 3706, *appeal denied*, 20 A.3d 1209 (Pa. 2011).

This civil action involved a professional (medical) liability claim for failure to diagnose breast cancer. The plaintiff sued numerous medical providers claiming that they failed to properly interpret several mammographies, thereby delaying the diagnosis of her cancer until it had metastasized into her bones and other organs. The case was tried before a jury and resulted in a \$12 million verdict for plaintiff. During post-trial proceedings, I granted a remittitur and reduced the award to \$6 million, which was accepted by plaintiff but not by the defendants. My rulings were affirmed on appeal.

Plaintiff's lead counsel:
Donna Lee Jones, Esquire

Saltz, Mongeluzzi, Barrett & Bendesky, PC
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215-575-2984

Defense lead counsel:
Sharon M. Reiss, Esquire
Post & Schell
1600 JFK Boulevard, 13th Floor
Philadelphia, PA 19103
215-587-1047

Dean Murtagh, Esquire
German Gallagher & Murtagh
200 South Broad Street, 5th Floor
Philadelphia, PA 19102
215-875-4003

6. *Galati v. Windsor-Joy Mutual Insurance Co.*, 2010 Phila. Ct. Com. Pl. LEXIS 54 (Pa. C.P. 2010), *aff'd*, 22 A.3d 1077 (Pa. Super. 2010), *appeal denied*, 27 A.3d 1015 (Pa. 2011). Opinion supplied.

This matter stemmed from an alleged breach of insurance contract and bad faith claim. In his complaint, plaintiff alleged that on December 26, 2006, his 33-foot Chaparral boat, while dry-docked at Waterfront Marina in Sommers Point, was damaged by a fire believed to be arson. The boat had a stated value of \$164,000, and had been purchased in May 2006 for \$165,903. Defendant insurance company denied the claim in March 2007, based upon a belief that Plaintiff caused the fire and was attempting to defraud the insurance company. During the cross-examination of plaintiff, it became obvious that he had misled defendants as to his lack of an insurable interest in the boat. The jury found that plaintiff did not have an insurable interest. Plaintiff appealed the jury's verdict and challenged numerous evidentiary rulings. The appellate court affirmed.

Plaintiff's lead counsel:
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215-232-1000

Defense lead counsel:
Martin Durkin, Esquire
Durkin Law Office, PC
1760 Market Street, Suite 602

Philadelphia, PA 19103
215-569-9090

7. *Wester v. Mateo*, No. 3833, November Term 1997.

This civil action involved complicated medical malpractice claims. The wife-decedent, a physician, had gone to a fertility doctor for a transvaginal oocyte retrieval procedure during which she apparently suffered an undetected perforated ovary which triggered heavy bleeding due to her being inappropriately on a blood thinning medication prescribed for an autoimmune syndrome. The husband, a doctor, rushed her to the emergency room and personally operated on her, but his wife ultimately died. The husband sued the fertility doctor and his medical group alleging malpractice. The fertility doctor contended that the husband's actions ultimately caused the wife's death and brought him into the action as an additional defendant. The case was tried before a jury and resulted in a \$25 million verdict against the fertility doctor and his group. The parties subsequently settled.

Plaintiff's lead counsel:
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215-772-1000

Defense lead counsel:
John J. Snyder, Esquire
Rawle & Henderson LLP
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Philadelphia, PA 19107
215-575-4200

8. *Weaver v. Forman, et al.*, 2010 Phila. Ct. Com. Pl. LEXIS 181 (Pa. C.P. 2010).

This was a medical malpractice action for failure to properly treat and follow-up on plaintiff-husband's *Clostridium Difficile* (C-Diff) infection. Plaintiffs contended that the infection commenced the day of his discharge from Northeastern Hospital July 25, 2005, and continued improperly treated until his readmission three weeks later on August 15, 2005, at which time he was diagnosed with C-Diff toxic megacolon and peritoneal sepsis requiring the removal of his entire colon. Following an 11-day trial, the jury rendered a verdict in favor of plaintiff-husband and against two of the doctors, and awarded him \$2 million in compensatory damages and plaintiff-wife \$750,000 for her loss of consortium claim. The jury assessed one defendant as being 30% comparatively negligent and the other as being 70% comparatively negligent. Defendants filed

post-trial motions, which I denied. Defendants appealed and my opinion was issued on July 9, 2010. On September 1, 2010, the appeal was discontinued without the appellate court issuing an opinion.

Plaintiff's lead counsel:
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215-568-0100

Defense lead counsel:
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Rawle & Henderson LLP
The Widener Building, One Penn Square
1339 Chestnut Street, 16th Floor
Philadelphia, PA 19107
215-575-4200

9. *Montañez v. Temple University Health Systems*, No. 3412, March Term, 2006.

This civil action involved a medical malpractice claim for failure to diagnose intracranial pressure. As the result of the negligence, plaintiff's brain tumor herniated, causing permanent brain injury. Plaintiff contended that a simple C-scan of the brain would have timely discovered the tumor and surgery could have possibly avoided the catastrophic injuries. The case was tried before a jury and resulted in an award of \$11.2 million. The jury assessed yearly amounts for the plaintiff's medical expenses pursuant to the Medical Care Availability and Reduction of Error Act. 40 P.S. § 1303.509(a)(2)(i).

Plaintiff's lead counsel:
Kenneth Rothweiler, Esquire
Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, PC
1634 Spruce Street
Philadelphia, PA 19103
215-268-7153

Defense lead counsel:
Charles A. Fitzpatrick, III, Esquire
Rawle & Henderson LLP
The Widener Building, One Penn Square
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Philadelphia, PA 19107
215-575-4234

10. *Spinner v. Thomas Jefferson University Hospital, et al.*, No. 2545, December Term, 1999.

This civil action involved a medical malpractice claim against a hospital and obstetrician for failure to diagnose and properly treat a placenta abruption resulting in a delayed delivery of the baby. Consequently, the baby developed cerebral palsy with severe and permanent injuries, including an inability to walk or talk, neurological deficits, and developmental delays. Without the jury's knowledge, the hospital settled for a confidential amount just prior to the jury's deliberations. After three days of deliberations, the jury was unable to decide the doctor's liability. The matter was subsequently retried against the doctor only, resulting in a defense verdict.

Plaintiff's lead counsel:
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610-724-5780

Defense lead counsels:
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Post & Schell
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Philadelphia, PA 19103

Donald Brooks, Esquire
Eckert Seamans Cherin Mellot
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Philadelphia, PA 19103
215-851-8470

Elaine Ross, Esquire
The Beasley Firm, LLC
1125 Walnut Street
Philadelphia, PA 19107
215-592-1000

- 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. *Commonwealth v. Carroll*, No. 00748 Philadelphia 1992, *rev'd*, 628 A.2d 398 (Pa. Super. 1993), *rev'd sub nom. Commonwealth v. Matos*, 672 A.2d 769 (Pa. 1996). Opinion supplied.

Counsel for the State:
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3 South Penn Square
Philadelphia, PA 19107
215-686-5730

Defense lead counsel:
Paul M. George, Esquire
McKinney & George
239 South Camac Street
Philadelphia, PA 19107
215-735-3343

2. *Goldman v. Southeastern Pennsylvania Transportation Authority*, No. 3034, January Term, No. 3034, *consolidated with Wiza v. SEPTA*, No. 3576, October Term, 2006 and *Maguire v. SEPTA*, No. 3088, October Term, 2006, *rev'd*, 980 A.2d 709 (Pa. Commw. 2009), *appeal granted*, 10 A.3d 898 (Pa. 2010), *rev'd and remanded*, 2012 Pa. LEXIS 2923 (Pa. Dec. 19, 2012). Opinion supplied in response to 13c.

Plaintiff's lead counsel:
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215-545-8800

Defense lead counsel:
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215-468-5444

Lawrence A. Katz, Esquire
Coffey Kaye Myers & Olley
Two Bala Plaza, Suite 718
Bala Cynwyd, PA 19004
610-667-3352

3. *Deutschbauer v. Barakat*, 57 Pa. D. & C.4th 276 (2002), *aff'd*, 814 A.2d 246 (Pa. Super. 2002).

Plaintiff's lead counsel:
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215-563-3540

Defense lead counsel:
Jonathan D. Herbst, Esquire
Margolis Edelstein
The Curtis Center
170 South Independence Mall West
Sixth and Walnut Streets, Suite 400E
Philadelphia, PA 19106
215-931-5822

4. *Sunderland et al. v. R.A. Barlow Homebuilders, et al.*, No. 1154, May Term, 2000, *aff'd*, 791 A.2d 384 (Pa. Super. 2002), *aff'd*, 838 A.2d 662 (Pa. 2003).
Opinion supplied.

Plaintiff's lead counsel:
Michael T. Drogan, Esquire
Drogan, McClean & Associates, PC
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215-557-0111

Defense lead counsel:
Henry T. Crocker, Esquire (retired)
Crocker & Crocker, PC
1296 East High Street
Pottstown, PA 19464
610-323-5700

5. *Andreassen v. Saf-Guard Safety Shoe*, 78 Pa. D. & C.4th 285 (2005), *aff'd*, 913 A.2d 936 (Pa. Super. 2006), *appeal denied*, 917 A.2d 312 (Pa. 2007).

Plaintiff's lead counsel:
Jamie D. Jackson, Esquire
Atlee Hall, LLP
8 North Queen Street
Lancaster, PA 17603
717-393-9596

Defense lead counsel:
L. Robinson, Esquire
Contact information unknown

6. *D'Alonzo v. Truscello*, 2006 Phila. Ct. Com. Pl. LEXIS 244 (2006).

Plaintiff's lead counsel:
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Sacchetta & Falcone
308 East Second Street
Media, PA 19063
484-841-1248

Defense lead counsel:
William D. Kennedy, Esquire
White and Williams LLP
One Liberty Place
1650 Market Street, Suite 1800
Philadelphia, PA 19103
215-864-6816

7. *Krosnowski v. Ward, et al.*, 61 Pa. D. & C.4th 490 (2002), *aff'd*, 836 A.2d 143 (Pa. Super. 2003).

Plaintiff's lead counsel:
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215-772-1000

Defense lead counsel:
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White and Williams
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1650 Market Street, Suite 1800
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215-864-6332

8. *Bullock v. City of Philadelphia*, 61 Pa. D. & C.4th 300 (2002), *aff'd*, 815 A.2d 45 (Pa. Commw. 2002), *appeal denied*, 825 A.2d 1262 (Pa. 2003).

Plaintiff's lead counsel:
Ralph D. Friedman, Esquire
Friedman & Friedman

1077 Rydal Road, Suite 103
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215-572-7600

Defense lead counsel:
Alan C. Ostrow, Esquire
Divisional Deputy City Solicitor
City of Philadelphia Law Department
One Parkway, 1515 Arch Street, 14th Floor
Philadelphia, PA 19102
215-686-5235

9. *Carlson v. Janney Montgomery Scott, LLC*, 80 Pa. D. & C.4th 230 (2006),
aff'd, 918 A. 2d 781 (Pa. Super. 2006).

Plaintiff's lead counsel:
Barry R. Elson, Esquire
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One Commerce Square
2005 Market Street, Suite 1000
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215-640-8529

Defense lead counsel:
Michael L. Banks, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
215-963-5387

10. *Faherty v. Gracias*, No. 0411, April Term 2001, *consolidated with Faherty v. Gracias*, No. 1896, April Term 2000, *aff'd*, 874 A.2d 1239 (Pa. Super. 2005).
Opinion supplied.

Plaintiff's lead counsel:
Daniel J. Hetznecker, Esquire
Giosa & Hetznecker, P.C.
1900 Spruce Street
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215-735-6464

Defense lead counsel:
Charles A. Fitzpatrick, III, Esquire
Rawle & Henderson LLP
The Widener Building, One Penn Square
1339 Chestnut Street, 16th Floor

Philadelphia, PA 19107
215-575-4234

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

I am unaware of any case where certiorari was requested and/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.

Having reviewed the databases available, the following is a brief summary of all of my opinions where the decision was reversed by a reviewing court or where my judgment was affirmed with significant criticism of substantive or procedural rulings.

1. *Commonwealth v. Carroll*, No. 00748 Philadelphia 1992, *rev'd*, 628 A.2d 398 (Pa. Super. 1993), *rev'd sub nom. Commonwealth v. Matos*, 672 A.2d 769 (Pa. 1996). This matter arose from defendant's motion to suppress the admission of narcotics discarded when defendant, who was not under any suspicion of criminal activity, fled when the police arrived. The motion to suppress was granted and an opinion issued. The Superior Court reversed, finding that there was no seizure because defendant was neither physically restrained nor had he submitted to the officer's assertion of authority. This matter was consolidated with the *Matos* matter for review by the Pennsylvania Supreme Court as a matter of first impression. There, the Court reversed and found that the contraband discarded while fleeing the police officer was the fruit of an illegal seizure when the officer possessed neither probable cause to arrest nor reasonable suspicion to stop and frisk defendant. Opinion supplied in response to Question 13d.

2. *Commonwealth v. Morris*, No. 00805 Philadelphia 1992, *rev'd, remanded*, 619 A.2d 709 (Pa. Super. 1992), *appeal denied*, 627 A.2d 731 (Pa. 1993). Defendant was a front seat passenger in a vehicle that was stopped by a police officer for failing to signal a right-hand turn, and the officer allegedly saw defendant stuff a brown paper bag under his seat. Defendant moved to suppress evidence of drugs found in that bag. I granted the motion, holding that the officer acted without probable cause to order the passenger out of the vehicle and search under the seat. The Superior Court reversed and remanded the matter, finding that the officer had legally stopped the vehicle and articulated a valid safety concern for ordering defendant-passenger out of the car. I am unaware of the outcome of the re-trial. Opinion supplied.

3. *Commonwealth v. Pagan*, No. 1840 Philadelphia 1992, 1934 Philadelphia 1992, *vacated, remanded for resentencing*, 1993 Pa. Super. LEXIS 1134 (Pa. Super. 1993). Defendant was found guilty of possessing a controlled substance

and was sentenced to two years probation and ordered to pay the mandatory court costs. The Commonwealth filed a petition to reconsider the sentence. At the reconsideration hearing and based upon the mandatory minimum sentencing provisions of 18 Pa. C.S.A. § 7508(a)(3)(i), defendant's previous sentence was vacated and he was re-sentenced to one to two years incarceration. However, no fines or costs were imposed based upon the court's determination that defendant was unable to pay. The Commonwealth appealed. The appellate court vacated defendant's sentence and remanded the matter for re-sentencing to include the mandatory court costs. Defendant was thereafter re-sentenced. Opinion supplied.

4. *Commonwealth v. Vasquez*, No. 2129 Philadelphia 1994, *vacated, remanded*, 667 A.2d 425 (Pa. Super. 1995), *appeal denied*, 668 A.2d 1130 (Pa. 1995). This matter arose from a sentencing hearing wherein the defendant was sentenced two to four years incarceration for possession and possession with intent to deliver heroin. Defendant, a Spanish-speaking individual, appealed asserting it was error to find him competent to stand trial and, consequently, to convict him. The reviewing court agreed with my conclusion that defendant's claims were meritless; and upon request of this trial court, remanded the matter for imposing of the mandatory fine which had been inadvertently omitted. Opinions supplied.

5. *Commonwealth v. Rollins*, No. 3604 Philadelphia 1994, *rev'd in part, vacated in part, remanded for resentencing*, 664 A.2d 1059 (Pa. Super. 1995). In a non-jury trial, defendant was found guilty of aggravated assault based upon a finding that his behavior of operating a motor vehicle while under the influence of alcohol, driving at a fast speed in an unsafe and reckless manner, and causing a collision with complainant's vehicle, was reckless. The appellate court reversed the conviction, vacating the sentence imposed and remanded to the trial court for resentencing on other counts. Opinions supplied.

6. *Kawczynski v. Camelback Ski Corp.*, No. 3604, August Term 1996, *rev'd*, 706 A.2d 1264 (Pa. Super. 1997). This matter originated as defendant's petition to transfer venue, which was granted. Upon appellate review, the order was reversed and the matter remanded for further proceeding. An evidentiary hearing was heard on the petition to transfer venue based on the doctrine of *forum non conveniens*. The petition was granted and plaintiff appealed. The Superior Court affirmed the transfer to Monroe County. Opinions supplied.

7. *Lucas v. Tennenbaum*, No. 01340 PHL 98, *aff'd in part, rev'd in part, remanded*, 745 A.2d 52 (Pa. Super. 1999). Plaintiff filed a dental malpractice action based on a prosthesis implanted in 1987 as a result of a motor vehicle accident. I granted partial summary judgment to the defendant based upon releases signed by plaintiff in a New Jersey action related to the motor vehicle accident, finding that plaintiff had waived all claims related to the accident. The appellate court affirmed my order even though it found error in the choice-of-law

analysis, finding that Pennsylvania was required to give full faith and credit to the New Jersey releases. Opinions supplied.

8. *Gabriele v. SEPTA*, No. 462 CD 99, *rev'd, remanded*, 751 A.2d 1273 (Pa. Commw. 2000). This matter was a motor vehicle accident trial before a jury wherein plaintiff was a passenger in a bus that suddenly stopped. During the plaintiff's testimony at trial, defense counsel asked whether she had received workers' compensation. Plaintiff's counsel objected and plaintiff did not answer. The objection was sustained with a curative instruction given to the jury to disregard the comment. The jury subsequently found in favor of plaintiff but assessed her 75% comparative negligence. I denied plaintiff's motion for mistrial, and post-trial motion for a new trial and/or judgment notwithstanding the verdict. The Superior Court reversed and remanded for a new trial, finding that the mention of workers' compensation benefits, despite an immediately issued curative instruction, was prejudicial and warranted a new trial. Opinions supplied.

9. *Obelisk, Inc. v. Sun Refining and Marketing, Inc.*, No. 2151, June Term 1994, and No. 1793, August Term 1996, *rev'd, remanded*, 750 A.2d 385 (Pa. Super. 1999); *rev'd, remanded*, 767 A.2d 1120 (Pa. Super. 2000). This was a franchise breach of contract and fiduciary duty matter. The jury returned a verdict in favor of plaintiff and both parties' post-trial motions were denied. On December 8, 1999, the Superior Court affirmed my ruling on liability but remanded for a supplemental opinion on damages. On October 19, 2000, the Superior Court issued a second opinion remanding the matter to recalculate the amount of damages based on the evidence in the record, or on new evidence, if warranted. The appellate court found an issue with the interpretation of a specific clause of the franchise agreement. On October 25, 2002, a discontinuance was ordered and on June 17, 2003, satisfaction was filed. Opinions supplied.

10. *Jistarri v. First Union Nat'l Bank*, No. 3516, March term 1997, *rev'd, remanded*, 768 A.2d 892 (Pa. Super. 2000), *appeal denied*, 781 A.2d 145 (Pa. 2001). Plaintiffs filed a complaint against the bank for breach of contract and negligence. The critical issue was determining the beneficiar[ies] of investments owned by Jistarri at the time of his death and which were in possession of defendant. The jury returned a verdict in favor of plaintiff beneficiary and plaintiff estate. Defendant's post-trial motion for judgment notwithstanding the verdict and/or a new trial was denied. The Superior Court reversed and remanded the matter for entry of judgment notwithstanding the verdict, finding that the evidence was insufficient to establish that defendant violated New Jersey's Multiple-Party Deposit Account Act. Opinions supplied.

11. *Byers v. St. Joseph Reg'l Health Network*, No. 2336-EDA 2000, *vacated, remanded*, 778 A.2d 1237 (Pa. Super. 2001), *appeal denied*, 796 A.2d 977 (Pa. 2002). This matter was presented as a petition to transfer venue on the basis of forum *non conveniens*. The petition was granted and the transfer of venue in this

medical malpractice action was ordered to Lancaster County. The Superior Court reversed and stated that the defendants had not met the proper burden and, therefore, the order transferring venue constituted an abuse of discretion. The matter was remanded and subsequently settled. Opinions supplied.

12. *Kummer v. St. Joseph Reg'l Health Network*, No. 2372 EDA 2000, *opinion withdrawn by the court, on reconsideration*, 792 A.2d 1294 (Pa. Super. 2001), *appeal nunc pro tunc denied* (Pa. Apr. 3, 2002). This matter was presented as a petition to transfer venue on the basis of forum *non conveniens*. The petition was granted and the transfer of venue in this medical malpractice action was ordered to Berks County. The Superior Court found that defendants had not met the burden imposed to show that venue should be transferred; the order was reversed and the matter remanded to the trial court. Opinions supplied.

13. *Faust v. Martinez*, No. 2627 EDA 2000, *rev'd*, 792 A.2d 1291 (Pa. Super. 2001), *appeal denied*, 800 A.2d 932 (Pa. 2002). This matter was presented as a petition to transfer venue on the basis of forum *non conveniens*. The petition was granted and the transfer of venue in this medical malpractice action was ordered to Berks County. The Superior Court found that defendants had not met the burden imposed to show that venue should be transferred, the order was reversed, and the matter remanded to trial court. The Honorable Sandra Mazer Moss transferred the matter to Berks County on January 26, 2004. Opinions supplied.

14. *Bussey v. Am. Future Sys., Inc.*, No. 02580 EDA 2000, *remanded to another jurisdiction*, 788 A.2d 1024 (Pa. Super. 2001). Plaintiff was assaulted at her place of employment in Bucks County, Pennsylvania, and sued her employer in Philadelphia County. Defendant filed a petition to transfer venue on the basis of forum *non conveniens*, which was granted. The transfer of venue was ordered to Bucks County on July 21, 2000. Upon review of a motion for reconsideration, I determined that venue was, in fact, proper in Philadelphia. However, the motion to reconsider was filed late, thus, depriving me of jurisdiction to reconsider the July 21, 2000 order. Notwithstanding, the Superior Court affirmed and remanded the matter to the Court of Common Pleas of Bucks County on September 5, 2001. Opinions supplied.

15. *Derecola v. Jefferson Health Sys., Inc.*, No. 02875 EDA 2000, *rev'd, remanded*, 788 A.2d 1036 (Pa. Super. 2001). This medical malpractice matter presented as a petition to transfer venue on the basis of forum *non conveniens*. The petition was granted since the parties who had nexus to Philadelphia had been dismissed and the transfer of venue was ordered to Chester County. The Superior Court disagreed, reversed my order and remanded the matter. Opinions supplied.

16. *Hummer v. Siegrist*, No. 643 EDA 2001, *rev'd, remanded*, 792 A.2d 1292 (Pa. Super. 2001). This matter presented as a petition to transfer venue on the basis of forum *non conveniens*. The petition was granted and the motor vehicle accident action was ordered transferred to Lancaster County, the county where the

accident occurred. The Superior Court reversed the transfer order and remanded the matter, finding that defendants had not met their burden to prove that venue in the chosen forum was oppressive or vexatious. The appellate court cited one of my previous opinions and distinguished the facts. Opinions supplied.

17. *McMahon v. Constantino*, 61 Pa. D. & C.4th 209 (Pa. County 2001), *rev'd*, 803 A.2d 803 (Pa. Super. 2002). This matter presented as preliminary objections challenging venue. Defendants' preliminary objections were sustained and transfer of venue was ordered in this medical malpractice action to Bucks County. The Superior Court reversed and remanded the matter to the trial court. Opinions supplied.

18. *PECO Energy Co. v. Phila. Suburban Water Co.*, No. 1576 EDA 2001, *rev'd, remanded*, 802 A.2d 666 (Pa. Super. 2002). This matter presented as defendant's preliminary objections challenging venue and requesting a transfer to Montgomery County. The preliminary objections were overruled. On appeal, the Superior Court reversed and remanded with instructions and the matter was transferred to Montgomery County. Opinion supplied.

19. *Estate of Henderson v. City of Phila.*, 62 Pa. D. & C.4th 313 (Pa. County 2001), *rev'd*, 798 A.2d 875 (Pa. Commw. 2002). This matter presented as defendants' preliminary objections to plaintiffs' claims for intentional infliction of emotional distress caused by the suicide of her son at the home. The preliminary objections were overruled, finding that the complaint asserted sufficient facts to support said claim. The Commonwealth Court disagreed and reversed the order of April 17, 2002. The matter was subsequently dismissed by another judge. I could not locate a copy of the appellate opinion.

20. *Humes v. Eckerd Corp.*, No. 3019 EDA 2001, *rev'd, remanded*, 807 A.2d 290 (Pa. Super. 2002). Plaintiffs commenced a wrongful death suit by filing a writ of summons against defendants, who, in turn, filed a motion to dismiss on the grounds of *forum non conveniens*, pursuant to 42 Pa.C.S. § 5322(e). Attached to defendants' motion, as an exhibit, was a wrongful death action filed by plaintiffs against the same defendants in New Jersey. I concluded that the pertinent facts regarding the instant matter would be the same as the case in New Jersey and dismissed the action utilizing a "private and public factors" analysis. The Superior Court acknowledged that its decision was complicated by changes in the law and a lack of precedent, but it reversed and remanded holding that because no complaint had been filed in Philadelphia County and discovery had not yet been completed, the court had abused its discretion in dismissing the complaint. It also found that the standard of *Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 157 (Pa. 1997) applied to Section 5322 (e) petitions. Opinion supplied.

21. *Clevenstine v. Harleysville Mutual Ins. Co.*, No. 03131, 03132 EDA 2001, *rev'd, remanded*, 813 A.2d 898 (Pa. Super. 2002). This matter presented as defendants' preliminary objections challenging venue and requesting transfer of

this medical malpractice matter to Lancaster County, and contending the court had no jurisdiction over the insurance carrier since it was immune from suit under the exclusivity provision of the Workers' Compensation Act. The preliminary objections were overruled. On appeal, the Superior Court reversed and remanded the matter to the motion judge to hold an evidentiary hearing on the issue of venue only. This hearing was held and the matter was subsequently transferred to Lancaster County. Opinions supplied.

22. *Miller v. Sommer Maid Creamery*, 60 Pa. D. & C.4th 197 (Pa. County 2002), *rev'd*, 821 A.2d 141 (Pa. Super. 2003). This matter presented as defendants' petition to transfer the motor vehicle accident matter to Northumberland County on the basis of forum *non conveniens*. I granted the petition, concluding that the record supported a finding that trial in Philadelphia County would be oppressive and vexatious to the parties and witnesses. On appeal, the Superior Court reversed and remanded the matter to trial in Philadelphia County. Three months later, plaintiff filed a praecipe to transfer the matter to Northumberland County. Opinion supplied.

23. *Barley v. Consolidated Rail Corp.*, No. 1354 EDA 2002, *rev'd in part, appeal quashed in part*, 820 A.2d 740 (Pa. Super. 2003). This matter arose from a discovery-related order compelling defendant to produce former employees for deposition, and deeming admitted a particular admission request. I determined that the orders were interlocutory and non-appealable and recommended that the appeal be quashed. The Superior Court reversed my order, finding that the appeal was proper in part and holding that it was error to order the defendant to comply with notices to depose non-party individuals, who instead should have been issued subpoenas. The remaining issues on appeal were quashed as improper. The matter subsequently settled. Opinion supplied.

24. *Watson v. Temple Univ.*, No. 629 EDA 2001, *rev'd*, 855 A.2d 146 (Pa. Super. 2004). This matter presented as plaintiff's discovery request in a personal injury matter, for documents which defendant claimed were privileged as either attorney-client communications or attorney work-product. After an *in camera* review of the documents, plaintiff's motion to compel defendant to provide full and complete answers to plaintiff's interrogatories and full and complete responses to plaintiff's request for production of documents were granted. Defendant appeal and the Superior Court quashed the appeal prior to the submission of the opinion. The matter was appealed to the Supreme Court, which granted the Petition for Allowance of Appeal from the Superior Court on the limited issue of whether the discovery order was appealable as of right. By a Per Curiam Order dated November 13, 2002, the Supreme Court without an opinion reversed the Superior Court. I issued an opinion on September 15, 2003, addressing only the merits of defendant's claims of attorney-client privilege and/or work product doctrine, finding that the information plaintiff sought was not protected. The Superior Court reversed and remanded. Opinions supplied.

25. *Gebremariam v. Marriot Hotel Serv.*, No. 1662 EDA 2003, *vacated, remanded for new trial, discontinued in the lower court*, 855 A.2d 140 (Pa. Super. 2004). This matter presented as a slip and fall case tried before a jury, which found plaintiff and defendant each to be 50% negligent and awarded plaintiff no damages. In her post-trial motion, plaintiff argued that the jury's verdict was contrary to the weight of the evidence since defendant admitted that plaintiff had sustained an injury and, therefore she should be compensated as a matter of law. Plaintiff's post-trial motion for a new trial on damages was denied on the basic finding that the jury's determination should not be disturbed since the issue of the actual injury suffered had been highly contested. On appeal, the Superior Court vacated the judgment and remanded for a new trial. A new trial was scheduled but the matter settled before the trial. Opinions supplied.

26. *Lizzo v. Atkins*, No. 3014 EDA 2003, *vacated, remanded*, 872 A.2d 1279 (Pa. Super. 2005), *appeal denied*, 877 A.2d 462 (Pa. 2005). This matter presented as a medical malpractice action wherein plaintiff claimed injuries resulting from a laceration sustained during childbirth. The jury found in favor of defendant. I denied plaintiff's post-trial motion for a new trial claiming unfair surprise and prejudice based upon evidentiary rulings related to the issue of scarring. The Superior Court vacated the judgment and remanded the matter.

27. *Baker v. Lehighon Chrysler Plymouth*, No. 108 EDA 2004, *vacated, remanded*, 885 A.2d 569 (Pa. Super. 2005). This case presented as plaintiffs' claims of violation of the Pennsylvania's Unfair Trade Practices and Consumer Protection Law, and the Magnuson-Moss Warranty Act arising from defendant's alleged sale of a "lemon" buyback without proper disclosure. The case was tried before a jury and was resolved by a non-monetary settlement agreement. Plaintiffs thereafter filed a petition for attorney's fees and costs. A hearing was held and the petition was granted albeit not in the amount requested. Defendant appealed the order awarding attorney's fees. The Superior Court vacated the attorney fee award and remanded for reconsideration, finding that the record did not support the amount of the award which was deemed to be grossly disproportionate to the value of the settlement. Opinions supplied.

28. *Hutchinson v. Penske Truck Leasing Co.*, No. 463, 497 EDA 2004, *rev'd, remanded*, 876 A.2d 978 (Pa. Super. 2005), *aff'd*, 922 A.2d 890 (Pa. 2006). This case presented as plaintiff's claims of a defective product and a crashworthiness theory of liability. The jury found in favor of plaintiff and awarded compensatory and punitive damages. Both parties filed post-trial motions. I granted defendants' request to vacate the jury's punitive damage award and denied their requests for either judgment notwithstanding the verdict or a new trial. On appeal, the Superior Court considered whether expert reports summarizing hundreds of other accidents were admissible as evidence of state of mind and found that the admission of these documents constituted reversible error and remanded for a new trial on liability and damages. The court held that those expert reports did not satisfy the "substantial similarity" test applicable to other accident evidence and

were, therefore, not admissible. The Superior Court further found that counsel's repeated violations of the court's pre-trial rulings warranted a new trial. It also found no error in the denial of defendant's motion for judgment notwithstanding the verdict, since conflicting testimony raising questions of fact and credibility were properly within the province of the jury. Shortly thereafter, the matter settled. Opinion supplied.

29. *Fitzpatrick v. Natter*, No. 1488 EDA 2004, *aff'd*, 894 A.2d 826 (Pa. Super. 2005), *vacated and remanded*, 961 A.2d 1229 (Pa. 2006). This case presented as a medical malpractice case alleging lack of informed consent. At trial, the plaintiff-husband testified as to the information provided to his wife, the patient, who was not called as a witness despite being competent to testify. The jury returned a verdict in favor of plaintiffs and defendant filed a post-trial motion for judgment notwithstanding the verdict. The motion was granted and affirmed by the Superior Court. The Supreme Court granted an allowance of appeal and after other procedural issues reviewed the question whether a patient seeking to prove a lack of informed consent claim in a medical malpractice action may rely solely upon circumstantial evidence. The Court determined that the testimony of a patient's spouse may be sufficient to prove the substantial factor element and remanded the case to the Superior Court to determine the sole issue of whether it was error to preclude plaintiffs' experts for their lack of qualifications. The Superior Court affirmed my opinion excluding the experts. No further action occurred. Opinion supplied.

30. *Dooner v. DiDonato*, 82 Pa. D. & C.4th 492 (Pa. County 2006), *vacated*, 943 A.2d 326 (Pa. Super. 2007), *rev'd*, 971 A.2d 1187 (Pa. 2009). This matter of first impression stemmed from an assault and battery inflicted by a stock trader against another stock trader who was employed at the Philadelphia Stock Exchange (PSX). A jury found in favor of plaintiffs and against both defendants. Defendant PSX filed a post-trial motion for judgment notwithstanding the verdict, which was denied. On appeal, the Superior Court concluded that the Securities Exchange Act of 1934 (Act) preempts "a floor trader's negligence causes of action against a national exchange where those causes of action implicate the exchange's statutory authority to govern itself." Thus, the Superior Court found that PSX was entitled to judgment as a matter of law, vacated the judgment in favor of the plaintiffs, and remanded for further proceedings. The Pennsylvania Supreme Court granted a petition for allowance of appeal on the issue of whether the Act preempts Pennsylvania state-law claims arising from personal injuries sustained on a stock exchange floor by a securities industry employee. The Court concluded that the Act did not preempt such claims and reversed the Superior Court. Judgment was entered on the verdict.

31. *Mastrocola v. SEPTA*, 2006 Phila. Ct. Com. Pl. LEXIS 458 (Pa. C.P. 2006), *rev'd*, 941 A.2d 81 (Pa. Commw. 2008), *appeal granted*, 973 A.2d 412 (Pa. 2009). This matter presented as a claim to recover property damages resulting from SEPTA's capital improvement project at a nearby train station. The jury found in favor of plaintiffs. SEPTA filed a post-trial motion arguing

preemption, and plaintiffs filed a post-trial motion requesting additur or a new trial. All motions were denied and appeals were filed. The preemption issue was denied because SEPTA had not raised it as a defense until its motion for directed verdict at the end of the trial. The Commonwealth Court reversed, and found that preemption applied pursuant to the Federal Railroad Safety Act of 1970. An appeal to the Supreme Court was denied and the matter subsequently settled. Opinion supplied.

32. *Kiak v. Crown Equipment Corp.*, 2008 Phila. Ct. Com. Pl. LEXIS 52 (Pa. C.P. 2008), *rev'd*, 989 A.2d 385 (Pa. Super. 2010). This matter presented as defendant's motion for summary judgment following the appellate court remand for a new trial (the previous trial was before another judge). The motion for summary judgment was granted in reliance on a recent appellate decision finding federal preemption in cases involving forklifts. On February 17, 2009, the Superior Court reversed but subsequently withdrew the panel decision and granted reargument *en banc*. On January 29, 2010, the Superior Court *en banc* concluded that the previous "controlling case" had been wrongly decided and overruled it. It further reversed my opinion and determined that the evidence established a substantial question of material fact regarding whether the alleged design defect caused plaintiff's injuries and therefore summary judgment was not warranted. The case was subsequently tried before another judge resulting in a defense verdict.

33. *Lewis v. Berwind Corp.*, 2009 Phila. Ct. Com. Pl. LEXIS 276 (Pa. C.P. 2009), *rev'd*, 7 A.3d 841 (Pa. Super. 2010), *appeal denied*, 2011 Pa. LEXIS 1279 (Pa. 2011). This case presented as a product liability action wherein the injuries occurred in New Jersey; thus, New Jersey law was found to be applicable. The case involved allegations that the warnings on an aerosol spray can used to clean electrical pole top switches, and which could cause an "arc-over" event, were inadequate. The case involved demonstrative evidence of the scene and of an electrical arc-over event. The case was tried before a jury and resulted in a defense verdict. Plaintiff appealed. The appellate court reversed, finding that error was committed in charging the jury on comparative negligence and assumption of risk. The dissenting opinion found that no error was committed. The matter was remanded for a new trial and subsequently settled.

34. *Goldman v. SEPTA*, 949 A.2d 983 (Pa. Commw. 2008), *appeal denied*, *Davis v. SEPTA*, 960 A.2d 841 (Pa. 2008), *appeal granted sub nom. Goldman v. SEPTA*, 10 A.3d 898 (Pa. 2010), *rev'd, and remanded*, 2012 Pa. LEXIS 2923 (Pa. Dec. 19, 2012). This matter presented as a motion for summary judgment on an issue of first impression: whether SEPTA was entitled to claim sovereign immunity in Federal Employers Liability Act (FELA) actions brought against it. I determined that SEPTA was not entitled to such immunity and the matter was consolidated with another case that reached the opposite conclusion. The Commonwealth Court reversed me and held that SEPTA was entitled to immunity as an "arm" of the Commonwealth and thus was not subject to suit under FELA.

The matter was appealed to the Pennsylvania Supreme Court, which held that in FELA cases, SEPTA cannot be deemed an arm of the Commonwealth and is not entitled to sovereign immunity under the Eleventh Amendment. Opinions supplied in response to Question 13c.

35. *Mirabal v. C.R. Bard, Inc.*, 2011 Phila. Ct. Com. Pl. LEXIS 147 (Pa. C.P. 2011), *rev'd, remanded*, 47 A.3d 1254 (Pa. Super. 2012), supplemental opinion, 2012 Phila. Ct. Com. Pl. LEXIS 380 (Pa. C.P. 2012). This matter presented as a product liability action. Mid-trial, plaintiff settled her claims against defendants for a confidential amount. However, defendants refused to release settlement proceeds until plaintiff satisfied its Medicare lien or provided defendants with the amount of the lien owed. Plaintiff filed motions for release of the settlement funds and/or for sanctions, which were denied. Plaintiff appealed. In the interim, the matter of *Zaleppa v. Sewell* was decided, which prohibited a party from adding Medicare as a payee, as a condition of settlement. As such, the Superior Court directed me to conduct further proceedings to (1) implement the sanctions mandated by Pennsylvania Rule of Civil Procedure 229.1(g), and (2) address the issues of plaintiff's petition for contempt. The proceedings were held and plaintiff's motion for sanctions was denied. The matter is pending before the Superior Court. Opinion supplied.

36. *Perry v. Commonwealth DOT*, 2007 Phila. Ct. Com. Pl. LEXIS 141 (2007), *rev'd*, 2008 Pa. Commw. unpublished LEXIS 493 (2008). This matter presented as a civil license suspension appeal. Plaintiff, *pro se*, filed an appeal of an adjudication issued by the Pennsylvania Department of Transportation which suspended his driving privileges for one year because of a conviction for driving with a suspended license. At the *de novo* hearing, his appeal was granted and the license suspension was rescinded. Defendant appealed before the Commonwealth Court, which reversed my opinion. The appellate court determined that plaintiff could not refute that his operating privilege had not been restored and that he was convicted of driving with a suspended license. Further, it held that it was error to consider plaintiff's reliance on the traffic court judge's assertion that everything "had been taken care of."

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

I have issued approximately 254 opinions and, to the best of my knowledge and belief, approximately 55 (22%) were published and 199 (78%) are unpublished.

Opinions are only submitted and required when a matter is appealed. The opinion is filed with the Certification and Appeals Unit of the Court of Common Pleas in Philadelphia, Pennsylvania.

- 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.

Goldman v. Southeastern Pennsylvania Transportation Authority, No. 3034, January Term, No. 3034, consolidated with *Wiza v. SEPTA*, No. 3576, October Term, 2006 and *Maguire v. SEPTA*, No. 3088, October Term, 2006, *rev'd*, 980 A.2d 709 (Pa. Commw. 2009), *appeal granted*, 10 A.3d 898 (Pa. 2010), *rev'd and remanded*, No. 65 EAP 2010 (Pa. Dec. 19, 2012). Opinion supplied in response to Question 13c.

Commonwealth v. Carroll, Criminal No. 9111-1159, *rev'd*, 628 A.2d 398 (Pa. Super. 1993), *rev'd and remanded*, 672 A.2d 769 (Pa. 1996). Opinion supplied in response to Question 13d.

Mastrocola v. SEPTA, 2006 Phila. Ct. Com. Pl. LEXIS 458 (2006), *rev'd*, 941 A.2d 81 (Pa. Commw 2008); *appealed granted*, 973 A.2d 412 (Pa. 2009).

Dooner v. DiDonato, 82 Pa. D. & C.4th 492 (2006), *rev'd*, 943 A.2d 326 (Pa. Super. 2007), *rev'd and remanded*, 971 A.2d 1187 (Pa. 2008).

D'Alonzo v. Truscello, 2006 Phila. Ct. Com. Pl. LEXIS 244 (2006).

Bezerra v. National Railroad Passenger Corporation, No. 1151, July Term, 1997, *aff'd*, 760 A.2d 56 (Pa. Super. 2000), *appeal denied*, 785 A.2d 86 (Pa. 2001). Opinion supplied.

Commonwealth v. Van Wells, Criminal, 93-10-2755, *aff'd*, 657 A.2d 507 (Pa. Super. 1995). Opinion supplied.

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

I have not sat by designation on a federal court of appeals.

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

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

The Pennsylvania Rules of Court, Code of Judicial Conduct, Canon 3(C), establishes when judges should disqualify themselves in a proceeding. Essentially, the Code provides for recusal in a proceeding where the judge's impartiality might reasonably be questioned, such as when the judge may have a personal bias or prejudice concerning a party or personal knowledge of the evidentiary facts or a financial interest in the outcome of the trial. I am not aware of any formal policy, procedure, local rule or administrative regulation governing recusals within the First Judicial District of Pennsylvania. The following are the instances that I recall when I have *sua sponte* recused myself or was asked to recuse myself.

I have recused myself *sua sponte* from a trial and/or motion assignment because of an affiliation with a party or counsel by virtue of my board membership and/or prior employment experience. A standing recusal involves matters of the North Philadelphia Health System (a non-profit organization in which I served as a member of the Board of Trustee). NPHS was sued in a medical malpractice matter and I was assigned a motion for summary judgment. When the motion was brought to my attention, I immediately returned it to court administration for re-assignment to another judge. As Team Leader for Day Forward 2010, all matters involving said hospital are assigned to another Judge for disposition.

I recall a criminal matter around 1992 where the defendant was the brother of my former Community Legal Services' secretary. Based upon our employment relationship and friendship, and although I believed I could be fair and impartial, I *sua sponte* recused myself to avoid any appearance of bias or impropriety.

In a civil matter before me in 2011, *Bonds v. Young, et al.*, March Term 2009, No. 0108, Court of Common Pleas, Philadelphia, Pennsylvania, I granted a motion for mistrial when the number composition of the jury became unacceptable to the defense. Following the dismissal of the jury, the parties requested a settlement conference to resolve the matter. When defense counsel refused the suggested settlement number, negotiations broke down, and defense counsel requested that I recuse myself. The request for recusal was granted. Subsequently, the case settled before another judge for the suggested settlement amount.

Sometime in February 2012, in the matter of *Waris v. Spectrum Health Service*, No. 0425, October Term, Court of Common Pleas, Philadelphia, Pennsylvania, I ruled on a discovery issue and allowed the defense counsel additional time to provide the requested information. Plaintiff, acting *pro se*, did not object. A few days later, plaintiff wrote letters to colleagues indicating how unfair and biased I had been. The letter was brought to my attention and because of the tone of the remarks, I recused myself.

With the exception of the *Waris* matter, I am unaware of any request for recusal based on an argument that I cannot be fair or impartial, or because of a conflict of interest.

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 office other than my present position. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held office in any political party or election committee. I have not held a position or played a role in any political campaign, except my own.

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 practiced alone in 1991, at 801 Arch Street, Philadelphia, Pennsylvania 19107.

- 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.

1975 – 1977

Community Legal Services, Inc.
The Beury Building
3701-03 North Broad Street
Philadelphia, Pennsylvania 19140
Staff Attorney

1977 – 1979

United States Department of Health and Human Services
Bureau of Hearings and Appeals
1528 Walnut Street
Philadelphia, Pennsylvania 19102
Attorney Advisor

1979 – 1991

United States Department of Veterans Affairs
Office of the District Counsel
5000 Wissahickon Avenue
Philadelphia, Pennsylvania 19144
Staff 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.

From 1980 to 1991, I served as one of three arbitrators for the uniform statewide court system's Compulsory Arbitration Program. *See* Pennsylvania Rules of Civil Procedure 1300 *et seq.* This program is designed to dispose of cases where the valued amount of damages is less than \$50,000. Generally, no recording of the hearing is made and the rules of evidence are somewhat liberalized. The arbitration panel decides the case and issues specific findings, including any determination of comparative negligence, if appropriate, and a final award. Any appeal taken is a trial *de novo* appeal. The cases heard were primarily motor vehicle accidents, premises liability slip and fall cases, and small contract cases.

Similarly, as a neutral arbitrator, in 1991, I sat with two other arbitrators (one plaintiff and one defense counsel) to hear motor vehicle insurance matters.

Given the passage of time and the lack of records, I am unable to recall any individual cases with specificity.

b. Describe:

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

I commenced my legal career in September 1975, as a staff attorney at Community Legal Services, Inc. I handled primarily family law related matters, including custody and adoption cases, as well as social security appeals which resulted in hearings before administrative law judges.

From 1977 to 1979, I was employed by the United States Department of Health and Human Services, Bureau of Hearings and Appeals, as an Attorney Advisor to various Administrative Law Judges. I essentially reviewed the hearing record and wrote the opinion supporting the judge's decision.

From 1979 to 1991, I was employed by the United States Department of Veterans Affairs as a Staff Attorney, interpreting and applying the rules, regulations, and statutes applicable to the Department. The Philadelphia Office then covered five hospitals in the eastern part of Pennsylvania and Delaware. The range of assignments varied from representing the VA in matters brought against it to matters on its behalf. These assignments included such things as federal tort claims involving medical malpractice, premises liability, and motor vehicle accidents; veterans' issues including commitment hearings; Freedom of Information and Title 38 requests for information; and employment matters including labor relations, discrimination, unfair labor practices, and contracts. I represented the VA in numerous matters before the Merit Systems Protection Board and the Equal Employment Opportunity Commission.

In 1991, as a solo practitioner, I was co-counsel in representing an individual accused of a criminal offense and sat as a neutral arbitrator in insurance matters. During this year, I was seeking confirmation of the judicial appointment made by the Governor and simultaneously running a judicial election campaign.

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

From 1975 to 1977, I was employed by Community Legal Services, Inc., in Philadelphia, Pennsylvania, in the position of Staff Attorney, representing indigent clients. I concentrated my practice in family-related

matters, including adoptions, custody and visitation, social security claims, and general legal matters.

From 1977 to 1979, I was employed by the United States Department of Health and Human Services, Bureau of Hearings and Appeals in Philadelphia, Pennsylvania, as an Attorney Advisor, exclusively writing opinions for administrative law judges following hearings. The issues included claims for Medicare, disability (SSA/SSI) and/or retirement benefits. At times I served as a Spanish interpreter during the hearings.

From 1979 to 1991, I was a Staff Attorney with the United States Department of Veterans Affairs, Office of the District Counsel in Philadelphia, Pennsylvania, handling all matters affecting the Regional Office and its five affiliated hospitals. My area of expertise included the following matters: Unfair Labor Practice disputes, medical malpractice claims, commitment hearings, Title 38 hearings, personal injury claims, Freedom of Information requests, contract disputes, and Merit System Protection Board and EEOC hearings. At those hearings, I represented the VA.

In 1991, as a solo practitioner, I assisted counsel in the representation of a defendant in a criminal case, and served as a neutral arbitrator in insurance matters. My legal practice was very limited as I was seeking confirmation of a state judicial appointment made by the Governor and simultaneously running a judicial election campaign.

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

My practice with Community Legal Services from 1975 until 1977 involved strictly civil and administrative matters with frequent appearances in Family Court and before Administrative Law Judges at the Department of Health and Human Services, Office of the Bureau of Hearings and Appeals, Social Security Administration. I estimate that I was in family court 25% of my practice and in Social Security hearings 30% of my time. I also had a very limited practice in bankruptcy Chapter 7 matters, appearing before the Bankruptcy Trustee to present the client's petition and ultimately to obtain the discharge. I am unsure of the exact number of bankruptcy cases I handled but to the best of my recollection, these did not exceed ten cases. I estimate that I was in bankruptcy court 2% of my practice.

During my employment with the Department of Health and Human Services from 1977 to 1979, I did not make any court appearances; my time was spent writing opinions in support of the decision rendered by the Administrative Law Judge.

From 1979 to 1991 while I was at the Department of Veterans Affairs, my practice involved primarily the interpretation and application of its administrative rules and regulations as well as other federal statutes, with frequent appearances before state court hearing officers in involuntary commitment matters and before other federal agencies when representing the VA in EEOC (discrimination) and MSPB (disciplinary) matters. Infrequently, there was cooperation with an Assistant United States Attorney (AUSA) and appearances in VA-related matters pursued in federal court. I would estimate that I spent 20% of my practice doing commitment hearings, 50% doing MSBP and EEOC hearings, and 2% assisting the AUSA.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 10% |
| 2. state courts of record: | 30% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 60% |

ii. Indicate the percentage of your practice in:

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

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

I estimate that I tried 20 cases in family court, 300 commitment hearings before a Mental Health Officer, and 600 administrative hearings. In 97% of these matters, I was sole counsel.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 0% |
| 2. non-jury: | 100% |

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

I have never practiced before the Supreme Court of the United States.

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

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Before becoming a Judge in the Court of Common Pleas 22 years ago, my primary legal experience was working as a Staff Attorney for the U.S. Department of Veterans Affairs. In this capacity, most of the cases I handled were hearings before the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the county mental health officer. Due to the passage of time and federal regulations which ordered the purging of agency documents after several years, I am unable to access, retrieve, or recall with specificity any cases I handled, with the exception of the matters listed below.

1. *Shaller v. Derwinski*, Case No. 3:89-cv-01618-RPC, Middle District of Pennsylvania, before Judge Richard P. Conaboy. Along with Jose Lopez, Regional Counsel of the VA, we handled the administrative phase, including the case preparation, discovery, and the hearing, of the first litigated Title 38 removal of a physician at the Veterans Administration Medical Center at Wilkes-Barre, Pennsylvania. Dr. Shaller contested his removal and lost. Once he appealed to federal court, the Department of Justice became involved and I no longer participated in the case.

Lead counsel: Jose Lopez
 Department of Veterans Affairs
 Regional Counsel
 3900 Woodland Avenue
 Philadelphia, PA 19104
 215-823-7811

Opposing counsel: John A. Bednarz, Jr.
 15 Public Square
 Wilkes-Barre, PA 18701
 570-821-0483

2. *Washington v. Department of Veterans Affairs*, Case No. PH07528910494, Merit Systems Protection Board, before Daniel R. Levinson, Chairman, Antonio C. Amador, Vice Chairman, and Jessica L. Parks, Member.

I was consulted by management regarding the charges to be lodged against a food service worker who refused to deliver food trays to veterans because the trays were dirty. Based upon our discussions, the management decided to terminate his employment, and the

employee appealed his removal to the MSPB. I then represented the agency in the removal action before an Administrative Law Judge of the MSPB. A full hearing was held with witnesses and exhibits. The Board ruled in the agency's favor and affirmed the termination of the employee. It appears that the employee appealed his termination but I do not recall the circumstances of the appeal or the outcome. This litigation occurred in the latter part of the 1980s or the early part of 1990.

Opposing Counsel: Martin I. Kleinman
 Martin I. Kleinman, P.C.
 Three Parkway, Suite 1320
 1601 Cherry Street
 Philadelphia, PA 19102
 215-496-1044

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 at the VA, I recall drafting and negotiating the first structured settlement in the VA's history involving a medical trust for a veteran who suffered an injury while receiving care at the VA. This structured settlement creation occurred in the early 1980s. In addition, I was actively involved in reviewing the contractual agreement for the sale of VAMC land in Wilkes-Barre, Pennsylvania, to the Commonwealth of Pennsylvania to expand an interstate highway in the area.

I was part of a group of Philadelphia lawyers who created the Hispanic Bar Association of Pennsylvania (HBA) in 1984, and in 1988 the Hispanic Bar Association of Pennsylvania Legal Education Fund (HBALEF). Within the HBA, I held several offices and was integrally involved in the establishment of the HBALEF. I became the first president of the HBALEF and resigned that position after almost four years in 1991 when I became a judge. During my tenure as president, we awarded over \$20,000 in scholarships to students attending the five Delaware Valley law schools. Both the HBA and the HBALEF continue to thrive.

As a member of the Mayor's Election Reform Task Force, I participated in meetings and discussions on the subject of reforming and making political elections machines user friendly. In 1995, the Task Force in conjunction with the Committee of Seventy issued a report concluding that the City should move as expeditiously as feasible to procure a Direct Recording Electronic system with full ballot-face display capability, paper audit-trail printing, and a physically durable design. The recommendations in the report were accepted and in 1998, Philadelphia voters approved the purchase of the new machines.

I have not performed any lobbying activity.

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

I have not taught any courses

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

To the best of my knowledge, I do not have any deferred future income that falls within the category above-noted.

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

I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

I do not perceive any potential conflict of interest issues that may arise if I am confirmed. Should a potential conflict arise, however, I will continue to handle it as I have done during the past 21 years. I believe in full disclosure of even the appearance of a possible conflict of interest and will *sua sponte* bring any concern to the attention of counsel. If confirmed, I will adhere to the Code of Conduct for United States Judges, as well as any advisory opinions or relevant guidelines.

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

If there is any potential appearance of a conflict of interest, it has been my practice to return the file to the assigning Judge as soon as the potential conflict is apparent. If the conflict is discovered at a later stage in the proceedings, I have addressed both parties with the concern, fully discussed the matter and provided an opportunity for input and for a party to request recusal. If the conflict is one that in any way affects my judgment or impartiality, even if the attorneys do not request recusal, I will *sua sponte* recuse myself. I will adhere to the Code of Conduct for United States Judges, as well as any advisory opinions or relevant guidelines.

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

In conjunction with the Philadelphia Bar Association and the School District, I participated in the Bar Association's Advancing Civics Education Program (A.C.E.) wherein we appeared to a 9th grade class and provided a course discussion on civic and legal concerns, approximately once a month for a year. Also, for numerous years, I have mentored summer law interns in my chambers, providing them a glimpse of the court system, court room practices, jury selection, trials, motions, opinion writing, and ethical dilemmas.

I have served for 20 years on the board of a medical center that provides medical care and services to the under privileged residents in North Philadelphia. Within my fiduciary responsibilities, I have advocated for bi-lingual hospital personnel needed to ensure proper communication between the patient and the health care provider; participated in general planning sessions related to hospital expansions, discontinuances of specific services, employment issues and financial concerns; and supported the creation of a nursing school, which was closed after a few years. My involvement on the board included ensuring compliance with state, federal and local rules and regulations.

Philadelphia Legal Assistance was created by the Philadelphia Bar Association to address the overflow of cases that Community Legal Services, Inc., was statutorily unable to handle. These cases involved similar disadvantaged clients. I was on the board during

the early years of this organization's formation. We addressed staffing and fiscal issues, compliance with state, federal and local rules and regulations, and the organization's case load.

26. Selection Process:

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

On July 14, 2011, I submitted a questionnaire to the Judicial Merit Selection Committee formed at the request of Senator Robert P. Casey, Jr. and Senator Pat Toomey. On December 2, 2011, I was interviewed by the Committee in Philadelphia, Pennsylvania. On June 26, 2012, I received a telephone call from Senator Casey's office advising me of his support and that Senator Toomey's office would be calling me. On July 10, 2012, I met with Senator Toomey in his Washington, DC office. I understand that the Senators jointly submitted my name to the White House for vetting as a potential nominee.

Since July 12, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 28, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 27, 2012, the President submitted my nomination to the Senate. On January 4, 2013, the President submitted my renomination 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.

AO 10
Rev. 1/2012

**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) Quinones Alejandro, Nitzia I.	2. Court or Organization United States District Court for the Eastern District of PA	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/31/2012
7. Chambers or Office Address Criminal Justice Center 1301 Filbert Street, Suite 1417 Philadelphia, PA 19107		
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. Insert signature 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. Administratrix	Estate #1
2.	
3.	
4.	
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 7

Name of Person Reporting Quinones Alejandro, Nitza I.	Date of Report 01/03/2013
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.	2011	Administrative Office of PA Courts	\$164,602.00
2.	2012	Administrative Office of PA Courts	\$169,541.00
3.			
4.			

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

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.		
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.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting Quinones Alejandro, Nitza I.	Date of Report 01/03/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Bank of America	Mortgages on Rental Property # 1, Part VII, line 28	L
2.	Bank of America	Mortgages on Rental Property # 2, Part VII, line 29	L
3.	Bank of America	Mortgages on Rental Property # 3, Part VII, line 30	L
4.	Department of Veterans Affairs Federal Credit Union	Loan	K
5.	Pentagon Federal credit Union	Loan	K

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting Quinones Alejandro, Nitza I.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount	(2) Type (e.g., div., rent, or int.)	(1) Value	(2) Value	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value	(4) Gain	(5) Identity of buyer/seller (if private transaction)
	Code 1 (A-H)		Code 2 (J-P)	Code 3 (Q-W)			Code 2 (J-P)	Code 1 (A-H)	
1. Pentagon Federal Credit Union cash account	C	Dividend	M	T	Exempt				
2. DVA Federal Credit Union cash account	A	Int./Div.	L	T					
3. Berkshire Hathaway B	A	Distribution	J	T					
4. Dreyfus Money Market account	A	Dividend	M	T					
5. Dreyfus Opportunity Small Cap	A	Dividend	J	T					
6. Dreyfus Disciplined Stock	A	Dividend	J	T					
7. Fidelity Cash management account	A	Int./Div.	J	T					
8. Fidelity Cash Reserve IRA account	A	Int./Div.	J	T					
9. Fidelity Equity Income	A	Dividend	J	T					
10. Fidelity Worldwide	A	Dividend	J	T					
11. Prudential Jennison Value	A	Dividend	K	T					
12. Prudential Jennison Small Company	A	Dividend	J	T					
13. Prudential Jennison Mid-cap	A	Dividend	J	T					
14. Prudential Jennison Blend	A	Dividend	K	T					
15. Prudential Sector-Intl Utility	A	Dividend	J	T					
16. Prudential World Fund	A	Dividend	J	T					
17. Prudential-stock	A	Dividend	J	T					

1. Income Item Codes: A=\$1,000 or less; F=\$50,001 - \$100,000; J=\$15,000 or less; N=\$250,001 - \$500,000; F3=\$25,000,001 - \$50,000,000; Q=Appraisal; U=Book Value; B=\$1,001 - \$2,500; G=\$100,001 - \$1,000,000; K=\$15,001 - \$50,000; O=\$500,001 - \$1,000,000; R=Cost (Real Estate Only); V=Other; C=\$2,501 - \$5,000; H=\$1,000,001 - \$5,000,000; L=\$50,001 - \$100,000; P1=\$1,000,001 - \$5,000,000; P4=More than \$50,000,000; S=Appraisal; W=Estimated; D=\$5,001 - \$15,000; I2=More than \$5,000,000; M=\$100,001 - \$250,000; P2=\$5,000,001 - \$25,000,000; T=Cash Market

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting Quinones Alejandro, Nitza I.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Vanguard European Stock Index	A	Dividend	J	T					
19. Vanguard Growth Index	A	Dividend	J	T					
20. Vanguard Primecap	A	Int./Div.	J	T					
21. Vanguard 500 Index Fund	A	Int./Div.	K	T					
22. Franklin Templeton-Mutual Shares	A	Dividend	J	T					
23. CISCO Systems Inc. stock	A	Int./Div.	J	T					
24. Concur technologies stock	A	Dividend	J	T					
25. DPEC certificate	B	Dividend	K	T					
26. IBOC stock	A	Interest	J	T					
27. Citibank stock	A	Dividend	J	T					
28. Rental Property #1, Philadelphia, PA	D	Rent	L	W					
29. Rental Property #2, Philadelphia, PA	D	Rent	L	W					
30. Rental Property #3, Philadelphia, PA	D	Rent	L	W					
31. Rental Property #4, Philadelphia, PA		None	K	W					
32. Estate #1	A	Int./Div.	M	W					
33. -Real estate, Sabana Grande, PR									
34. -Pentagon Federal Credit Union cash account.									

1. Income Gain Codes: A=\$1,000 or less B=\$1,001 - \$1,500 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 H=\$1,000,001 - \$5,000,000 H2=More than \$5,000,000
 2. Value Codes J=\$15,000 or less K=\$15,001 - \$50,000 L=\$50,001 - \$100,000 M=\$100,001 - \$250,000
 (See Columns C1 and D3) N=\$250,001 - \$500,000 O=\$500,001 - \$1,000,000 P1=\$1,000,001 - \$5,000,000 P2=\$5,000,001 - \$25,000,000
 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 6 of 7

Name of Person Reporting	Date of Report
Quinones Alejandro, Nitza I.	01/03/2013

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 7

Name of Person Reporting	Date of Report
Quinones Alejandro, Nitza I.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/ Nitza I. Quinones Alejandro*

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		169	022	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured		35	477
Listed securities – see schedule		243	088	Notes payable to relatives			
Unlisted securities – see schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		11	352
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		706	670
Real estate owned – see schedule	1	365	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000	Business loan (partner)		26	533
Cash value-life insurance							
Other assets itemize:							
Pennsylvania SERS		914	805				
				Total liabilities		780	032
				Net Worth	1	971	883
Total Assets	2	751	915	Total liabilities and net worth	2	751	915
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
Berkshire Hathaway B	\$ 3,065
CISCO Systems Inc. stock	95
Concur Technologies stock	2,949
Citigroup	2,832
DPEC	35,000
Dreyfus Disciplined Stock Fund	5,542
Dreyfus Opportunistic Small Cap Fund	15,111
Fidelity Cash Reserves	7,934
Fidelity Equity-Income Fund	12,583
Fidelity Worldwide Fund	12,345
Franklin Templeton Mutual Shares Fund	14,919
International Bancshares Corp. stock	9,910
Prudential Jennison Value Fund	16,348
Prudential Jennison Small Company Fund	12,571
Prudential Jennison Mid-Cap Growth Fund	8,038
Prudential Jennison Blend Fund	22,025
Prudential World Fund	7,852
Prudential Jennison Utility Fund	8,484
Prudential stock	5,062
Vanguard European Stock Index Fund	4,029
Vanguard Growth Index Fund	5,943
Vanguard PRIMECAP Fund	9,257
Vanguard 500 Index Fund	21,194
Total Listed Securities	\$ 243,008
<u>Real Estate Owned</u>	
Primary residence	\$ 400,000
Secondary residence	432,500
Family home (50% ownership)	62,500
Rental property #1	85,000
Rental property #2	70,000
Rental property #3	50,000
Rental property #4	65,000
Rental property #5 (50% ownership)	200,000
Total Real Estate Owned	\$ 1,365,000
<u>Real Estate Mortgages Payable</u>	
Primary residence	255,723
Secondary residence	311,160
Rental property #1	53,823
Rental property #2	38,103
Rental property #4	47,861
Total Real Estate Mortgages Payable	\$ 706,670

Note:

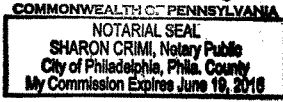
The entirety of our "Account and bills due" and "Notes payable to banks-unsecured" listed above are associated with the recent renovation of our primary residence. We recently entered into a contract to sell the secondary residence. Settlement of the sale is scheduled for January 18, 2012. With the proceeds from the sale, we plan to pay off completely the debts associated with the recent renovation of our primary residence and satisfy the mortgage due on said secondary residence.

AFFIDAVIT

I, Nitza I. Quiñones Alejandro, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Nov. 27, 2012
November 27, 2012

Nitza I. Quiñones Alejandro
Nitza I. Quiñones Alejandro



Sworn to 27th day of November 2012.

Sharon Crimi
(NOTARY)

Judge Restrepo.
Judge RESTREPO. Restrepo.
Senator HIRONO. Restrepo. Apologies.

**STATEMENT OF LUIS FELIPE RESTREPO, NOMINEE TO BE U.S.
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYL-
VANIA**

Judge RESTREPO. Good afternoon. Thank you for having me. I'd like to start by thanking the President for having nominated me to this position. I'd like to thank you and Senator Lee for chairing this hearing, and for all the Members of the Judiciary Committee and their participation in the process. A very special thanks to Senators Casey and Toomey for their kind words and their generous support.

I have no opening statement, but I do have a lot of family members here, and if you'll indulge me for just a minute, I'd like to start by recognizing my wife, Cathy, who is seated directly behind me, and my mother, Maria Restrepo. She is maybe two rows back. My father-in-law, Gene Maier; my sister, Patricia Loria, and four of her 10 children are here: Phil, Trish, Elena, and Nick. Four of my children are here: Catherine—I only have four.

[Laughter.]

Judge RESTREPO. Catherine, Andrew, Nicholas, and Matthew. My brother, Nicholas, is here. My sister-in-law, Kate, is here with three of her children, Isabella, Maria, and Kristina. I also have quite a few friends and close family friends, as well as supporters in the room today, some students from Rutgers Law School that work with me up in Philadelphia. I'd like to thank all my friends and the folks that have helped me get this far that might be watching this by way of the Webcam. Thank you, Senator.

Senator HIRONO. Thank you so much.

Judge Schmehl.

[The biographical information of Justice Restrepo follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Luis Felipe Restrepo (Phil Restrepo)
2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Pennsylvania
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.

James A. Byrne Federal Courthouse
601 Market Street, Suite 3038
Philadelphia, Pennsylvania 19106

Residence: Swarthmore, Pennsylvania
4. **Birthplace:** State year and place of birth.

1959; Medellin, Colombia
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, Tulane University Law School; J.D., 1986

1979 – 1981, University of Pennsylvania; B.A., 1981

1977 – 1979, George Mason University; no degree
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, nonprofit 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 or address of the employer and job title or description.

2006 – Present
United States District Court for the Eastern District of Pennsylvania
601 Market Street, Suite 3038
Philadelphia, Pennsylvania 19106
United States Magistrate Judge

2004 – Present
National Institute for Trial Advocacy
1685 38th Street, Suite 200
Boulder, Colorado 80301
Team Leader for Western Regional Program’s annual seven-day course

1992 – 1994, 1996 – Present
National Institute for Trial Advocacy
1685 38th Street, Suite 200
Boulder, Colorado 80301
Team Leader for Mid-Atlantic Program’s annual seven-day course

1993 – Present
Temple University, Beasley School of Law
1719 North Broad Street
Philadelphia, Pennsylvania 19122
Adjunct Professor

1997 – 2009
University of Pennsylvania Law School
3501 Sansom Street
Philadelphia, Pennsylvania 19104
Adjunct Professor

1993 – 2006
Krasner and Restrepo
239 South Camac Street
Philadelphia, Pennsylvania 19107
Partner

July 1995, July 2000
National Institute for Trial Advocacy
1685 38th Street, Suite 200
Boulder, Colorado 80301
Team Leader for National Program in Boulder, Colorado

1990 – 1993
Federal Community Defender for the Eastern District of Pennsylvania
Suite 540 West, The Curtis Center
601 Walnut Street

Philadelphia, Pennsylvania 19106
Assistant Federal Defender

Spring 1992
Peirce College
1420 Pine Street
Philadelphia, Pennsylvania 19102
Adjunct Professor

1987 – 1990
Defender Association of Philadelphia
1441 Sansom Street
Philadelphia, Pennsylvania 19102
Assistant Defender

1986 – 1987
ACLU National Prison Project
915 15th Street, N.W.
Washington, D.C. 20005
Law Clerk

1984 – 1986
Tulane University
6823 Saint Charles Avenue
New Orleans, Louisiana 70118
Resident Advisor (1984 – 1985)
Senior Advisor (1985 – 1986)
Clerk/cashier, Tulane University Law School Bookstore (1985 – 1986)

1983 – 1985
Advantage International Sports Marketing
1751 Pinnacle Drive
McLean, Virginia 22102
Player/Client Liaison

1981 – 1983
ProServ Sports Marketing
Washington, D.C.
Player/Client Liaison (In 1983 the partnership at ProServ dissolved. ProServ was purchased by SFX in 1999 and is now a subsidiary of Clear Channel Entertainment.)

Other Affiliations (uncompensated unless otherwise indicated):

2011 – Present
Make-A-Wish Foundation of Philadelphia and Susquehanna Valley
One Valley Squire, Suite 133

512 Township Line Road
Blue Bell, Pennsylvania 19422
Board of Directors

2001 – 2008
Russell Byers Charter School
1911 Arch Street
Philadelphia, Pennsylvania 19103
Board of Trustees

2001 – 2008
Camac Street Partners
239 South Camac Street
Philadelphia, Pennsylvania 19107
Partner (receive rental income)

2000 – 2006
North Philadelphia Health System
1600 West Girard Avenue
Philadelphia, Pennsylvania 19130
Board of Governors

1996 – 2006
Defender Association of Philadelphia
1441 Sansom Street
Philadelphia, Pennsylvania 19102
Federal Trustee and Secretary of the Board of Directors

1994 – 1998
Pennsylvania Capital Case Resource Center
437 Chestnut Street
Philadelphia, Pennsylvania 19106
Board of Directors and Vice-President at Large

1992 – 1994, 1997
Hispanic Bar Association of Pennsylvania
P.O. Box 59106
Philadelphia, Pennsylvania 19102
President (1993 – 1994)
Board of Directors (1992 and 1997)

1996
Philadelphia Bar Education Center
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
Board of Directors

1994 – 1995
Philadelphia Bar Association
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
Board of Governors

1993
Police/*Barrio* Relations Project
2828 North Fifth Street, 2nd Floor
Philadelphia, Pennsylvania 19133
Board of Directors

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

I have not served in the military nor have I registered for selective service. I was not required to register for selective service due to my age at the time I was given permanent resident status.

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.

Impacto Latin Newspaper, Recognized as one of the Most Influential Latinos in the Delaware Valley (2012)

Philadelphia Bar Association, Justice William J. Brennan Jr. Distinguished Jurist Award (2010)

Hispanic Bar Association of Pennsylvania, *La Justicia* Award (2010)

University of Pennsylvania Law School, Irving R. Segal Lectureship in Advocacy in recognition for outstanding service to the University of Pennsylvania Law School (2003 – 2005)

Temple University Law School, Gideon Award presented for work which demonstrates a commitment to ensuring that the indigent are afforded competent defense counsel (2004)

Philadelphia Bar Association Criminal Justice Section and the Justinian Society, Cesare Beccaria Award for demonstrating a commitment to criminal justice issues and teaching services (2000)

Balch Institute, New American/New Freedom Committee Award in Appreciation for Outstanding Service to the Greater Philadelphia Community and the Nation (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.

Criminal Justice Act Attorney Selection Committee for the Eastern District of Pennsylvania

Defender Association of Philadelphia
Federal Trustee and Secretary of the Board of Directors (1996 – 2006)

Federal Court Interpreter Services Committee

Federal Court Outreach Committee for the Eastern District of Pennsylvania

Hispanic Bar Association of Pennsylvania
President (1993 – 1994)
Board of Directors (1992, 1997)
Legal Education Fund Banquet Co-chair (1992)

Hispanic National Bar Association

Merit Selection Panel, United States Magistrate Judge Selection

National Conference of Criminal Justice Act Attorneys
Representative of the Eastern District of Pennsylvania (1995 – 2006)

Pennsylvania Capital Case Resource Center
Board of Directors and Vice-President at Large (1994 – 1998)

Pennsylvania Commission on Crime and Delinquency
Economic Crime and Development Committee, DNA Sub-Committee (2003)

Philadelphia Bar Association
Commission on Judicial Selection and Retention (1993 – 1994, 1999 – 2001)
Board of Governors (1994 – 1995)
Lawyers' Fund for Equal Justice, Bar Association effort to solicit funds for Community Legal Services (1994)

Philadelphia Bar Education Center
Board of Directors (1996)

Third Circuit Judicial Council Committee on Magistrate Judges

Third Circuit Task Force for Equal Treatment in the Courts. Commission on Race and Ethnicity

10. **Bar and Court Admission:**

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

Pennsylvania, 1986
District of Columbia, 1988 (inactive member)

There were no lapses in membership while I was a practicing 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.

United States Court of Appeals for the Third Circuit, 1990
United States District Court for the Eastern District of Pennsylvania, 1990
United States District Court for the District of Columbia, 1988
Supreme Court of Pennsylvania, 1986

There were no lapses in any membership while I was a practicing 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 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.

Junior Legal Club of Philadelphia (2012 – Present)

Make-A-Wish Foundation of Philadelphia and Susquehanna Valley
Board of Directors (2011 – Present)

North Philadelphia Health System
Board of Governors (2000 – 2006)

Russell Byers Charter School
Board of Trustees (2001 – 2008)

- 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 in response to 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

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

Don't Neglect Life Outside of Workplace, PHILA. BAR REP., Apr. 2006. Copy supplied.

Impeach Clinton? Here's Advice From Counsel: Political Not Legal, PHILADELPHIA DAILY NEWS, Sept. 15, 1998. Copy supplied.

Jury Selection in Federal Cases - The Fundamentals of Voir Dire Relevant to Trial Practice, LEGAL INTELLIGENCER, June 12, 1995. Copy supplied.

Excluding Bilingual Jurors May Be Racist, NAT'L L.J., Apr. 17, 1995. Copy supplied.

Community Legal Services Deserves Your Support, LEGAL EMP., June 3, 1994. Copy supplied.

False Logic Misdirects the U.S. War on Drugs, NAT'L L.J., Apr. 12, 1993. Copy supplied.

To Be or Not To Be a Cooperating Defendant, 7 CRIM. JUST., no. 4, 1993. Copy supplied.

Voir Dire in Wake of Supreme Court's McCollum Decision, LEGAL INTELLIGENCER, Oct. 21, 1992. Copy supplied.

Attorneys Working With Translators Must Watch Over Defendant Rights, NAT'L L.J., Sept. 28, 1992. Copy supplied.

City Needs Panel to Oversee Cops, PHILA. DAILY NEWS, Aug. 19, 1992. Copy supplied.

Los Derechos del Acusado de un Crimen en la Vista Preliminar, en el Juicio y en la Sentencia, COMMUNITY FOCUS, Feb. 13, 1992. Copy supplied.

Derechos del Acusado en un Crimen, COMMUNITY FOCUS, Feb. 6, 1992. Copy supplied.

F.A.S.T. The Continued Federalization of the Drug War in the Eastern District of Pennsylvania, LEGAL INTELLIGENCER, Jan. 27, 1992. Copy supplied.

La ley y sus derechos, COMMUNITY FOCUS, Jan. 23, 1992. Copy supplied.

Criminal Defense Manual, Federal Community Defender Office, Eastern District of Pennsylvania, printed by the Clerk of Court, Nov. 1991; 2nd ed. Dec. 1992; 3rd ed. Mar. 1994. Copy of 1992 edition supplied.

Guilty Plea, POST-CONVICTION REMEDIES: A SELF-HELP MANUAL, Chapter DC, (George N. Brezna ed., Oceana 1988). Copy supplied.

Smoking in Prison: Weighing Privilege to Smoke Against Rights of Non-Smokers, J. OF THE NAT'L PRISON PROJECT, no. 12, Summer 1987. Copy supplied.

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

Since 2009, United States Magistrate Judge Timothy R. Rice and I have provided the judges of the United States District Court with a report summarizing our Reentry Court efforts. This report is generated once a year. Copies of the 2009, 2010, 2011 and 2012 reports have been supplied.

In 1998, I was a member of the Third Circuit Task Force for Equal Treatment in the Courts, Commission on Race and Ethnicity. The Commission issued a report. My efforts as a member of the Commission were directed toward language issues and access to interpreters in the courts. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that

you have issued or provided or that others presented on your behalf to public bodies or public officials.

In March 2007, I appeared before the Wallingford Swarthmore School Board and asked that they fund the "Foreign Language is Elementary" program. Minutes supplied.

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

Since 1992, I have taught trial advocacy programs for practicing attorneys with the National Institute for Trial Advocacy. I have taught and helped coordinate such programs as a "Team Leader" and an "Assistant Team Leader" approximately 29 times. The programs have been held in Philadelphia, Pennsylvania, San Francisco, California, and Boulder, Colorado. Sample program schedule supplied.

December 11-13, 2012: Participated in a panel discussion entitled "A View From the Bench" and presided over trials for new Assistant United States Attorneys at the National Advocacy Center in Columbia, South Carolina. My comments during the panel discussion were focused on how to be an effective advocate. I have no notes, transcript or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 5, 2012: Panelist at a CLE entitled "Vanishing Trials: Building Trial Skills in the Age of Settlement and ADR" in Atlantic City New Jersey. My remarks were focused on ways to improve the trial skills of younger attorneys and include them in the trial process. I have no notes, transcript, or recording. The CLE was sponsored by the Women's Committee of the Philadelphia Bar Association, 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

September 21, 2012: Participated in a breakout session on federal practice in the United States District Court for the Eastern District of Pennsylvania at the Chester County Bar Association's Bench Bar Conference in Hamburg, New Jersey. My comments emphasized the role of United States Magistrate Judges in the litigation/settlement process in the Eastern District of Pennsylvania. I have no notes, transcript, or recording. The address of the Chester County Bar Association is 15 West Gay Street, West Chester, Pennsylvania 19380.

July 26, 2012: "Distinguished Guest Speaker" at a Naturalization Ceremony at the Federal Courthouse in Philadelphia, Pennsylvania. I relied on the same materials supplied for the March 22, 2007 speech.

June 21, 2012: Participated in a forum on diversity initiatives and on pursuing a legal education at Rutgers Law School in Camden, New Jersey. My comments emphasized the need to network, manage student loans and the value of a legal education. I have no notes, transcript, or recording. The address of Rutgers Law School is 217 North Fifth Street, Camden, New Jersey 08102.

June 13, 2012: Participated in a First Amendment moot court argument for middle school students at Strath Haven Middle School. The program was sponsored by the Strath Haven Middle School and the Pennsylvania Bar Association. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Association is 100 South Street, Harrisburg, Pennsylvania 17101. The address of Strath Haven Middle School is 200 Providence Road, Wallingford, Pennsylvania 19086.

May 23, 2012: Participated in "Dimensions in Living" career day at Strath Haven Middle School. I have no notes, transcript, or recording. The address of Strath Haven Middle School is 200 Providence Road, Wallingford, Pennsylvania 19086.

May 17, 2012: Hosted a group of high school students on Law Day at the United States Courthouse. I have no notes, transcript, or recording. The address of the Courthouse is 601 Market Street, Philadelphia, Pennsylvania 19016.

May 9, 2012: Panelist at a CLE on Social Media and the Courts that was sponsored by the Temple Law Alumni Association and held in Philadelphia, Pennsylvania. My remarks were focused on the impact social media has had on the discovery process and the cost of this discovery in litigation. I have no notes, transcript, or recording. The address of Temple Law School is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

April 26, 2012: Introduction of Judge Louis Pollak at the Federal Bar Association's Bill of Rights Dinner honoring him, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Federal Bar Association, Philadelphia Chapter, Criminal Law Committee is c/o Ron Levine, Esq., Post & Schell, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103.

April 24, 2012: Addressed the graduating class of the Inside/Out program at the Federal Detention Center in Philadelphia by invitation of Villanova Law School and the administration of the Federal Detention Center in Philadelphia. My remarks consisted of congratulating the participants in the program on their graduation and thanking the Dean of Villanova Law School for his support of the program. I have no notes, transcript, or recording. The address of the Federal Detention Center is Seventh and Arch Streets in Philadelphia, Pennsylvania, 19107. The address of

Villanova Law School is 299 North Spring Mill Road, Villanova, Pennsylvania 19085.

April 19, 2012: Panelist at the Pennsylvania Bar Institute's (PBI) 18th Annual Employment Law Institute on Discovery Disputes, Philadelphia, Pennsylvania. My remarks were focused on the most efficient ways to resolve discovery disputes using the services provided by United States Magistrate Judges in the Eastern District of Pennsylvania. I have no notes, transcript, or recording. The address of the PBI is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

March 17, 2012: Panelist at a class on Organizational Dynamics at the Wharton School of Business of the University of Pennsylvania by invitation of Professor Adam Grant. I have no notes, transcript, or recording. The address of the Wharton School of Business is 3730 Walnut Street, Philadelphia, Pennsylvania 19014.

February 16, 2012: Speaker at a Memorial Celebration of Maureen Rowley, Esquire, sponsored by the Federal Bar Association, Philadelphia, Pennsylvania. Speaking notes and DVD supplied.

January 25, 2012: Addressed a group of judges and government officials from Iran on corruption cases in federal court, sponsored by the Clerk of Court for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania. My comments focused on corruption that can lead to criminal charges and civil litigation that may flow from said corruption. I have no notes, transcript, or recording. The address of the United States District Court for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19016.

December 13-15, 2011: Participated in a panel discussion entitled "A View From the Bench" and presided over trials for new Assistant United States Attorneys at the National Advocacy Center in Columbia, South Carolina. My comments during the panel discussion were focused on how to be an effective advocate. I have no notes, transcript, or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

November 21, 2011: Introduction of keynote speaker, Dan Restrepo, Esquire, at the Hispanic Bar Association Legal Education Fund annual dinner in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Hispanic Bar Association Legal Education Fund is P.O. Box 59106, Philadelphia, Pennsylvania 19102.

November 4, 2011: Offered opening remarks at Extending a Helping Hand. The Resources for Human Development job fair for former offenders, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Resources for Human Development is 4700 Wissahickon Avenue, Philadelphia, Pennsylvania 19144.

October 28, 2011: Panelist for the University of Pennsylvania Law Review's 2011 Symposium "Sentencing Law: Rhetoric and Reality" at the University of Pennsylvania Law School, Philadelphia, Pennsylvania. I discussed the federal prisoner reentry program in the United States District Court for the Eastern District of Pennsylvania. I have no notes, transcript, or recording. I did provide the participants with materials supplied in response to question 12b. The address of the University of Pennsylvania Law Review is 3501 Sansom Street, Philadelphia Pennsylvania 19104.

October 19, 2011: Panelist for Temple Law School's Judicial Education Program for a group of judges from China to discuss the support available to judges in the United States, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

October 18, 2011: Judge for the finals of the Samuel Polsky Moot Court competition at Temple Law School, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

October 17, 2011: Panelist at Temple Law School for a group of Iraqi Kurd judges, law professors and mayors on the Relationship/Integration of law schools and the community in the United States, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

October 13, 2011: Panelist, "The Successful Settlement Conference: Tips From the Bench," National Police Accountability Project, Philadelphia, Pennsylvania. I relied on same materials supplied for the September 16, 2011 panel.

September 16, 2011: Panelist at the Berks County Bar Association on Settlement of Civil Cases, Reading, Pennsylvania. Materials supplied.

September 15, 2011: Panelist at the Third Circuit Reentry Conference at Rutgers University in Camden, New Jersey. I discussed the history of the federal reentry program in the Eastern District of Pennsylvania, the sanctions available to the presiding United States Magistrate Judge and the partnerships the program has established with various groups and organizations in Philadelphia. I have no notes, transcript, or recording. The address of Rutgers School of Law - Camden is 217 North Fifth Street, Camden, New Jersey, 08102.

July 21, 2011: Spoke at George Mason University Center for Advancing Correctional Excellence on the Eastern District of Pennsylvania's Reentry Court Efforts, Fairfax, Virginia. PowerPoint supplied.

May 16, 2011: Panelist on "Federal Discovery Disputes: A View From the Bench," sponsored by the Federal Courts Committee and the Young Lawyers Section of the

Philadelphia Bar Association, Philadelphia, Pennsylvania. Podcast available at: <https://itunes.apple.com/us/podcast/philadelphia-bar-association/id491086738>.

April 13, 2011: Spoke to students from the United States Attorney's Violence Prevention Initiative with the United States Attorney and an Assistant Federal Defender. United States Courthouse, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States District Court for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19016.

March 31, 2011: Judge for an argument during a CLE for the patent bar sponsored by the Pennsylvania Bar Institute, Philadelphia, Pennsylvania. DVD supplied.

March 18, 2011: Panelist at the University of Pennsylvania Law School Sparer Conference on Re-Entry Issues, Philadelphia, Pennsylvania. I relied on the materials supplied in response to question 12b.

November 16, 2010: Panelist on the Pennsylvania Bar Institute's CLE regarding Section 1983 Cases and Criminal Defense Issues Relevant to pursuing a 1983 Claim, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

November 6, 2010: Panelist on careers for Philadelphia Futures. I offered some comments on how to pursue a legal career to a group of high school students. I have no notes, transcript, or recording. The address of Philadelphia Futures is 230 South Broad Street, 7th Floor, Philadelphia, Pennsylvania 19102.

November 4, 2010: Addressed a group of visiting judges from China on the settlement process in the federal district court, Philadelphia, Pennsylvania. My discussion with the visiting judges focused on the support available to federal judges by way of law clerks, other courthouse and law enforcement personnel. I have no notes, transcript, or recording. The event was sponsored by Temple University Beasley School of Law, 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

November 4, 2010: Panelist at Temple University Law School – Latin American Law Students Association panel on career advice, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

September 21-23, 2010: Participated in a panel discussion entitled "A View From the Bench" and presided over trials for new Assistant United States Attorneys at the National Advocacy Center in South Carolina. My comments during the panel discussion were focused on how to be an effective advocate. I have no notes, transcript, or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 14, 2010: Panelist on "Habeas Corpus" sponsored by the Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Recording supplied.

August 19, 2010: Guest speaker welcoming the Temple University Law School Class of 2013, Philadelphia, Pennsylvania. Materials supplied.

July 22, 2010: Hosted a group of high school students at the United States Courthouse – LEAP program, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of LEAP is 6 Royal Avenue, Glenside, Pennsylvania 19038.

July 13-15, 2010: Participated in "Fair Criminal Trials Workshop" in Xining, China. The event was hosted by Temple Law School, National Judicial College of China, High Peoples Court of Qinghai and the Qinghai Minorities University School of Law. I have no notes, transcript, or recording, but press coverage is supplied. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122. The address of Qinghai Nationalities University is 3 Bayi Middle Road, Xining, Qinghai, P.R.C.

April 26, 2010: Panelist on Settlement Conferences sponsored by the Philadelphia Bar Association, Philadelphia, Pennsylvania. My comments focused on the role of United States Magistrate Judges in the Eastern District of Pennsylvania in the settlement context. I have no notes, transcript, or recording. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania, 19107.

April 15, 2010: Presiding Judge at a CLE presented by the Philadelphia Intellectual Property Law Association and the Pennsylvania Bar Institute on summary judgment, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

April 8, 2010: Spoke at the United States Magistrate Workshop on Re-Entry Courts, by invitation of the Federal Judicial Center and the Administrative Office of United States Courts, San Francisco, California. I relied on the materials supplied in response to question 12b.

March 25, 2010: Panelist on "Federal Discovery Disputes: A View From the Bench," sponsored by the Federal Court's Committee and the Young Lawyers Section of the Philadelphia Bar Association, Philadelphia, Pennsylvania. My comments focused on the use of United States Magistrate Judges to help counsel resolve their discovery disputes in a quick, cost-effective manner. I have no notes, transcript, or recording. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

February 19, 2010: Participated as judge for High School Moot Court exercise at the United States Courthouse in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States District Court for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19016.

February 5, 2010: Presiding Judge at the National Regional Trial Competition, hosted by Temple University Law School, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

February 3, 2010: Participated as a judge in the Temple Law School Defender / United States Attorney clinical program at the United States Courthouse in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States District Court for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19016.

January 30, 2010: Introduction of keynote speaker, Dan Restrepo, Esq., at the Latin American Law Students Association conference at the University of Pennsylvania Law School, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

January 16, 2010: Addressed Eagle Scout "Court of Honor" in Delaware County, Pennsylvania. Speaking notes supplied.

December 8-10, 2009: I lectured and presided over a trial for new Assistant United States Attorneys at the National Advocacy Center in Columbia, South Carolina. My comments during the panel discussion were focused on how to be an effective advocate. I have no notes, transcript, or recording. The address of the National Advocacy Center is 1620 Pendleton Street, Columbia, South Carolina 29201.

December 2, 2009: Panelist at Duke University's Symposium on Re-Entry Courts by invitation of the Federal Judicial Center and the Administrative Office of the United States Courts, Durham, North Carolina. The panel I participated on was made up of individuals that staff the reentry programs in the Eastern District of Pennsylvania. We discussed how our program operates on a day-to-day basis. I have no notes, transcript, or recording. The address of the Federal Judicial Center is 1 Columbus Circle, N.E., Washington, D.C. 20544.

October 30, 2009: Moderator at the Pennsylvania Bar Institute's 7th Annual Constitutional Law Conclave, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

October 26, 2009: Panelist at the Philadelphia Bar Association Chancellor's Pro Bono Forum, Philadelphia, Pennsylvania. I encouraged attorneys to participate in pro bono

activities in the Philadelphia community and discussed how the reentry program in our district has benefited from the efforts of pro bono counsel. I have no notes, transcript, or recording. The Philadelphia Bar Association is located at 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

October 1, 2009: Panelist at the Public Interest Law Center of Philadelphia 40th Annual Symposium, Philadelphia, Pennsylvania. Materials supplied.

September 17, 2009: "Distinguished Guest Speaker" at a Naturalization Ceremony, Philadelphia, Pennsylvania. I relied on the materials supplied for the March 22, 2007 speech. A DVD is also supplied.

September 16, 2009: Participated as a judge in the Temple Law School Defender / United States Attorney clinical program at the United States Courthouse in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States Courthouse for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19106.

September 14, 2009: Addressed a group of visiting judges from China by invitation of Temple Law School, Philadelphia, Pennsylvania. My comments were focused on the role of judges in the settlement context. I have no notes, transcript, or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

August 17, 2009: Panelist in the Eastern District of Michigan on Re-Entry Courts by invitation of the Federal Judicial Center, Detroit, Michigan. I discussed the implementation and history of the reentry program in the Eastern District of Pennsylvania. I have no notes, transcript, or recording. The address of the Federal Judicial Center is 1 Columbus Circle, N.E., Washington, D.C. 20544.

June 10, 2009: Addressed the Delaware County Bar Association at their Annual Retreat on Federal Practice, Skytop, Pennsylvania. The Delaware County Bar Association is located at 335 West Front Street, Media, Pennsylvania 19063. Materials supplied.

April 30, 2009: Panelist at the Philadelphia Work Force Employment Forum. I discussed the efforts of our reentry program and the challenges our participants have in joining the work force. I have no notes, transcript, or recording. The address of the Philadelphia Work Force Employment Forum is 1617 JFK Boulevard, Philadelphia, Pennsylvania 19103.

April 15, 2009: Guest speaker on career day at the Russell Byers Charter School. I have no notes, transcript, or recording. The address of Russell Byers Charter School is 1911 Arch Street, Philadelphia, Pennsylvania 19103.

April 9, 2009: Panelist. Philadelphia Defender CLE. Ethnic and Cultural Issues in Criminal Defense at the Office of the Philadelphia Defender Association, Philadelphia, Pennsylvania. I used the same materials supplied for the February 1999 panel.

March 20, 2009: Introduced the keynote speaker Jeremy Travis, Esq., at the University of Pennsylvania Law School's 2009 Edward Sparer Symposium, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the University of Pennsylvania Law Review is 3501 Sansom Street, Philadelphia Pennsylvania 19104.

March 13, 2009: Coordinated and served as the judge in the trial of Goldilocks at the Swarthmore Rutledge School for grades 1-5 with the Pennsylvania and Philadelphia Bar Associations, Swarthmore, Pennsylvania. I have no notes, transcript, or recording. The address of the Swarthmore Rutledge School is 100 College Avenue, Swarthmore, Pennsylvania, 19081.

February 24 and 25, 2009: Invited by the Administrative Office of the United States Courts to participate as a speaker/participant in the Design Session for Criminal Justice Act vouchers in Charleston, South Carolina. I have no notes, transcript, or recording. The address of the Administrative Office of the United States Courts is 1 Columbus Circle, N.E., Washington, D.C. 20544.

February 4, 2009: Taught a class at Drexel Law School on Jury Selection by invitation of Professor Stern, Philadelphia, Pennsylvania. I discussed jury selection from the perspective of a trial attorney and helped conduct a mock *voir dire*. I have no notes, transcript, or recording. The address of Drexel University Earle Mack School of Law is 3141 Chestnut Street, Philadelphia, Pennsylvania 19104.

December 16, 2008: Panelist. CLE on Alternative Dispute Resolution sponsored by the Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I discussed the role of United States Magistrate Judges in the Eastern District of Pennsylvania in the arbitration/settlement context. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

October 15, 2008: Participated as a judge in the Temple Law School Defender / United States Attorney clinical program at the United States Courthouse in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States Courthouse for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19106.

October 2008: Panelist. "Code of Civility" CLE sponsored by the Philadelphia District Attorney's Office. I emphasized the importance of professionalism and civility toward the court and opposing counsel during litigation. I have no notes.

transcript, or recording. The address of the Philadelphia District Attorney's Office is 3 South Penn Square, Philadelphia, Pennsylvania 19107.

September 25, 2008: "Distinguished Guest Speaker" at a Naturalization Ceremony, Philadelphia, Pennsylvania. I relied on the same materials supplied for the March 22, 2007 speech.

July 18, 2008: Taught a class on Federal Criminal Practice at Drexel Law School by invitation of Professor Daley, Philadelphia, Pennsylvania. I discussed the representation of the "cooperating defendant" from the perspective of defense counsel. I have no notes, transcript, or recording. The address of Drexel University Earle Mack School of Law is 3141 Chestnut Street, Philadelphia, Pennsylvania 19104.

April 30, 2008: CLE presentation on "Winning Your First Federal Trial" sponsored by the National Business Institute, Philadelphia, Pennsylvania. Materials supplied.

April 18, 2008: Panelist, "A View From the Bench" CLE sponsored by the Pennsylvania Bar Institute – Employment Law Institute, Philadelphia, Pennsylvania. My comments focused on the effective use of United States Magistrate Judges when litigating employment cases in the Eastern District of Pennsylvania. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

April 15, 2008: Panelist, CLE sponsored by Philadelphia Intellectual Property Law Association on Settlement Issues in IP cases, Philadelphia, Pennsylvania. Materials supplied.

January 8, 2008: Participated as judge for High School Moot Court exercise at the United States Courthouse in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States Courthouse for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19106.

December 6, 2007: Panelist, CLE sponsored by the Pennsylvania Bar Institute on effective representation in social security cases. I discussed the role of the United States Magistrate Judges in the Eastern District of Pennsylvania in Social Security litigation and the "Report and Recommendation" protocol in our district. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Philadelphia, Pennsylvania 19107.

November 8, 2007: Panelist, CLE sponsored by the American Bar Association Section on Labor and Employment, Philadelphia, Pennsylvania. My comments focused on the effective use of United States Magistrate Judges when litigating employment cases in the federal court. I have no notes, transcript, or recording. The address of the American Bar Association is 740 15th Street, N.W., Washington, D.C. 20005.

November 6, 2007: Addressed Professor Combs' class on federal practice at Rutgers Law School, Camden, New Jersey. I presented a general overview of the criminal process in federal court from the perspective of an attorney as well as the role of a United States Magistrate Judge in the process. I have no notes, transcript, or recording. The address of Rutgers School of Law – Camden is 217 North Fifth Street, Camden, New Jersey 08102.

July 26, 2007: "Distinguished Guest Speaker" at a Naturalization Ceremony, Philadelphia, Pennsylvania. I relied on the same materials supplied for the March 22, 2007 speech.

July 20, 2007: Panelist. "Code of Civility" CLE sponsored by the Philadelphia District Attorney's Office. I emphasized the importance of professionalism and civility toward the court and opposing counsel during litigation. I have no notes, transcript, or recording. The address of the Philadelphia District Attorney's Office is 3 South Penn Square, Philadelphia, Pennsylvania 19107.

June 8, 2007: Panelist. "Dealing with the Difficult Adversary" CLE sponsored by the Federal Bar Association of Philadelphia, Philadelphia, Pennsylvania. My comments were directed toward maintaining professionalism notwithstanding a difficult adversary and when and how to approach the court should counsel deem it appropriate to seek judicial intervention. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 20, 2007: Panelist. Cross-examination CLE at Widener Law School in Wilmington, Delaware. I offered my thoughts on what constitutes effective cross-examination from the perspective of an attorney and from the perspective of a judge. I have no notes, transcript, or recording. The address of Widener Law School is 4601 Concord Pike, P.O. Box 7474, Wilmington, Delaware. 19803.

March 22, 2007: "Distinguished Guest Speaker" at Naturalization Ceremonies, Philadelphia, Pennsylvania. Materials supplied.

February 27, 2007: Panelist at the Philadelphia Bar Association Labor and Employment Section CLE. Philadelphia, Pennsylvania. I have no recollection as to what my comments were. I have no notes, transcript, or recording. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

January 25, 2007: Participated as judge for High School Moot Court exercise at the United States Courthouse in Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the United States Courthouse for the Eastern District of Pennsylvania is 601 Market Street, Philadelphia, Pennsylvania 19106.

December 8, 2006: Presentation on Immigration Issues with the Temple Inns of Court, Philadelphia, Pennsylvania. I participated in a skit prior to a discussion of the implications of the "Hazelton" litigation in the Middle District of Pennsylvania with other judges and attorneys that were members of the Temple Inn of Court. I have no notes, transcripts or recording. The address of Temple University Beasley School of Law is 1719 North Broad Street, Philadelphia, Pennsylvania 19122.

November 16, 2006: Speaker at the induction of Edson Bostic, Esquire, as the Federal Defender for the District of Delaware, Wilmington Delaware. I have no notes, transcript, or recording. The address of the United States District Court for the District of Delaware is 844 North King Street, Wilmington, Delaware 19081.

September 19, 2005: Speaker at Villanova Law School Trial Advocacy Class by invitation of the Honorable Juan Sanchez, Villanova, Pennsylvania. I have no notes, transcript, or recording. The address of Villanova University School of Law is 299 North Spring Mill Road, Villanova, Pennsylvania 19085.

November 15, 2003: Lectured on the use of interpreters at a CLE by invitation of the Philadelphia District Attorney's Office. I emphasized the importance of using highly qualified and experienced interpreters in court and during witness interviews in anticipation of litigation. I have no notes, transcript, or recording. The CLE took place at the Philadelphia District Attorney's Office, which is located at 3 South Penn Square, Philadelphia, Pennsylvania 19107.

October 20, 2003: Participated in a CLE panel on "Hate Crimes," sponsored by the Pennsylvania Bar Institute in Philadelphia, Pennsylvania. I have no recollection as to what my comments were. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

June 30, 2003: Participated in a CLE panel, "The Ethics of Cultural Defenses," sponsored by the Defender Association of Philadelphia. My discussion focused on the importance of making an effort to familiarize yourself with a client's cultural background in anticipation of trial and/or sentencing. I have no notes, transcript, or recording. The CLE took place at the Defender Association of Philadelphia, which is located at 1441 Sansom Street, Philadelphia, Pennsylvania 19102.

February 1, 2003: Participated in a CLE panel, "Anatomy of a Federal Death Penalty Case," sponsored by the Pennsylvania Association of Criminal Defense Lawyers, Valley Forge, Pennsylvania. I discussed my experiences representing a defendant in a federal death penalty prosecution in the Eastern District of Pennsylvania. This included a discussion of issues defense counsel might encounter at trial and in anticipation of trial. I have no notes, transcript, or recording. The address of the Pennsylvania Association of Criminal Defense Lawyers is 115 State Street, Harrisburg, Pennsylvania 17101.

July 23, 1999: I lectured on the use of interpreters at a CLE by invitation of the Philadelphia District Attorney's Office. I emphasized the importance of using highly qualified and experienced interpreters in court and during witness interviews in anticipation of litigation. I have no notes, transcript, or recording. The CLE took place at the Philadelphia District Attorney's Office, which is located at 3 South Penn Square, Philadelphia, Pennsylvania 19107.

February 1999: Panelist, Philadelphia Defender CLE, Ethnic and Cultural Issues in Criminal Defense at the Office of the Philadelphia Defender Association, Philadelphia, Pennsylvania. Materials supplied.

1999: Participated in the production of the Philadelphia Police/*Barrio* Project's video/documentary titled *Your Rights and Responsibilities When Stopped by the Police*. Copy of video supplied.

July 24, July 30 and August 21, 1998: Speaker on a CLE panel: "Keys to Examining Witnesses," sponsored by the Pennsylvania Bar Institute in Philadelphia, Pennsylvania. My comments emphasized the fundamentals of both direct and cross-examination from the perspective of a trial attorney. I have no notes, transcript, or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, 10th Floor, Suite 1010, Philadelphia, Pennsylvania 19107.

July 20, 1998: Panelist on a Community Education Workshop on the Rights and Responsibilities of Citizens When Stopped by the Police sponsored by *La Raza* and the Police/*Barrio* Relations Project in Philadelphia, Pennsylvania. My comments were focused on how to appropriately respond to any issues a civilian may have with police in a peaceful productive manner. I have no notes, transcript or recording. The Police/*Barrio* Relations Project is no longer operating. The address of the National Council of La Raza is 1126 16th Street, Suite 600, N.W., Washington, D.C. 20036.

August 21, 1997: I lectured Criminal Justice Act attorneys on the effective use of an interpreter at a seminar sponsored by the Administrative Office of the United States Courts, Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Administrative Office of United States Courts is 1 Columbus Circle, N.W., Washington, D.C. 20544.

April 8, 1997: Panelist at a CLE titled "Picking the Topic and Planning the Focus of a CLE" sponsored by the Philadelphia Bar Association, Philadelphia, Pennsylvania. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

February 21, 1997: Taught a CLE on trial practice sponsored by the Philadelphia Bar Education Center and the American Law Institute. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the Philadelphia Bar Education Center is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania

19107. The address of the ALI is 4025 Chestnut Street, Philadelphia, Pennsylvania 19014.

March 15, 1996: Panelist at a seminar presented to Criminal Justice Act attorneys on Sentencing Strategies sponsored by the Office of Probation and the Federal Community Defender for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania. My comments focused on the impact state court convictions have on the Federal Sentencing Guidelines. I have no notes, transcript, or recording. The address of the Federal Community Defender is Suite 540 West, The Curtis Center, 601 Walnut Street, Philadelphia, Pennsylvania 19106.

December 15, 1995: Participated in a panel, "*Voir Dire* and the Use of Interpreters for Clients Who Do Not Speak English," sponsored by the Philadelphia Bar Association, Philadelphia, Pennsylvania. My remarks consisted of emphasizing the importance of using qualified experienced interpreters at trial and when interviewing clients and witnesses. I have no notes, transcript, or recording. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

December 14, 1995: Participated in a panel, "Criminal Law Update, Juries in the Age of O.J.: An Overview on the Law of *Voir Dire*," sponsored by the Philadelphia Bar Association, Philadelphia, Pennsylvania. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the Philadelphia Bar Association is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

August 21, 1995: Participated in a panel discussion on jury selection, sponsored by the United States Attorney's Office for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania. To the best of my recollection I presented an overview of the law as it applies to jury selection. I have no notes, transcript, or recording. The address of the United States Attorney's Office for the Eastern District of Pennsylvania is 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania.

May 4, 1995: I lectured with Maureen Rowley, Chief Federal Defender, on Sentencing and Plea Negotiations in Federal Court, sponsored by the Federal Bar Association, Criminal Law Committee in Philadelphia, Pennsylvania. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the Federal Bar Association, Philadelphia Chapter, Criminal Law Committee is c/o Ron Levine, Esq., Post & Schell, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103.

November 18 and 19, 1994: I lectured to Criminal Justice Act attorneys from across the country on the State of *Voir Dire* in Federal Court in Boxborough, Massachusetts. The event was sponsored by the Administrative Office of the United States Courts. My remarks were directed at the state of the law as it applies to jury selection in federal court. I have no notes, transcript, or recording. The address of the Administrative Office of the United States Courts is 1 Columbus Circle, N.E., Washington, D.C. 20544.

March 9, 1994: I lectured to the Federal Bar Association Criminal Law Section on Recent Amendments to the Federal Sentencing Guidelines. Philadelphia, Pennsylvania. I have no notes, transcript, or recording. The address of the Federal Bar Association, Philadelphia Chapter, Criminal Law Committee is c/o Ron Levine, Esq., Post & Schell, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103.

March 7, 1994: I lectured Criminal Justice Act attorneys on the effective use of an interpreter, sponsored by the Federal Defender for the Eastern District of Pennsylvania and the Clerk of Court for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania. I emphasized the importance of using qualified experienced interpreters at trial and when interviewing clients and witnesses in anticipation of trial and/or sentencing. I have no notes, transcript, or recording. The address of the Office of the Federal Defender and Clerk of Court for the Eastern District of Pennsylvania is Suite 540 West, The Curtis Center, 601 Walnut Street, Philadelphia, Pennsylvania 19106.

- 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.

David Franco, "*Hablar español me ha ayudado mucho en mi Carrera*", AL DIA, Sept. 4, 2011. Copy supplied. A video of this interview is also available at <http://www.youtube.com/watch?v=mqwAcJ3mh-M&noredirect=1>.

Honorable Joan Gottschall and Molly Armour, *Second Chance: Establishing a Reentry Program in the Northern District of Illinois*, DePaul Journal for Social Justice, Volume 5, Fall 2011. Copy supplied.

Arturo Varela, *Una Segunda Oportunidad Para Ex-Convictos*, AL DIA, Nov. 23, 2010. Copy supplied.

Ivonne Malaver, *Otro Restrepo con posibilidades federales*, AL DIA, Feb. 21, 2010. Copy supplied.

John Shiffman, *Herbert J. Hutton, 69. Federal Judge*, PHILADELPHIA INQUIRER, Apr. 12, 2007. Copy supplied.

Jim Smith, *Handyman Gets Probation in Kemp Sideshow*, PHILADELPHIA DAILY NEWS, Aug. 12, 2005. Copy supplied.

Familias y Abogados de Pandilleros Proclaman Derrota de Gobierno, EFE NEWS SERVICES (U.S.) INC., June 15, 2005. Copy supplied.

Jurado Federal Postpone Deliberación Sobre Pena Contra Pandilleros, EFE NEWS SERVICES (U.S.) INC., June 13, 2005. Copy supplied.

Two Plead Guilty in Pa. Probe, COURIER-POST, Aug. 12, 2004. Copy supplied.

Carrie Budoff, *Minority Judges a Scarcity in Region; African Americans, Latinos and Asians Are Not Taking the Bench. Don't Expect the Nov. Ballot to Make a Difference*, PHILADELPHIA INQUIRER, October 19, 2003. Copy supplied.

Leticia Roa Nixon, *Premio Cesare Beccaria para L. Felipe Restrepo*, EL HISPANO, Nov. 16, 2000. Copy supplied.

Krasner & Restrepo: Serious About Civil Rights, PHILA. BAR REP., Oct. 1999. Copy supplied.

Jim Smith, *Eight Mobsters' Sentences Upheld*, PHILADELPHIA DAILY NEWS, July 29, 1998. Copy supplied.

Drug Suspects Include Six Bikers. Two Amishmen, PITTSBURGH POST-GAZETTE, July 3, 1998. Copy supplied.

U.S. Is Said to Seek Logs on Arrests, NEW YORK TIMES, Sept. 1, 1995. Copy supplied.

Kitty Caparella, *Disorder in Court at Mob Deposition: Translation Woes Impair Hearing in Italy*, PHILADELPHIA DAILY NEWS, May 25, 1995. Copy supplied.

Lisa Brennan, *Minorities and Women: Progress Is Made, But the Glass Ceiling Is as Strong as Ever*, PA. LAW 1994; THE STATE OF THE PROFESSION, 1994. Copy supplied.

Lisa Brennan, *Hispanic Bar Leaders Prepare New Agenda: Education is the Answer*, LEGAL INTELLIGENCER, Dec. 14, 1993. Copy supplied.

Megan E. Burns, *The Presentence Interview and the Right to Counsel: A Critical Stage Under the Federal Sentencing Structure*, WM. & MARY L. REV., 1993. Copy supplied.

Mark McDonald, *Interpreting An Hispanic Crisis: Many Latino Defendants Don't Understand System. Language*, PHILADELPHIA DAILY NEWS, June 2, 1990. Copy supplied.

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

I was appointed on June 16, 2006 as a United States Magistrate Judge for the Eastern District of Pennsylvania and continue to serve in that position. United States Magistrate Judges are judges in the United States District Court System as described in 28 U.S.C. Section 636 et seq.: "Upon consent of the parties, a full time United States Magistrate Judge... may conduct any and all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case..." 28 U.S.C. Section 636. In non-consent matters, "a District Judge may designate a Magistrate Judge to hear any pretrial matter pending before the court." 28 U.S.C. Section 631. Unlike a consent case, if the pretrial matter would be dispositive of the case, the Magistrate Judge prepares a Report and Recommendation outlining proposed findings of fact and conclusions of law for consideration by the District Judge. In criminal matters, Magistrate Judges have jurisdiction over misdemeanor and petty offenses. A Magistrate Judge also has jurisdiction over preliminary felony criminal matters including, but not limited to, initial appearances, arraignments, bail determinations, pleas, search and arrest warrants. Magistrate Judges are appointed for renewable eight year terms by the United States District Court Judges in their respective jurisdiction.

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

38

- i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10%
civil proceedings:	100%
criminal proceedings:	0%

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

See attachment.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Meehl, et al. v. First Student Inc., et al.*, No. 05-2615

This was a jury trial involving a traffic accident where an elderly couple driving a sedan was hit by a school bus. The plaintiffs suffered serious injuries. After several attempts to settle the case were unsuccessful, a jury returned a verdict in favor of the plaintiffs awarding a significant amount of monetary damages. There were post-

verdict motions filed by both parties. With some encouragement on my part, the motions were resolved amicably as part of a global resolution of the case. I did not issue an opinion in the case.

Plaintiffs' Counsel: Jeffrey A. Krawitz
Stark and Stark
1800 John F. Kennedy Boulevard, Suite 403
Philadelphia, PA 19103
Phone: 267/907-9606

Joel I. Fishbein
Spector, Gaden and Rosen
Seven Penn Center
1635 Market Street – 7th Floor
Philadelphia, PA 19103
Phone: 215/241-8829

Defense counsel: Richard Margolis
Margolis Edelstein
Independence Square West
Sixth and Walnut Streets – 4th Floor
Philadelphia, PA 19106
Phone: 215/931-5851

Walter J. Timby
Gibson and Perkins
100 West Sixth Street, Suite 204
Media, PA 19063
Phone: 610/565-1708

2. *Stevens v. Temple University*, No. 07-4736

This was an employment case brought against Temple University where the plaintiff alleged that she had been discriminated against because of her gender in violation of Title VII of the Civil Right Act of 1964, the Pennsylvania Human Relations Act, the Pennsylvania Equal Rights Amendment and the Equal Pay Act. After resolving several pre-trial evidentiary issues the case was presented to a jury, which found in favor of the defendant. I did not issue an opinion in this case.

Plaintiff's counsel: Jeffrey Campolongo
Atrium at Olde City
128 Chestnut Street, Suite 202
Philadelphia, PA 19106
Phone: 215/592-9293

Defense counsel: Neil Hamburg
 Hamburg and Golden
 1601 Market Street, Suite 3310
 Philadelphia, PA 19103
 Phone: 215/255-8592

3. *King, et al. v. Ridley Township, et al.*, No. 07-0704

This was a civil rights case in which two plaintiffs alleged police abuse. The jury returned a nominal verdict in favor of the plaintiffs. Shortly thereafter it was reported to me that the case had settled. Within days of the settlement, defense counsel filed a motion for a new trial premised on after-discovered evidence. There was significant post-verdict litigation including an evidentiary hearing, after which I denied the defendants' request for a new trial. The matter eventually settled. My opinion can be found at *King v. Banner*, No. 07-0704, 2010 WL 3656030 (E.D. Pa. Sept. 17, 2010).

Plaintiffs' counsel: Glen R. Morris
 100 South Broad Street, Suite 2226
 Philadelphia, PA 19110
 Phone: 215/893-1222

Defense counsel: Robert DiDomenicis
 Holsten and Associates
 One Olive Street
 Media, PA 19063
 Phone: 610/627-2437

4. *E.E.O.C. v. Unitek, USA*, No. 08-4592

This was a case brought by the EEOC on behalf of the charging party alleging a violation of the Age Discrimination in Employment Act of 1967. The damages sought were back pay, liquidated damages and injunctive relief. Prior to trial the EEOC withdrew its jury demand and the defense agreed to try the case without a jury. After resolving several pre-trial evidentiary issues the case was tried before me without a jury. I ruled in favor of the defense after consideration of the trial testimony and post-trial submissions. My opinion can be found at *E.E.O.C. v. Unitek, USA, LLC*, No. 08-4592, 2010 WL 3658247 (E.D. Pa. Sept. 15, 2010).

Plaintiff's counsel: Iris Santiago Flores
 EEOC
 801 Market Street, Suite 1300
 Philadelphia, PA 19107
 Phone: 215/440-2684

Defense counsel: Colin David Dougherty
 Elliott Greenleaf

50 South 16th Street, Suite 2960
Philadelphia, PA 19102
Phone: 215/977-1055

5. *Infocrossing Services West, Inc. et al. v. TMG Health, Inc. et al.*, No. 08-5632

This litigation centered on the meaning of disputed pricing terms in a written contract between the parties. I encouraged the parties to make every effort to resolve the matter prior to trial. When it became clear that the matter would not settle, there were several pre-trial evidentiary rulings that had to be made concerning what evidence would be presented to the jury. The jury awarded the plaintiffs significant damages. I did not issue an opinion in this case.

Plaintiffs' counsel: Douglas Smillie
Fitzpatrick, Lentz and Bubba
4001 Schoolhouse Lane
Center Valley, PA 18034
Phone: 610/797-9000

Defense counsel: J. Bruce McKissok and James G. Lare
Marshall, Dennehey, Warner, Coleman and Goggin
1845 Walnut Street
Philadelphia, PA 19103
Phone: 215/575-4553

6. *Ge Zhang v. Children's Hospital of Philadelphia*, No. 08-5540

This was an employment discrimination and retaliation action brought by the plaintiff against his employer. Prior to trial the parties requested that I decide whether, with respect to the anti-retaliation provision of Title VII, the court may charge the jury with a "mixed-motive" or "motivating factor" instruction if warranted by the evidence. I held that the jury would not be charged with a mixed motive instruction relating to the retaliation claim. The jury found in favor of the defendants. I facilitated a post-verdict settlement of the case. My opinion can be found at *Ge Zhang v. Children's Hosp. of Philadelphia*, No. 08-5540, 2011 WL 940237 (E.D. Pa. Mar. 14, 2011).

Plaintiff's counsel: May Mon Post
Post Law Firm
1515 Market Street, Suite 820
Philadelphia, PA 19102
Phone: 267/335-3068

Defense counsel: Neil Hamburg
Hamburg and Golden
1601 Market Street, Suite 3310

Philadelphia, PA 19103
Phone: 215/255-8592

7. *Dubrow v. City of Philadelphia*, No. 07-537

The plaintiff, a former behavioral health nurse in the Philadelphia prisons, alleged that her substantive due process right to life, liberty and bodily integrity guaranteed by the 14th Amendment of the Constitution was violated by the defendants when she was sexually assaulted by an inmate while working in the prison. Plaintiff sought to hold defendants liable under the "state created danger" theory. After consideration of the pleadings and argument I dismissed the case on summary judgment. My opinion can be found at *Dubrow v. City of Philadelphia*, No. 07-537, 2008 WL 4055844 (E.D. Pa. Aug. 28, 2008). The Court of Appeals affirmed my decision at *Dubrow v. City of Philadelphia*, 350 Fed. Appx. 784 (3rd Cir. 2009).

Plaintiff's counsel: David Deratzian
Hehalis & Kounoupis
20 East Broad Street
Bethlehem, PA 18018
Phone: 610/865-2608

Defense counsel: Matthew Hubbard
City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: 215/683-5439

8. *Al Daraji, et al. v. Monica et al.*, No. 07-1749

Plaintiffs, citizens of the Republic of Iraq, the Kingdom of Jordan and the Syrian Arab Republic, sought an order compelling the United States Citizenship and Immigration Service (USCIS) to adjudicate their applications for naturalization pleading jurisdiction under the Immigration and Nationality Act, the federal question statute, the Declaratory Relief Act, the mandamus statute and the Administrative Procedure Act. The government filed a motion to dismiss which I denied. The case was submitted to me on cross motions for summary judgment. I granted the plaintiffs' motion for summary judgment and remanded their applications to USCIS and the FBI for adjudication within 90 days. My opinion denying the government's motion to dismiss can be found at *Al Daraji v. Monica*, No. 07-1749, 2007 WL 2994608 (E.D. Pa. Oct. 12, 2007). My opinion granting plaintiffs' motion for summary judgment can be found at *Al Daraji v. Monica*, No. 07-1749, 2008 WL 183643 (E.D. Pa. Jan. 18, 2008).

Plaintiffs' counsel: Daniel Sansoni
8040 Roosevelt Boulevard, Suite 218

Philadelphia, PA 19152
Phone: 215/333-7790

Government counsel: Assistant United States Attorney Susan Becker
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
Phone: 215/861-8200

9. *Vanali Electrical Construction, Inc. v. Selco Manufacturing Corp.*, No. 03-6741

This was a diversity action brought by the plaintiff for monetary damages arising from the defendant's breach of contract, breach of express warranties and breach of the implied warranty of fitness for a particular use. A jury found in favor of the plaintiff, awarding in excess of \$300,000 in damages. Post-verdict motions were filed with respect to prejudgment interest. I awarded the plaintiff prejudgment interest in excess of \$74,000. My opinion can be found at *Vanali Elec. Const., Inc. v. Selco Mfg. Corp.*, No. 03-6741, 2008 WL 63245 (E.D. Pa. Jan. 3, 2008).

Plaintiff's counsel: Jeffrey Wallack
Wisler Pearlstine
484 Norristown Road, Suite 100
Blue Bell, PA 19422
Phone: 610/825-4887

Defense counsel: Christopher James Amentas
Armstrong & Carosella
882 South Matlack Street, Suite 101
West Chester, PA 19382
Phone: 610/431-3300

10. *Gustaitis v. Chao*, No. 05-1210

Plaintiff, a former employee of the federal government, alleged age and gender discrimination under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act. Specifically, the plaintiff alleged that his employer engaged in employment discrimination in failing to select him for a promotion on the basis of his gender and age. The case was tried before me without a jury after I denied the employer's motion to strike plaintiff's jury demand. After consideration of the trial testimony and post-trial submissions, I ruled in favor of the defendant. My decision on the merits can be found at *Gustaitis v. Chao*, No. 05-1210, 2007 WL 2071901 (E.D. Pa. July 16, 2007). My decision on the motion to strike can be found at *Gustaitis v. Chao*, No. 05-1210, 2006 WL 3791335 (E.D. Pa. Dec. 22, 2006).

Plaintiff's counsel: Stephen J. Springer
2033 Walnut Street

Philadelphia, PA 19103
Phone: 215/732-8229

Defense counsel: Assistant United States Attorney Annetta Foster Givhan
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
Phone: 215/861-8200

- 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. *Ge Zhang v. Children's Hosp. of Philadelphia*, No. 08-5540, 2011 WL 940237 (E.D. Pa. Mar. 14, 2011).

Plaintiff's counsel: May Mon Post
Post Law Firm
1515 Market Street, Suite 820
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Phone: 267/335-3068

Defense counsel: Neil Hamburg
Hamburg and Golden
1601 Market Street, Suite 3310
Philadelphia, PA 19103
Phone: 215/255-8592

2. *Dubrow v. City of Philadelphia*, No. 07-537, 2008 WL 4055844 (E.D. Pa. Aug. 28, 2008), *aff'd*, 350 Fed. Appx. 784 (3d Cir. 2009).

Plaintiff's counsel: David Deratzian
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Phone: 610/865-2608

Defense counsel: Matthew Hubbard
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1515 Arch Street, 15th Floor
Philadelphia, PA 19102
Phone: 215/683-5439

3. *Al Daraji v. Monica*, No. 07-1749, 2007 WL 2994608 (E.D. Pa. Oct. 12, 2007).

Plaintiffs' counsel: Daniel Sansoni
8040 Roosevelt Boulevard, Suite 218
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Phone: 215/333-7790

Government counsel: Assistant United States Attorney Susan Becker
615 Chestnut Street, Suite 1250
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Phone: 215/861-8200

4. *Al Daraji v. Monica*, No. 07-1749, 2008 WL 183643 (E.D. Pa. Jan. 18, 2008).

Plaintiffs' counsel: Daniel Sansoni
8040 Roosevelt Boulevard, Suite 218
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Phone: 215/333-7790

Government counsel: Assistant United States Attorney Susan Becker
615 Chestnut Street, Suite 1250
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Phone: 215/861-8200

5. *E.E.O.C. v. Unitek, USA, LLC*, No. 08-4592, 2010 WL 3658247 (E.D. Pa. Sept. 15, 2010).

Plaintiff's counsel: Iris Santiago Flores
EEOC
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Defense counsel: Colin David Dougherty
Elliott Greenleaf
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Phone: 215/977-1055

6. *King v. Banner*, No. 07-0704, 2010 WL 3656030 (E.D. Pa. Sept. 17, 2010).

Plaintiffs' counsel: Glen R. Morris
100 South Broad Street, Suite 2226
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Phone: 215/893-1222

Defense counsel: Robert DiDomenicis
Holsten and Associates
One Olive Street
Media, PA 19063
Phone: 610/627-2437

7. *Gustaitis v. Chao*, No. 05-1210, 2007 WL 2071901 (E.D. Pa. July 16, 2007).

Plaintiff's counsel: Stephen J. Springer
2033 Walnut Street
Philadelphia, PA 19103
Phone: 215/732-8229

Defense counsel: Assistant United States Attorney Annetta Foster Givhan
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
Phone: 215/861-8200

8. *Gustaitis v. Chao*, No. 05-1210, 2006 WL 3791335 (E.D. Pa. Dec. 22, 2006).

Plaintiff's counsel: Stephen J. Springer
2033 Walnut Street
Philadelphia, PA 19103
Phone: 215/732-8229

Defense counsel: Assistant United States Attorney Annetta Foster Givhan
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Philadelphia, PA 19106
Phone: 215/861-8200

9. *Ocasio v. Ollson*, 596 F. Supp. 2d 890 (E.D. Pa. 2009).

Plaintiffs' counsel: Kevin Allen
Crystle, Allen & Braught
143 North Duke Street
Lancaster, PA 17602
Phone: 717/393-0600

Defense counsel: Cynthia Certo
Rawle & Henderson
One South Penn Square, 16th Floor
1339 Chestnut Street
Philadelphia, PA 19017
Phone: 215/575-4200

10. *Nally v. Life Ins. Corp. of N. Am.*, No. 07-0707, 2007 WL 4390423 (E.D. Pa. Dec. 14, 2007).

Plaintiff's counsel: Richard Angino
Angino & Rovner
4503 North Front Street
Harrisburg, PA 17110
Phone: 717/238-6791

Defense counsel: Andrew J. Rolles
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
Phone: 215/665-1082

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

I am unaware of any cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decision was 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. *Wilson v. City of Philadelphia*, No. 04-5396, 2010 WL 1254111 (E.D. Pa. Mar. 31, 2010). I denied the defendants' motion to dismiss the complaint for failure to comply with pleading standards. The Third Circuit remanded this matter with instructions to grant the petitioner leave to amend his amended complaint if he could do so to comport with pleading standards. *See Wilson v. City of Philadelphia*, 415 Fed. Appx. 434 (3d Cir. 2011). Copy supplied.

2. *Griffin-El v. Beard*, No. 06-2719, 2009 WL 3233151 (E.D. Pa. Oct. 6, 2009). I denied summary judgment on the basis of qualified immunity. The Third Circuit remanded with instructions to specify which material facts, if any, precluded qualified immunity as to each official. *See Griffin-El v. Beard*, 411 Fed. Appx. 517 (3d Cir. 2011). Copy supplied.

3. *Brown v. Astrue*, 2011 WL 1474295 (E.D. Pa. Apr. 15, 2011). My Report and Recommendation ("R&R") recommended that plaintiff's summary judgment motion be denied and that the final decision of the Commissioner of Social Security denying disability benefits be affirmed. The District Court approved in part and adopted in part my R&R, granted in part and denied in part plaintiff's motion for summary judgment, and remanded the case to the Commissioner for further proceedings to give the Commissioner further opportunity to explain his credibility findings and assess plaintiff's residual functional capacity.

4. *Young v. Folino*, 2009 WL 5178302 (E.D. Pa. Dec. 23, 2009). The District Court approved and adopted my R&R, overruled petitioner's objections, and dismissed the habeas petition. In so doing, the District Court addressed and denied as meritless one of petitioner's claims which I had recommended be dismissed as unexhausted.

5. *Crawford v. Astrue*, 2009 WL 1033611 (E.D. Pa. Apr. 15, 2009). I recommended that the case be remanded to the Commissioner of Social Security to give the Commissioner a further opportunity to properly analyze the evidence and make credibility findings. The District Court sustained defendant's objections and affirmed the final decision of the Commissioner denying disability benefits.

6. *Pabon v. Mahoney*, 2008 WL 249845 (E.D. Pa. Jan. 30, 2008). The District Court approved and adopted my R&R and denied and dismissed the habeas petition as time-barred. In so doing, the District Court denied petitioner's subsequent equitable tolling claim which had not been presented to me, as explicitly pointed out by the Court in its Order adopting my R&R. On appeal, the Third Circuit reversed and remanded for an evidentiary hearing on petitioner's equitable tolling 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.

To the best of my knowledge, all of my opinions and reports and recommendations are reported in both Westlaw and Lexis. It is also my understanding that copies of all of my opinions are kept with the Clerk of Court for the Eastern District of Pennsylvania.

- 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 authored any opinions that address significant federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

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 grounds for recusal.

The Clerk of Court for the Eastern District of Pennsylvania keeps a recusal list that is updated periodically. Judges are asked to review their self-identified recusal list on a regular basis. In addition to recusals made based on this list, I have recused as follows:

I was initially assigned to the case of *Roberts v. Ferman, et al.*, No. 09-4895, by the consent of the parties. Subsequently, the plaintiff moved to revoke consent and/or have me recuse myself from this case. The plaintiff suggested that I would be called as a witness at trial and that extraordinary circumstances required that I recuse myself from the case. To the best of my understanding the extraordinary circumstances that he suggested warranted my recusal were tethered to an investigation conducted by the United States Marshals surrounding a letter I received by a relative of the plaintiff. The defense took no position with respect to this motion. After the plaintiff filed the motion, Judge Timothy Savage revoked consent, and the matter was returned to his docket.

I recused myself from a settlement conference in a case in which the University of Pennsylvania was a plaintiff at the request of plaintiff's counsel because I was teaching at the Law School of the University of Pennsylvania at the time. I told the attorneys of my teaching commitment at Penn. and they opted to pursue settlement with a different U.S. Magistrate Judge.

I *sua sponte* recused myself from a settlement conference in a case involving the City of Philadelphia Department of Human Services because the director of the department was a close friend from years prior, when we were both employed at the Defender Association of Philadelphia.

I *sua sponte* recused myself from a settlement conference in a case on which my wife had worked in her capacity as an attorney in the United States Attorney's Office for the Eastern District of Pennsylvania.

As a rule, I *sua sponte* recuse myself on *habeas corpus* petitions if they allege ineffective assistance of counsel against the Defender Association of Philadelphia during the time when I was serving on the Board of Directors of the Defenders, and *habeas corpus* petitions in which my father-in-law was the trial court judge. He is a Senior Judge on the Pennsylvania Court of Common Pleas, Philadelphia County.

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 office. I have not pursued any public office.

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

I have never held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you served as a clerk;

I did not clerk for a judge.

- ii. whether you practiced alone, and if so, the address and dates:

I did not practice alone during any part of my legal career.

- 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 – 1987
ACLU National Prison Project
915 15th Street, N.W.

Washington, D.C. 20005
Law Clerk

1987 – 1990
Defender Association of Philadelphia
1441 Sansom Street
Philadelphia, Pennsylvania 19102
Assistant Defender

1990 – 1993
Federal Community Defender for the Eastern District of Pennsylvania
Suite 540 West, The Curtis Center
601 Walnut Street
Philadelphia, Pennsylvania 19106
Assistant Federal Defender

1993 – 2006
Krasner and Restrepo
239 South Camac Street
Philadelphia, Pennsylvania 19107
Partner

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

The general character of my law practice as an Assistant Defender from March of 1987 to March of 1993 was that of a public defender in the local and federal courts in Philadelphia and a limited amount of appellate practice while I was an Assistant Federal Defender in Philadelphia.

From March of 1993 to March of 2006, I was in private practice with one partner. We focused primarily on criminal defense in both State and Federal Courts, including defense of death penalty prosecutions. We represented clients who retained our services as well as individuals for whom we were appointed by the courts.

Over the years we were also retained in various civil matters. The majority of our civil litigation consisted of Title 42, Section 1983 claims alleging police abuse and mistreatment. We also represented individuals in other types of civil litigation including workplace accidents, medical malpractice, wrongful death cases and fire cases. I also practiced immigration law for a very brief period several years ago while in private practice.

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

My typical clients when I was a defender in the state and federal courts were indigent individuals who qualified for the services of the Defender Association. My typical clients in private practice were often indigent defendants, individuals of limited means charged criminally in both the local and federal courts. Over the years I was also retained in various civil matters.

The majority of my civil litigation consisted of Title 42, Section 1983 claims alleging police abuse/mistreatment. The vast majority of our 1983 clients were plaintiffs, although on a few occasions I did represent a defendant in a Section 1983 case. We also represented individuals in other types of civil litigation including workplace accidents, medical malpractice, wrongful death and fire cases. Both my former partner and I are bilingual English/Spanish and roughly one-half of our clients spoke only Spanish or a limited amount of English.

- 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.

Prior to becoming a Magistrate Judge, 100% of my practice was in litigation. I appeared in court frequently, usually daily, both as a public defender and in private practice.

The numbers below represent my tenure as a defender and in private practice from 1987 to 2006.

- i. Indicate the percentage of your practice in:
- | | |
|----------------------------|------|
| 1. federal courts: | 50 % |
| 2. state courts of record: | 50% |
| 3. other courts: | <1% |
| 4. administrative agencies | 0% |
- ii. Indicate the percentage of your practice in:
- | | |
|--------------------------|-----|
| 1. civil proceedings: | 20% |
| 2. criminal proceedings: | 80% |

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

I tried several hundred cases to verdict in courts of record, as sole counsel. The majority of these cases were non-jury criminal trials in the Philadelphia Court of Common Pleas and the Municipal Court of Philadelphia. None were before administrative law judges. I tried approximately 25 jury trials in federal and state courts as sole counsel.

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

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

I have not 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 these 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. Acosta*, Criminal Docket No. 98-362; Eastern District of Pennsylvania. Judge Louis H. Pollak. Trial was in 2001.

I was co-counsel for Mr. Acosta. Mr. Acosta was one of 13 individuals charged in an indictment with, *inter alia*, murder in aid of racketeering and one of three defendants charged with capital murder. This was the first trial in a capital prosecution in the Eastern District of Pennsylvania. It was also my first federal capital case as lead counsel. There was significant pretrial litigation. Mitigation efforts included, but were not limited to, traveling to Puerto Rico to interview family, friends and others in an effort to prepare the penalty phase of the trial. After approximately six months of trial, the defendant pled guilty and received a sentence of life in prison. *See United States v. Llera Plaza*, 188 F. Supp. 2d 549 (E.D. Pa.

2002) (Pollak, J.), wherein Judge Pollak vacated an earlier ruling that found fingerprint evidence unreliable.

Lead Prosecutor: AUSA Thomas Perricone
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215/861-8200

Co-Counsel on Acosta: Mike Giampietro
239 South Camac Street
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610/212-8240

Counsel for Plaza: Tim Sullivan
6305 Ivy Lane, Suite 700
Greenbelt, MD 20770
301/952-1400

Jules Epstein
Widener Law School
4601 Concord Pike
Wilmington, DE 19803
302/477-2031

Counsel for Rodriguez: Gerald Stein
2727 Central Square West
1500 Market Street
Philadelphia, PA 19102
215/665-1130

Bernie Siegal
1515 Market Street, Suite 1915
Philadelphia, PA 19102
215/751-9830

2. *United States v. Grande*. Criminal Docket No. 04-0283; Eastern District of Virginia, Judge Gerald Bruce Lee. Trial was in 2005.

I was appointed by Judge Lee of the Eastern District of Virginia to represent Mr. Grande, a member of MS-13, who was accused of capital murder for his role in the killing of a woman who was in the federal witness protection program. The case was tried to verdict. Mr. Grande was convicted but did not receive the death penalty when the jury could not unanimously agree as to the sentence in the penalty phase of the trial. The capital nature of the case, the evidence confronting my client and the heinous allegations against him forced us to begin presenting our mitigation case during the guilt phase of the trial without compromising our defense of Mr. Grande. Mitigation efforts included finding the

appropriate experts and developing a relationship with our client's family while under significant pressure.

Counsel for the Government: AUSAs Ronald Walutes and Patricia Giles
2100 Jamieson Avenue
Alexandria, VA 22314
703/299-7300

Co-Counsel for Grande: David Baugh
1602 Rolling Hills Drive, Suite 212
Richmond, VA 23229
804/622-7166

Counsel for co-defendant Rivera: Robert Jenkins
1010 Cameron Street
Alexandria, VA 22314
703/549-7211

Jerome Aquino
5901 Kingstown Village Parkway
Alexandria, VA 22314
703/549-1131

Counsel for co-defendant Garcia: Frank Salvato
1203 Duke Street
Alexandria, VA 22314
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Alex Levay
29 North King Street
Leesburg, VA 20176
703/297-4162

Counsel for co-defendant Cisneros: Nina Ginsberg
908 King Street, Suite 200
Alexandria, VA 22314
703/341-4873

Jim Clark
524 King Street
Alexandria, VA 22314
703/836-1000

3. *United States v. Evans*, 49 F.3d 109 (3d Cir. 1995); United States Court of Appeals for the Third Circuit, Judges Greenberg, Scirica and Lewis. District Court Docket No. 92-689-5. Judge Thomas N. O'Neill, Jr.

I was appointed to represent Mr. Evans at sentencing, after he pled guilty to drug charges. The District Court denied my efforts to secure a downward departure given Mr. Evans' disclosure of his true identity to the United States Probation Office. On appeal, the Third Circuit Court of Appeals agreed with my argument that the sentencing court was not foreclosed from deciding that Mr. Evans' disclosure of his true identity might have warranted a downward departure in sentencing. In light of the Third Circuit's opinion, Mr. Evans was given a downward departure at his resentencing.

Counsel for the Government: AUSA Frank Barbieri
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215/861-8200

4. *Mickus v. Abington Township, et al.*, No. 98-6594; Eastern District of Pennsylvania, Magistrate Judge Jacob P. Hart. Trial was in September 1999.

I was plaintiff's counsel in this Section 1983 claim filed against Abington Township and several individual defendants in the Eastern District of Pennsylvania. I tried the case to a jury with an associate of my firm. The claims centered on the amount of force allegedly used during the arrest of Mr. Mickus. The claims survived a 12(b)(6) challenge under the Federal Rules of Civil Procedure as well as summary judgment arguments advanced by the defense. The trial included expert testimony as well as testimony for the relevant parties and independent fact witnesses. The jury ultimately found for the defense.

Opposing Counsel: Joseph J. Santarone, Jr.
Marshall, Dennehey, Warner, Coleman and Goggin
620 Freedom Center, Suite 300
King of Prussia, PA 19406
610/354-8282

5. *United States v. Hudson*, Criminal Docket No. 04-297; Eastern District of Pennsylvania, Judge Timothy J. Savage. Suppression Hearing in October 2004.

I was appointed to represent Mr. Hudson, who was charged with violating federal narcotics and firearms statutes in the Eastern District of Pennsylvania. I was able to secure the services of an investigator to help me prepare for the suppression motion. I was also able to subpoena an individual who at the time of the hearing was in custody on unrelated charges. My efforts were successful and all the evidence against Mr. Hudson was suppressed by Judge Savage. The charges were eventually dismissed by the government.

Counsel for the government: AUSA Robert Reed
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215/861-8200

Special Assistant United States Attorney Robert Rosner
 Lehigh County District Attorney's Office
 455 West Hamilton Street
 Allentown, PA 18101
 610/782-3110

6. *United States v. Sparacio*, Criminal Docket No. 94-127; Eastern District of Pennsylvania, Judge Ronald Buckwalter. Trial was in October 1995.

I was counsel for Mr. Sparacio, who was alleged to be a "capo" in the mafia in Philadelphia. Mr. Sparacio was one of 27 individuals charged in a RICO indictment with a wide variety of violent offenses. The representation of Mr. Sparacio included taking the testimony of trial witnesses in Italy, reviewing extensive discovery, litigating pre-trial motions, trial, sentencing presentations and argument in the Court of Appeals. Mr. Sparacio was convicted and sentenced to 300 months imprisonment and denied relief by the Court of Appeals.

Counsel for the government:	Barry Gross Drinker Biddle and Reath One Logan Square Philadelphia, PA 19103 215/988-2872
	AUSA David Fritchey 615 Chestnut Street, Suite 1250 Philadelphia PA 19106 215/861-8200
Counsel for co-defendant Stanfa:	John Myers – Deceased
Counsel for co-defendant Piccolo:	Harvey Wiessbard Genova, Burns and Giantomasi 494 Broad Street Newark, NJ 07102 973/230-2084
Counsel for co-defendant Martinez:	Brian McMonagle 30 South 15th Street Philadelphia, PA 19102 215/981-0999
Counsel for co-defendant Pagano:	Jeremy Gelb P.O. Box 40078 Philadelphia, PA 19017 215/922-2415

Counsel for co-defendant
Bataglia: Robert Welsh
2000 Market Street
Philadelphia, PA 19103
215/972-6430

Counsel for co-defendant
Keller: Howard Popper
230 South Broad Street, Suite 503
Philadelphia, PA 19102
215/546-5700

7. *United States v. Cantero*. Criminal Docket No. 96-245; Eastern District of Pennsylvania, Judge Harvey Bartle. Sentencing in July 1997.

I was counsel for Mr. Cantero, who was charged with a variety of violent offenses stemming from an armed car-jacking and kidnapping in which he was involved. The case against Mr. Cantero was unusual because he was one of very few juveniles charged in federal court. Given his age, the victim in this case offered to meet with the United States Attorney in an effort to convince the government not to pursue the mandatory sentences because of the related firearms charge. Although we were not able to persuade the United States Attorney to withdraw the firearms charge, the victim did testify on behalf of Mr. Cantero at sentencing and the sentencing judge departed from the guidelines in light of my sentencing presentation.

Counsel for the government: AUSA Wendy Kelly
Chief, Operations Department
Office of Military Commissions
4800 Mark Center Drive, Suite 11F09-02
Alexandria, VA 22350
571/372-3724

8. *United States v. Williams*. Criminal Docket No. 01-512; Eastern District of Pennsylvania, Chief Judge Curtis Joyner. Trial was in April 2006.

I was co-counsel for Mr. Williams, who was charged with, *inter alia*, murder in aid of racketeering and the capital murder of a federal witness. Although the motions practice and trial in this case went on for approximately two months, much of our efforts were concentrated outside the courtroom preparing our mitigation case. The United States eventually withdrew its notice to pursue the death penalty on the strength of the evidence we were able to gather documenting our client's mental retardation. Mr. Williams was sentenced to life.

Lead counsel for the
government: Faithe Moore Taylor
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215/861-8200

Co-counsel for Mr. Williams: Tim Sullivan
6305 Ivy Lane, Suite 700
Greenbelt, MD 20770
301/952-1400

Counsel for co-defendant
Cooper: Patrick Egan
Fox Rothschild
2000 Market Street
Philadelphia, PA 19107
215/299-2150

Anthony Ricco
20 Vesey Street, Suite 400
New York, NY 10007
212/791-3919

Counsel for co-defendant
Williams: Robert J. Hill, Jr.
Gilroy, Kammen & Hill
One Indiana Square, Suite 150
Indianapolis, IN 46204
317/236-0400

Clayton Sweeney
3933 Lancaster Avenue, Suite 102
Philadelphia, PA 19104
215/776-2313

9. *Clark v. City of Coatsville*, No. 03-1665; Eastern District of Pennsylvania, Judge Ronald Buckwalter. Trial was in December 2005.

This was a Section 1983 claim. Co-counsel and I were able to convince a federal jury that our client's civil rights had been violated by police officers employed by the City of Coatsville in light of the force used while arresting Mr. Clark. Although we had no independent witnesses and the defense presented expert testimony to rebut our allegations, we were able to convince the jury that the force used to arrest Mr. Clark was unreasonable. The jury awarded Mr. Clark considerable monetary damages, and we were awarded fees and costs.

Co-counsel for Mr. Clark: Paul George
239 South Camac Street
Philadelphia, PA 19107
215/735-0598

Counsel for the
City of Coatsville: Steve Ludwig
Fox Rothschild
2000 Market Street

Philadelphia, PA 19107
215/299-2150

10. *United States v. DeLia*, Criminal Docket No. 98-562; Eastern District of Pennsylvania, Judge Jan DuBois.

I was counsel of record for Mr. DeLia, who was charged by the United States in an extortion conspiracy. I was able to secure Mr. DeLia's release on conditions pending the disposition of his case. The case presented many challenges in terms of Mr. DeLia's efforts to minimize his exposure at sentencing. Given a combination of factors, including his exceptional efforts to maintain work and support his family, I was able to convince the sentencing judge to impose a sentence that allowed Mr. DeLia to continue working notwithstanding the seriousness of his offense.

Counsel for the government: AUSA David Fritchey
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215/861-8200

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) for whom you have performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The vast majority of the civil cases I pursued as an attorney did not go to trial, but were resolved well before trial. Likewise, most of the criminal matters in which I was counsel were resolved by way of non-trial dispositions. The most significant legal activity I pursued was running a small law firm with one partner and an occasional employee for the better part of 13 years.

During the years I worked as an attorney I was actively engaged in number of legal associations and boards that dealt with a wide variety of issues. I was a long term member of the Board of Directors and a Federal Trustee of the Defender Association of Philadelphia as well as the Representative of the Eastern District of Pennsylvania to the National Conference of Criminal Justice Attorneys. I also served on the Philadelphia Bar Association's Commission on Judicial Selection and Retention and on the Merit Selection Committee for the selection of a United States Magistrate Judge in the Eastern District of Pennsylvania.

As a United States Magistrate Judge I have been fortunate enough to participate in the re-entry program in the Eastern District of Pennsylvania since September of 2007. The re-entry program in the Eastern District of Pennsylvania is a collaborative effort between the court, the United States Attorney's Office, the Federal Defenders Office, the Office of Probation and many community partners to assist individuals recently released from federal custody

with a violent criminal history to re-enter the community and live productive lives in the community.

I have never done any lobbying on behalf of any clients and/or organizations.

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 and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

The following courses and course dates are listed to the best of my recollection.

Temple University, Beasley School of Law, Adjunct Professor
 Legal Research and Writing (1993 – 1995)
 I do not have a syllabus available for this course.
 Introduction to Trial Advocacy (1993 – 2005)
 Spring 2012 syllabus supplied.
 Integrated Trial Advocacy I (Fall Semesters 2006 – 2010)
 Fall 2010 syllabus supplied.
 Integrated Trial Advocacy II (Spring Semesters 2007 – 2013)
 Spring 2011 syllabus supplied.
 Advanced Trial Advocacy – Criminal (Fall Semesters 2010 – 2012)
 Fall 2010 syllabus supplied.
 LL.M. in Trial Advocacy – Final Jury Trials (2008 – present)
 Spring 2012 syllabus supplied.
 LL.M. in Trial Advocacy – Jury Dynamics (2008 – present)
 Fall 2012 syllabus supplied.
 LL.M. in Trial Advocacy – Boot Camp I (2008 – present)
 2012 syllabus supplied.
 LL.M. in Trial Advocacy – Boot Camp II (2008 – present)
 2012 syllabus supplied.

University of Pennsylvania Law School, Adjunct Professor:
 Trial Advocacy (1997 – 2009)
 2008, 2007, and 2006 syllabi supplied.

Peirce College, Adjunct Professor
 Criminal Justice (Spring Semester 1992)
 Spring 1992 syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and 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.

There is one outstanding payment due for work done as an attorney that may generate income. My former partner and I submitted a Criminal Justice Act voucher while I was still in practice that has yet to be paid. Should it be paid my former law partner and I would share equally in the payment. My share would be approximately \$7,000.

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

The only plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court would be to continue teaching consistent with the restrictions imposed on the federal judiciary.

22. **Sources of Income:** List the sources and amounts of all income received during the calendar year preceding your nomination and the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500.00 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 conflict-of-interest when you assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My father-in-law is a state court judge, and I currently recuse myself, and would continue to recuse myself, in any case where I may have to review a case in which he was involved. From March 2011 to November 2012, my wife worked on a part-time basis with the United States Attorney's Office for the Eastern District of Pennsylvania in the financial litigation unit. I recused myself, and will continue to recuse myself, from any case in which she had participated. There are six or fewer attorneys in the area with whom I have a close relationship that would require me to recuse if they appeared before me. Finally, I have investments with corporations listed in my Net Worth Statement which would present conflicts.

Should any other potential conflicts of interest arise, I will adhere to the Code of Conduct for United States Judges and other applicable authority regarding their resolution.

- 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 intend to be guided by the Code of Conduct for United States Judges and other applicable authority in resolving any conflicts of interest.

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

Throughout my tenure as an attorney and as a magistrate judge I have devoted a considerable amount of time and effort to a wide variety of efforts to help the disadvantaged.

I was a founding member of the Police/*Barrio* Project. The project, while no longer operating, was an effort to improve the relationship between the Philadelphia Police Department and the Latino Community in Philadelphia. As an attorney I spoke regularly at community centers, high schools, intermediate schools and elementary schools on behalf of the Project along with members of the Philadelphia Police Department.

I served on the Board of Trustees of the Russell Byers Charter School ("RBCS") for seven years. The RBCS serves an urban population of students in Philadelphia many of whom come from very challenging home and social circumstances.

I currently serve on the Board of the Make-a-Wish Foundation for Philadelphia and the Susquehanna Valley. Make-a-Wish provides "wishes" to children and their families suffering from serious medical conditions.

I have presented to a wide variety of groups including but not limited to the Philadelphia Bar Association, the United States Attorney's Office, the National Conference of *La Raza*, the Philadelphia District Attorney's Office, the Philadelphia Defender office (both the local and federal offices), and the Administrative Office of the United States Courts on a variety of issues including the federal sentencing guidelines, police/citizen relations and the ethics of representing the non-English speaking client, to name a few.

While a federal defender I developed an in-house training manual for new defenders and authored a primer of federal defense practice in the Eastern District of Pennsylvania that was widely distributed among Criminal Justice Act ("CJA") counsel. During my tenure as the CJA representative to the Administrative Office of the United States Courts for this district, I regularly provided advice to CJA counsel on a variety of representation issues.

Through my writing and speaking engagements, I have also actively promoted the importance of the use of qualified interpreters in the State and Federal courts.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interview 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 have had with the White House staff or the Justice Department regarding your nomination. Do not include any contacts with the Federal Bureau of Investigation personnel regarding your nomination.

Senators Casey and Toomey formed a selection committee in the Eastern District of Pennsylvania. After I submitted an application to this committee, I was interviewed by its co-chairs and several members, in December 2011. Thereafter, I met with Senator Casey and his staff on March 6, 2012, and I met with Senator Toomey and his staff on March 29, 2012. Since June 22, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 2, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 27, 2012, the President submitted my nomination to the Senate. On January 4, 2013, the President submitted my renomination to the Senate.

- b. Has anyone involved in the process of selecting you as a federal 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 assurance concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2012

**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) Restrepo, Luis F.	2. Court or Organization United States District Court for the Eastern District of PA	3. Date of Report 1/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 1/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 12/27/2012
7. Chambers or Office Address United States Courthouse 601 Market Street Suite 3038 Philadelphia, PA 19106		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member - Board of Directors	Make a Wish Foundation of Philadelphia and Susquehanna Valley
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. June 2006	Agreement with former law partner regarding the distribution of some fees/earnings that correspond to work done before I was appointed to the bench.
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 7

Name of Person Reporting Restrepo, Luis F.	Date of Report 1/03/2013
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME: (yours, not spouse's)
1. 2011	Temple Law School Adjunct Professor	\$15,886.00
2. 2011	National Institute for Trial Advocacy - Instructor	\$6,375.00
3. 2012	Temple Law School Adjunct Professor	\$17,392.00
4. 2012	National Institute for Trial Advocacy - Instructor	\$7,900.00

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. 2012	My spouse was employed and paid as a contract attorney with the United States Attorneys Office in 2012.
2. 2012	My spouse received payments from the City of Philadelphia Board of Pension Retirement.
3.	
4.	

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.
(Do not include 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 Restrepo, Luis F.	Date of Report 1 03 2013
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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 7

Name of Person Reporting Restrepo, Luis F.	Date of Report 1/03/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Vanguard Life Strategy Growth Fund	B	Dividend	L	F					
2. Vanguard Explorer Fund	C	Dividend	L	T					
3. Vanguard Index Fund 500	A	Dividend	M	T					
4. Vanguard Value Index Fund	A	Dividend	L	T					
5. Vanguard Energy Fund	A	Dividend	K	F					
6. Vanguard Health Care Fund	A	Dividend	K	T					
7. Vanguard Money Market Fund	A	Dividend	J	T					
8. Microsoft Stock	A	Dividend	J	T					
9. Vanguard Extended Market Fund	A	Dividend	K	T					
10. Wells Fargo Stock	A	Dividend	J	F					
11. American Century Heritage Institutional Fund	A	Dividend	K	T					
12. Philadelphia Police Credit Union - cash accounts	A	Interest	J	F					
13. Vanguard 529 Conservative Growth Portfolio Ages 11-15	B	Dividend	K	F					
14. Vanguard 529 Conservative Growth Portfolio Ages 16-18	B	Dividend	L	F					
15. Vanguard 529 Income Portfolio Ages 16-18	B	Dividend	J	T					
16. Vanguard 529 Moderate Growth Portfolio Ages 11-15	B	Dividend	M	T					
17. U.S. Government Bonds - Series EE	A	Interest	J	T					

1. Income/Gain Codes (See Columns B) and D): 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; H \$1,000,001 - \$5,000,000; I \$5,000,001 - \$50,000,000; J \$50,000,001 - \$100,000,000; K \$100,000,001 - \$500,000,000; L \$500,000,001 - \$1,000,000,000; M \$1,000,000,001 - \$5,000,000,000; N \$5,000,000,001 - \$50,000,000,000; O \$50,000,000,001 - \$500,000,000,000; P \$500,000,000,001 - \$5,000,000,000,000; Q Appraised; R Cost/Real Estate Index; S Other; T Book Value; U Other; V Estimated.

2. Value Codes (See Columns C) and D): 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; P \$1,000,001 - \$5,000,000; Q \$5,000,001 - \$25,000,000; R \$25,000,001 - \$50,000,000; S More than \$50,000,000.

3. Value Method Codes (See Column C 2): R Cost/Real Estate Index; S Other; T Book Value; U Other; V Estimated.

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting Restrepo, Luis F.	Date of Report 1/03/2013
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
18. PNC Bank - cash accounts		Interest	J	T						
19.										
20.										
21.										
22.										
23.										
24.										
25.										
26.										

1. Income Grit 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; F: \$50,001 - \$100,000; G: \$100,001 - \$1,000,000; H: \$1,000,001 - \$5,000,000; I: \$5,000,001 - \$10,000,000; J: \$10,000,001 - \$25,000,000; 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

2. Value Codes (See Columns C1 and D3): 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; H: \$1,000,001 - \$5,000,000; I: \$5,000,001 - \$10,000,000; J: \$10,000,001 - \$25,000,000; K: \$25,000,001 - \$50,000,000; L: More than \$50,000,000

3. Value Method Codes (See Column C2): Q: Appraisal; R: Cost (Real Estate Only); S: Assessment; T: Book Value; U: Other; V: Unstated; W: Unstated

FINANCIAL DISCLOSURE REPORT
Page 6 of 7

Name of Person Reporting	Date of Report
Restrepo, Luis F.	1-03-2013

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

FINANCIAL DISCLOSURE REPORT

Page 7 of 7

Name of Person Reporting	Date of Report
Restrepo, Luis F.	1-03-2013

IX. CERTIFICATION.

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

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

Signature: *s/* **Luis F. Restrepo**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		7	800	Notes payable to banks-secured			
U.S. Government securities - Series EE		37	550	Notes payable to banks-unsecured			
Listed securities - see schedule		751	896	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		7	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned - personal residence		400	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		21	700				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		188	008				
				Total liabilities			0
				Net Worth	1	413	954
Total Assets	1	413	954	Total liabilities and net worth	1	413	954
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
Microsoft stock	\$ 7,057
Vanguard Energy Fund	36,623
Vanguard Explorer Fund	93,764
Vanguard Extended Market Fund	34,043
Vanguard Health Care Fund	21,114
Vanguard Index 500 Fund	129,608
Vanguard Life Strategy Growth Fund	77,102
Vanguard Money Market Fund	2,068
Vanguard Value Index Fund	60,395
Wells Fargo stock	1,098
American Century Heritage Institutional Fund	27,537
Vanguard 529 Conservative Growth Portfolio Ages 11-15	37,444
Vanguard 529 Conservative Growth Portfolio Ages 16-18	57,930
Vanguard 529 Income Portfolio Ages 16-18	14,207
Vanguard 529 Moderate Growth Portfolio Ages 11-15	151,906
Total Listed Securities	<u>\$ 751,896</u>

AFFIDAVIT

I, Luis Felipe Restrepo, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

November 28, 2012
(DATE)

L. Felipe Restrepo
(NAME)

J. R. Rice
(NOTARY)
U.S. Magistrate Judge
Timothy R. Rice

STATEMENT OF JEFFREY L. SCHMEHL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Judge SCHMEHL. Madame Chairman, Ranking Member Lee, I want to thank you for this opportunity. I'd first like to thank Senators Casey and Toomey for their warm and kind remarks and their confidence in recommending me to the President. I'd also like to thank the President for honoring me with this nomination. I'd like to thank the Chairman, the Ranking Member, and all the Members of this Committee for scheduling this hearing so promptly.

Since most of my colleagues took up most of the audience, I don't have a whole lot of people here.

[Laughter.]

Judge SCHMEHL. But I'll explain that. My wife, April, is behind me, and she has been my rock and support through this whole process. My three children have all graduated from college and are gainfully employed, thank God. They are scattered all over the United States at various locations and they cannot be here.

My father, unfortunately, passed away two years ago. My mother is 86 and in not good health, so she's back in Reading and she doesn't know how to work a computer, so she's not watching it on Webcast.

[Laughter.]

Judge SCHMEHL. I'd also like to recognize two of my colleagues who I've worked very closely with over the last five years that have come down here. Christian Leinbach is the chairman of the Berks County Commissioners and our District Attorney, John Adams, is seated behind my wife. So, John Adams is back in Washington.

[Laughter.]

Judge SCHMEHL. I would also like to recognize my staff at the Berks County courthouse. They are watching, I'm sure, my friends and colleagues in Reading. I've got a lot of messages that they're going to be watching. I just appreciate this opportunity, and I stand ready to answer any and all of your questions.

Senator HIRONO. I thank all of the nominees. We'll start with questions.

Mr. Gonzales, you are the first U.S. Attorney whose office has a full section focused exclusively on addressing crime in the Native American communities. Can you tell us more about that and what challenges might exist in combatting crime and violence on Native American reservations?

Mr. GONZALES. Certainly, Madame Chair, and thanks for the question. The—we do have a section of prosecutors in my office specifically dedicated to working felony prosecutions relating to Indian country. That was important to me to set up because of the prevalence of violent crime and drug trafficking that occurs in all 22 of our Indian tribes and Pueblos in New Mexico. It was important because it takes a special expertise to do the kind of work that's done in that section.

But beyond that, it takes a relationship, in my opinion, that must be developed between my office and, really, the Federal Government and the people that live in each one of these communities. These 22 Indian tribes and Pueblos are scattered all over New

Mexico so there's a geographic challenge, just being able to reach out and do the job that we're supposed to be doing. Lots of time and road miles are expended to be able to have that presence.

There is a part of the job that requires investigation and prosecution, and there's a part of it that requires relationship building, and there's a part of it that requires training of law enforcement. That takes special expertise, and that's the idea behind the section.

[The biographical information of Justice Schmehl follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).
Jeffrey L. Schmehl
2. **Position**: State the position for which you have been nominated.
United States District Judge for the Eastern District of Pennsylvania
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.
Berks County Court of Common Pleas
633 Court Street, 8th Floor
Reading, Pennsylvania 19601
4. **Birthplace**: State year and place of birth.
1955; Reading, Pennsylvania
5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
1977 – 1980, University of Toledo School of Law: J.D., 1980
1973 – 1977, Dickinson College: B.A., 1977
6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.
1998 – Present
Berks County Court of Common Pleas
633 Court Street, 8th Floor
Reading, Pennsylvania 19601
President Judge (2007 – Present)
Judge (1998 – 2007)

1999 – Present
Alvernia College
400 Saint Bernadine Street
Reading, Pennsylvania 19607
Adjunct Professor

1986 – 1997
Rhoda, Stoudt & Bradley
The Berkshire, 6th Floor
Fifth & Washington Streets
P.O. Box 877
Reading, Pennsylvania 19603
Partner (1988 – 1997)
Associate (1986 – 1987)

1989 – 1997
Berks County Services Center
Solicitor's Office
633 Court Street, 13th Floor
Reading, Pennsylvania 19601
Berks County Solicitor

1981 – 1986
Jeffrey L. Schmehl, Esq.
434 Penn Avenue
West Reading, Pennsylvania 19611
Solo Practitioner

1981 – 1986
Berks County District Attorney
633 Court Street, 5th Floor
Reading, Pennsylvania 19601
Assistant District Attorney

1980 – 1981
Berks County Public Defender
633 Court Street, 12th Floor
Reading, Pennsylvania 19601
Assistant Public Defender

Summer 1979
Teamsters 419 Legal Defense Fund
435 South Lawley Street
Toledo, Ohio 43609
Legal Intern

Summers 1977, 1978
Reading Contractors
No Longer in Business
Summer Employment

Other Affiliations (uncompensated):

2008 – Present
Berks County Mental Health and Developmental Disabilities Advisory Board
Berks County Services Center
633 Court Street, 15th Floor
Reading, Pennsylvania 19601
Board of Directors

1998 – 2008
Pennsylvania Conference of State Trial Judges
Administrative Office of Pennsylvania Courts
Judicial Services Department
1515 Market Street, Suite 1414
Philadelphia, Pennsylvania 19102
Executive Committee

1996 – 2001
Wyomissing Area Little League Baseball
P.O. Box 6922
Wyomissing, Pennsylvania 19610
Board of Directors

1994 – 2001
Wyomissing Basketball Club
P.O. Box 6831
Wyomissing, Pennsylvania 19610
Vice President

1994 – 1999
Wyomissing Area Youth Football Association
P.O. Box 6093
Wyomissing, Pennsylvania 19610
Board of Directors

1986 – 1991
Kline's Creek Park Recreational Association
Sinking Spring, Pennsylvania
(association no longer exists and has no address)
Board of Directors

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

I have not served in the military. I have 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.

Berks County Bar Association Liberty Bell Award (2010)

Cumru Township Exemplary Citizenship Award (2009)

Berks County Prison Society's W. Richard Eshelman Award (1995)

Commendation from City of Reading as Assistant District Attorney for prosecuting drug cases (1984)

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

American Bar Association

American Judicature Society

Berks County Bar Association

Chairman, Public Relations Committee (1986 – 1988)

Legal Education Committee (1995 – 1997)

Unauthorized Practice of Law Committee (1993 – 1995)

County Commissioners Association of Pennsylvania Courts and Corrections Committee

Endlich Law Club

Justice William Strong American Inns of Court

Pennsylvania Bar Association

Pennsylvania Conference of State Trial Judges

Executive Committee (2000 – 2008)

Education Committee (2009 – Present)

Self Represented Litigants Task Force

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.

Pennsylvania (1980)

There has been no lapse in membership. I am currently listed as inactive.

- 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 Third Circuit (1991)
United States District Court for the Eastern District of Pennsylvania (1981)
Pennsylvania Supreme Court (1980)

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.

Berks County Board of Elections (1999, 2001, 2003, and 2011)
Chair (1999, 2003, and 2011)

Berks County Mental Health and Developmental Disabilities Advisory Board
Board of Directors (2008 – Present)

Clover Park Athletic Association (1982 – 2012)

Commonwealth Partners Regional Conference between Judges and Legislators
Co-Chair (2002 – 2006)

Free and Accepted Masons (1985 – Present)
Scottish Rite (1986 – Present)
Shrine (2007 – Present)

Kline's Creek Park Recreational Association
Board of Directors (1986 – 1991)

Wyomissing Basketball Club
Vice President (1994 – 2001)

Wyomissing Mavericks Football League
Board of Directors (1994 – 1999)

Wyomissing Area Little League Baseball
Board of Directors (1996 – 2001)

- 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 Masons, Scottish Rite, and Shrine are fraternal service organizations that require members to be male. They do, however, have a sister organization, Eastern Star, that provides similar opportunities for females. Clover Park Athletic Association is a fraternal organization that requires members to be male. It supports youth sports in the Governor Mifflin School District and provides a scholarship to a male and female Governor Mifflin graduate every year. None of the remaining organizations listed in response to Question 11a currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

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

None.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

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

None.

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

Listed below are all of the speaking engagements that I have been able to recall or locate. I compiled the list from my own recollection and by reviewing my file of speech notes, but as I do not always use notes or retain them, there may be additional speeches for which I have no record or recollection.

October 4, 2012: Speech on differences between American and British court systems, as an introduction to the performance of Agatha Christie's "Witness for the Prosecution" at the Genesis Theatre, Reading, PA. Outline supplied.

October 3, 2012: Speech at Berks County Bar Association Naturalization Ceremony, Reading, PA. I have given a speech from the same outline at this ceremony each year since 2007. Outline supplied.

June 1, 2012: Presentations at the courthouse entitled "Welcome to the World of S.R.L. (Self-Represented Litigants)," Reading, PA. Outline and speech supplied.

May 18, 2012: Welcoming speech to accountants at Alvernia University, for program entitled "Integrity and Governance: A Symposium on Ethics, Leadership, and Accountability," Reading, PA. Outline supplied.

April 19, 2012: Presentation explaining formation of the Berks County Self-Represented Litigant Task Force for a seminar of the Pennsylvania Conference of State Trial Judges, Pittsburgh, PA. I have no notes, transcript, or recording, though my outline for the speech of June 1, 2012, listed above, reflects the

content. The Pennsylvania Conference of State Trial Judges is administered by the Administrative Office of Pennsylvania Courts, Judicial Services Department, 1515 Market Street, Suite 1414, Philadelphia, PA 19102.

January 2, 2012: Remarks at inauguration of Mayor Vaughn Spencer, Reading, PA. I have no notes, transcript, or recording. The address for the City of Reading is 815 Washington Street, Reading, PA 19601.

December 14, 2011: Remarks at retirement party honoring Judge Albert A. Stallone, Reading, PA, wishing him a happy retirement. I have no notes, transcript, or recording. The address for the Berks County Court of Common Pleas is 633 Court Street, Reading, PA 19601.

July 21, 2011: Remarks at Third Annual Berks County Bar Association Softball Challenge, Reading, PA. I have no notes, transcript, or recording, but press coverage is supplied.

May 15, 2011: Remarks at charity softball game benefiting the Special Olympics, Reading, PA. I have no notes, transcript, or recording, but press coverage is supplied.

April 12, 2011: Welcoming remarks for Special Session of the Pennsylvania Superior Court sitting in Berks County, Reading, PA. Outline supplied.

April 6, 2011: Welcoming and closing remarks at truancy summit, Bern Township, Berks County, PA. Outline supplied.

April 2011: State of the Bench speech, Berks County Bench Bar Conference, Reading, PA. Outline supplied.

November 3, 2010: Remarks at Judge Tom Golden's Memorial Service, Reading, PA. Outline supplied.

May 20, 2010: Welcoming remarks at Minority Youth Law Enforcement Forum, Reading, PA. Outline supplied.

May 4, 2010: Keynote Speech, Berks County Law Day Luncheon, Reading, PA. Outline supplied.

April 2010: State of the Bench speech, Berks County Bench Bar Conference, Reading, PA. Outline supplied.

November 12, 2009: "Anatomy of a Civil Case," seminar presented by the Berks County Court of Common Pleas Civil Division and the Berks County Bar Association, Reading, PA. Outline supplied.

October 6, 2009: Moderator for "Judicial Ethics & Leadership: A Conversation with Berks County Judges." Reading, PA. I have no notes, transcript, or recording. The event was sponsored by Alvernia's Center for Ethics and Leadership and the Holleran Center for Community Engagement, 400 Saint Bernardine Street, Reading, PA 19607.

October 2009: State of the Bench speech, Berks County Bench Bar Conference, Reading, PA. Outline supplied.

April 2009: State of the Bench speech, Berks County Bench Bar Conference, Reading, PA. Outline supplied.

October 11, 2008: Guest speaker at Columbus Day Celebration Banquet of the United Italian Societies of Berks County, Reading, PA. Outline supplied.

May 1, 2007: Berks County Law Day Speech, Reading, PA. Outline supplied.

August 4, 1998: Criminal Justice System Panel, Reading Police Department's Citizen Police Academy, Reading, PA. Outline supplied.

1984 – 1988: Instructor on search and seizure and the law of arrest at the Reading Police Academy. I have no notes, transcripts, or recordings. The address of the Reading Police Academy is Alvernia University, Francis Hall, 400 Saint Bernardine Street, Reading, PA 19607.

At least four speeches on topics including the state of the Berks County judiciary, Berks County Court Criminal Division, the Pennsylvania Court System, and the public's role in the criminal justice system, at Berks County Lions Clubs. I have no notes, transcripts, or recordings. I have no records reflecting the dates or particular Lions Clubs.

Speeches on topics including the state of the Berks County judiciary, Berks County Court Criminal Division, the Pennsylvania Court System, and the public's role in the criminal justice system, at Berks County Rotary Clubs. I have no notes, transcripts, or recordings. I have no records reflecting the dates or particular Rotary Clubs.

Career Day Keynote Speech at Governor Mifflin High School. I have no notes, transcript, or recording. I have no record reflecting the date of this event. The address of Governor Mifflin High School is 101 South Waverly Street, Shillington, PA 19607.

Career Day Speech at Reading High School. I have no notes, transcript, or recording. I have no record reflecting the date of this event. The address of Reading High School is 801 North 13th Street, Reading, PA 19604.

Career Day Speech at Wyomissing Area Junior/Senior High School. I have no notes, transcript, or recording. I have no record reflecting the date of this event. The address of Wyomissing Area Junior/Senior High School is 630 Evans Avenue, Wyomissing, PA 19610.

Speeches and teaching on the justice system at Alvernia University Seniors College. I have no notes, transcripts, or recordings. I have no records reflecting the dates of these events. The address of Alvernia University Seniors College is 400 Saint Bernardine Street, Reading, PA 19607.

- 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.

Holly Herman, *President Judge Lives in Whirlwind*, READING EAGLE, Dec. 17, 2012. Copy supplied.

Mike Urban, *Longtime District Judge Ready to Retire. Travel*, READING EAGLE, Dec. 12, 2012. Copy supplied.

Holly Herman, *Berks Judge Jeffrey L. Schmehl Nominated to Federal Post*, READING EAGLE, Nov. 27, 2012. Copy supplied.

Holly Herman, *Digital Devices No Match for Stenographers in Berks Courts*, READING EAGLE, Sept. 18, 2012. Copy supplied.

Kimberly Davidow, *County Expands Court Program to Help Veterans in Trouble*, WFMZ-TV 69 News, Jan. 9, 2012. Copy supplied.

Holly Herman, *County To Expand Veterans Court*, READING EAGLE, Jan. 9, 2012. Copy supplied.

Holly Herman, *Foreclosure: 'This has been a nightmare.'* READING EAGLE, Dec. 19, 2011. Copy supplied.

Pam Cunningham, *Twitter Plays Key Role in Media's Coverage of PSU Court Hearings*, WFMZ-TV 69 News, Dec. 15, 2011. Copy supplied.

Holly Herman, *Repaired and Ready for Justice: Services Center Courtrooms Renovated*, READING EAGLE, Dec. 6, 2011. Copy supplied.

Holly Herman, *Berks Judge Signs Court Order to Help Avoid Foreclosures*, READING EAGLE, Dec. 3, 2011. Copy supplied.

Holly Herman, *Forming Their Own Attorneys: Self-Representation on Rise*, READING EAGLE, Nov. 14, 2011. Copy supplied.

Holly Herman, *Berks President Judge Backs Video Cameras in High-Profile Cases*, READING EAGLE, Sept. 24, 2011. Copy supplied.

Berks County Judge: Be on the Lookout for Jury Duty Scams, WFMZ-TV 69 News, Aug. 25, 2011. Copy supplied.

Dwayne Parker, *Program Would Certify Court Interpreters*, WFMZ-TV 69 News, Aug. 24, 2011. Copy supplied.

Holly Herman, *Courthouse, Services Center Evacuated, Closed*, READING EAGLE, Aug. 24, 2011. Copy supplied.

Murder Trial Reignites Debate Over Cameras in the Courtroom, WFMZ-TV 69 News, Aug. 17, 2011. Copy supplied.

Mary Young, *Courtrooms Getting Repair Priority*, READING EAGLE, July 14, 2011. Copy supplied.

Holly Herman, *City Attorney to Lead State, Berks Young Lawyers Groups*, READING EAGLE, June 22, 2011. Copy supplied.

Holly Herman, *Water in the Court*, READING EAGLE, June 14, 2011. Copy supplied.

Holly Herman, *Closed-Circuit Court Proceedings Saving Berks Money*, READING EAGLE, June 13, 2011. Copy supplied.

Holly Herman, *John Adams Checks in for Law Day*, READING EAGLE, May 4, 2011. Copy supplied.

Holly Herman, *State Superior Court to Hold Sessions in Berks*, READING EAGLE, Feb. 26, 2011. Copy supplied.

Holly Herman, *Xavios to Run Against Lachina in New District*, READING EAGLE, Feb. 20, 2011. Copy supplied.

Holly Herman, *District Judge Seat in City Eliminated*, READING EAGLE, Feb. 16, 2011. Copy supplied.

Holly Herman, *Closing of Reading District Judge Office Recommended*, READING EAGLE, Dec. 21, 2010. Copy supplied.

Holly Herman, *Berks President Judge to Seek Seat on Federal Bench*, READING EAGLE, Dec. 7, 2010. Copy supplied.

Holly Herman, *Court Employees Must Adhere to New Code of Conduct*, READING EAGLE, Nov. 27, 2010. Copy supplied.

Holly Herman, *Committee to Recommend Golden's Successor: Panel Will Give Name to State's U.S. Senators. Who Will Then Suggest Next Judge to Obama*, READING EAGLE, Aug. 7, 2010. Copy supplied.

Riley Yates, *Retired Judges Get Paid to Return to the Bench*, THE MORNING CALL, May 30, 2010. Copy supplied.

Holly Herman, *Good Morning Reader: Judge Honored for Her Impact on Women in Law*, READING EAGLE, May 15, 2010. Copy supplied.

Holly Herman, *Pennsylvanians Likely to Continue Electing Their Judges: Sampling of Berks Legal Community Reveals Little Support for Appointing Judges to Posts*, READING EAGLE, Dec. 25, 2009. Copy supplied.

Holly Herman, *Work Phones: What Rights Do You Have?: Berks Judges and Investigators Are Among the Many Interested in a Federal Case About Privacy and Personal Use of Devices Issued by Employers*, READING EAGLE, Dec. 19, 2009. Copy supplied.

Dan Kelly, *Parking Authority Tickets To Be Handled by 4 District Judges Instead of 1*, READING EAGLE, Dec. 16, 2009. Copy supplied.

Dan Kelly, *Officials Say Courtroom Inside RHS in the Works: Idea First Proposed 5 Years Ago: Recent Violence Revives Interest*, READING EAGLE, Nov. 11, 2009. Copy supplied.

Holly Herman, *Court Simplifying Some Forms*, READING EAGLE, June 22, 2009. Copy supplied.

Holly Herman, *Jeffrey L. Schmehl, Berks County President Judge*, READING EAGLE, June 10, 2009. Copy supplied.

Holly Herman, *Lawsuits Against Doctors Decline: Judges, Lawyers Credit Rulings by High Court*, READING EAGLE, May 4, 2009. Copy supplied.

Dan Kelly, *Community Leaders Understand the Importance of Newspapers*, READING EAGLE, Apr. 28, 2009. Copy supplied.

Joe Scoboria, *Finding Some Order in the Court With...Jeffrey L. Schmehl*, BERKS COUNTY LIVING, Mar. 2009, at 40. Copy supplied.

Holly Herman, *New Juror Lists Will Include More Names: A State Law Strives For Panels that Better Represent Populations*. READING EAGLE, Oct. 6, 2008. Copy supplied.

John Fidler, *A Local Judicial Roundtable Debates '12 Angry Men.'* READING EAGLE, Sept. 7, 2008. Copy supplied.

Holly Herman, *Justice is Served on Timely Basis: Berks Court Officials Praise District Attorney John T. Adams' Office for Swift Action on Criminal Cases*. READING EAGLE, Aug. 4, 2008. Copy supplied.

Holly Herman, *Judge Wants Court in Prison: Paul M. Yatron Says He Could Process Cases for Defendants in Crimes Where There Are No Victims*. READING EAGLE, July 26, 2008. Copy supplied.

Dan Kelly, *Berks Judge Empanels Group To Review Regulations on Constables*. READING EAGLE, July 7, 2008. Copy supplied.

Dan Kelly, *Panel to Review Rules on Constables: The President Judge Says He Decided to Review the Regulations After Learning That Three of the Elected Officials Each Made About \$250,000 Last Year*. READING EAGLE, July 7, 2008. Copy supplied.

Mary E. Young, *New Jury Lists Mean More Would Be Called: The State May Provide Berks County with Names From Voting, Tax and Welfare Records. Now Only Driver's Licenses and State Identification Cards Are Used to Generate Jury Pools*. READING EAGLE, July 7, 2008. Copy supplied.

Dan Kelly, *Constables' Pay High. But Job Can Be Risky*. READING EAGLE, June 2, 2008. Copy supplied.

Holly Herman, *Judges Given Books on Sex Crime Laws*. READING EAGLE, May 3, 2008. Copy supplied.

Reading Eagle, Pa., Area Digest Column. READING EAGLE, Apr. 2, 2008. Copy supplied.

Holly Herman, *Career of Retired Judge, 86, Recalled: Berks County Senior Judge Frederick Edenharter Died Thursday*. READING EAGLE, Mar. 29, 2008. Copy supplied.

Holly Herman, *Berks Official is Facing Contempt Hearing*. READING EAGLE, Mar. 26, 2008. Copy supplied.

Erin Negley and Steven Henshaw. *Noted Reading Attorney Loses Battle with Cancer*. READING EAGLE, Mar. 16, 2008. Copy supplied.

Holly Herman. *Retired District Judge is Honored: John F. Dougherty, Who Stepped Down Feb. 26, Looks Back on a Law Enforcement Career that Spanned 57 Years -- 40 Of Them In Berks*. READING EAGLE, Mar. 8, 2008. Copy supplied.

Holly Herman. *Local Attorneys Promise Outreach to People Who Don't Speak English*. READING EAGLE, Feb. 17, 2008. Copy supplied.

Holly Herman. *Review of Courts Slated*. READING EAGLE, Jan. 8, 2008, at B1. Copy supplied.

Holly Herman. *Rowley Takes Oath as Judge; Thanks Mother: Lawyers and New Colleagues Congratulate the Comru Township Resident at the Ceremony in the Courthouse*. READING EAGLE, Jan. 5, 2008. Copy supplied.

Holly Herman. *Ex-Prosecutor Named Top Assistant by Incoming DA: Theresa Johnson Hopes to Facilitate Communication Among Law-Enforcement Agencies. Her Boss, John T. Adams, Will Take Office Monday*. READING EAGLE, Jan. 3, 2008. Copy supplied.

Holly Herman. *Berks President Judge Ready for Retirement: An Expert in Juvenile Justice Issues, Arthur E. Grim, 64, Will End a 20-Year Career*. READING EAGLE, Dec. 9, 2007. Copy supplied.

Holly Herman. *Vote by Peers Makes Schmehl President Judge: He is Named to Replace Arthur E. Grim. But an Official Vote Will Not Be Taken Until Jan. 7, the Day Grim Retires*. READING EAGLE, Oct. 17, 2007. Copy supplied.

Holly Herman. *Added Benefit Seen if Pools of Jurors Grow: A Proposal to Effectively Expand the Ranks of Those Eligible to Serve Would Result in Panels that Better Reflect the Community, Berks Court Officials Say*. READING EAGLE, June 25, 2007. Copy supplied.

Mike Urban. *Umpire for Hire Settles Real Disputes in Fantasy Baseball*. READING EAGLE, Mar. 17, 2007, at A1. Copy supplied.

Holly Herman. *Schmehl Finds Being a Judge an Eye-Opener*. READING EAGLE/READING TIMES, Feb. 17, 1998, at B4. Copy supplied.

John D. Forester, Jr.. *Schmehl Gets Nod for Judgeship*. READING EAGLE, May 21, 1997, at A1. Copy supplied.

Dawn Drago. *Acts Not Legal, Solicitor States*. READING EAGLE, Apr. 24, 1991, at 8. Copy supplied.

Connie Andrews, *Trash Plan Defeat Apparent*, READING EAGLE/READING TIMES, Nov. 3, 1990, at A1. Copy supplied.

Connie Andrews, *County Decides to Honor Trash Contracts*, READING EAGLE, Mar. 22, 1990, at A1. Copy supplied.

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

In May of 1997, I was nominated by both parties for a judicial position in the Berks County Court of Common Pleas. I was elected to the bench in November 1997, and sworn into office in January 1998. In 2007, I was appointed to a five-year term as President Judge in the Berks County Court of Common Pleas, where I remain today.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 180
- i. Of these, approximately what percent were:

jury trials:	95%
bench trials:	5%
civil proceedings:	33%
criminal proceedings:	67%

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

Commonwealth v. Payero, 17 Pa. D. & C.5th 73 (C.P. Berks 2010).
Nationwide Mut. Ins. Co. v. Gingrich, 17 Pa. D. & C.5th 90 (C.P. Berks 2010).
Volutza v. McBryan, 12 Pa. D. & C.5th 487 (C.P. Berks 2010).
Today's Hous. v. Times Shamrock Comm'ns Inc., 12 Pa. D. & C.5th 337 (C.P. Berks 2010).
Kerns v. Chiodo, 11 Pa. D. & C.5th 191 (C.P. Berks 2010).
Lambert v. Katz, 11 Pa. D. & C.5th 260 (C.P. Berks 2010).
Orange Stones Co. v. Borough of Hamburg Zoning Hearing Board, 11 Pa. D. & C.5th 455 (C.P. Berks 2010).
Commonwealth v. McFarlin, 8 Pa. D. & C.5th 330 (C.P. Berks 2009).
Detwiler v. Larsen, 7 Pa. D. & C.5th 468 (C.P. Berks 2009).
Department of General Services v. Firetree Ltd., 6 Pa. D. & C.5th 242 (C.P. Berks 2008).
Reyes v. Wagner, 5 Pa. D. & C.5th 225 (C.P. Berks 2008).
Constanzo v. Yetzer, 5 Pa. D. & C.5th 310 (C.P. Berks 2007).
Kerper v. Educators Mutual Life Ins. Co., 71 Pa. D. & C.4th 413 (C.P. Berks 2004).

Bender v. Exeter Township School District, 63 Pa. D. & C.4th 414 (C.P. Berks 2003).

Dashner v. Hamburg Center of the Department of Public Welfare, 62 Pa. D. & C.4th 380 (C.P. Berks 2003).

Santiago v. Bishop, 63 Pa. D. & C.4th 177 (C.P. Berks 2003).

Commonwealth v. Keller, 57 Pa. D. & C.4th 429 (C.P. Berks 2002).

Commonwealth v. Mehlman, 59 Pa. D. & C.4th 277 (C.P. Berks.2002).

Wing Pointe Corporation v. Pennsylvania Liquor Control Board, 57 Pa. D. & C.4th 529 (C.P. Berks 2002).

- 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. *Vojtasek v. Diocese of Allentown*, No. 04-14021 (C.P. Berks Dec. 15, 2005). *aff'd*, 916 A.2d 637 (Pa. Super. Ct. 2006). My opinion is supplied.

A former student brought an action against the Catholic diocese, a Catholic high school, and various bishops, alleging sexual abuse by a priest who was a teacher at her high school while she attended it. Defendants' motion for judgment on the pleadings was granted based on a finding that the statute of limitations was not tolled by Plaintiff's allegation that the school fraudulently concealed the teacher's abuse from the student's mother. The Superior Court affirmed.

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2. *Commonwealth v. Boxley*, Criminal Docket No. 99-4792 (C.P. Berks June 8, 2005). *aff'd*, 948 A.2d 742 (Pa. 2008). My opinion and supplemental opinion are supplied.

Defendant was involved in a premeditated shooting of local drug rival, on city streets, during the middle of the day. Defendant was convicted of capital murder

and aggravated assault, and sentenced to death. The Pennsylvania Supreme Court affirmed the sentence, noting there was sufficient evidence to establish aggravating factors.

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3. *Volutza v. McBryan*, No. 03-15721 (C.P. Berks June 3, 2010), *aff'd*, 45 MDA 2010 (Pa. Super. Ct. Aug. 16, 2011). My opinion is supplied.

This was a medical malpractice action, wherein the decedent visited a hospital complaining of chest pains and heart attack-like symptoms. He was examined and given a stress test, after which the doctors concluded it was most likely a panic attack, and that the test was fine. A radiologist subsequently reviewed the test and noticed abnormalities, including a heart defect. The decedent died the next day of a heart attack, before his doctors could relay the radiologist's findings. The jury trial resulted in a \$4 million verdict for Plaintiff. I concluded entry of judgment was proper.

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4. *Commonwealth of Pennsylvania Department of General Services v. Firetree, Ltd.*, No. 08-6671 (C.P. Berks Oct. 17, 2008), *appeal dismissed*, 1545 CD 2008 (Pa. Commw. Ct. Apr. 28, 2009). My opinion is supplied.

Plaintiff and Defendant executed a commercial lease whereby Defendant would operate a drug and alcohol treatment center. Plaintiff properly exercised an option not to renew the lease. An ejectment action was filed and granted. Defendant petitioned to open/strike the confessed judgment because it had added fixtures and was trying to renegotiate the lease to maintain the property until the fixtures were amortized. I denied the petition and further enjoined Defendant from attempting to remove fixtures upon ejectment. The Commonwealth Court dismissed Defendant's claims as moot because the court's order had no preclusive effect on Defendant's pending Board of Claims action.

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5. *In re Condemnation by County of Berks*, No. 05-16489 (C.P. Berks Aug. 22, 2006), *aff'd*, 914 A.2d 962 (Pa. Commw. Ct. 2007). My opinion is supplied.

The county filed a declaration of taking for the "Antietam Lake" property, thereby condemning land owned by the city for use as a public park. The investment company that had negotiated with the city for an option to purchase tenancy in common in said property filed preliminary objections. I dismissed those objections and sustained the county's objections. The Commonwealth Court affirmed, noting the company lacked standing because it failed to obtain an option to purchase property in question.

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6. *Lichtman v. Gibbons*, No. 03-6359, 46 Berks County Law Journal 257 (C.P. Berks Feb. 24, 2004). My opinion is supplied.

A New York woman filed suit in New York against a Berks County man, in a dispute stemming from a failed professional and romantic relationship between the two. Plaintiff filed in Berks County a Petition for Issuance of a Subpoena to depose the man's wife, attaching and requesting enforcement of an order issued by the New York judge directing the wife to submit to deposition. On the wife's motion, I quashed the subpoena on the grounds of personal jurisdiction and marital privilege. The case was dismissed by the Superior Court for failure to file a brief.

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7. *Bender v. Exeter Township School District*, 63 Pa. D. & C.4th 414 (C.P. Berks 2003), *aff'd*, No. 1182 CD 2003 (Pa. Commw. Ct. Dec. 16, 2003).

A school principal suspended a student and attempted to place her in a disruptive students' unit in an alternate school, and the student's family sought an injunction. I found for the student because the school had violated its contract with the student, which provided she would only be suspended for future violations and made no mention of alternate school placement. The Superior Court affirmed.

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8. *Keppley v. School District of Twin Valley*, No. 01-10464 (C.P. Berks June 4, 2004), *aff'd*, 866 A.2d 1165 (Pa. Commw. Ct. 2005). My opinion is supplied.

A high school student sought class certification in her action against a school district, alleging violations of state and federal law in connection with the operation of electronic surveillance and recording systems on school buses. I denied certification because the student would not have fairly and adequately asserted and protected the interests of the class. The Commonwealth Court affirmed.

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9. *Commonwealth v. Greth*, Criminal Docket No. 99-1250 (C.P. Berks Jan. 26, 2000), *aff'd*, 758 A.2d 692 (Pa. Super. Ct. 2000). My opinion is supplied.

Defendant failed field sobriety tests and consented to a blood test that showed his BAC was 0.135%. Defendant challenged the sufficiency of the evidence to sustain his conviction of driving with a BAC of 0.10% or greater, because the Commonwealth did not present expert testimony to refute Defendant's BAC expert. The Superior Court upheld a sentence of 30 days to 23 months.

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10. *Commonwealth v. McMullen*, Criminal Docket No. 98-3261 (C.P. Berks Dec. 1, 1999), *aff'd*, 756 A.2d 58 (Pa. Super. Ct. 2000). My opinion is supplied.

Defendant was convicted of driving under the influence as a minor and sentenced to 48 hours to 23 months incarceration. Defendant challenged the constitutionality of the DUI statute, arguing that it was impermissibly vague, that

it did not have a sufficient relationship to accomplishing its purpose, and that it created a presumption that undermined the Commonwealth's obligation to prove an element of the crime. The Superior Court affirmed my ruling against Defendant on these points, refused to consider an additional argument about presumptions in the statute because it was not raised at trial, and affirmed the sentence.

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

1. *Vojtasek v. Diocese of Allentown*, No. 04-14021 (C.P. Berks Dec. 15, 2005), *aff'd*, 916 A.2d 637 (Pa. Super. Ct. 2006). My opinion is supplied in response to Question 13(c).

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3. *Volutza v. McBryan*, No. 03-15721 (C.P. Berks June 3, 2010), currently pending decision in Superior Court. My opinion is supplied in response to Question 13(c).

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4. *Commonwealth of Pennsylvania Department of General Services v. Firetree, Ltd.*, No. 08-6671 (C.P. Berks Oct. 17, 2008), *appeal dismissed*, 1545 CD 2008 (Pa. Commw. Ct. Apr. 28, 2009). My opinion is supplied in response to Question 13(c).

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6. *Lichtman v. Gibbons*, No. 03-6359, 46 Berks County Law Journal 257
(C.P. Berks Feb. 24, 2004). My opinion is supplied in response to Question 13(c).

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7. *Bender v. Exeter Township School District*, 63 Pa. D. & C.4th 414 (C.P.
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8. *Keppley v. School District of Twin Valley*, No. 01-10464 (C.P. Berks June
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9. *Commonwealth v. Greth*, Criminal Docket No. 99-1250 (C.P. Berks Jan. 26, 2000), *aff'd*, 758 A.2d 692 (Pa. Super. Ct. 2000). My opinion is supplied in response to Question 13(c).

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10. *Commonwealth v. McMullen*, Criminal Docket No. 98-3261 (C.P. Berks Dec. 1, 1999), *aff'd*, 756 A.2d 58 (Pa. Super. Ct. 2000). My opinion is supplied in response to Question 13(c).

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- 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.

Nationwide Mutual Insurance Co. v. Gingrich, No. 09-2266 (C.P. Berks June 21, 2010), *rev'd*, 184 MDA 2010 (Pa. Super. Ct. Mar. 1, 2011). Opinions supplied. Plaintiff and Defendant entered into arbitration over medical and wage loss benefits. Defendant requested a revised award because the arbitrator initially ruled contrary to a stipulation between the parties regarding the time period covering wage loss benefits. The arbitrator issued a revised award, factoring in the stipulation. Plaintiff appealed based on the doctrine of *functus officio*, under which an arbitrator's authority is ordinarily exhausted after making and publishing a final award. I found that the revised award was proper, because the arbitrator had failed to dispose of every issue that was presented to him. The Superior Court reversed, stating that the original award did not contain an irregularity significant enough to warrant issuance of a revised award.

Orange Stones Co. v. City of Reading Building/Fire Board of Appeals, No. 08-14947 (C.P. Berks May 4, 2011), *rev'd*, 287 CD 2011 (Pa. Commw. Ct. Sept. 27, 2011). Opinions supplied. Defendant Board of Appeals ruled that Reading's Chief Building Official properly issued an "Enforcement Notice/Cease of Operations Order" to Plaintiff because its building lacked the required occupancy permit. I affirmed because the city had presented substantial eyewitness and documentary evidence showing that the building had changed in use from its previous occupant, thus requiring a new permit. The Commonwealth Court reversed, stating that the City's evidence was insufficient to sustain their burden, and that Plaintiff's evidence was improperly discredited by the trial court.

City of Reading v. FireTree, Ltd., No. 08-12204 (C.P. Berks Jan. 27, 2009), *rev'd*, 984 A.2d 16 (Pa. Commw. Ct. 2009). My opinion supplied.

After Defendants purchased a building and began to move in equipment and conduct business, the city issued an order to stop operations because a zoning permit and certificate of occupancy were needed due to a change in use. Defendants' appeal to the zoning hearing board, arguing there had been no change in use, was stayed. The city filed for a preliminary injunction to prevent Defendants from conducting operations. The city proffered testimony indicating people were working on the premises, but Defendants indicated only preparatory work was being done. I entered an order permitting Defendants to conduct preparatory work but not regular business, ordered limited discovery, and continued the hearing. After further continuance, Defendants appealed. My opinion held there were reasonable grounds for an injunction preventing any modifications to the property before the parties could present evidence as to whether permits were necessary. I also entered an order indicating the court would take no further action pending the appeal. The Commonwealth Court first held that the matter should have proceeded pending the appeal, because the underlying question regarding the permits was ancillary to the appeal of the temporary injunction. The Commonwealth Court also reversed the preliminary injunction, finding the continuation of business operations did not present a risk of immediate and irreparable harm to the public.

Stankiewicz v. City of Reading, No. 00-5768 (C.P. Berks May 10, 2007), *rev'd*, 466 CD 2007 (Pa. Commw. Ct. Feb. 26, 2008). Opinions supplied.

In this case, I considered the validity of various local ordinances relating to "dangerous" or "aggressive" dogs, defining certain breeds as more dangerous and setting restraint and muzzling requirements. Plaintiffs, who were pit bull owners, argued the ordinances were preempted by a 1990 Pennsylvania state law. The City argued the local ordinance was not preempted because it was passed several years after the Pennsylvania state law. I agreed and granted the City's Motion for Summary Judgment. The Commonwealth Court reversed, stating that the legislative preemptive intent was clear and ruling otherwise would differentiate between local dog laws passed before and after the 1990 statute. A dissenting opinion was authored that would have affirmed my ruling and supported my interpretation of the legislative intent behind the state ordinance.

Greth Development Group, Inc. v. Zoning Hearing Board of Lower Heidelberg Township, No. 05-3828 (C.P. Berks Aug. 9, 2006), *rev'd*, 918 A.2d 181 (Pa. Commw. Ct. 2007). My opinion supplied.

A real estate developer sought to construct a residential development on a tract zoned partly agricultural and partly residential, and applied for a special exception to allow residential use on the portion zoned agricultural. The ordinance expressly listed such an exception but required the provision of sewer and water facilities. The developer sought to develop the agricultural portion first, and demonstrated that the overall tract had sufficient sewer capacity for the initial phase. The zoning board denied the special exception, pre-allocating a large

amount of the sewer capacity to the future, residential-zone portion of the project. I affirmed the zoning board's denial. The Commonwealth Court reversed, reasoning that the zoning board exceeded its authority by reading into the ordinance a requirement that property zoned residential must be fully developed before allowing a special exception in an agricultural zone and that sewage capacity must be allocated to residential-zone development before agricultural-zone development. The zoning board improperly made its decision on the spirit of the ordinance rather than its express terms. Allocation of sewage capacity is instead the responsibility of the planning commission.

Township of Spring v. Zoning Hearing Board of Township of Spring, No. 05-5393 (C.P. Berks Mar. 9, 2006), *rev'd*, 2564 CD 2005 (Pa. Commw. Ct. Dec. 13, 2006). Opinions supplied.

Defendant Construction Consulting planned to develop a restaurant in excess of 7,000 square feet, which, pursuant to a township ordinance, required at least 203 off-street parking spaces. Defendant requested and received a variance to provide only 155 spaces, due to a hardship based on the irregular shape of the property and certain easements and building restrictions that were in existence. I affirmed the grant of the variance because I agreed that Defendant had met the requirements to show a hardship. The Commonwealth Court reversed, finding that Defendant could simply make the square footage of the restaurant smaller, requiring fewer parking spaces.

Barness Land Development Co., LLC v. Board of Supervisors of Washington Township, No. 03-4231 (C.P. Berks Oct. 28, 2003), *rev'd*, 852 A.2d 463 (Pa. Commw. Ct. 2004). My opinion supplied.

Barness Land Development Company filed a plan with Washington Township for the subdivision of 269.63 acres for the construction of single-family houses. In rejecting this plan, the Township relied on a recent zoning ordinance that changed the zoning classification from suburban residential to agricultural. However, Barness filed its plan prior to the lawful adoption of the zoning change. Barness appealed, and I overturned the decision of the Township, holding that the Township's rejection was improperly based upon an ordinance not yet in effect at the time of the application. Therefore, Barness was entitled to a deemed approval under Sections 508(2) and (3) of the Municipalities Planning Code. The Commonwealth Court reversed, holding that Barness was not entitled to mandamus since its right was not clear when it applied for subdivision approval. The validity of the ordinance was still pending appeal in a related case, and the Commonwealth Court reasoned that I should not have ruled until the validity of the ordinance was decided. After finding the ordinance valid in the related case, the Commonwealth Court reversed me and held that Barness was collaterally estopped from asserting that the zoning change was invalid.

Dashner v. Hamburg Center of the Department of Public Welfare, No. 00-11202 (C.P. Berks July 7, 2003), *rev'd*, 845 A.2d 935 (Pa. Commw. Ct. 2004). My opinion supplied.

Two mentally retarded men were sexually assaulted by an attendant at the Hamburg Center, a residential care facility operated by the Pennsylvania Department of Public Welfare. The residents' parents brought an action against the Commonwealth. I granted the Commonwealth summary judgment on counts concerning vicarious liability and corporate negligence, but I denied summary judgment with respect to Plaintiffs' allegations that the facility negligently hired the attendant, negligently supervised him, and failed to provide a safe treatment facility. I specifically held that the alleged torts were not institutional acts, but rather acts of the Center's employees. Thus, I concluded that sovereign immunity was inapplicable pursuant to an exception in the Sovereign Immunity Act related to acts of medical professionals employed by the Commonwealth. The Commonwealth Court disagreed, holding that the medical-professional liability exception to sovereign immunity did not apply and that the corporate theory of liability likewise did not apply to state-owned medical facilities.

Diesel Service, Inc. v. Engines, Inc., No. 02-13325 (C.P. Berks Aug. 11, 2003), *rev'd*, 457 MDA 2003 (Pa. Super. Ct. Aug. 19, 2004). Opinions supplied. Following a three-week trial, a jury entered a verdict in the amount of \$75,000 in favor of Plaintiff/Appellant Diesel Service, Inc., finding that Defendant/Appellee/Cross-Appellant Fredericks misappropriated Diesel's confidential customer list, but that Fredericks did not commit a breach of fiduciary duty in doing so. Diesel moved for judgment notwithstanding the jury's verdict that Fredericks did not breach a fiduciary duty. I denied this post-trial motion and Diesel appealed. Fredericks and his wife cross appealed from the verdict that they misappropriated confidential information, that Mrs. Fredericks was part of a civil conspiracy, and from the award of damages. The Superior Court affirmed the trial court with respect to the cross appeal of the Frederickses, but reversed on the trial court's denial of judgment notwithstanding the verdict on the breach of fiduciary duty claim. The Superior Court did not remand for a new trial on damages, but simply remanded for an entry of JNOV on that count only since Diesel's request for a new trial was made in the alternative. Diesel did not request a new trial in the event JNOV was granted, and the damage award was not challenged, so everything essentially remained the same.

City Council of Reading v. Eppihimer, No. 01-3624 (C.P. Berks Jan. 23, 2003), *rev'd*, 835 A.2d 883 (Pa. Commw. Ct. 2003). My opinion supplied. The City Council sought a declaratory judgment that the City Council and not the mayor had the authority to fill two newly created staff positions. I held that the doctrine of separation of powers, along with specific language in the City Charter, gives only City Council the authority to hire and fire with regard to these two positions. The Commonwealth Court reversed and held that under the City's home rule charter with the "Strong Mayor-Council Form of Government with a Managing Director," only the mayor and the City's managing director have the authority to hire and fire with regard to these positions. As a matter of first impression, the Commonwealth Court held that that the Pennsylvania State

Constitution does not provide for a separation of powers doctrine at the local government level.

Commonwealth v. Keller, CP-06-CR-0005189-2001 (C.P. Berks June 6, 2002), *rev'd*, 823 A.2d 1004 (Pa. Super. Ct. 2003). My opinion supplied.

The defendant was charged with two counts of driving under the influence of alcohol and other driving-related offenses. He filed a motion to suppress and a motion for a writ of habeas corpus. I granted defendant's motion to suppress, but only as to blood test results, and granted the defendant's motion for a writ of habeas corpus. I based my decision on a Pennsylvania Supreme Court opinion, *Commonwealth v. Shaw*, 770 A.2d 295 (Pa. 2001). The Commonwealth appealed. The Superior Court held that *Shaw* was distinguishable from the case at bar and that the police did not need a search warrant to obtain the results of a blood test where blood was drawn from the defendant by the hospital for medical treatment purposes.

Commonwealth v. Mehlman, CP-06-CR-0004080-2001 (C.P. Berks June 6, 2002), *rev'd*, 208 MDA 2002 (Pa. Super. Ct. May 20, 2003). Opinions supplied. Same as *Keller*, above.

Commonwealth v. Oliver, CP-06-CR-0000843-1999 (C.P. Berks Mar. 19, 2002), *aff'd*, 1843 MDA 2001 (Pa. Super. Ct. Jan. 13, 2003), *later remanded*, 1843 MDA 2001 (Pa. Super. Ct. Oct. 29, 2003), *dismissed on remand*, (C.P. Berks June 1, 2004), *subsequent appeal dismissed as moot*, 936 MDA 2004 (Pa. Super. Ct. July 20, 2004). Opinions and order supplied.

Defendant, who was charged with three counts of Attempt to Commit First Degree Murder and related charges, entered a plea of guilty on two of the three counts. As part of a plea agreement, the related charges were dismissed. I sentenced Defendant to ten to twenty years. The Defendant filed a petition under Pennsylvania's Post Conviction Relief Act, and I appointed conflict counsel to represent Defendant. Conflict counsel withdrew from the case after filing a no-merit letter. Subsequently, the Court dismissed Defendant's petition and he filed a pro se appeal. The Superior Court remanded the case for an evidentiary hearing on the following appellate claims: (1) did defense counsel's alleged ineffectiveness cause him to tender an unknowing and involuntary guilty plea?; (2) was the trial court's guilty plea colloquy ineffective?; and (3) were the Defendant's constitutional protections against double jeopardy and due process violated? I held the hearing, then issued another order dismissing the petition. Defendant filed another pro se appeal, but died in prison while this appeal was pending. The Superior Court denied the appeal as moot.

Mountain Village v. Board of Supervisors of Longswamp Township, No. 99-464 (C.P. Berks Sept. 17, 2002), *rev'd*, 828 A.2d 411 (Pa. Commw. Ct. 2003), *aff'd*, 874 A.2d 1 (Pa. 2005). My opinion supplied.

Mountain Village, a mobile home park, filed an application for a 110-unit expansion of its nonconforming use. Mountain Village paid \$6,500 to the

Township for review fees, but disputed a subsequent bill for \$14,070 in legal fees for plan review and related work by the Township's solicitor. Mountain Village filed an action in declaratory judgment, asking that the trial court find it was not required to pay any fees of the Township solicitor. I granted summary judgment to the Township, reasoning that such fees should be paid by the developer and not by the taxpayers. The Commonwealth Court reversed, holding that language in the Municipalities Planning Code, which allowed a township to charge fees for "professional consultants" or "consultants," referred only to "scientific professionals" – engineers, land surveyors, geologists and landscape architects – and did not permit charging for legal services of a township solicitor. The Supreme Court affirmed the Commonwealth Court's decision.

Mountain Village v. Board of Supervisors Longswamp Township, No. 98-12306 (C.P. Berks Jan. 13, 2003), *rev'd in part*, 2943 CD 2002 (Pa. Commw. Ct. Sept. 26, 2003). Opinions supplied.

The Board of Supervisors for Longswamp Township denied Mountain Village's application to expand its mobile home park. Mountain Village filed a series of land use appeals to the trial court, and I subsequently found that the Board's rejection of Mountain Village's application was not supported by substantial evidence, and held that the Board abused its discretion in rejecting the application. I further ordered that the previous plan approval be reinstated and that the Board review Mountain Village's final plan and materials. I also remanded the consolidated appeals to the Board for further proceedings. The Commonwealth Court affirmed me in every respect except that it reversed to the extent that my order directed the Board not to require evidence of compliance with all state, federal, and/or other water and sewer permits until after final plan approval.

Commonwealth v. Giusto, CP-06-CR-0000692-2001 (C.P. Berks Oct. 9, 2001), *rev'd*, 810 A.2d 123 (Pa. Super. 2002). My opinion supplied. Defendant was charged with two counts of stalking his ex-wife. The statute states that a person is guilty of stalking when he engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority. A "course of conduct" is defined as at least two separate acts. All of the alleged acts of stalking in the case at bar, except for one, occurred outside the borders of Pennsylvania, and Pennsylvania's Territorial Applicability statute requires that all statutes prohibiting out-of-state conduct must be written in express language. Defendant moved for a writ of habeas corpus, asking the Court to dismiss the charges for lack of jurisdiction. I granted the motion. The Superior Court reversed the dismissal, finding that the statutory section defining "course of conduct" was an evidentiary rule and not a jurisdictional bar. The Superior Court further held that the Territorial Applicability Act looks at the result of prohibited conduct.

Commonwealth v. Sanford, CP-0005310-2000 (C.P. Berks Nov. 9, 2001), *vacated in part*, 1371 MDA 2001 (Pa. Super. Ct. Oct. 17, 2002). Opinions supplied.

Defendant pleaded guilty to one count of sexual assault as a felony of the second degree. I sentenced him to five to ten years and designated him a "sexually violent predator" under Pennsylvania's Megan's law statute. This designation occurred following a hearing, at which Defendant and the Commonwealth produced conflicting expert opinions on the likelihood of Defendant to re-commit sexually violent acts. Defendant appealed, arguing that I had erred in concluding that he met the statutory definition of a sexually violent predator and in denying his constitutional challenges to the Megan's law statute. The Superior Court concluded that the opinion of the Commonwealth's expert was based upon unproven allegations and that the evidence was, therefore, insufficient to support my designation of Defendant as a "sexually violent predator."

Commonwealth v. Varallo, CP-06-CR-0004253-1999 (C.P. Berks Sept. 19, 2000), *rev'd*, 1070 MDA 2000 (Pa. Super. Ct. Apr. 3, 2001), *reh'g en banc*, (Pa. Super. Ct. Apr. 3, 2002). Opinions supplied.

Defendant was convicted at a bench trial of driving under the influence of alcohol and was sentenced to 6 days to 23 months imprisonment. Defendant had filed a pre-trial motion to suppress on the basis that the arresting officer did not have a reasonable suspicion to initiate a stop of Defendant's vehicle. I had denied the motion, but the Superior Court reversed, holding that the officer could not lawfully stop Defendant's vehicle, despite evidence that Defendant had crossed the fog line three times over a distance of three miles, because there was no evidence that Defendant's driving created a safety hazard.

Commonwealth v. Bauman, CP-06-CR-0004329-1999 (C.P. Berks July 13, 2000), *rev'd*, 679 MDA 2000 (Pa. Super. Ct. Jan. 18, 2001). Opinions supplied.

Defendant was charged with driving under the influence of alcohol and involvement in an accident involving damage to an unattended vehicle. I had granted Defendant's motion for a writ of habeas corpus as to the DUI charge. The Superior Court reversed, holding that there was sufficient evidence to establish a prima facie case because there was evidence that Defendant's vehicle matched a description given to police by an eyewitness along with other corroborating evidence of Defendant's guilt even though there was a delay in the arrest.

Commonwealth v. Espada-Alvarado, CP-06-CR-0001016-2000 (C.P. Dec. 7, Berks 2000), *rev'd*, 1951 MDA 2000 (Pa. Super. Ct. June 20, 2001). Opinions supplied.

Defendant was convicted at a bench trial of possession of a controlled substance/cocaine and was sentenced to 6 to 12 months. Defendant had filed a pre-trial motion to suppress on the basis that the arresting officer had conducted an illegal investigative detention, that his consent to search was the fruit of an illegal detention, and that the search exceeded the scope of consent granted by Defendant. I had denied the motion. The Superior Court reversed, holding that a mere encounter escalated into an unlawful investigative detention when the officer informed Defendant that he was going to run a warrants check to see if he

was wanted. The Court held that a consent to search given under these circumstances was invalid as it was the fruit of an illegal investigative detention.

Commonwealth v. Stitzel, CP-06-CR-0000544-1998 (C.P. Berks June 13, 2000), *remanded*, 342 MDA 2000 (Pa. Super. Ct. Mar. 23, 2001), *later aff'd*, 342 MDA 2000 (Pa. Super. Ct. Sept. 4, 2001). Opinions supplied.

Following a jury trial, Defendant was found guilty of two counts of driving under the influence of alcohol, homicide by vehicle while DUI, and related offenses. I sentenced Defendant to 40 months to 7 years. The victim was a pedestrian who had been released from a mental hospital shortly before his death. Defendant subpoenaed a number of mental health records with the hope that he could establish that the victim had suicidal tendencies. I refused to allow discovery on the grounds that such records were privileged. The Superior Court reversed and remanded for a hearing to determine whether any witness could, without violating a privilege, testify as to whether the victim suffered from suicidal tendencies. At this evidentiary hearing, none of the witnesses testified that the victim suffered from such tendencies. Accordingly, the Superior Court held that the victim's psychiatric history was irrelevant and affirmed the judgment of sentence.

Commonwealth v. Essig, CP-06-CR-0000981-1998 (C.P. Berks Apr. 14, 1999), *supplemental opinion*, (C.P. Berks Aug. 18, 1999), *rev'd*, 826 MDA 1999 (Pa. Super. Ct. June 16, 2000). Opinions supplied.

Defendant was charged with two counts of driving under the influence of alcohol, homicide by vehicle while DUI, involuntary manslaughter, and other related offenses. A jury acquitted Defendant of all misdemeanor and felony charges, but I had convicted Defendant of the summary offense of careless driving. I then imposed a \$25 statutory fine and ordered restitution in the amount of \$25,377 for damages caused by the death. The Superior Court reversed, holding that since Defendant was acquitted of the offenses involving death or serious bodily injury, the award for restitution could not stand.

- 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.

Approximately 75-80% of my opinions are unreported memorandum opinions. These opinions are filed and lodged as part of the official trial record, and as part of the appellate record when applicable.

- 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.

None.

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.

Pennsylvania Code of Judicial Conduct Canon 3(c) sets forth the basis by which a judge should disqualify himself or herself. To the best of my recollection, there are no cases in which I have been asked to recuse myself because of a conflict of interest.

I have recused myself in matters in which a local attorney I am close to is a party or a fellow elected official in the county is a party. In two cases involving Sheriff Barry Jozwiak and Prothonotary Marianne Sutton, I recused myself sua sponte because these are officials that work for the Courts. Out-of-County judges were brought in by the Administrative Office of Pennsylvania Courts to hear those cases.

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.

Assistant Public Defender (1980-1981): Appointed by Berks Commissioners on recommendation of District Attorney George Yatron

Assistant District Attorney (1981-1986): Appointed by Berks Commissioners on recommendation of District Attorney George Yatron

Berks County Solicitor (1989-1997): Appointed by three separate Boards of County Commissioners

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

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign.

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

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

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

I never served as a judicial clerk.

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

I practiced alone from 1981 to 1986. My office was located at 434 Penn Avenue, West Reading, PA 19611.

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

1980 – 1981
Berks County Public Defender
633 Court Street, 12th Floor
Reading, PA 19601
Assistant Public Defender

1981 – 1986
Berks County District Attorney
633 Court Street, 5th Floor

Reading, PA 19601
Assistant District Attorney

1989 – 1997
Berks County Services Center
Solicitor's Office
633 Court Street, 13th Floor
Reading, PA 19601
Berks County Solicitor

1986 – 1997
Rhoda, Stoudt & Bradley
The Berkshire, 6th Floor
Fifth & Washington Streets
P.O. Box 877
Reading, PA 19603
Partner (1988 – 1997)
Associate (1986 – 1987)

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

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

b. Describe:

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

Early in my career, I practiced mostly in the public criminal sector, first with the public defender's office and later with the district attorney's office. I tried every type of criminal case from DUI to murder as both a prosecutor and defense attorney.

At that time in Berks County, the positions of Assistant Public Defender and Assistant District Attorney were considered part time in that you could also have a private civil practice. In the spring of 1981, I did open up an office in West Reading, Pennsylvania. I maintained a law office for the general practice of law until I left the District Attorney's Office in 1986 and joined Rhoda, Stoudt & Bradley. At that time, I closed my private office and resigned from the District Attorney's Office to join the law firm and practice in a more traditional way.

As a solo practitioner, I handled wills, estates, real estate matters, workers' compensation cases, unemployment compensation cases, and minor civil matters. Then as a partner at Rhoda, Stoudt & Bradley, I did insurance defense work and plaintiffs' personal injury suits.

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

Initially, my typical clients were low-income criminal defendants when I worked with the public defender's office. Then, at the district attorney's office, my clients were the County of Berks and the Commonwealth of Pennsylvania. During this period of my career, I specialized in criminal law, handling all types of criminal cases from DUI to murder as both a prosecutor and defense attorney.

Thereafter, my private practice always contained a strong base of individual clients for whom I performed the general practice of law, ranging from wills and estates to real estate closings. I also represented small businesses and, as part of the Rhoda, Stoudt, & Bradley Litigation Department, represented individuals, insurance companies and corporate clients in civil litigation.

I also represented plaintiffs in personal injury lawsuits, both when I was in solo practice and during my time with Rhoda, Stoudt, & Bradley.

Lastly, I represented municipal clients and clients who were involved with municipalities. I served as the Berks County Solicitor, representing Berks County, Pennsylvania, in all civil matters (1989 to 1997), serving three different administrations.

- 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.

While I was an Assistant Public Defender and Assistant District Attorney, my practice was 90% litigation, and I was in the courtroom approximately 70% of the time. When I went into private practice, I would say my practice dropped to approximately 60% litigation and the time I actually spent in the courtroom dropped to about 25-30%.

- i. Indicate the percentage of your practice in:
 - 1. federal courts: 10%
 - 2. state courts of record: 85%
 - 3. other courts: 0%
 - 4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 70% |
| 2. criminal proceedings: | 30% |

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

I tried approximately 200 cases to verdict, judgment, or final decision throughout my career. In almost all of those cases, I served as either sole counsel or chief 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 never practiced before the Supreme Court of the United States.

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

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Stapleton v. Berks County*, 593 A.2d 1323 (Pa. Commw. Ct. 1991); The Honorable Forest G. Schaeffer of the Court of Common Pleas of Berks County; Judge McGinley, Judge Kelley and Judge Narick of the Commonwealth Court of Pennsylvania; 1990 – 1992.

This was a taxpayer's lawsuit, alleging irregularities in the bidding process for a waste disposal contract. At the time, I was serving as Berks County Solicitor and

represented Berks County and the three County Commissioners. Plaintiff taxpayer sought a preliminary injunction from the trial court, requesting that the court issue an order to prevent the County from awarding the contract to Wheelabrator. Approximately two years previous to the lawsuit, the County began the process of selecting a contractor by its "Request for Qualifications" (RFQ), the purpose of which was to limit participation to firms which were reputable and financially secure. Only three competing bidders emerged from this process: Wheelabrator, WAI, and American Re-Fuel. The County submitted a draft copy of its "Request for Proposal" (RFP) to each of these three firms. Bid compliance with the RFP was to be measured on a pass/fail basis. The County's consulting team reviewed the proposals of WAI and Wheelabrator and found that both passed the technical criteria. The County Commissioners voted to accept Wheelabrator's proposal, despite the fact that the RFP process was flawed and despite the recommendation of its consulting team. After a hearing, the trial court refused to grant the taxpayer plaintiff's request for an injunction. The Commonwealth Court reversed. While the Commonwealth Court agreed with my legal argument that the state statute required only that the bidding process be fair, open, and competitive, they found that the County should have reformed the RFP process and recommenced the bidding process.

Opposing counsel:
Dennis L. Veraldi, Esquire.
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-5982

James W. Baumbach, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center
1617 JFK Boulevard, 19th Floor
Philadelphia, PA 19103
(215) 665-3000

2. *Commonwealth v. Breidenstein*, Berks Criminal Docket Number 1275 of 1982 (C.P. Berks 1983); 1089 Harrisburg 1998 (Pa. Super. Ct. 1999); The Honorable Thomas J. Eshelman of the Court of Common Pleas of Berks County; 1982 – 1983.

This was a first degree murder case that I prosecuted while I was an Assistant District Attorney. The Defendant kidnapped the female victim from her place of employment, the records department at St. Joseph's Hospital, Reading, Pennsylvania, and then attempted to rape her at knifepoint. He then killed her. She died as a result of eighteen stab wounds. I represented the Commonwealth at the pretrial proceedings and at the jury trial, but I was not involved in the post-

conviction proceedings. The case was tried before a jury on January 21, 1983, and the Defendant was found guilty of first degree murder, criminal attempt-rape, and burglary. He was sentenced to a term of life in prison plus 5 to 10 years on the criminal attempt-rape plus 10 to 20 years on the burglary charge. He appealed to the Superior Court of Pennsylvania, but this appeal was denied. Several years later, on January 13, 1997, the Defendant filed a petition under Pennsylvania's Post Conviction Relief Act. This petition was denied at the trial level and Defendant again appealed to the Superior Court, which denied his appeal on November 9, 1999.

Opposing counsel:
Charles B. Coleman, Esquire
300 Kenhorst Boulevard
Reading, PA 19607
(610) 777-2728

3. *Schaeffer v. Frey*, 589 A.2d 752 (Pa. Super. Ct. 1991); Judge Beckert, visiting judge sitting specially for the Court of Common Pleas of Berks County; Judge Beck, Judge Kelly, and Judge Popovich of the Superior Court of Pennsylvania; 1990 – 1991.

The Honorable Forrest Schaeffer, President Judge of the Court of Common Pleas of Berks County, brought suit for injunctive relief to prohibit the recorder of deeds from debinding or cutting of deed books as part of a county contract to reproduce deed books onto microfilm. He argued that the state statute placed the physical integrity of the deed books within the discretionary power of the Court of Common Pleas and not with the recorder of deeds. At that time, as County Solicitor, I was appointed to represent Frey, the Berks County Recorder of Deeds. The trial court disagreed and denied Judge Schaeffer's relief. An appeal was taken, and I continued to represent Frey. The Superior Court held that the statute requiring recorders of deeds annually to submit books of records to inspection of the judges of the Court of Common Pleas does not substitute the Court of Common Pleas for the recorder of deeds as custodian with control and responsibility over the deed records. Accordingly, the Superior Court affirmed the trial court, finding that no immediate and irreparable harm was caused by the microfilming contract, that the debinding contract was lawful and did not constitute destruction of public records, and that the debinding process did not erode public confidence in the court.

Opposing counsel:
Paul R. Ober, Esquire
234 North Sixth Street
Reading, PA 19601
(610) 378-0121

4. *Cumru Township Authority v. Snekul, Inc.*, 618 A.2d 1080 (Pa. Commw. Ct. 1993); The Honorable Thomas J. Eshelman of the Court of Common Pleas of Berks County; Judge Craig, Judge Friedman, and Judge Lord of the Commonwealth Court of Pennsylvania; 1991 – 1993.

Snekul, Inc., was a developer of a tract of land containing approximately 103 acres in Cumru Township, Berks County, Pennsylvania. Prior to beginning development of this tract, Snekul entered into a contract with the Cumru Township Authority for the construction and financing of public sewer facilities, including a trunk line which was to connect the development's subdivision to the township's existing sewer line. A dispute arose between the parties concerning the township's charging connection fees to the owners of improved property within the Snekul tract. On behalf of Snekul, I sought a preliminary injunction and a declaratory judgment, seeking specific performance of the terms of the agreement. The trial court granted the preliminary injunction and the township and township authority appealed. I represented Snekul on appeal. The Commonwealth Court affirmed the trial court, holding that the enforcement of the agreement, which specifically limited charges that could be imposed against the developer, was not precluded on the theory that the police powers could not be abridged by contract. The Court held that enforcement would not violate the Constitution by forcing the township, in effect, to lend the municipality's credit to a private enterprise. Otherwise, any contracts entered into by a municipality could be tendered null and void at the municipality's request. The Court specifically held that the agreement was an integrated contract and that the contract provision allowing the township to set rates for owners of improved property did not apply to fees which could be assessed against the developer. Finally, the Court concluded that the enforcement of the contract was not precluded on the theory that it might result in discrimination in favor of the developer. The Commonwealth Court affirmed the trial court's determination that the agreement between the parties provided for only one tapping or connection fee against Snekul.

Opposing counsel:
 Scott L. Huyett, Esquire
 Stevens & Lee
 111 North Sixth Street
 P.O. Box 679
 Reading, PA 19603
 (610) 373-6453

5. *Cescon v. Dove*, 792 F. Supp. 998 (E.D. Pa. 1992); The Honorable Edward N. Cahn of the U.S. District Court for the Eastern District of Pennsylvania; 1991 – 1992.

Dove, a Pottsville Police Department officer, initiated a stop of a vehicle. After suspecting that the driver was under the influence of alcohol, Officer Dove had

the driver perform some field sobriety tests. During one of these tests, the driver, due to his intoxicated state, broke his ankle. He subsequently brought a civil rights suit against Officer Dove. I filed a 12(b)(6) motion on behalf of Officer Dove to dismiss the plaintiff's complaint for failure to state a claim. The District Court held that the driver failed to state a civil rights claim against the officer, as there was no showing of the use of force on the part of the officer. Accordingly, my motion to dismiss was granted; no appeal was taken.

Opposing counsel:
Edward E. Kopko, Esquire
15 Nottingham Drive
Ithaca, NY 14850
(607) 269-1300

6. *Peck v. Huberle*, 642 A.2d 509 (Pa. Super. Ct. 1994); The Honorable Frederick Edenharter of the Court of Common Pleas of Berks County; Judge Cirillo, Judge Johnson, and Judge Cercone of the Superior Court of Pennsylvania; 1993 – 1995.

The Plaintiff motorist, who was injured in a vehicular accident, brought an action against the other driver. I was assigned by Allstate to represent Haberle, the Defendant driver. My client skidded for approximately 75 feet on the roadway before striking the rear of Plaintiff's vehicle. The jury awarded a verdict in the total sum of \$6,530, which included only \$500 for non-economic injuries. Plaintiff filed a post-trial motion, seeking an additur or, in the alternative, a new trial. The trial court denied this motion and an appeal followed. My representation continued on appeal, and the Superior Court held that it was not a palpable abuse of discretion for the trial court to deny the post-trial motion.

Opposing counsel:
David M. Kozloff, Esquire
2640 Westview Drive
P.O. Box 6286
Wyomissing, PA 19610
(610) 670-2552

7. *Huber v. Commonwealth, Dept. of Transportation*, 551 A.2d 1130 (Pa. Commw. Ct. 1989); The Honorable Thomas J. Eshelman of the Court of Common Pleas of Berks County; Judge Craig, Judge Palladino, and Judge Narick of the Commonwealth Court of Pennsylvania; 1987 – 1989.

A motorist injured in a multicar collision filed an action against the Department of Transportation, alleging that its negligent failure to remove or treat ice and snow caused the collision and resulting injuries. At the time of the accident, the road was covered with ice and snow from a snowstorm. The trial court granted summary judgment for the Department, and the motorist appealed. The

Commonwealth Court affirmed, holding that the Department's duty on behalf of the general public – *i.e.*, to clear snow and ice on state highways – did not impose a duty with respect to the particular motorists to protect them from the harm suffered, and thus did not create a cause of action. I represented Gardecki, another motorist named as a co-defendant, at both the trial level (along with Jerry Richwine, Esq.) and the Commonwealth Court. I had to show that my client was not negligent, as his car did not hit Plaintiff and the accident was caused by a faulty condition that was the responsibility of PennDOT.

Opposing counsel:
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 Liever, Hyman & Potter
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 P.O. Box 782
 Reading, PA 19603
 (610) 375-6131

Co-counsel:
 Jerry Richwine, Esq.
 Roland Stock
 627 North Fourth Street, P.O. Box 902
 Reading, PA 19603
 (610) 372-5588

Counsel for co-defendants:
 William A. Slotter, Esquire
 Office of Attorney General
 1125 South Cedar Crest Boulevard, Suite 205
 Allentown, PA 18103
 (610) 821-6477

Daniel Bausher, Esquire
 Stevens & Lee
 111 North Sixth Street, P.O. Box 679
 Reading, PA 19603
 (610) 478-2207

8. *Commonwealth v. Hill*. Berks Criminal Docket Number 995 of 1981 (C.P. Berks 1985); 01627 Philadelphia 1984 (1986); The Honorable Thomas J. Eshelman of the Court of Common Pleas of Berks County: 1982 – 1983.

Defendant was charged with First Degree Murder and Criminal Conspiracy. I prosecuted this case and tried it before a jury as an Assistant District Attorney. At trial, it was elicited that the Defendant, Hill, agreed to assist Yingling in the killing of Eppihimer. Prior to the killing, Yingling offered Hill \$10 for the murder. The Defendant was tried by a jury and found guilty of both first degree

murder and criminal conspiracy. He was sentenced to a term of life in prison plus 2 to 7 years on the criminal conspiracy charge. I represented the Commonwealth of Pennsylvania, by way of the Berks County District Attorney's Office, at pretrial proceedings and at the jury trial. Defendant subsequently filed an appeal, which was denied by the Superior Court on February 6, 1986.

Opposing counsel:
Michael F. Flannery, Esquire (deceased)

9. *Commonwealth v. Bialek*, Berks Criminal Docket Number 1144 of 1982 (C.P. Berks 1984); 2057 Philadelphia 1984 (Pa. Super. Ct. 1984); The Honorable Arthur Saylor of the Court of Common Pleas of Berks County (deceased); 1984.

Defendant Bialek and co-defendant Debiec were charged with possession of a controlled substance, possession of a controlled substance with intent to deliver, possession of a controlled substance with intent to manufacture, and criminal conspiracy. Specifically, Defendant was found to have been growing over 50 marijuana plants in pots in a warehouse in the City of Reading. At the time, Defendant Bialek was the Chief City Building Inspector and Debiec was an elected constable. As an Assistant District Attorney, I prosecuted both individuals for manufacturing (growing) marijuana in a city warehouse. After a four-day jury trial, Defendant was found guilty of all counts. On June 27, 1984, Defendant was sentenced to an aggregate term of 12 to 59 months in the Berks County Prison. The Superior Court denied Defendant's appeal and affirmed the sentence. I represented the above-listed at the trial court level only. Debiec was also convicted in a subsequent trial.

Opposing counsel:
John S. Elder, Esquire
635 Walnut Street
Reading, PA 19601
(610) 376-7411

10. *Commonwealth v. Knoll*, 34 Pa. D. & C.3d 351 (C.P. Berks 1985); The Honorable Arthur Saylor of the Court of Common Pleas of Berks County (deceased); 1985.

As an Assistant District Attorney, I prosecuted the Defendant, who was charged with possession of marijuana and carrying an unlicensed firearm. The Court of Common Pleas suppressed all evidence, holding that an arrest used as an excuse to detain a defendant until he could be arrested for possession of marijuana and an unlicensed firearm is illegal and evidence obtained from a search incident to the arrest is inadmissible. I recall filing an appeal with the Pennsylvania Superior Court, but I represented the Commonwealth at the trial level only; there no longer exists any record of the appeal.

Opposing counsel:
 Stephen B. Lieberman, Esquire [now Judge Lieberman]
 The Court of Common Pleas of Berks County
 Berks County Courthouse, 9th Floor
 633 Court Street
 Reading, PA 19601
 (610) 478-6436

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

During my tenure as County Solicitor, I had to advise the County Commissioners on two significant legal issues. The first was the Pennsylvania Sunshine Law, and I authored an opinion that guided the Commissioners on how to properly conduct public meetings in compliance with the law. Also during that time, the County was required under Pennsylvania law to impose a countywide trash plan. The County's constituent municipalities each had to approve or reject the plan, with certain requirements, including written reasons, necessary to properly reject it. I had to interpret and rule on the Countywide plan and whether the municipalities successfully rejected it or not. Both of these matters were significant legal issues during my first term as Berks County Solicitor from 1989 through 1991.

As a Judge, I reconstituted the Berks County Self Represented Litigant Task Force. This Task Force provides forms and assistance to clients in child custody cases and criminal record expungement cases. The Task Force has been such a success I was asked to speak in Pittsburgh in April 19, 2012, at the Pennsylvania Trial Judges seminar explaining how it was formed and the steps we are using to provide access to justice in Berks County. That seminar was followed up with one in Berks County on June 1, 2012, outlining to Court personnel in ten counties the difference between procedural information and legal advice. This was important because it informed Court personnel what they could do to assist people and what constitutes legal advice which they would not be allowed to provide.

Furthermore, as President Judge I formed the Berks County Mortgage Foreclosure Diversionary Program. With the help of the Berks County Bar Association, we now stay owner-occupied mortgage foreclosure cases early in the case and order both sides to attend a conciliatory conference. Members of the Bar Association serve as conciliatories on a rotating basis in hopes of reaching an agreement between the clients and the lenders so that the home can be saved if possible. This program has been operating for 12 months and we are hopeful that it will allow a number of residents of Berks County to remain in their homes.

In addition, as President Judge I also instituted a Countywide Truancy Task Force to bring all of the interested stakeholders throughout our County together to address the significant and far reaching effects of the problem of truancy and how this problem could be handled on a legal, effective, and consistent countywide basis.

I have never performed any lobbying activities.

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

From 1999 to present, I have served as an adjunct professor at Alvernia College, teaching a course entitled Judicial Process and Procedure. The course is offered as an upper-level criminal justice course, outlining the basic tenets of the Fourth, Fifth, and Sixth Amendments, and other criminal procedure issues. The Fall 2012 syllabus is supplied.

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

None.

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

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.

If confirmed, I do not foresee any potential conflicts that are likely to arise. There are no family members, categories of litigation, or financial arrangements that would present a conflict of interest for me as a District Judge.

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

If confirmed, I would address conflicts of interest through application of the Code of Conduct for United States Judges and other relevant canons and statutes. In addition, if a conflict of interest did present itself, where I either felt I could not be fair or if it would create the appearance of unfairness, I would immediately 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.

When I was a practicing attorney, I volunteered at Central Pennsylvania Legal Services one or two afternoons a year. They had various client interviews set up for participating attorneys, who would continue representing those clients until the cases had concluded. Those cases included child custody defense and civil matters/collection matters.

As already noted, as President Judge, I reconstituted the Berks County Self Represented Litigant Task Force, which provides forms and assistance to clients in child custody cases and criminal record expungement cases. In addition, I also recently formed the Berks County Mortgage Foreclosure Diversionary Program, which offers stays of owner-occupied mortgage foreclosure as well as a conciliatory conference. Both programs benefit members of our community who otherwise might not have access to counsel or the courtroom.

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 Robert Casey and Senator Patrick Toomey formed an Eastern District Nominating Committee made up of twenty individuals. On July 15, 2011, I submitted a written application to the Committee. I was interviewed by the Committee on December 5, 2011, in Philadelphia. On March 12, 2012, I interviewed with Senator Toomey in Allentown, Pennsylvania. On June 5, 2012, I interviewed with Senator Casey and his staff in Washington, DC.

Since June 22, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 31, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 27, 2012, the President submitted my nomination to the Senate. On January 4, 2013, the President submitted my renomination 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.

AO 10
Rev. 1-2012

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. 88 101-111)*

1. Person Reporting (last name, first, middle initial) Schmebl, Jeffrey L.	2. Court or Organization U. S. District Court for the Eastern District of Pennsylvania	3. Date of Report 01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/03/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final Sub: <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2011 to 12/31/2012
7. Chambers or Office Address 8th Floor Berks County Courthouse 633 Court Street Reading, PA 19601		
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. Insert signature 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. Judge	Commonwealth of Pennsylvania
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. 1998	Berks County Employee Retirement Plan-Member presently receiving benefits.
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 7

Name of Person Reporting Schmehl, Jeffrey L.	Date of Report 01-03-2013
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-23 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (years, not spouse's)
1. 2012	Administrative Office of Pennsylvania Courts, Salary	\$166,000.00
2. 2012	Alvernia University, Salary	\$2,780.00
3. 2012	Berks County Employees' Pension	\$2,498.00
4. 2011	Administrative Office of Pennsylvania Courts, Salary	\$165,219.00
5. 2011	Alvernia University, Salary	\$2,541.00
6. 2011	Berks County Employees' Pension	\$2,498.00
7.		
8.		
9.		
10.		

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 bonuses.)

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2012	Opportunity House, Salary
2.	
3.	
4.	

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 23-27 of filing instructions.)

NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting	Date of Report
Schmehl, Jeffrey L.	01-03-2013

2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting Schmebl, Jeffrey L.	Date of Report 01/03/2013
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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

NONE *(No reportable gifts.)*

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

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

NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting Schmehl, Jeffrey L.	Date of Report 01/03/2013
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period				D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)		
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm dd yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)		
1. Affinity Bank Cash Accounts	A	Int. Div.	J	T	Exempt						
2. Pennsylvania S.E.R.S. Account		None	N	T							
3. Banco Santander S.A. Stock	A	Int. Div.	J	T							
4. Goldman Sachs Growth Strategy Fund	A	Int. Div.	K	T							
5. Invesco Global Core Equity Fund	A	Int. Div.	J	T							
6. Invesco Van Kampen American Value Fund	A	Int. Div.	K	T							
7. Morgan Stanley International Fund	A	Int. Div.	J	T							
8. Morgan Stanley Smith Barney Spectrum Select LP	A	Int. Div.	J	I							
9. Morgan Stanley Smith Barney Spectrum Technical LP	A	Int. Div.	J	T							
10.											
11.											
12.											
13.											
14.											
15.											
16.											
17.											

1. Income/Gain Codes: A \$1,000 or less; B \$1,000 - \$2,500; C \$2,500 - \$5,000; D \$5,000 - \$15,000; E \$15,000 - \$50,000; F \$50,000 - \$100,000; G \$100,000 - \$1,000,000; H \$1,000,000 - \$5,000,000; I \$5,000,000 - \$10,000,000; J \$15,000 - \$50,000; K \$50,000 - \$100,000; L \$100,000 - \$500,000; M \$500,000 - \$1,000,000; N \$250,000 - \$500,000; O \$500,000 - \$1,000,000; P1 \$1,000,000 - \$5,000,000; P2 \$5,000,000 - \$25,000,000; P3 \$25,000,000 - \$50,000,000; P4 More than \$50,000,000

2. Value Codes: J \$15,000 or less; K \$15,000 - \$50,000; L \$50,000 - \$100,000; M \$100,000 - \$500,000; N \$500,000 - \$1,000,000; O \$1,000,000 - \$5,000,000; P1 More than \$5,000,000

3. Value Method Codes: Q Appraisal; R Cost (Reid) State (Ohio); S Assessment; T Cash Market; U Book Value; V Other; W Estimated

FINANCIAL DISCLOSURE REPORT
Page 6 of 7

Name of Person Reporting	Date of Report
Schmehl, Jeffrey L.	01/03/2013

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 7

Name of Person Reporting	Date of Report
Schmehl, Jeffrey L.	01/03/2013

IX. CERTIFICATION.

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

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

Signature: *s/ Jeffrey L. Schmehl*

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		12	510	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule		59	765	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		17	100
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule		162	959
Real estate owned -- see schedule		365	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		5	500				
Cash value-life insurance							
Other assets itemize:							
Pennsylvania SERS		284	259				
				Total liabilities		180	059
				Net Worth		546	975
Total Assets		727	034	Total liabilities and net worth		727	034
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		43	253	Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Listed Securities</u>	
Banco Santander S.A. stock	\$ 1,428
Goldman Sachs Growth Strategy Fund	17,355
Invesco Global Core Equity Fund	7,312
Invesco Van Kampen American Value Fund	21,340
Morgan Stanley International Fund	5,713
Morgan Stanley Smith Barney Spectrum Select L.P.	3,419
Morgan Stanley Smith Barney Spectrum Technical L.P.	3,198
Total Listed Securities	\$ 59,765

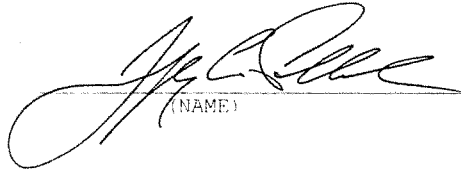
<u>Real Estate Owned</u>	
Personal residence	\$ 240,000
Family residence (50% interest)	125,000
Total Real Estate Owned	\$ 365,000

<u>Real Estate Mortgages Payable</u>	
Personal residence - primary mortgage	\$ 114,606
Personal residence - secondary mortgage	48,353
Total Real Estate Mortgages Payable	\$ 162,959

AFFIDAVIT

I, Jeffrey L. Schmehl, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

November 28, 2012
(DATE)


(NAME)

Barbara A. Crossley
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
BARBARA A. CROSSLEY, NOTARY PUBLIC
CITY OF READING, BERKS COUNTY
MY COMMISSION EXPIRES JAN. 9, 2013

Senator HIRONO. Thank you very much.

Judge Schmehl, did I hear correctly that you had formed a veterans court?

Judge SCHMEHL. That is correct.

Senator HIRONO. Can you tell me what led to you creating this special court and how it's working?

Judge SCHMEHL. Yes, Madame Chairman, I'd be glad to. Okay. This is on now. Right. We were not the first county in Pennsylvania to form a veterans court. A veterans court was first formed in Philadelphia, and maybe some other counties, but we tried to jump on the bandwagon pretty quickly.

It is a court—it's really part of a specialty court—and it's for veterans who are charged with crimes, but the cases are handled on the same day. The reason for that is their access of services. A discharged veteran, of course, has benefits available through the VA.

There are many, many veterans who wish to mentor other veterans. This way we can bring all these people together in the courtroom at the same time. We can have the mentors there, we can have representatives from the VA there, we can actually take people out of the courtroom directly to treatment, if necessary.

So it's just a matter of efficiency and it's a matter of utilizing services, and we believe it's something well worth, you know, looking into and utilizing.

Senator HIRONO. Thank you. It sounds like a good idea. So it's only a minority of jurisdictions that have this kind of a specialty court?

Judge SCHMEHL. Yes. I think you would need the volume of criminal cases to do it, so smaller jurisdictions, it would not make sense. But in the third-class counties and larger of Pennsylvania, it makes a lot of sense to do that in criminal courts.

It's really only like two days a month where those cases are handled, but that way we do have, like I said, the representative from the Veterans Administration and mentors who want to mentor people who have fallen on hard times. We have them present in court that day.

Senator HIRONO. Thank you.

Judge Quiñones, I think it's important that we have diversity in the judiciary, just as we should seek diversity in Congress. Can you describe for the Committee what more can and should be done to increase the diversity of the bar, and what steps have you taken professionally to diversify the bar in Pennsylvania?

Judge QUINONES. As the Senator has indicated, Madame Chair, I was involved in creating the Hispanic Bar Association in Puerto—in Philadelphia, I'm sorry—in 1982 or 1983, and we also created the Hispanic Bar Association Legal Education Fund, of which I was the first president for four years. I stepped down when I became a judge, since part of your judicial duties and the Code of Ethics prohibit you from fundraising.

The purpose of the Bar Association was to provide an avenue for young graduates from college interested in going to law school seeing role models and being able to communicate with them, share experiences. The Hispanic Bar Association Legal Education Fund was to provide them assistance to be able to go to school. I've made

it a point of, in the summer, hiring law students. Mostly have been Latinos, but they've also been non-Latinos.

I think there is an awareness of the Bar Association to become more inclusive and to open different—as an example, they created a position in the Bar Association for the minority bars, for them to be part of the governing bodies of the Bar Association. With that, they gave them exposure to the different law firms, the different opportunities that the law provides.

To the extent that I can assist someone, as I introduced my staff, my staff is completely diverse. I mean, as I was introducing them, I thought about that first as the second—I think it's important to continue reaching out and assisting others to understand that we all have our opportunity, we all have the knowledge to contribute to our society.

Senator HIRONO. Thank you.

My time is up, so I'd like to turn to Ranking Member Lee for his questions.

Senator LEE. Thank you very much. Thanks to all of you for coming here and introducing us to those who have come to support you.

Why don't we start with Mr. Gonzales. First of all, you and I have a number of things in common. Among other things, we both have six siblings, so that tells me something about your growing up. Where did you fall in the birth order, just out of curiosity?

Mr. GONZALES. Second to the last.

Senator LEE. Second to the last? Okay. So you had to hold up. I would imagine there was some bullying that went on among older siblings that probably has served you well as a prosecutor, and will as a judge, should you be confirmed. So, I think that ought to be a qualification in and of itself.

I'm not going to ask Jennifer, Alex, and Abigail whether they wish that you also had a family including seven children; we'll leave that for another day.

But I wanted to talk to you a little bit about a couple of things. First of all, you've got a very impressive resume. You've got a lot of experience in court, and I think it's very difficult to find somebody who has more experience in federal court than someone who has served as an Assistant U.S. Attorney, and later as a U.S. Attorney.

On your questionnaire, we do see, as is understandable for someone who has served most of their career in the U.S. Attorney's Office, that it is overwhelmingly criminal. You list about three percent civil. Do you feel like you'd be prepared for the civil litigation component of your docket should you be confirmed as District Judge?

Mr. GONZALES. Thanks, Senator Lee, for the question. Yes. My strength is on the criminal side. A substantial amount of my legal career has been as a criminal prosecutor. I've had some exposure to criminal—excuse me—to civil work as a law clerk relating to review of decisions on Rule 12(b)(6) or Rule 56. That was a long time ago, though.

But nevertheless, I believe I can come up to speed. I'm fortunate the District Judges in the District of New Mexico, who pride themselves on being collegial within the court, have already reached out to me and offered assistance. I feel very confident I could get up

to speed on the rules of civil procedure, the discovery practices, and be effective in this new role.

Senator LEE. I'm glad to hear you mention Rule 12(b)(6) and Rule 56 because I think those, in handling your civil docket, will be two of the most important to become very familiar with initially. It's been my fear for a long time that the natural inclination of most judges might be to, in a close case, in a case where they might be able to go either way, to cut the cards in favor of denying dispositive motions, motions to dismiss or motions for summary judgment, because it's easier.

That has the possibility of affecting a judge's exercise of discretion, consciously or otherwise. It's easier to deny the dispositive motion, the case might settle on its own, the case might never go to trial, you don't have to write an opinion, that opinion won't be subject to an appeal the same way a denial would.

So anyway, I think it's important for judges, particularly those who come from a primarily criminal law background, to focus on those and remember that denying one of those motions when the motion is warranted is just as bad as granting one where it's not warranted.

Judge Schmehl, I wanted to talk to you about sort of a related topic. So you do have—in your prior life as a litigator you had considerable—more considerable civil experience, but almost all of it was in State court, as I recall.

Judge SCHMEHL. That's correct, Senator. Most if it was in State court, although I did represent municipalities, police departments that were charged with civil rights violations, and I did do some work in federal court. But most of it was in State court. As a trial court judge over the last eight years, I've tried major civil cases in our county.

Senator LEE. You're certainly familiar with the dynamic that I described?

Judge SCHMEHL. I am certainly familiar with that, Senator. In fact, I had a recent case. It was an attractive nuisance case where a small girl fell into, like, a pond the neighbors created, and I granted the motion to dismiss because I felt there was no liability on the property on her. Of course, I've been appealed. So, we'll see that.

Senator LEE. What are the major differences that you think you'll need to prepare yourself for, should you be confirmed and should you have to make this transition, between being a State court judge and a federal judge?

Judge SCHMEHL. Senator, I've been in a courtroom almost my whole life as a prosecutor, a trial attorney, and a trial judge, so I'm very familiar with the Pennsylvania rules of evidence. The federal rules of evidence are not that dissimilar. I've dealt with criminal statutes, I've dealt with Pennsylvania's sentencing guidelines. Of course, the federal sentencing guidelines are different, but it's the same concept.

In civil cases, in diversity cases, it's the same thing: discovery, motions. There are some parts of the civil issues and some of the criminal statutes I will have to bring myself up to date on. I will study them. I will avail myself of any educational opportunities. I will consult with fellow members of the bench, and I feel that I'm

a quick learner and I will be able to get up to speed and make this transition smoothly.

Senator LEE. Wonderful. Thank you. Thank you, Judge.

I've got more questions, but I see my time for this round has expired so we'll go on to the next.

Senator HIRONO. Please proceed.

Senator LEE. You want me to keep going?

Senator HIRONO. Yes.

Senator LEE. Okay. Great. Thank you. Thank you, Judge Schmehl.

Next, I've got a couple of questions for Judge Restrepo. When you, Judge, graduated from law school you worked at the ACLU Prison Project, and I think that was here in DC. Can you just explain to us on the Committee what your responsibilities were in that job and how that might have shaped the rest of your career?

Judge RESTREPO. Sure, Senator Lee. It was my first job out of law school. I wanted to come back to the northeast from Tulane where I went to law school. I was fortunate enough to get a clerkship. It was not an attorney's position with the Prison Project. I worked there for about three or four months before I was fortunate enough to get a job with the Defender's Association of Philadelphia, and that was my first job as an attorney with the defenders in Philadelphia.

Senator LEE. Okay. Thank you.

In 1993, you wrote an article for the *National Law Journal* regarding the war on drugs and you said, "We must demilitarize our approach in the drug problems, emphasizing social, economic, educational, and family policies targeting groups ignored during the Reagan/Bush years." What were the groups who were ignored during the Reagan and Bush years?

Judge RESTREPO. Well, I think, Senator, the gist of the article is really that we should emphasize the war on drugs from a demand side as opposed to a supply-side problem. Again, it was my personal opinion in 1993, some 20 years ago, and the article is making an argument, an editorial piece, suggesting that we should also take a look at the other side of the equation as opposed to what everybody traditionally thinks of as the war on drugs.

Senator LEE. In other words, instead of focusing primarily, sometimes exclusively, on suppliers, we ought to look at who and what's driving the demand also.

Judge RESTREPO. Exactly. What's causing the demand? I guess on the theory that supply doesn't create its own demand.

Senator LEE. Right. Yes, that's right. Federal law recognizes that there are both components, but the way federal law is enforced doesn't always reflect that, so that's a fair point.

Judge Alejandro, in 2008 you participated in a panel discussion of the Philadelphia Bar Association's Bench and Bar Annual Conference and it was entitled, "Wake Up Everybody: Race in the Law, a Conversation About Diversity."

There's no notes that we're aware of or transcript or recording of the event, as would be customary for an event like that, so I can't yet ask you any specific questions about that presentation. But generally speaking, do you think that a judge's gender diversity or any other demographic factor has any influence or should

have any influence on the outcome of a particular case in that courtroom?

Judge QUIÑONES. I do have an opinion, and it should not have any bearing whatsoever in one deciding the case.

Senator LEE. It shouldn't have. Maybe sometimes does, but if it does, it shouldn't. Is that what you're saying?

Judge QUIÑONES. A judge definitely should not have their own personal ethnicity or circumstances involved at all in the case. You should decide the case based on the facts before you and the law and precedents that have been established.

Senator LEE. Yes. That's certainly—certainly is how it should work and I suppose consistent with the judges' oath that federal judges must take. That's the natural outgrowth of that, so yes, I agree.

Last but not least, Judge McShane, so it's my understanding you're one of four judges that's assigned to hear death penalty cases in your county. Is that right?

Judge MCSHANE. That's correct.

Senator LEE. How many capital punishment cases do you think you might have presided over?

Judge MCSHANE. If you include both the trials I've been assigned and the cases for settlement, probably 25 to 30. Nine have gone to trial that I've presided over.

Senator LEE. How many of these cases resulted in the defendant being sentenced to a capital punishment?

Judge MCSHANE. One.

Senator LEE. Can you tell us something about your ruling in a case—in the case of *State vs. Dassa*—

Judge MCSHANE. *Dassa*. Yes.

Senator LEE [continuing]. *Dassa*, where I believe you vacated a jury conviction for aggravated murder and reduced it to the lesser offense of intentional murder.

Mr. MCSHANE. Correct.

Senator LEE. Can you just give us sort of an overview of that?

Judge MCSHANE. Yes. So that was a case of first impression on statutory construction, not a constitutional issue, but a case of first impression in Oregon. The issue was whether the State's factual theory fit one of our definitions of aggravated murder. I looked at the language of the statute and, in looking at the language, it was ambiguous.

I could not decide how to rule solely on the language of the statute so, with no controlling precedent in Oregon, I looked at the four States that had resolved the same issue, Alaska, Utah, and New York—maybe Nevada, I'm not sure on that.

I was—all four States ruled against the prosecution on that same issue. The New York high court had issued an opinion that it seemed to me is persuasive of anything I had read. It seemed consistent with the way I was approaching the case, and so I did set aside then the jury verdict.

The one thing I would point out is I was being asked to make that ruling pre-trial, which would have disallowed the case to go forward under—as a capital case. So we went through the trial, and I allowed the jury verdict to go into place so that if I was reversed—and I was—we could simply put the jury verdict back into

place without putting the family and the witnesses back through a trial.

Senator LEE. Probably a merciful approach to take under the circumstances. But it sounds like the ruling was, in your opinion, the inexorable command of the statutory text?

Judge MCSHANE. Correct.

Senator LEE. And you found the other jurisdictions' interpretation of corresponding text in those States persuasive—

Judge MCSHANE. Yes.

Senator LEE [continuing]. Using canons of statutory construction?

Judge MCSHANE. Yes.

Senator LEE. Let me ask you just one more question about that. Let's suppose, in that case, there hadn't been other jurisdictions that had decided the issue, and you found something indicating that the statutory text at the time of its adoption had a meaning that was attributed to it in the floor debates of the State legislature, several State legislators had said I think it means X, and X would decide the case one way or another. Tell me what effect, if any, that might have had on you.

Judge MCSHANE. The parties did bring up some legislative history. I think, that the clearest intention of the legislature is the language. In the statute, it is—especially on a State court level where our legislative history is not always particularly clear.

Senator LEE. As opposed to federal legislation.

[Laughter.]

Judge MCSHANE. You often get—you're not necessarily getting the consensus of the legislature by hearing the statement of one State legislator, so I think you have to look to the language.

Senator LEE. Does that reflect, then, a danger that inheres in an intentionalist approach to statutory construction, that you're not really sure who's intention you're looking at and it's impossible to divine the intentions of 100 people, or 435 people all at once?

Judge MCSHANE. I think that's the tension that we always face going back in time.

Senator LEE. Right. It's why the cases that direct us to look, as you said, first and foremost—first and last—at the statutory text are probably the best. Thank you very much. I appreciate that.

Thank you, Madame Chair.

Senator HIRONO. Thank you. I would like to just do one follow-up question. I mean, clearly in the case that you were describing, Judge McShane, it just may explain why criminal statutes have to be very, very clear, and there shouldn't be much room for statutory construction in a criminal statute. But often that is not the case.

So, after you did your ruling, did the State legislature clarify that statute to make it clearer?

Judge MCSHANE. No. It's interesting, in Alaska they did do that. The Alaska legislature did clarify the language after the ruling of the court.

Senator HIRONO. Thank you very much.

I want to thank all of you for being here. The record will remain open for one week for Members to submit questions or statements.

We are adjourned. Thank you very much.

[Whereupon, at 4:22 p.m. the hearing was adjourned.]

Questions for Judicial Nominees
Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

**Senator Chuck Grassley
Questions for the Record**

**Kenneth John Gonzales
Nominee, U.S. District Judge for the District of New Mexico**

1. At a Teacher Training Conference on Bullying, you stated, “But all of us in this room know that reducing crime and keeping communities safe requires so much more. We know that it takes a lot more than police, prosecutors and prisons to make a community safe. We need people who watch out for each other and who have a stake in their community. We need an economic base that keeps people engaged and relatively free from need.” Additionally, at the 3rd Annual Gangs, Drugs and Prosecution Conference in 2011, you stated, “we cannot investigate and prosecute our way out of the violent crime problems that plague our communities. Law enforcement has to be augmented by education, prevention, and treatment if it’s going to be successful.”
 - a. Crime prevention is certainly an objective of all responsible citizens and of government. As a prosecutor you supported partnerships between state authorities, individuals, and families to prevent and reduce crime. Are there limitations on what the government can do in this area, particularly the federal government, and if so, what are the boundaries?
 - b. If confirmed as a federal judge, what would be your approach or involvement with crime prevention initiatives? Please describe the powers and limitations that would guide you.
 - c. In sentencing, what weight would you give to a person’s background – such as family status, economic standing, or other perceived social disadvantages?
2. At the Binational Mexico-U.S. Federal Prosecutors Working Group Meeting in 2011, you spoke of the inability to seize guns in the same way the government can seize drugs – noting “we can take drugs away from criminals simply because it is illegal to possess drugs. We cannot do that with guns.”
 - a. What is your understanding of the rights afforded by the Second Amendment?
 - b. If you are confirmed, will you commit to protect an individual’s right to possess a firearm?

3. You once remarked, "It is only when all individuals—regardless of race, gender, ethnicity, religion, national origin and sexual orientation—have access to the great promise of equal opportunity that we will be able to say we have created the more perfect union envisioned by the framers of the Constitution." What is your understanding of the current state of law, as to the level of review for these classifications, under the Equal Protection Clause?
4. How will you use the Sentencing Guidelines to guide you in criminal cases?
5. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?
6. What is the most important attribute of a judge, and do you possess it?
7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
8. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
15. If confirmed, how do you intend to manage your caseload?
16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
17. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
18. Please describe with particularity the process by which these questions were answered.
19. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Michael M. McShane
Nominee, U.S. District Judge for the District of Oregon**

1. A news article included in your Senate Questionnaire stated you “oppose mandatory minimum sentences and would like to preserve more judicial discretion.”
 - a. Can you please expound on this statement and fully describe how it affects sentencing in your courtroom?
 - b. As a state court judge, how much discretion did you have in sentencing, compared with federal district court judges?
 - c. If confirmed, what deference will you give to the federal sentencing guidelines?
 - d. In sentencing, what weight would you give to a person’s background – such as family status, economic standing, or other perceived social disadvantages?
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
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8. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?
9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
11. If confirmed, how do you intend to manage your caseload?
12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
13. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
14. Please describe with particularity the process by which these questions were answered.
15. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Nitza I. Quinones Alejandro
Nominee, U.S. District Judge for the Eastern District of Pennsylvania**

1. You were a member of the Philadelphia Fellowship Commission's Board of Directors for four years, including while you were a judge. This organization has been involved in a number of activities that potentially could have come before the courts, including victim's compensation and handgun controls. Why was it appropriate for you to remain on this Board, even after you became a judge?
2. You have had some reversals that raise a question as to whether or not you are pro-defendant. In one case, the defendant drug dealer ran from the police and was subsequently found to be in possession of illegal substances. In another, the officer saw the defendant stuff a brown paper bag containing cocaine under his seat during the course of a traffic stop.
 - a. I recognize that search and seizure and probable cause determinations are fact specific. Without getting into the specifics of the cases, please describe your approach to these types of cases.
 - b. To what sources do you look and what principles guide you?
 - c. Why did that process not lead you to a correct ruling in the cases mentioned above?
3. What is the most important attribute of a judge, and do you possess it?
4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
5. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
12. If confirmed, how do you intend to manage your caseload?
13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
15. Please describe with particularity the process by which these questions were answered.
16. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Luis Felipe Restrepo
Nominee, U.S. District Judge for the Eastern District of Pennsylvania**

1. As a magistrate judge, you have not yet presided over any criminal matters. This is not the normal pattern I have observed with other magistrate judges.
 - a. Please explain how your cases are assigned and the extent to which have handled criminal matters as a United States Magistrate Judge.
 - b. How prepared are you to preside over federal criminal matters? Please explain.
 - c. What assurances can you give that you will be fair to both prosecutors and criminal defendants who appear before you?
2. How will you use the Sentencing Guidelines to guide you in criminal cases?
3. You are quoted as saying that “at least for defense lawyers, it is absolutely untrue that probation officers are independent, neutral fact gatherers.”
 - a. Is this your position today? Please explain
 - i. If so, what effect does this have on the criminal justice system?
 - ii. If so, how will this belief inform how you as you listen to probation officers as a judge?
4. You are quoted (with regard to diversity issues) as saying, “Where it becomes important is to the people who use the system. If all they see day after day is people on the bench who can’t identify with their language or color, it is not healthy.”
 - a. How diverse should a bench be to be considered healthy?
 - b. Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge’s approach to interpreting text, or otherwise affect the judicial process?

5. You represented Oscar Antonio Grande, a member of the MS-13 gang. Please describe any other times you represented an alleged member of MS-13, including the circumstances of the cases, the jurisdiction, and the outcome of these cases.
6. What is the most important attribute of a judge, and do you possess it?
7. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?
8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
9. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
13. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?
14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
15. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
16. If confirmed, how do you intend to manage your caseload?

17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?
18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
19. Please describe with particularity the process by which these questions were answered.
20. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Jeffery L. Schmehl
Nominee, U.S. District Judge for the Eastern District of Pennsylvania**

1. What is the most important attribute of a judge, and do you possess it?
2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
7. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.
8. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?
9. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
10. If confirmed, how do you intend to manage your caseload?
11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.
13. Please describe with particularity the process by which these questions were answered.
14. Do these answers reflect your true and personal views?

Response of Kenneth John Gonzales
Nominee to be United States District Judge for the District of New Mexico
to the Written Questions of Senator Chuck Grassley

1. **At a Teacher Training Conference on Bullying, you stated, “But all of us in this room know that reducing crime and keeping communities safe requires so much more. We know that it takes a lot more than police, prosecutors and prisons to make a community safe. We need people who watch out for each other and who have a stake in their community. We need an economic base that keeps people engaged and relatively free from need.” Additionally, at the 3rd Annual Gangs, Drugs and Prosecution Conference in 2011, you stated, “we cannot investigate and prosecute our way out of the violent crime problems that plague our communities. Law enforcement has to be augmented by education, prevention, and treatment if it’s going to be successful.”**
 - a. **Crime prevention is certainly an objective of all responsible citizens and of government. As a prosecutor you supported partnerships between state authorities, individuals, and families to prevent and reduce crime. Are there limitations on what the government can do in this area, particularly the federal government, and if so, what are the boundaries?**

Response: Yes. One significant limitation is the amount of resources needed for law enforcement purposes exceeding the amount available. Yet we have prosecuted many serious offenders and obtained convictions and significant sentences. Many of the most effective crime fighting and prevention strategies come from a community level, and often start with very limited resources. In most instances, the missing ingredients are leadership and vision. I have been very fortunate to have served as United States Attorney for many reasons. One of the significant aspects of the position, like so many other public leadership positions, is the ability to mobilize agencies and organizations, stimulate partnerships and pool limited resources toward a common objective in the area of public safety and crime prevention. But this can only be done by being very respectful of (1) jurisdictional lines, particularly those of state, local and Tribal governments, and (2) the legitimate local view that local agencies and organizations can best address some local challenges.

- b. **If confirmed as a federal judge, what would be your approach or involvement with crime prevention initiatives? Please describe the powers and limitations that would guide you.**

Response: As an Assistant United States Attorney and as the United States Attorney, I have spent many hours speaking to hundreds of middle and high school students on

the importance of making positive choices. I have explained to these young people that many choices they make, e.g., whether to use illegal drugs, join gangs, graduate from high school, go to college or the military, can have very long-lasting results, both positive and negative. They can be proud of making positive choices but they have to live with and accept the consequences of making negative choices. I use the opportunity to empower and challenge each student to take control of their lives by making positive choices. If confirmed, I hope to continue to challenge young people so long as doing so does not violate the Code of Judicial Standards or interfere with my duties on the bench.

- c. In sentencing, what weight would you give to a person's background – such as family status, economic standing, or other perceived social disadvantages?**

Response: I would not give any weight to a person's background, such as family status, economic standing, or other perceived social disadvantages.

- 2. At the Binational Mexico-U.S. Federal Prosecutors Working Group Meeting in 2011, you spoke of the inability to seize guns in the same way the government can seize drugs – noting “we can take drugs away from criminals simply because it is illegal to possess drugs. We cannot do that with guns.”**

- a. What is your understanding of the rights afforded by the Second Amendment?**

Response: As the Supreme Court has explained, “the Second Amendment conferred an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008).

- b. If you are confirmed, will you commit to protect an individual's right to possess a firearm?**

Response: Yes.

- 3. You once remarked, “It is only when all individuals—regardless of race, gender, ethnicity, religion, national origin and sexual orientation—have access to the great promise of equal opportunity that we will be able to say we have created the more perfect union envisioned by the framers of the Constitution.” What is your understanding of the current state of law, as to the level of review for these classifications, under the Equal Protection Clause?**

Response: The Supreme Court has ruled that a statute that classifies by race, alienage, or national origin will be subjected to strict scrutiny and sustained only if it serves a compelling state interest, explaining “[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others.” *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Strict scrutiny also will be applied “when state laws impinge on personal rights protected by the Constitution,” *id.*, including laws that burden First Amendment rights by “prefer[ring] one religion over another,” *Larson v. Valente*, 456 U.S. 228, 246 (1982). The Court applies intermediate scrutiny to review discriminatory practices based on sex. *See, e.g., Clark v. Jeter*, 486 U.S. 450, 461 (1988) (applying intermediate scrutiny to strike down Pennsylvania statute of limitations in paternity actions); *United States v. Virginia*, 518 U.S. 515, 532-33 (1996) (applying intermediate review and invalidating gender-based exclusion of women at military college). With respect to the appropriate level of scrutiny for classifications based on sexual orientation, I am aware that the issue currently is before the Supreme Court in *United States v. Windsor* and *Hollingsworth v. Perry*. If confirmed, I will follow all applicable Supreme Court and 10th Circuit precedent in this and other areas.

4. How will you use the Sentencing Guidelines to guide you in criminal cases?

Response: If confirmed, I would apply the Sentencing Guidelines in every criminal case. Since the Supreme Court’s ruling in *United States v. Booker*, 543 U.S. 220 (2005), the Sentencing Guidelines are no longer mandatory but are advisory on the sentencing judge. Nevertheless, controlling Supreme Court precedent requires the Sentencing Guidelines be applied correctly and a miscalculation amounts to procedural error and will be reversed. *Gall v. United States*, 552 U.S. 38 (2007). After applying the Sentencing Guidelines, a sentencing judge may vary from the correctly-calculated Guideline sentence to fashion a sentence that is sufficient but not greater than necessary to promote the purposes set forth in 18 U.S.C. 3553(a).

5. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

Response: It is never appropriate for a judge to favor one party over another.

6. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is the ability to adhere faithfully to the rule of law and apply it impartially. I believe I possess this attribute.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must have an even, calm and humble temperament, which, in my mind, includes a variety of qualities, including a deep respect for the rule of law, for the neutral role of the judge, for the position and for everyone in the courtroom, be they litigants, witnesses, jurors, court staff, or members of the public. It also includes patience, courtesy, and an ability to listen attentively. I believe I meet this standard and can apply it if confirmed.

8. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In deciding a case of first impression relating to a statutory or constitutional provision, I would look first to the express language and consider its plain and ordinary meaning. If necessary, I would apply any existing and closely-related or analogous precedent from the Circuit and Supreme Court for guidance.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: The decisions of the Supreme Court and Court of Appeals are binding precedent on the District Court. If confirmed, I would apply it regardless of my personal view of its correctness.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A Congressional statute is presumptively constitutional, but can be found to be unconstitutional if it violates a particular provision of the Constitution or if Congress, in enacting the statute, exceeded its authority as provided by the Constitution.

12. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Throughout my legal career, which thus far has spanned almost 20 years, I have demonstrated a true commitment to impartially adhere to the rule of law. If confirmed, I will continue to adhere to the rule of law and render decisions completely separate and apart from any notions of political ideology or motivation.

13. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: Please see my response to Question 12.

14. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No. The meaning of the Constitution should be based on an application of Supreme Court and relevant Circuit Court precedent.

15. **If confirmed, how do you intend to manage your caseload?**

Response: The caseload within the federal judiciary is growing, especially the criminal caseload in Districts all along the Southwest Border, including the District of New Mexico. The Sixth Amendment of the Constitution guarantees defendants the right to a speedy trial. If confirmed, I would manage my criminal caseload being especially mindful of each defendant’s constitutional and statutory right to a speedy trial and grant continuances only when necessary and in conformance with law. *See* 18 U.S.C. 3161(h)(7)(A). I also would utilize status conferences, set realistic schedules and deadlines and promptly make rulings to avoid unnecessary delays. In addition, I would utilize the Magistrate Judges on the Court and utilize their expertise and experience to assist in criminal and civil cases.

16. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. If confirmed, I would utilize a system of status conferences, scheduling orders with realistic deadlines, and promptly rule on pending motions to ensure cases continue moving efficiently toward trial or other disposition.

- 17. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I have spent a substantial amount of my career as an advocate, spending the last 14 years as a federal prosecutor advocating on behalf of the United States. If I am confirmed, my role as a judge will be much different. A judge must be neutral and detached from the parties and issues, deciding cases based only on the facts and the applicable law. I am, however, confident that I can successfully make this transition.

- 18. Please describe with particularity the process by which these questions were answered.**

Response: I reviewed each question thoroughly and answered them independently based on my experience and, where necessary, on legal research of existing legal precedent and standards. Moreover, I discussed my responses to each question with representatives from the Department of Justice.

- 19. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Kenneth John Gonzales
Nominee to be United States District Judge for the District of New Mexico
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is based on the importance of applying the law to the facts impartially in each individual case that comes before the Court, as well as respectfully and clearly communicating a decision orally or in writing to the parties. I am familiar with many in a long line of United States Supreme Court Justices, although I have not modeled my philosophy on any one Justice. I have practiced before many federal and state judges both at the trial and appellate levels who apply this same philosophy. I will apply the same if confirmed.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I have not subscribed to a particular philosophy relating to Constitutional interpretation. However, I am aware that the Supreme Court has applied originalism in cases to interpret the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (examining the original meaning of Second Amendment and striking down District of Columbia statute prohibiting possession of useable handguns in home as violative of Constitution); *See also Marsh v. Chambers*, 463 U.S. 783 (1983) (examining Continental Congress' practice of opening prayer and authorization of paid chaplains and upholding Nebraska Legislative practice of opening legislative day with prayer as not violative of Establishment Clause of First Amendment of Constitution).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I would have no authority as a District Judge to overrule precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The United States Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), is binding precedent and, if confirmed, I would apply it regardless of whether I agree with it.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court in *United States v. Lopez* articulated three categories of activity that Congress may regulate under the commerce power of the Constitution. 514 U.S. 549, 558 (1995). If confirmed, I would follow all Supreme Court or 10th Circuit Court of Appeals precedent regarding the scope of Congressional power under the Commerce Clause.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The judiciary evaluates whether the President exceeded Executive authority by applying the framework set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (stating, "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself").

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has described when a right is so fundamental so as to be protected under the Due Process Clause, stating "we have regularly observed that the Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (Internal citations and quotations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has ruled that a statute that classifies by race, alienage, or national origin will be subjected to strict scrutiny and sustained only if it serves a compelling state interest, explaining "[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others." *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Strict scrutiny also will be applied "when state laws impinge on personal rights protected by the Constitution." *Id.* The Court applies intermediate scrutiny to review discriminatory practices based on gender. *See, e.g., Clark v. Jeter*, 486 U.S. 450, 461 (1988) (applying intermediate scrutiny to strike down Pennsylvania statute of limitations in paternity actions); *United States v. Virginia*, 518 U.S. 515, 532-33 (1996) (applying intermediate review and invalidating gender-based exclusion of women at military college).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I will apply controlling precedent in the area of affirmative action without regard to my personal views or expectations.

Response of Michael M. McShane
Nominee to be United States District Judge for the District of Oregon
to the Written Questions of Senator Chuck Grassley

1. **A news article included in your Senate Questionnaire stated you “oppose mandatory minimum sentences and would like to preserve more judicial discretion.”**

- a. **Can you please expound on this statement and fully describe how it affects sentencing in your courtroom?**

Response: The news article from the Willamette Week centered on the growing population of women property offenders in the Oregon prison system. The reporter refers to my practice of sending many female repeat property and drug offenders to prison as “unconventional.” She asked if I was advocating for mandatory minimum sentences for property crimes and I told her that I was not. I told her that I was satisfied with our recent, voter-passed initiative that set higher presumptive prison terms for property offenders, but allowed the court some discretion in imposing a departure. I was not referring to all mandatory sentences and I regret that my statement was reported in a manner that appeared so broad in scope.

My personal views have never affected my ability to follow the law in imposing sentences in my courtroom. If the law requires me to impose a mandatory sentence, I have always done so.

- b. **As a state court judge, how much discretion did you have in sentencing, compared with federal district court judges?**

Response: Oregon’s sentencing guidelines set the presumptive sentence that a judge must follow unless the judge finds that there are substantial or compelling reasons to depart. In addition, Oregon has reduced judicial discretion by imposing mandatory minimum sentences for most violent felonies and certain drug crimes.

- c. **If confirmed, what deference will you give to the federal sentencing guidelines?**

Response: I have practiced as both an attorney and a judge in a state that utilizes sentencing guidelines. The sentencing guidelines were enacted to make sure that similarly situated individuals are treated the same in different jurisdictions and even within the same jurisdiction. If confirmed as a federal district court judge, I would give appropriate deference to the sentences that the Sentencing Commission has created within the guidelines.

d. In sentencing, what weight would you give to a person's background – such as family status, economic standing, or other perceived social disadvantages?

Response: I believe that the due process concept of proportionality requires that defendants facing similar charges should receive the same sentence. I do not believe that judges should fashion sentences based on the defendant's background.

2. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute that I possess as a judge is humility. By keeping our ego in check, judges become better learners and listeners in the courtroom. As an attorney, there was nothing more frustrating than appearing in front of a judge whose ego impeded his or her ability to learn and ask questions. Humility is also what allows us to exercise the judicial restraint necessary to set aside our own biases and beliefs.

3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A humble temperament allows us to learn from the attorneys who appear before us and listen to the litigants, witnesses, and victims with an open and unbiased mind. A judge must also present him or herself in court as fair by setting aside personal views, applying the law, and using best efforts to make sure that those appearing in court have received a balanced opportunity to make their case. In my fifteen years on the bench, I believe I have met that standard.

4. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: As a trial judge, I am occasionally presented with cases of first impression. If I am dealing with a statute I begin with the principles of statutory construction, giving plain meaning to the statute and ascribing to it the presumption that it is constitutional. After that, I would look to analogous precedent in my own jurisdiction. Finally, I would look to similar cases in other jurisdictions.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision despite my personal beliefs.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed to be constitutional. A federal court should only declare a statute unconstitutional if Congress clearly exceeded its authority or the statute violates a constitutional provision based on clear precedent established by the appellate courts.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: No.

9. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I strongly support the notion of judicial restraint and, in particular, the need for trial judges to base decisions solely on precedent and the plain meaning of statutes. This has been my practice for the fifteen years that I have been a state court judge.

10. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: Throughout the nomination process, both sides of the criminal and civil bar in my jurisdiction have been enthusiastically supportive of my potential appointment to the federal bench. I enjoy this support because the attorneys know I do not come into the case with bias or a personal agenda. They know that their clients will be treated respectfully and that they will get a fair hearing.

11. **If confirmed, how do you intend to manage your caseload?**

Response: In civil cases, I would use the case management rules found in the federal rules of civil procedure to assure that discovery and motion practice are being completed in a timely manner. I would hold regular status hearings in criminal cases to ensure that both

sides are complying with discovery deadlines. I would issue decisions as quickly as possible so as to not hinder the litigation. I would set realistic dates and set an expectation in my courtroom that the attorneys will be held to those dates.

- 12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Judges do have a role in controlling the pace and conduct of the litigation by being accessible, by setting clear expectations during case management conferences, by issuing rulings in a timely manner, by holding attorneys to the standards of professionalism, and by setting firm trial dates.

- 13. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: In deciding cases and issuing opinions, I begin with a respectful analysis of the memoranda of the attorneys before me. I rely on counsel to outline the basic legal structure of the issue and I expect them to assist me in focusing on the issues during oral argument. I then look to the statutes and the case law that control the issue and apply it to the facts of the case.

- 14. Please describe with particularity the process by which these questions were answered.**

Response: I received the questions via email from the United States Department of Justice on February 20, 2013. I drafted my responses that same day. On February 21, I reviewed my responses with an official at the Department of Justice and submitted my final response on February 24.

- 15. Do these answers reflect your true and personal views?**

Response: Yes.

**Response of Michael J. McShane
Nominee to be United States District Judge for the District of Oregon
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is that the rule of law holds our constitutional system together and judges must apply it irrespective of popular opinion or personal beliefs. Within that framework, the role of the judge is one of restraint; restricting him or herself to applying the law to the facts and not ascribing to the law a purpose or meaning that fits the world view of the judge. I am not familiar enough with any one Supreme Court Justice's judicial philosophy to say which is most analogous with mine. I greatly admire those Justices, such as Hugo Black, who valued the importance of judicial restraint, even in those moments when it clashed with popular opinion.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: Yes. I believe that the original intent of the framers of the Constitution should be used to interpret the Constitution. I also believe that determining the public meaning of the text at the time it was written is "a critical tool of Constitutional interpretation." *District of Columbia v Heller*, 554 U.S. 570 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: No circumstance exists in which I would overrule precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed to be a District Court Judge, I would follow the holding of *Garcia* and any other relevant precedent of my Circuit and of the United States Supreme Court.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Congress has the authority to regulate what is described by the Supreme Court as “three broad categories” of activity. *Unites States v Lopez*, 514 U.S. 549 (1995). This authority includes the power to regulate the channels and instrumentalities of interstate commerce, as well as activities that have a substantial effect on interstate commerce.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: This is not an area of law that I have been presented with during my career as an attorney or a judge. It is my general understanding that the President’s power to issue executive orders or executive actions “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet and Tube v Sawyer*, 343 U.S. 579, 586 (1952). Any executive order or action that is alleged to exceed these limitations would be subject to judicial review.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is “fundamental” for purposes of substantive due process only when it is defined as such by the precedent of the Supreme Court. This would include only those rights that have been found to be “deeply rooted in our Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Snyder v Massachusetts*, 291 U.S. 97, 105 (1934); *Palko v Connecticut*, 302 U.S. 319, 325 (1937). It is an area in which courts are cautioned to exercise great restraint, “lest the liberty of the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court.” *Washington v Glucksberg*, 521 U.S. 702,720 (1997).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: A classification should be subject to heightened scrutiny if it meets the definition of a “suspect classification” or a “quasi suspect classification” as defined by the precedent of the Supreme Court.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I hold no personal expectations as to the use of racial preferences in public higher education 15 years from now. As a trial judge, I would not use my personal expectations as a guide in applying applicable law.

Response of Nitza I. Quinones Alejandro
Nominee to be District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

1. **You were a member of the Philadelphia Fellowship Commission's Board of Directors for four years, including while you were a judge. This organization has been involved in a number of activities that potentially could have come before the courts, including victim's compensation and handgun controls. Why was it appropriate for you to remain on this Board, even after you became a judge?**

Response: When I was on the board of the Fellowship Commission, the scope of our meetings dealt primarily with concerns about equal rights issues. It appears that in recent years, the Board may have been involved with victim's compensation and handgun control concerns. These concerns arose after I left the Board and were never issues discussed while I was a Board member. I have not been involved in any organization where issues of this nature or any issue that could come before the court have been a major focus. Had I been a Board member when these matters arose, I would have immediately resigned from the Board. More generally, I have always carefully followed the applicable ethical and other standards governing recusal in cases where my impartiality could be questioned, and I would continue to do so, if confirmed as a federal district court judge.

2. **You have had some reversals that raise a question as to whether or not you are pro-defendant. In one case, the defendant drug dealer ran from the police and was subsequently found to be in possession of illegal substances. In another, the officer saw the defendant stuff a brown paper bag containing cocaine under his seat during the course of a traffic stop.**
 - a. **I recognize that search and seizure and probable cause determinations are fact specific. Without getting into the specifics of the cases, please describe your approach to these types of cases.**

Response: In the cases alluded to, these matters came before me as motions to suppress evidence. I heard the evidence, made a determination of the relevant facts based upon the evidence presented, and applied the law as I understood it. In the first matter, though reversed by the Superior Court, I was subsequently affirmed by the Pennsylvania Supreme Court. In the second matter, the appellate court differed with my analysis and I respect the court's opinion. In this latter ruling, the appellate court provided a clearer guideline as to when a search of a front seat passenger in a stopped vehicle was permissible. Although my rulings in these two cases were in favor of the

defendant, I have presided over 1,500 criminal matters. In a substantial number of these cases, I have found the defendant guilty of criminal offenses.

b. To what sources do you look and what principles guide you?

Response: When deciding these particular motions to suppress, I looked to prevailing precedents, including, *Terry v. Ohio*, 392 U.S. 1 (1968), *California v. Hodari D.*, 499 U.S. 621 (1991), *Commonwealth v. Edmunds*, 586 A.2d 887 (1991), and *Commonwealth v. Jeffries*, 311 A.2d 914 (1973). The principles that guide me in all cases are to determine the relevant facts and to apply existing precedent to the facts.

c. Why did that process not lead you to a correct ruling in the cases mentioned above?

Response: In the first case mentioned above, the process did lead me to the correct ruling, as ultimately determined by the Pennsylvania Supreme Court. In the other case, the appellate court opined that in the particular factual scenario before me, the police were justified in requiring that the passenger be searched. I respect the appellate court opinion.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute for a judge to possess is integrity. This includes a commitment to and respect for the rule of law, precedents, and the matters that come before the court. In exercising integrity, the judge must also be a good listener, patient, fair, impartial, courteous, reasonable, ethical, and decisive. I believe I possess these qualities.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: Judicial temperament requires that a judge show respect for the law and everyone who appears before the court; treat everyone with dignity, fairness, and impartiality; be willing to listen to the testimony and arguments made, and understand the facts and law; and be objective, clear, and decisive in disposing of matters. I believe that I have demonstrated these qualities during my 22 years of public service as a state court judge.

5. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I have had the occasion to rule on several cases of first impression. In deciding cases of first impression, I first review the specific wording of the statute to determine whether the meaning of the statute is clear or ambiguous. If the meaning of the statutory text is clear, then that meaning must be given effect. If the meaning is ambiguous, I look at the legislative intent, legislative history, and to other cases involving analogous issues.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision rendered by the appellate courts despite any personal disagreement.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: There are two instances when it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional: when Congress has exceeded its authority and when the statute violates a constitutional right.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: Foreign law or views of the world community have no place in determining the meaning of the Constitution.

10. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As a trial judge, I strongly adhere to the doctrine of *stare decisis*. This doctrine provides the court and the community with an understanding of what to expect in a particular circumstance and how the court is to rule. That is, it provides stability and predictability in the law. My 22 year record as a state court judge demonstrates that I have been guided by the doctrine of *stare decisis* and not by political ideology and/or personal views.

- 11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: See my answer to Question 10.

- 12. If confirmed, how do you intend to manage your caseload?**

Response: During my 22 years on the state court, I have handled numerous criminal and complex civil matters, and have managed trial programs from the initial filing of pleadings to trial. I have established internal systems in addition to the established case management system that already exists in the courts. I have worked closely with attorneys to establish realistic deadlines that control the flow of cases through the trial stage. I have ruled on dispositive motions and other motions in a timely manner. If confirmed, I plan to continue these practices. I will carefully review the status of each case assigned, and hold status hearings with counsel to prioritize cases, define the issues, and schedule the matter for resolution.

- 13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes. If confirmed, I would first inquire as to the case management system that currently exists in the district court, and would utilize that system if I believed it was efficient and effective. I would establish deadlines for specific events, in consultation with counsel, when appropriate, and after these deadlines have been established, a continuance would be granted based only upon good cause. See also my answer to Question 12.

- 14. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: How a case is decided depends on the status of the case. If the matter comes to me as a motion, I review all the pleadings and briefs filed. If there is a novel issue, I also conduct additional research, including reviewing relevant case law and statutes. When necessary, a hearing is scheduled to allow counsel to make oral argument. If warranted, a review of the legislative history is conducted to understand the intent of the law. As promptly as possible, a decision is rendered.

If the matter is a trial, the parties will be allowed to present their respective motions, evidence, and arguments. The evidence is properly weighed, the law applied to the facts presented, and the decision is made.

- 15. Please describe with particularity the process by which these questions were answered.**

Response: On February 20, 2013, I received a series of questions and personally drafted my answers on the same day. I reviewed the draft of my responses with an official in the Department of Justice before submitting these to the Committee.

- 16. Do these answers reflect your true and personal views?**

Response: Yes, these answers reflect my true and personal views.

Response of Nitza I. Quiñones Alejandro
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy consists of a belief that each branch of the government plays an important role in our governance. The role of a member of the judicial branch is to faithfully determine the facts, apply the law to the facts, rely on precedential interpretation of the law, and set aside one's own personal beliefs. My judicial philosophy is consistent with my definition of the role of the judiciary. I strive to always be prepared, fair, impartial, respectful, and willing to let the parties have their day in court. I have never compared my judicial philosophy with those held by any Supreme Court Justices.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has looked to original understanding to interpret the Constitution, and has used the language of original intent and original public meaning in various cases. *See, e.g.,* District of Columbia v. Heller, 554 U.S. 570 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a federal court judge, I would never overrule a precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: If confirmed as a federal judge, I would be bound to follow the holding of Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985), as well as any subsequent precedent on this issue from the Supreme Court or the Third Circuit Court of Appeals, regardless of whether I disagreed with the precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In resolving questions regarding the Commerce Clause and non-economic activities, I would rely on *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), which essentially held that Congress may regulate commerce in the use of the channels of interstate commerce; may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; or may regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *See also* *United States v. Morrison*, 529 U.S. 598, 608-609 (2000).

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: It is my understanding that the President's ability to issue executive orders or executive actions must stem either from the Constitution or from an act of Congress. When the President exceeds the stated authority and the relevant executive order or action is challenged in court, it is the judiciary's responsibility to invalidate that order or action.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In general, a right specifically guaranteed by the Constitution, including the Bill of Rights, or one that is deeply rooted in our Nation's history, is deemed to be fundamental for the purpose of substantive due process. *See* *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997). If confirmed, I will adhere to the established precedents on this issue and the Constitution.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: If a classification burdens a fundamental right, the court should apply strict scrutiny to inquire as to whether a compelling state interest is involved. Heightened scrutiny applies when a law's classification is based on a suspect or quasi-suspect classification (race, gender, etc.). *See* *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a federal judge, I will apply the holding in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), and any other precedent in this area of the law regardless of any expectation I might have.

Response of Luis Felipe Restrepo
Nominee to be United States District Judge for the Eastern District of Pennsylvania
To the Written Questions of Senator Chuck Grassley

1. **As a magistrate judge, you have not yet presided over any criminal matters. This is not the normal pattern I have observed with other magistrate judges.**

- a. **Please explain how your cases are assigned and the extent to which have handled criminal matters as a United States Magistrate Judge.**

Response: Although I have not handled any criminal trials as a United States Magistrate Judge, I have handled hundreds of criminal matters. The Magistrate Judges in the Eastern District of Pennsylvania are assigned to "criminal duty" several times a year. During any given duty week I review, *inter alia*, many requests for search warrants, arrest warrants, pen registers, criminal complaints and warrants, sealing orders, requests for GPS surveillance, requests for pole cameras and the return of criminal indictments. I also preside over a wide variety of hearings in court including initial appearances, detention/bail hearings, removal hearings, identity hearings, arraignments, probable cause hearings and occasional misdemeanor pleas and sentencings.

- b. **How prepared are you to preside over federal criminal matters? Please explain.**

Response: I am very prepared to preside over federal criminal matters. As noted above I have presided over a wide variety of criminal matters during my nearly 7-year term as a United States Magistrate Judge. During my tenure as an Assistant Federal Defender and as a private practitioner I participated in over 30 federal jury trials as lead counsel and represented hundreds of individuals who opted to plead guilty at sentencing hearings. I represented individuals from the pre-charging phase of the trial through the appellate process. I have also tried hundreds of cases as lead counsel in state court in both jury and non-jury trials and represented hundreds of others who opted to plead guilty at sentencing hearings. I have also represented many individuals at revocation of supervised release, probation, and bail hearings in both federal and state court.

- c. **What assurances can you give that you will be fair to both prosecutors and criminal defendants who appear before you?**

Response: I am confident that my record presiding over a wide variety of criminal matters during my nearly 7-year tenure as a United States Magistrate Judge demonstrates that I have been and would continue to be fair to both prosecutors and criminal defendants that appear before me should I be confirmed as a District Judge.

2. How will you use the Sentencing Guidelines to guide you in criminal cases?

Response: As mandated by the Third Circuit the Sentencing Guidelines are an extremely important matrix in determining the appropriate sentence in criminal cases. I would follow Supreme Court and Third Circuit precedent with respect to the calculation and use of the Sentencing Guidelines in criminal cases.

3. You are quoted as saying that “at least for defense lawyers, it is absolutely untrue that probation officers are independent, neutral fact gatherers.”

a. Is this your position today? Please explain

Response: This was my view as a federal defender noting that attorneys should be present and vigilant when their clients are being interviewed by probation officers in anticipation of sentencing. My position remains that defense attorneys have an obligation to participate in all critical stages of the criminal justice process.

i. If so, what effect does this have on the criminal justice system?

Response: Our criminal justice system relies on an adversarial presentation of the facts and the law, and therefore, I think that defense attorneys have an obligation to participate in every crucial stage of the proceedings.

ii. If so, how will this belief inform how you as you listen to probation officers as a judge?

Response: My personal belief will not impact on my ability to listen to and seriously consider the position of a probation officer should I be confirmed as a District Court Judge. I have worked closely with both United States Pre-trial Services Officers and United States Probation Officers during my nearly 7-year tenure as a United States Magistrate

Judge and hope to continue to do so should I be confirmed as a District Court Judge.

4. **You are quoted (with regard to diversity issues) as saying, “Where it becomes important is to the people who use the system. If all they see day after day is people on the bench who can’t identify with their language or color, it is not healthy.”**

a. How diverse should a bench be to be considered healthy?

Response: Our justice system overall benefits when it reflects the demographics of the community it serves.

b. Does the gender or ethnic background of a judge influence the way a judge views the law, shape a judge’s approach to interpreting text, or otherwise affect the judicial process?

Response: The gender and/or ethnic background of a judge should in no way influence the way a judge views the law, shape a judge’s approach to interpreting text or otherwise affect the judicial process.

5. **You represented Oscar Antonio Grande, a member of the MS-13 gang. Please describe any other times you represented an alleged member of MS-13, including the circumstances of the cases, the jurisdiction, and the outcome of these cases.**

Response: To the best of my recollection Mr. Grande was the only member of the MS-13 gang that I ever represented.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is a firm commitment to following the rule of law. I believe that during my nearly 7-year term as a United States Magistrate Judge I have demonstrated that I possess this attribute.

7. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: It is never the role of a judge to favor one party over another.

8. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In my view, the appropriate temperament of a judge includes the qualities of impartiality, fairness, respectfulness, humility, integrity and the commitment to the rule of law. I believe that I have met these standards as a United States Magistrate Judge and that I would continue to meet these standards if confirmed as a United States District Court Judge.

9. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am committed to following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

10. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In cases involving statutory interpretation, I would first turn to the text of the statute. In cases involving Constitutional interpretation, I would first turn to the text of the Constitution. If the text is not clear I would turn to analogous precedent from the Supreme Court and the Third Circuit Court of Appeals. Where such precedent is not available I would examine analogous precedent from other Circuit Courts and District Courts.

11. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I must and would apply the decision(s) of the United States Supreme Court and the Third Circuit Court of Appeals. I would follow such precedent regardless of my own judgment or my personal beliefs.

12. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Should a court determine that a statute enacted by Congress exceeded its authority or contradicts the Constitution it would be appropriate for a federal court to declare the statute unconstitutional. I would follow Supreme Court and Third Circuit precedent in making such a determination.

13. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution?**

Response: Unless mandated to do so by the Supreme Court or the Court of Appeals it is not proper for judges to rely on foreign law or the view of the “world community” in determining the meaning of the Constitution.

14. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I am confident that my record as a United States Magistrate Judge for nearly 7 years can provide the Committee with assurance/evidence that, if confirmed, my decisions will continue to be grounded in precedent and the text of the law rather than any underlying political ideology or motivation.

15. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I am confident that my record as a United States Magistrate Judge for nearly 7 years can provide the Committee with assurance/evidence that, if confirmed, I will put aside any personal views and be fair to all who appear before me.

16. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed I would actively manage my caseload with the assistance of chambers staff and staff from the clerk of court. I would make every effort to promptly dispose of motions and discovery disputes and I would strongly encourage the parties to engage in serious settlement discussions early in the case. I would also make myself available to counsel on short notice for telephone conferences in an effort to efficiently manage my caseload.

17. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe that judges have a role in controlling the pace and conduct of litigation. If confirmed, I would set firm scheduling deadlines, promptly decide motions, encourage settlement discussions early in the litigation and promote the efficient resolution of discovery disputes.

18. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: I read the written submissions of the parties, review the cases cited by the parties, listen and consider any oral argument presented, and apply the law as set forth in the decisions of the United States Supreme Court and the Third Circuit Court of Appeals to the facts of the case.

- 19. Please describe with particularity the process by which these questions were answered.**

Response: The questions were provided to me on the evening of February 20, 2013 by personnel from the Department of Justice. I prepared responses to the questions and reviewed them with a representative of the Office of Legal Policy of the Department of Justice on February 22, 2013 and asked that my responses be submitted to the Senate Judiciary Committee.

- 20. Do these answers reflect your true and personal views?**

Response: These answers reflect my true and personal views.

**Response of Luis Felipe Restrepo
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is based on a firm commitment to the rule of law and treating all litigants with respect and dignity. During my nearly 7-year tenure as a United States Magistrate Judge, my record demonstrates a commitment to applying Supreme Court and Third Circuit precedent to the facts established by the evidence.

Given the very different roles of a trial court and the Supreme Court I do not have a specific Justice of the Supreme Court whose judicial philosophy is most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I believe that the original intent of the authors of the Constitution is extremely important in interpreting constitutional provisions. If confirmed as a District Court Judge, I would look to the plain meaning of the words or phrases of the Constitution and binding precedent from the Supreme Court and Third Circuit Court of Appeals.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a District Court Judge, I would be fully committed to following Supreme Court and Third Circuit precedent, regardless of my personal beliefs.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: As a nominee I do not feel it is appropriate to express my personal views about Supreme Court decisions. *Garcia* is binding precedent, and I would follow it regardless of my personal views.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia summarized the relevant Supreme Court precedent as follows: "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." Justice Scalia further noted: "Congress may regulate noneconomic intrastate activities only where the failure to do so 'could...undercut' its regulation of interstate commerce." *Id.* at 38. If confirmed as a United States District Court Judge, I would faithfully follow the Supreme Court's decisions in this area, including *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000).

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's authority to issue executive orders and executive actions is limited by the Constitution and federal statutes. If the President takes action that is not authorized by the Constitution or an act of Congress and a challenge to that action is properly brought, then a federal judge must invalidate the action as exceeding Presidential authority. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In discussing the "established method of substantive-due process analysis," the Supreme Court has observed that "the Due Process Clause specifically protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' ... and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). If confirmed as a United States District Court Judge, I would apply that precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: In accordance with Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin, or gender. The Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as "fundamental," such as the right to vote.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed as a District Court Judge I would strictly follow and apply *Grutter* and all Supreme Court precedents concerning this issue regardless of my individual expectations.

Response of Jeffrey L. Schmehl
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

1. What is the most important attribute of a judge, and do you possess it?

Response: A good judge needs many attributes, but the three most important, in my opinion, are courtroom experience, proper judicial temperament, and a good work ethic. Throughout my career as a prosecutor, trial attorney, and trial judge, I believe I have demonstrated the experience and knowledge necessary to be a good trial court judge. I also possess the proper judicial temperament in that I am respectful to all attorneys and litigants, never lose my temper, and have a respectful and pleasant demeanor in the courtroom. Lastly, in today's day and age, a judge that must preside over crowded dockets must have a good work ethic in order to process the case loads assigned. I believe I have demonstrated all of these attributes in my fifteen years on the Berks County Bench.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe that a trial judge must be even-keeled, respectful, and transparent. If a judge demonstrates all three of those things, he or she will have the appropriate temperament. Additionally, a judge's demeanor should reflect that he is impartial, thoughtful, and dignified. I believe I have demonstrated this temperament throughout my years as a judge.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: I am certainly committed to following the precedent of the Third Circuit Court of Appeals and the United States Supreme Court faithfully and giving them full force and effect. I have done that for the past fifteen years with the Pennsylvania intermediate appellate courts and the Supreme Court of Pennsylvania. I believe it is vitally important for consistency, and for the expectations of the bar and the litigants, to follow prior precedent.

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If confirmed and faced with a case of first impression, I would first consider any related United States Supreme Court decisions, and then any related decisions by the Third Circuit Court of Appeals. I would also examine the text of the governing law in

question, and the legislative history, if any. I would also look to what other courts and other circuits have ruled, acknowledging that they are not binding on my court, but reviewing the rationale and reasons behind their decisions and if thoughtful and appropriate, following the same.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I believed that the United States Supreme Court or the Third Circuit of the Court of Appeals had seriously erred in rendering a verdict, I would still feel constrained to follow the precedent that was set. In order to have a system that is fair, predictable, and reliable, a trial court judge must follow precedent.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Any statute passed by Congress is strongly presumed to be constitutional, depending upon the rights affected and the appropriate level of scrutiny according to precedent. If confirmed and called upon to review a statute, as a trial court judge, I would consider it constitutional and look to uphold the constitutionality of it. Only if a statute is clearly and unequivocally not in conformance with the Constitution as interpreted by the Supreme Court and the relevant Circuit Court of Appeals should it be declared unconstitutional by a federal district court judge.

7. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: I cannot think of any circumstance where it would be proper for a judge to rely on foreign law or the view of the world community in determining the meaning of any part of the United States Constitution.

8. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I have always followed the precedent of the Pennsylvania Superior Court, Pennsylvania Commonwealth Court, and Pennsylvania Supreme Court. A trial court judge should not be making new law, but should be following the laws as passed by the legislative body and as reviewed and acted on by the higher courts. In making a decision, a judge should consider that the decision could be appealed and by following precedent, the judge can then feel confident that his decision would be affirmed on appeal.

9. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: During my fifteen years as a state trial court judge, I have never put my personal views before the law. I have also strived to be fair to all that have appeared before me. It is every judge's duty to strive to be a fair and impartial judge. The parties, the litigants and the attorneys expect and demand that from the judge they appear before.

10. If confirmed, how do you intend to manage your caseload?

Response: I believe that my extensive experience as a trial attorney and a trial judge gives me a unique view to estimate which cases will take up a significant amount of judicial time and which cases will not. I am always directly involved with scheduling cases and, if confirmed, will continue to be. By doing this, I believe judicial time could be maximized and judicial economies can be achieved. Furthermore, in addition to having a hands-on approach with scheduling all matters in my courtroom, I would also actively monitor all cases assigned to my docket, conduct necessary hearings promptly, and rule on all matters in a timely fashion. I would also utilize United States Magistrate Judges in my district to expedite settlements and/or trials of any and all cases on my docket. Lastly, and as always, I would be available at all possible times to parties in civil actions to conduct settlement conferences.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that a Federal District Judge has a role in controlling the pace and the conduct of litigation. If confirmed, I would regularly monitor the cases on my docket, establish and enter case management orders with reasonable but firm deadlines, and make myself available to the parties for pretrial settlement conferences.

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: When attempting to make a decision, I ask both sides for the cases they feel are most on point as to the arguments and positions they are taking. I start by reviewing those cases; however, the facts of a particular case are not always on point with the prior cases that have been decided by the appellate courts. A judge must evaluate the facts of a particular case, thoroughly research the law, and look at the rationale other judges have used in deciding cases similar to the case at hand.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions via email on February 20, 2013. I drafted responses and forwarded them to the Department of Justice on February 21, 2013. I discussed my responses with a representative of the Department of Justice and authorized the Department of Justice to submit the responses to the United States Senate.

14. Do these answers reflect your true and personal views?

Response: Yes.

**Response of Jeffrey L. Schmehl
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is one of respectful demeanor, respect of the record, and applying the law to the facts in order to render a proper decision independent of any outside influences. Because the United States of America is a nation governed by the rule of law, I believe that the most important thing a judge can do is apply the law to the facts as he finds them and rule appropriately. I cannot identify with one of the three enumerated Supreme Court Chief Justices, but I have been mostly influenced by judges before whom I have personally appeared.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would carefully follow all United States Supreme Court and Third Circuit Court of Appeals decisions that utilize an originalist analysis. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). If I were asked to decide a case based upon the interpretation of a constitutional provision that has not been ruled on previously, I would first look at the express language of the provision and examine its plain and ordinary meaning in consideration of the times in which it had been written. If appropriate in those scenarios, I would follow and apply the ordinary meaning. If said provision was ambiguous, I would look to the United States Supreme Court and the Third Circuit Court of Appeals for guidance. If appropriate or necessary, I would go further and look for thoughtful and well reasoned decisions of other federal circuit courts.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: I cannot think of any circumstances in which I would overrule precedent as a judge. If a decision is precedent today and is also precedent while I am on the bench, I would feel compelled to follow that precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The *Garcia* case represents binding precedent. As such, if confirmed, I would be compelled to follow the rulings in that case and apply the precedent that has been set by the United States Supreme Court.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: If confirmed and asked to decide a question involving the scope of Congress's Commerce Clause power, I would follow the binding precedent of the United States Supreme Court, which indicates that Congress, under the Commerce Clause, "may regulate the use of the channels of interstate commerce," and may "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *United States v. Lopez*, 514 U.S. 549, 558 (1995). Further, Congress may "regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.* (citations omitted). The majority opinions in *Lopez*, *id.* at 560-67, and *United States v. Morrison*, 529 U.S. 598, 610-11 (2000), indicate that the economic or non-economic nature of an activity is one important consideration when evaluating whether the Constitution gives Congress the power to regulate that activity. I will follow the precedent set by these and other decisions of the United States Supreme Court and the Third Circuit Court of Appeals.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Judicial Review is allowable on executive orders and executive actions by the President. The standard is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952) (Jackson, J., concurring). The President must have the power directly derived from the Constitution or directly given to the President through an act of Congress.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has identified rights as fundamental when those rights are, "objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'"

Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) (citations omitted). For a district trial court judge, a right is fundamental when it has previously been so characterized by either the United States Supreme Court or the Third Circuit Court of Appeals. If confirmed, I would apply the precedent that has been set previously by the above two courts.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Strict scrutiny under the Equal Protection Clause applies when legislation employs suspect classifications, including race, alienage, or national origin, and an intermediate level of scrutiny applies to classifications based on gender and illegitimacy. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Though not necessarily an issue of classification, heightened scrutiny also applies to review of legislation that affects fundamental rights. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: *Grutter* is now binding precedent in this area of the law. If I were confirmed as a district court judge, I would be bound to follow the *Grutter* case and any subsequent binding precedent in that area regardless of any personal expectations.



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VIA EMAIL AND FIRST CLASS MAIL

November 15, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Kenneth J. Gonzales*
To the United States District Court for the District of New Mexico

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Kenneth J. Gonzales who has been nominated for a position on the United States District Court for the District of New Mexico. As a result of our investigation, the Committee is of the opinion that Mr. Gonzales is Unanimously Qualified for this position.

A copy of this letter has been provided to Mr. Gonzales.

Sincerely,

Judy Perry Martinez
Chair

CC: **Kenneth J. Gonzales**
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 15, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 15, 2012.



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Tel: 703-280-4088
Email: judy.martinez@ngc.com

VIA EMAIL AND FIRST CLASS MAIL

September 20, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Michael J. McShane*
To the United States District Court for the District of Oregon

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Michael J. McShane who has been nominated for a position on the United States District Court for the District of Oregon. As a result of our investigation, the Committee is of the opinion that Mr. McShane is Majority-Qualified, Minority-Well Qualified for this position.

A copy of this letter has been provided to Mr. McShane.

Sincerely,

Judy Perry Martinez
Chair

cc: **Michael J. McShane**
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

772

September 20, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on September 20, 2012



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New Orleans, LA
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10 Post Office Square
Boston, MA 02109

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Burling B. Flewain
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New York, NY 10036-8229

THIRD CIRCUIT
Bridget C. Heenan
Civic Center
2520 Arch Street
Philadelphia, PA 19104-2608

FOURTH CIRCUIT
E. Fitzgerald Parsell III
Suite 2100
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne J. Lee
746 Coronado Street
New Orleans, LA 70110

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
3101 College Street
Huntington, NY 42102-0770

SEVENTH CIRCUIT
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Suite 6600
231 South Wacker Drive
Chicago, IL 60606-6107

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Bank Building
5201 Walnut Street
Des Moines, IA 50309-4119

NINTH CIRCUIT
Edith R. Mastha
Suite 2400
500 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
Sheryl J. Wilbert
Suite 4100
601 Union Street
Seattle, WA 98101

ELEVENTH CIRCUIT
Jim Cobb
Suite 4600
1700 Lincoln Street
Denver, CO 80202-4556

THIRTEENTH CIRCUIT
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Miami, FL 33156-2739

FOURTEENTH CIRCUIT
Russett A. Cox
10560 Fox Forest Drive
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VIA EMAIL AND FIRST CLASS MAIL

November 27, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Nitza Quiñones Alejandro*
To the United States District Court for the Eastern District of
Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Nitza Quiñones Alejandro who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. As a result of our investigation, the Committee is of the opinion that Judge Alejandro is Substantial Majority Qualified, Minority Not Qualified for this position.

A copy of this letter has been provided to Judge Alejandro.

Sincerely,

Judy Perry Martinez
Chair

cc: **Nitza Quiñones Alejandro**
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 27, 2012

Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 27, 2012.



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THIRTEENTH CIRCUIT
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5 South Dadeland Boulevard
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Ronald A. Cass
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**Standing Committee on
the Federal Judiciary**
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

November 27, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: *Nomination of Luis F. Restrepo
To the United States District Court for the Eastern District of
Pennsylvania***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Luis F. Restrepo who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. As a result of our investigation, the Committee is of the opinion that Mr. Restrepo is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. Restrepo.

Sincerely,

Judy Perry Martinez
Chair

cc: **Luis F. Restrepo**
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 27, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 27, 2012.



February 11, 2013

VIA EMAIL

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Minority Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

RE: *Support for the Nomination of the Honorable L. Felipe Restrepo to the U.S. District Court for the Eastern District of Pennsylvania*

Dear Chairman Leahy and Ranking Member Grassley:

We write with enthusiasm on behalf of the National Employment Lawyers Association (NELA) and our Eastern Pennsylvania Chapter to endorse the nomination of Magistrate Judge L. Felipe Restrepo to be an Article III Judge for the U.S. District Court for the Eastern District of Pennsylvania.

NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 68 circuit, state and local affiliates have a membership of over 3,000 attorneys, including 75 members in our Eastern Pennsylvania Chapter, who are dedicated to working on behalf of those who have been illegally treated in the workplace. NELA advocates for independent and fair-minded federal judges who are committed to equal justice under law for all of America's workers, and who do not place the interests of employers over the rights of employees. We take an active role in assessing candidates nominated to federal judgeships as well as individuals interested in becoming candidates for such vacancies. NELA screens potential judicial nominees, ensuring they are faithful to the progress made on civil rights and individual liberties, and possess a demonstrated record of respect for justice and equality in the workplace. We endorse candidates who have not only excellent professional credentials but also an appreciation of the real world circumstances that employees face on the job and the need to provide a remedy for violations of their workplace rights.

The Honorable Patrick J. Leahy
The Honorable Charles Grassley
February 11, 2013
Page 2

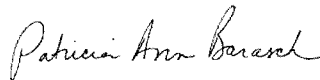
Without hesitation, NELA wholeheartedly endorses Judge Restrepo to be a U.S. District Court judge. Judge Restrepo receives enthusiastic support from lawyers who have tried cases before him from both sides of the courtroom, including many NELA members. They testify that he brings both intelligence and understanding to the cases before him and handles them with integrity, fairness and even-handedness.

We believe that a primary reason Judge Restrepo will be an outstanding addition to the District Court is his extensive trial experience as an advocate and instructor. He tried many cases, both civil and criminal, in six years as a public defender and 13 years as a trial lawyer in the firm of Krasner & Restrepo. Judge Restrepo's background as a small firm trial lawyer and former public defender sets him apart from most federal district judges who were either prosecutors or lawyers in large firms for most of their pre-judicial careers. This experiential diversity is a valuable and needed addition to the federal bench. Judge Restrepo's expertise has been recognized by the University of Pennsylvania and Temple University Law Schools, both of which have employed him to teach Trial Advocacy for a dozen years or more. In addition, he has served many years as a team leader for the highly respected National Institute for Trial Advocacy.

In 2004, shortly before Judge Restrepo was appointed as a Magistrate Judge, Temple University honored him with its Gideon Award for his demonstrated commitment to ensure that indigent individuals are afforded defense counsel. In addition to his public service on behalf of legal education, Judge Restrepo served public education with distinction for seven years as a member of the Board of Trustees of the Russell Byers Charter School. He has also served the community as a member of the Board of Governors of North Philadelphia Health System.

In short, Judge Restrepo is a superb candidate for an Article III judge, having demonstrated the integrity, intellectual depth and balanced temperament necessary to serve on the federal trial bench. He also brings with him a deep commitment to public service. For these reasons, NELA respectfully urges that the Honorable L. Felipe Restrepo be confirmed as an Article III judge for the U.S. District Court for the Eastern District of Pennsylvania.

Very truly yours,



Patricia A. Barasch
President, National Employment Lawyers Association

cc: The Honorable Robert P. Casey, Jr.
The Honorable Pat Toomey
Members, Senate Committee on the Judiciary



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Judy Perry Martinez
New Orleans, LA

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**Standing Committee on
the Federal Judiciary**
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

November 27, 2012

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: *Nomination of Jeffrey L. Schmehl
To the United States District Court for the Eastern District of
Pennsylvania***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jeffrey L. Schmehl who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. As a result of our investigation, the Committee is of the opinion that Mr. Schmehl is Majority Well Qualified, Minority Qualified for this position.

A copy of this letter has been provided to Mr. Schmehl.

Sincerely,

Judy Perry Martinez
Chair

cc: Jeffrey L. Schmehl
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

November 27, 2012
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on November 27, 2012.

Introductory Remarks
Nomination of Judge McShane
February 13, 2013

Madam Chairwoman, Ranking Member Lee, I'm proud today to be here to introduce Judge Michael McShane, Oregon's nominee to serve as U.S. District Court Judge for the District of Oregon. I thank you both for holding his confirmation hearing today.

Over the years Oregon has been blessed with a long list of distinguished judges who have served with distinction. I have every confidence that Judge McShane will join that list.

Judge McShane is currently a Multnomah County Circuit Court Judge where he has worked since 2001. After Graduating Magna Cum Laude from Gonzaga University, Judge McShane attended the Northwestern School of Law at Lewis and Clark College where he graduated in the top ten percent of his class.

He began his legal career as an attorney with the Metropolitan Public Defender's office in Portland. In 1997 he was appointed by the Oregon Supreme Court as a full time, pro tem judge. For the last decade he has been an adjunct professor at his alma mater, the Northwestern School of Law at Lewis and Clark College where he teaches Trial Advocacy and the Criminal Practice Seminar.

Judge McShane's litigation experience includes both complex criminal and civil cases. He is the senior member of Multnomah County Circuit Court's Death Penalty Panel and he has presided over more capital cases than any other sitting judge in Oregon. He has been a proven advocate for evidence-based sentencing and he has created a proof-based sentencing model for DUII offenders that is now the standard in Multnomah County. Judge McShane's accomplishments in the court room have earned him the 'well qualified' and 'qualified' ratings by the American Bar Association. Furthermore, despite budget cuts that have led to the closure of courthouses, due in no small part to Judge McShane's dedication and leadership, state courts in Oregon continue to meet ABA standards for moving civil cases to trial within one year, guaranteeing Oregonians' right to due process.

Alongside his legal career, Judge McShane has been an active member of his community, working proudly with inner city youth and Oregon's HIV community. He has taken leadership and volunteer roles in many legal, professional and civic groups including:

- *St. Andrew Nativity School* volunteer (Board member from 2003-2009)
- *HIV Services Planning Council* member
- *Classroom Law Project* speaker and mock trial judge
- *Cascade Aids Project* volunteer
- *Metropolitan Learning Center "Friday Focus"* instructor
- *LEP High School* intern supervisor
- *Job Corps* internship development
- *St. Francis Dining Hall* meal server
- *Oregon National Guard Youth Challenge* mentor
- *Portland Business Alliance Leadership Institute*

This past year he was awarded the 2012 Oregon State Bar President's Public Service Award for his service to his community. He is involved in the Northwestern School of Law's mentoring program and in 2009 was named the law school's "Mentor of the Year."

On a weekly basis, Judge McShane brings children from alternative schools into his courtroom to expose them to the justice system and the courts. He has partnered with several schools and with Job Corps to provide internship opportunities for youth to gain valuable experience in a working environment. Through the Classroom Law Project, Judge McShane presides over Summer Law Camp for inner city kids. And maybe his most admirable achievement, Judge McShane was a foster and adoptive parent through the Oregon Department of Human Services.

Again, I thank the Committee and especially its hardworking staff for allowing this nomination process to move forward.

**NOMINATION OF JANE KELLY, OF IOWA,
NOMINEE TO BE CIRCUIT JUDGE FOR THE
EIGHTH CIRCUIT**

WEDNESDAY, FEBRUARY 27, 2013

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

The Committee met, pursuant to notice, at 2:05 p.m., in Room SD-226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senators Klobuchar, Franken, and Grassley.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S.
SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. I am pleased to call this nominations hearing of the Senate Judiciary Committee to order. I want to thank Chairman Leahy for inviting me to chair this hearing.

I want to give a warm welcome to our nominee, Jane Louise Kelly, who has been nominated to the Eighth Circuit Court of Appeals. That is the circuit that includes not only Iowa but also Minnesota.

We also welcome any family and friends that have accompanied you, Ms. Kelly, and you will have an opportunity to introduce them shortly.

If confirmed, Ms. Kelly will be only the second woman to ever serve on the Eighth Circuit Court of Appeals. The other one I know well. Judge Diana Murphy is a friend of mine, and I know she could use some company.

Given this important milestone, I want to acknowledge the Infinity Project, which is based in Minneapolis and was created to advance getting more women on the Eighth Circuit bench and in State courts. I am happy to see their efforts paying off, and, of course, a lot of it has to do with the great qualities of this fine nominee.

I would like to call upon my colleagues now. Senator Grassley, who is the Ranking Republican on the Judiciary Committee, has graciously said that he wanted Senator Harkin to go first, who is a visitor, and a welcome visitor, to our Committee. And with that, I will turn it over to Senator Harkin.

**PRESENTATION OF JANE KELLY, NOMINEE TO BE CIRCUIT
JUDGE FOR THE EIGHTH CIRCUIT, BY HON. TOM HARKIN, A
U.S. SENATOR FROM THE STATE OF IOWA**

Senator HARKIN. Well, thank you very much, Madame Chair, Ranking Member Grassley, and other Members of the Committee who may be watching or arriving shortly. It is a great honor for me to introduce Jane Kelly, who has been nominated to serve as a judge on the United States Court of Appeals for the Eighth Circuit. I was honored to recommend this outstanding attorney to the

President. I thank him for nominating her, and I urge this Committee's swift approval.

I also want to thank Senator Leahy and the Committee for scheduling such a prompt hearing. I also want to thank my senior colleague from Iowa, Senator Grassley, and his staff for making this hearing possible. For many years, Senator Grassley and I have worked in a collaborative spirit on judicial nominations in our State, and I am grateful that that tradition has continued.

Madame Chair, I believe Jane Kelly possesses all of the qualifications necessary to assume the responsibilities of a federal appellate judge. Before recommending Ms. Kelly to the President, I reviewed an unusually strong field of candidates for this position. She stood out as a person of truly outstanding intellect and character, with a reputation as an extremely talented lawyer with a deep sense of compassion and fairness. It is no surprise that she enjoys wide bipartisan support from the Iowa legal community.

Judge Michael Melloy, who was nominated by President George W. Bush and whose seat on the Eighth Circuit Ms. Kelly is nominated to fill, said that Ms. Kelly, and I quote, "is very intelligent and thoughtful, is a good writer, which is important on the appellate court."

Federal District Court Judge Stephanie Rose recently noted that Ms. Kelly "has a great blend of personality, skills, and common sense to make a great lawyer and judge."

Iowa State Court Judge Casey Jones said that Jane Kelly is "one of the most brilliant people I have ever met."

So it is no surprise that the American Bar Association gave her a unanimous "Qualified" rating.

Ms. Kelly is a credit to all of us who have chosen to be public servants. She earned her bachelor's degree summa cum laude from Duke University, received her J.D. cum laude from Harvard Law School. After law school, she was a law clerk to both Judge Donald Porter of the District Court of South Dakota and a long-time friend of mine, and I know of Senator Grassley's, Judge David Hansen, nominated by President George H.W. Bush to serve on the Eighth Circuit.

She could easily have commanded a big salary with a top law firm. Instead, for over 20 years, she has opted for public service and long hours as a federal defender, working to uphold the rule of law and ensure the rights of all Americans. We are fortunate that she seeks to continue her public service to Iowa and our Nation by serving as a federal judge.

Madame Chair, let me conclude with two additional notes about Ms. Kelly's nomination.

First, to sort of repeat what you have already said, if confirmed, Ms. Kelly will be only the second female judge in the history of the Eighth Circuit, established in 1891. I might add, while 56 men have sat on that court, to date, as you pointed out, only one woman, Diana Murphy from Minnesota. And so now, hopefully, she will be joined by Jane Kelly from Iowa.

Second, I would note that President Obama has nominated 100 former prosecutors to the federal bench, including one that I recommended and supported by Senator Grassley, which is Stephanie Rose for the Southern District of Iowa. Among recent Presidents,

that is the highest percentage of former prosecutors nominated. These are all outstanding attorneys and, of course, dedicated public servants. But as Judge Melloy recently noted with respect to Ms. Kelly, "It will be good to have someone from the public defender realm on the bench."

Ms. Kelly has served for more than 20 years in the federal defender's office where she has argued hundreds of cases on behalf of indigent clients. She has fought tirelessly to ensure the rights of all are protected and has worked to give meaning to the phrase above the Supreme Court "Equal Justice for All." This is a critically important perspective that she will bring to the court, and I might add that our research showed that she will be the first career public defender since 1891 to serve on the Eighth Circuit Court of Appeals.

Members of the Committee, Jane Kelly is very highly qualified to serve as United States Court of Appeals judge for the Eighth Circuit. I urge this Committee to act swiftly to approve her.

Thank you, Madame Chair.

Senator KLOBUCHAR. Senator Grassley. Thank you, Senator Harkin.

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. Before I speak about Jane Kelly, I want to follow up on something that Senator Harkin has said about our working relationship and ratify what he said but go beyond it.

I suppose there are 50 different ways of doing this in the 50 different States, and I know that in some places they have been very contentious. And in our particular case, he and I have been doing this together for 28 years, and I do not think we have had one single disagreement when we had a Republican President who nominated somebody and you supported them, and now we have a Democrat President for a second time and I have supported your nominees. And there has not been one dispute, as far as I know, and I think it is something that maybe other States ought to take a look at, this relationship. So I thank Senator Harkin for that cooperation that he has given, and he has already thanked me.

I am particularly pleased to welcome the nominee, Ms. Jane Kelly, and her family and friends and guests. Ms. Kelly is nominated to be U.S. Circuit Judge for the Eighth Circuit. She presently serves as assistant Federal public defender and as supervising attorney of the office in Cedar Rapids. Ms. Kelly is a native of Indiana. She received her B.A. degree from Duke University in 1987. She spent the next 10 months in New Zealand as a Fulbright scholar. She received her J.D. from Harvard in 1991. Upon graduation, she clerked for Judge Donald J. Porter, U.S. District Court, District of South Dakota, and then for Judge David R. Hansen of the Eighth Circuit.

From 1993 to 1994, she was visiting instructor, University of Illinois College of Law. Since 1994, Ms. Kelly has served as an assistant federal public defender in the federal public defender's office for the Northern District of Iowa. She handles criminal matters for indigent defendants and has handled a wide range of crimes.

Since 1999, she has been a supervising attorney. Ms. Kelly has spent her entire legal career in litigation and has appeared in court frequently. She has tried 14 cases to jury verdict and has also represented clients before the Eighth Circuit Court of Appeals.

Ms. Kelly is active in the bar and in district court matters. She presently serves on the Criminal Justice Act Panel Selection Committee, the blue-ribbon panel for criminal cases, and the Facilities Security Committee of the district court. She has been a member of Dean Mason Ladd Inn of Court as well as National Association of Criminal Defense Lawyers.

In 2004, her peers honored her with the John Adams Award from the Iowa Association of Criminal Defense Lawyers and Drake University Law School. She was unanimously chosen for this award, which recognizes individuals who show a commitment to the constitutional rights of criminal defense, and probably John Adams represented that best when he defended British people that committed something wrong up there in Massachusetts.

[Laughter.]

Senator GRASSLEY. Well, that is where he lived.

Senator KLOBUCHAR. It is just a nice Iowa way of describing it.

Senator GRASSLEY. Judge Hansen, for whom Ms. Kelly clerked, has submitted a letter of support, and I read that entire handwritten note last night, and every sentence of it speaks highly of your work.

In that letter, he states that Ms. Kelly has practiced law in an exemplary fashion. He notes, "She is a forthright woman of high integrity and honest character." He observed that she possesses an exceptionally keen intellect and is a fair and compassionate advocate for her clients. Judge Hansen concludes that she will be a welcome addition to the court, if confirmed, and I have a great deal of confidence in Judge Hansen because, when I was first a candidate for Congress, I was in the University of Iowa Hospital, and he was a Republican chairman in one of my counties, and he went out and campaigned for me. And, you know, you do not find county chairmen doing that very often in our State. And I won that primary and won that election, obviously.

[Laughter.]

Senator GRASSLEY. And he gets all the credit for it.

The ABA Standing Committee on the Federal Judiciary has unanimously rates Ms. Kelly as "Qualified."

Again, I welcome Ms. Kelly and look forward to her testimony. Thank you.

Senator KLOBUCHAR. Okay. Very good. And we have also been joined by Senator Franken, who I know will have some questions when we go forward.

Senator FRANKEN. I think so.

Senator KLOBUCHAR. Okay. Very good. Excellent.

Senator Harkin, we thank you for being here. We do not want to swear you in under oath, so you are welcome to join us, but we know you have many pressing things to do. So thank you very much for coming.

Okay. Ms. Kelly, could you please come forward and we will administer the oath? Do you affirm that the testimony you are about

to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. KELLY. I do.

Senator KLOBUCHAR. Thank you very much, and I know you have some people here that you want to introduce, and so please take a moment to do that.

**STATEMENT OF JANE KELLY, NOMINEE TO BE CIRCUIT
JUDGE FOR THE EIGHTH CIRCUIT**

Ms. KELLY. Thank you very much. I wish to thank—that was the first thing I was supposed to remember.

[Laughter.]

Senator KLOBUCHAR. We will give you a break.

Ms. KELLY. Back to the true first thing I would like to do is to thank the Chair and the rest of the Committee for this opportunity to appear here today. And I appreciate the opportunity to introduce the handful of people who are here with me today.

My partner, Tom Lidd, and my sister, Lisa Kelly Vance, are both here with me today. And I also have a handful of friends who have made the trip from Iowa to support me as well.

[The biographical information of Ms. Kelly follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

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

United States Circuit Judge for the Eighth 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.

Federal Public Defender's Office, Northern District of Iowa
320 Third Street SE, Suite 200
Cedar Rapids, Iowa 52401
4. **Birthplace:** State year and place of birth.

1964; Greencastle, Indiana
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1993 – 1994, University of Illinois College of Law; LLM student (no degree obtained)

1988 – 1991, Harvard Law School; J.D. (*cum laude*), 1991

1983 – 1987, Duke University; B.A. (*summa cum laude*), 1987

Spring 1986, University of Bath, England; Higher Education in Europe, Semester Abroad Program (no degree obtained)

Summer 1985, Rice University (Sevilla, Spain); Summer School Session (no degree obtained)
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

Federal Public Defender's Office, Northern District of Iowa
320 Third Street SE, Suite 200
Cedar Rapids, Iowa 52401
Assistant Federal Public Defender (1994 – present)
Supervising Attorney (1999 – present)

1993 – 1994

University of Illinois College of Law
504 East Pennsylvania Avenue
Champaign, Illinois 61820
Visiting Instructor

1992 – 1993

United States Court of Appeals for the Eighth Circuit
Cedar Rapids, Iowa 52401
Judicial Clerk to the Honorable David R. Hansen (now retired)

1991 – 1992

United States District Court for the District of South Dakota
Pierre, South Dakota 57501
Judicial Clerk to the Honorable Donald J. Porter (deceased)

Summer 1990

The University of North Carolina at Chapel Hill
Knapp-Sanders Building, Campus Box 3330
Chapel Hill, North Carolina 27599
Law Clerk at the Institute of Government (now School of Government)

Summer 1989

Ice, Miller, Donadio, & Ryan (Ice Miller LLP)
One American Square, Suite 2900
Indianapolis, Indiana 46287
Summer Associate

1987 – 1988

University of Otago, Department of Paediatrics and Child Health
Health and Development Research Unit
Dunedin, New Zealand
Visiting Researcher (Fulbright Scholar)

Summers 1987 and 1988

Duke University

Talent Identification Program
1121 West Main Street
Durham, North Carolina 27701
Teaching Assistant

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 never served in the military, and I am 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.

John Adams Award, Iowa Association of Criminal Defense Attorneys, 2004

Fulbright Scholarship, 1987

Phi Beta Kappa, 1986

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.

Dean Mason Ladd Inn of Court (approx. 1994 – 1996)

National Association of Criminal Defense Lawyers (2001 – 2003, 2005)

United States District Court for the Northern District of Iowa
Facility Security Committee (2012 – present)
Blue Ribbon Panel for Criminal Cases (2007 – present)
Criminal Justice Act (CJA) Panel Selection Committee (approx. 1999 – 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.

Indiana, 1991

There have been no lapses in membership.

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

in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1999
United States Court of Appeals for the Eighth Circuit, 1994
United States District Court for the Northern District of Iowa, 2001

There have been no lapses in membership.

11. Memberships:

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

Duke University Alumni Association (1987 – present)

Harvard Law School Alumni Association (1991 – present)

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

Neither of the organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

- 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.

Warren R. Stanton, Jane L. Kelly, Deborah A. Bunyan, Phil A. Silva, "Expected Gain in Body Mass and Onset of Menarche," Australian and New Zealand Journal of Obstetrics and Gynaecology, 1992. Copy supplied.

J.L. Kelly, W.R. Stanton, R. McGee, P.A. Silva, "Tracking Relative Weight in Subjects Studied Longitudinally from Ages 3 to 13 Years," *Journal of Paediatrics and Child Health*, 1992. Copy supplied.

Jane L. Kelly, Warren R. Stanton, Phil A. Silva, Thomas E. Jordan, "Comparison of United States and New Zealand Children's Body Mass Scores," *Journal of The Royal Society of Health*, April 1991. Copy supplied.

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

I have not prepared, or contributed in the preparation of, any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization.

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

I have not given any testimony, official statements, or other communications relating, in whole or in part, to matters of public policy or legal interpretation. No one has presented any such testimony, official statements, or other communications on my behalf.

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

I have not kept a complete list of all the presentations I have given. I have reviewed my files and other available information in an effort to locate information about as many of my speaking engagements as possible. The following list comprises all of the speaking engagements for which I have a record or that I otherwise recall. It is my general practice to speak from rough handwritten notes, which normally are not saved in my files. I have also spoken at the University of Iowa College of Law on various career day panels, discussing

my role and practice as an Assistant Federal Public Defender. These panels have taken place both at the University of Iowa College of Law in Iowa City, Iowa, and in Cedar Rapids, Iowa at the federal courthouse, but I do not have a record of specific dates on which these panel discussions took place. Finally, I have done a number of presentations that were sponsored by the Federal Defender of Iowa. They are listed below, and where I prepared my own notes or other materials for use during the presentation, they are supplied. Most of these presentations are also listed on the organization's website, along with links to the materials distributed during the presentations (including those I did not prepare). See http://ias.fd.org/english/cja_seminars.php. In sum, I have done my best to provide a complete listing of all of my speaking engagements, but it is possible that I have omitted one or more speaking engagements of which I have no record or no specific memory.

May 24, 2012: Panel Discussion Member, "Discovery," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I spoke on a panel with other attorneys to discuss matters related to discovery in federal criminal cases, including the increasingly common practice of providing discovery by means of electronic media. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

May 26, 2011: Co-presenter, "Criminal Defense in the Era of Social Media," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

May 13, 2010: Panel Discussion Member, "Everyday Ethics for Criminal Defense Lawyers," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. Materials prepared for use during the panel discussion are supplied.

May 21, 2009: Panel Discussion Member, "Plea Negotiations: Dealing with Prosecutors and Difficult Clients," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

November 20, 2008: A colleague and I were scheduled to present "Postville Postmortem" at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. Due to illness, I was unable to participate in this presentation. I have no notes, transcript, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

November 17, 2008: Panel Discussion Member, "The Postville, Iowa, Prosecutions," at Loyola University School of Law, Chicago, Illinois. My role included discussing generally how the cases were handled by the prosecution, the defense attorneys, and the court, and describing some of the specific challenges that criminal defense attorneys faced. I have no notes, transcripts, or recording. The event was sponsored by the Federal Bar Association of Chicago, Workplace Enforcement and Immigration Program, Federal Plaza Center, P.O. Box 1200, Chicago, Illinois 60690.

September 18, 2008: Panel Discussion Member, "The Post-Postville Conference," Kansas City, Missouri. My role included discussing generally how the cases were handled by the prosecution, the defense attorneys, and the court, and describing some of the specific challenges that criminal defense attorneys faced. I have no notes, transcripts, or recording. The sponsor of the conference was the Federal Public Defender of Kansas, 201 United States Courthouse, 500 State Avenue, Kansas City, Kansas 66101.

March 13, 2008: Speaker: "Civil Commitment of Sexually Dangerous Persons," at a Brown Bag Lunch for CJA Panel Attorneys, sponsored by the Federal Defender of Iowa, Cedar Rapids, Iowa. Notes supplied.

January 30, 2008: Speaker: "Recent Developments in Federal Sentencing," Iowa City, Iowa. A colleague in Johnson County, Iowa asked me to speak at a relatively informal gathering of criminal defense attorneys. Notes supplied.

June 21, 2007: Co-presenter, "Current Issues in Federal Criminal Law," at the Annual Meeting of the Iowa State Bar Association, Des Moines, Iowa. Power Point slides prepared by my co-presenter and shown during our presentation are supplied. My recollection is that I used roughly the same set of notes that is provided for the June 23, 2006 presentation on the same topic.

November 30, 2006: Co-presenter, "Use of Polygraphs," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. Notes and materials supplied.

June 23, 2006: Co-presenter, "Current Issues in Federal Criminal Law," at the Annual Meeting of the Iowa State Bar Association, Des Moines, Iowa. Power Point slides prepared by my co-presenter and shown during our presentation are supplied, as well as my handwritten notes.

November 30, 2005: Panel Discussion Member, "Mental Health Issues," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

June 29, 2005: Brief welcoming remarks at the start of the "Take Back The Trail" event, Cedar Rapids, Iowa. I have no notes, transcripts, or recording. This event had no sponsor.

February 15, 2005: Speaker, "Federal Criminal Law," at a program entitled the Lunch and Learn Series, sponsored by Southwestern Community College, Creston, Iowa. I spoke about the types of criminal cases brought in federal court, the nature of federal sentencing, and some of the particular challenges that defense attorneys face in federal court. I have no notes, transcripts, or recording. The address for Southwestern Community College is 1501 West Townline Street, Creston, Iowa 50801.

November 2004: Remarks following acceptance of John Adams Award, given by the Iowa Association of Criminal Defense Lawyers, Des Moines, Iowa. I have no notes, transcripts, or recording, but press coverage is supplied. The address for the Iowa Association of Criminal Defense Lawyers is 2400 University Avenue, Des Moines, Iowa 50311.

June 9, 2004: Speaker, "Eighth Circuit Update," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

November 21, 2003: Speaker, "Defending a Methamphetamine Case." I believe this panel was sponsored by the local Criminal Justice Act (CJA) Panel in Madison, Wisconsin, but I have been unable to confirm this. Materials supplied. Additionally, I used the same set of notes that is provided for the October 10, 2003 presentation on the same topic.

November 20, 2003: Panel Discussion Member, "Everyday Ethics in Federal Practice," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

November 4, 2003: Panel Discussion Member, "Sentencing Issues," at the CJA Panel Attorney Seminar, sponsored by the Federal Defender of Iowa, Cedar Rapids, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

October 10, 2003: Speaker, "Defending Methamphetamine Cases," at the CJA Panel Attorney Seminar, sponsored by the Office of the Federal Public Defender, Middle District of Tennessee, Nashville, Tennessee. Materials and notes supplied.

November 14, 2002: Speaker, "Revocation of Probation and Supervised Release," at the Seminar for New Assistant Federal Defenders, sponsored by the Office of Defender Services of the Administrative Office of the U.S. Courts, Santa Fe, New Mexico. I have no notes, transcript, recording.

September 13, 2002: Co-presenter, General Practice Seminar on Federal Criminal Law, sponsored by the Continuing Legal Education Program of the University of Iowa College of Law, Iowa City, Iowa. Notes supplied.

June 6, 2002: Speaker, "Eighth Circuit Update," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

June 8, 2001: Speaker, "Eighth Circuit Update," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

June 16, 2000: Speaker, "Legal Writing," at a seminar entitled Federal Criminal Law and Procedure, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. Materials supplied.

February 2, 2000: Panel Discussion Member, "Life Outside of Work," sponsored by the University of Iowa College of Law. I was on a panel of attorneys discussing how to balance a rewarding professional life with an equally satisfying personal life. I have no notes, transcripts, or recording. The address of the University of Iowa College of Law is 290 Boyd Law Building, Iowa City, Iowa 52242.

June 17, 1999: Speaker, "Sentencing Procedure," at a seminar entitled Iowa Federal Defender Seminar for Davenport CJA Attorneys, sponsored by the Federal Defender of Iowa, Davenport, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

May 20, 1999: Co-presenter, "The Sweat Patch – Will it Work?" at a seminar entitled Federal Criminal Law Update, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. My co-presenter and I spoke about the increasingly common use of the sweat patch to detect illegal drug use among persons under the supervision of the federal criminal court. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

September or October, 1997: Speaker at the ceremony for Paul Papak upon his official appointment as Federal Defender of Iowa, Cedar Rapids, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

April 25, 1996: Speaker, "Appeals in Federal Criminal Cases," at a seminar entitled Federal Criminal Law Update, sponsored by the Federal Defender of Iowa, Des Moines, Iowa. I have no notes, transcripts, or recording. The address for the Federal Defender's office is 400 Locust Street, Suite 340, Des Moines, Iowa 50309.

In addition, I have been a guest lecturer at the University of Iowa College of Law in a course entitled Federal Criminal Practice, which is taught by two federal prosecutors. The topics I have covered include voir dire, opening statements, cross examination, and closing arguments. I have spoken at this class for the past several years, with the most recent time being October 2012. I also was a guest speaker at the University of Iowa College of Law at a course on the federal sentencing guidelines in the fall of 2011. Finally, I have been a guest lecturer on federal criminal law at Kirkwood Community College, although I do not recall the year. I have no notes, transcripts, or recording.

- 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.

Rekha Basu, *An Attack on Attorney Puts Values to the Test*, Des Moines Register, Nov. 17, 2004. Copy supplied.

In June 2005, I was interviewed by two local television stations, KCRG and KGAN, about an upcoming event called "Take Back The Trail," a gathering of the community at a local biking/running trail on the one-year anniversary of my being attacked by an assailant on the trail on June 29, 2004. An article also appeared in the Cedar Rapids Gazette the following day, describing the event. I do not have copies of the interviews, but a copy of the article is available at: <http://newspaperarchive.com/cedar-rapids-gazette/2005-06-30/page-11>.

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

I have never held judicial office.

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

i. Of these, approximately what percent were:

jury trials:	_____ %
bench trials:	_____ % [total 100%]
civil proceedings:	_____ %
criminal proceedings:	_____ % [total 100%]

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

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never held judicial office.

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

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

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

I have never held public office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I served as a poll watcher for the Democratic party on October 6, 2012, during early voting in Iowa. I played no other 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;

I served as a judicial clerk to the Honorable Donald J. Porter, United States District Court Judge for the District of South Dakota, from August 1991 to August 1992.

I served as a judicial clerk to the Honorable David R. Hansen, United States Circuit Judge for the Eighth Circuit Court of Appeals, from August 1992 to July 1993.

- 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.

1994 – present
Federal Public Defender’s Office, Northern District of Iowa
320 Third Street SE, Suite 200
Cedar Rapids, Iowa 52401
Assistant Federal Public Defender (1994 – present)
Supervising Attorney (1999 – present)

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

I have never 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 work as an Assistant Federal Public Defender in Cedar Rapids, Iowa, in July 1994. I remain in this position to date. Attorneys in the Federal Defender’s office represent defendants in federal criminal court who are financially unable to hire private counsel. Since 1999, I have been the supervising attorney for the Cedar Rapids office of the Federal Defender. In my capacity as supervising attorney, I assist the Federal Defender in personnel and administrative matters in the Cedar Rapids office, and I am the main point of contact for the court and other agencies.

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

As an Assistant Federal Public Defender, I represent indigent defendants charged in federal criminal court. Since 1994, I have represented clients at all stages of a federal criminal case, including pre-trial matters, trial, sentencing, appeal, and post-conviction proceedings. The attorneys in the Federal Defender's office in Iowa do not specialize in any particular area of criminal law. As a result, I have represented clients charged with a wide range of criminal offenses, including but not limited to drug, firearm, money-laundering, immigration, fraud, and child pornography offenses.

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

My practice as an Assistant Federal Public Defender has been entirely in litigation. I appear in court frequently, sometimes multiple times per day. The frequency with which I have appeared in district court has remained relatively constant since 1994. In addition to trials, I represent my clients in contested detention hearings, suppression hearings, revocation hearings, and sentencing hearings. I prepare and file motions to suppress, motions to dismiss, and briefs in support of disputed sentencing issues. In my first several years as an Assistant Federal Public Defender, I also represented clients at oral argument before the Eighth Circuit Court of Appeals. Since the late 1990s, I have submitted relatively few briefs to the Court of Appeals, as the Cedar Rapids office's appellate cases are now handled primarily out of the Des Moines office of the Federal Defender of Iowa.

- i. Indicate the percentage of your practice in:

1. federal courts:	100%
2. state courts of record:	0%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	0%
2. criminal proceedings:	100%

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

To the best of my recollection, I have tried fourteen cases to jury verdict. Of these, I was sole (and chief) counsel in nine cases. I was associate counsel in five of the cases. I have also served as stand-by counsel in one additional criminal trial.

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

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

To the best of my memory, I have submitted only one petition for writ of certiorari to the Supreme Court of the United States, *Buchanan v. United States*, 99-5122, *cert. denied*, 528 U.S. 887 (1999). Copy supplied.

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

- the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *United States v. Mendoza Alvarez*, Case No. 94-114 (S.D. Iowa), *rev'd*, 79 F.3d 96 (8th Cir. 1996).

I represented Mr. Mendoza Alvarez from approximately January 1995 to late 1996. Mr. Mendoza Alvarez, an undocumented immigrant, was stopped for speeding. The officer who pulled him over saw a rifle in the back seat. Mr. Mendoza Alvarez said he had been hunting earlier and had left the gun in the car. He later pled guilty to illegal reentry after deportation and possession of a firearm as an alien unlawfully in the United States. At the time of sentencing, I objected to a significant increase in Mr. Mendoza Alvarez's offense level for being previously deported after a felony conviction and to the failure to assess a reduction in his offense level for the "sporting purposes" exception. The district court overruled the objections. I also represented Mr. Mendoza Alvarez on appeal. On appeal, I argued that the government failed to prove Mr. Mendoza Alvarez had been deported after a felony conviction; that the district court erred in refusing to apply the "sporting purposes" reduction; and that the government had breached the plea agreement by arguing against the "sporting purposes" reduction

at sentencing. In a published decision, the Eighth Circuit Court of Appeals reversed and remanded for resentencing, ruling that the government failed to prove Mr. Mendoza Alvarez had been deported after a felony and that the government had breached the plea agreement. The Court also provided guidance concerning application of the "sporting purposes" exception and, on remand, Mr. Mendoza Alvarez received a significantly lower sentence.

Presiding Judge:
The Honorable Ronald Longstaff
United States District Judge, Southern District of Iowa

Counsel for the government:
Robert Dopf (deceased)
Assistant United States Attorney, Southern District of Iowa
United States Courthouse Annex
110 East Court Avenue, Suite 286
Des Moines, IA 50309
(515) 473-9300

2. *United States v. Schultz*, Case No. CR 95-3011, 917 F. Supp. 1343 (N.D. Iowa 1996).

I represented Mr. Schultz from approximately July 1995 to April 1996. Mr. Schultz went to trial on two counts related to the operation of an illegal gambling business. Mr. Schultz and a co-defendant were tried together. Prior to trial, I filed a motion to dismiss the charges on constitutional grounds, which the district court denied. After an eight-day trial, the jury convicted Mr. Schultz on both counts. Post-trial, I filed a motion for judgment of acquittal, arguing that no reasonable jury could find Mr. Schultz conducted a gambling business involving five or more people as required by the federal statute. I also filed a motion for new trial on the grounds that documentary evidence was improperly admitted against Mr. Schultz at trial. The district court denied these motions, and Mr. Schultz proceeded to sentencing. At sentencing, I argued that, despite having taken his case to trial, Mr. Schultz should receive the benefit of the reduction in his offense level under the federal sentencing guidelines for acceptance of responsibility, a reduction normally reserved for defendants who plead guilty. I argued that Mr. Schultz testified truthfully about his conduct at trial and did not deny running a gambling operation. Instead, the defense at trial was a legal one, focusing on whether the federal gambling statute properly applied to his largely undisputed conduct. The district court agreed and granted Mr. Schultz a reduction in his offense level for acceptance of responsibility. The district court then imposed a one-month sentence.

Presiding Judge:
The Honorable Mark W. Bennett
United States District Judge, Northern District of Iowa

Counsel for the government:
 Janet Petersen (retired)
 Assistant United States Attorney, Northern District of Iowa
 600 Fourth Street, Suite 670
 Sioux City, IA 51101
 (712) 255-6011

3. *United States v. Knight*, Case No. CR 00-43 (N.D. Iowa), *rev'd*, 306 F.3d 534 (8th Cir. 2002).

I represented Mr. Knight from approximately July 2000 to January 2003. Mr. Knight was an over-the-road truck driver and a convicted felon. A state trooper asked Mr. Knight to pull over because the trooper detected the presence of a radar detector in Mr. Knight's semi-trailer. After he confirmed the presence of the radar detector, the trooper conducted a driver-inspection search. During the search, and without Mr. Knight's permission, the trooper opened a briefcase in the cab of Mr. Knight's truck. The briefcase contained a firearm. I filed a motion to suppress evidence of the firearm on the grounds that the trooper exceeded the scope of a proper regulatory search when he seized the briefcase. The district court denied the motion. On appeal, which was handled by another attorney in the Federal Defender's office, the Eighth Circuit Court of Appeals reversed. The Eighth Circuit ruled that the search of Mr. Knight's briefcase was not in compliance with the regulatory guidelines and also was not supported by probable cause. On remand, Mr. Knight was allowed to withdraw his plea of guilty and he was released from custody shortly thereafter.

Presiding Judge:
 The Honorable Michael J. Melloy
 United States Circuit Judge, Eighth Circuit Court of Appeals
 (Then, United States District Judge)

Counsel for the government:
 Robert Teig (retired)
 Assistant United States Attorney, Northern District of Iowa
 401 First Street SE, Suite 400
 Cedar Rapids, IA 52401
 (319) 363-6333

4. *United States v. Williams*, Case No. CR 00-56 (N.D. Iowa), *aff'd*, 308 F.3d 833 (8th Cir. 2002).

I represented Mr. Williams from approximately September 2000 to November 2001. Mr. Williams was charged with a violation of the Hobbs Act, a robbery of a taxi-cab driver. The government gave notice of its intent to seek a mandatory sentence of life imprisonment upon conviction pursuant to 18 U.S.C. §

3559(c)(1), the federal “Three Strikes” statute. This case involved extensive investigation of the alleged facts, interviews of numerous witnesses, and extended negotiations with the federal prosecutors. I filed a motion to dismiss, which the district court denied, and Mr. Williams was convicted after trial. After trial, I filed a motion for judgment of acquittal and a motion for new trial, arguing among other things that the government failed to prove the alleged robbery had an actual effect on interstate commerce. The district court denied these motions. Mr. Williams appealed. On appeal, which was handled by another attorney in the Federal Defender’s office, the Eighth Circuit Court of Appeals agreed that the district court, over Defendant’s objection, gave an improper jury instruction regarding whether the effect on interstate commerce must be actual or merely probable. The Court then determined that the error was harmless. The conviction was affirmed on all other grounds as well.

Presiding Judge:
The Honorable Charles Wolle
United States District Judge, Southern District of Iowa

Counsel for the government:
Robert Teig (retired)
Assistant United States Attorney, Northern District of Iowa
401 First Street SE, Suite 400
Cedar Rapids, IA 52401
(319) 363-6333

5. *United States v. Hicks*, Case No. CR 01-80 (N.D. Iowa).

I represented Mr. Hicks from approximately January 2002 to April 2002. Mr. Hicks was charged with possession of crack cocaine with the intent to distribute. Because he had a prior felony drug conviction, he faced a 10-year, rather than a 5-year, mandatory minimum sentence if convicted. Prior to trial, I filed motions in limine in an effort to restrict the type of evidence introduced at trial. At trial, the government was nevertheless permitted to admit evidence of an in-store videotape, from a local grocery store, purportedly showing Mr. Hicks wearing a coat that was later found at an apartment during a search by law enforcement. In the pocket of the coat were approximately 12 grams of crack cocaine. After the conclusion of the government’s case, I moved for a judgment of acquittal on the grounds that the government had failed to present sufficient evidence to support a conviction. The district court agreed and granted the motion.

Presiding Judge:
The Honorable Robert Pratt
United States District Judge, Southern District of Iowa

Counsel for the government:
The Honorable Stephanie Rose

United States District Court, Southern District of Iowa
 (Then, Assistant United States Attorney, Northern District of Iowa)
 United States Courthouse
 123 East Walnut Street, Room 420
 Des Moines, IA 50309
 (515) 284-6453

6. *United States v. Hmimssa*, Case No. CR 02-15 (N.D. Iowa, J. Melloy); Case No. CR 06-112 (N.D. Iowa, C.J. Reade).

I represented Mr. Hmimssa from September 2001 to June 2003, and again from April 2007 to January 2008. Mr. Hmimssa was charged with fraudulent conduct in the Northern District of Iowa. After negotiations, the case was transferred to the Eastern District of Michigan, where Mr. Hmimssa also faced charges and where he became a government witness in a purported terror-related case. Given its high profile nature, this case raised a number of concerns about protecting Mr. Hmimssa's constitutional rights and safety. Mr. Hmimssa was later identified as a material witness in Case No. CR 06-112 and was transferred back to the Northern District of Iowa, where I again represented him. After he testified as a material witness, he was removed to his home country of Morocco.

Presiding Judges:
 The Honorable Michael J. Melloy
 United States Circuit Judge, Eighth Circuit Court of Appeals
 (Then, United States District Judge)

The Honorable Linda R. Reade
 Chief United States District Judge, Northern District of Iowa

Counsel for the government:
 Kandice Wilcox (formerly an Assistant United States Attorney, Northern District of Iowa)
 Professional Responsibility Advisory Office
 U.S. Department of Justice
 1425 New York Avenue NW, Suite 12000
 Washington, D.C. 20530
 (202) 514-0458

7. *United States v. Brathwaite*, Case No. CR 02-20 (N.D. Iowa).

I represented Mr. Brathwaite from approximately April 2002 to December 2002. Mr. Brathwaite was charged with two counts of witness intimidation related to an underlying bank fraud investigation. Mr. Brathwaite was accused of trying to influence the grand jury testimony of two of his friends, who were also potential witnesses in the bank fraud investigation. Mr. Brathwaite proceeded to trial, where the facts were not significantly in dispute. Instead, the parties disagreed on

whether statements Mr. Brathwaite made to his friends amounted to intimidation. The jury acquitted Mr. Brathwaite on both counts.

Presiding Judge:
The Honorable Linda R. Reade
Chief United States District Judge, Northern District of Iowa

Counsel for the government:
Sean Berry
Assistant United States Attorney, Northern District of Iowa
411 First Street SE, Suite 400
Cedar Rapids, IA 52401
(319) 363-6333

8. *United States v. Helder*, Case No. CR 02-43 (sealed) (N.D. Iowa).

Since May 2002, I have represented Lucas Helder, who has been charged in multiple federal districts with charges related to allegations that he planted pipe bombs in various locations across the middle section of the country. The case has involved extensive investigation as well as continued research into issues related to competency and a variety of mental health issues. The case has also received a significant amount of national publicity. All documents related to the criminal case are under seal.

Presiding Judge:
The Honorable Mark W. Bennett
United States District Judge, Northern District of Iowa

Counsel for the government:
Sean Berry, Richard Murphy
Assistant United States Attorneys, Northern District of Iowa
411 First Street SE, Suite 400
Cedar Rapids, IA 52401
(319) 363-6333

9. *United States v. Howell*, Case No. CR 07-2013 (N.D. Iowa), *aff'd*, 552 F.3d 709 (8th Cir. 2009).

I represented Mr. Howell from approximately August 2007 to April 2008. Mr. Howell was charged with two counts of failure to register as a sex offender as required, each count alleging a different period of time during which he had failed to register. I filed a motion to dismiss the charges, raising a number of statutory and constitutional arguments. The district court granted the motion as to Count 1, concluding that application of the statute during the alleged time period violated the *Ex Post Facto* Clause of the United States Constitution. The district court denied the motion as to Count 2, concluding in part that the sex offender registry

statute was a proper exercise of Congressional power pursuant to the Commerce Clause. The district court's decision regarding Count 2, which also addressed the issue of proper venue, was affirmed on appeal. The appeal was handled by another attorney in the Federal Defender's office.

Presiding Judge:
The Honorable Mark W. Bennett
United States District Judge, Northern District of Iowa

Counsel for the government:
Kandice Wilcox (formerly an Assistant United States Attorney, Northern District of Iowa)
Professional Responsibility Advisory Office
U.S. Department of Justice
1425 New York Avenue NW, Suite 12000
Washington, D.C. 20530
(202) 514-0458

10. *United States v. Penney*, Case No. CR 10-3027 (N.D. Iowa).

I represented Mr. Penney from approximately May 2010 to February 2011. Mr. Penney was a veteran of the war in Afghanistan. Shortly after his return from overseas, he was convicted of a felony. Mr. Penney then returned to Iowa, where he maintained his life-long interest in firearms and the outdoors. He was vigilant about gun safety and helped others clean and repair their firearms. In connection with this conduct, Mr. Penney was charged with unlawfully possessing a firearm as a convicted felon. After considering the circumstances surrounding his felony conviction, his difficulties re-adjusting to civilian life, and the otherwise responsible manner in which he handled his firearms, the district court varied from the advisory guidelines and imposed a sentence of probation rather than a term of imprisonment.

Presiding Judge:
The Honorable Linda R. Reade
Chief United States District Judge, Northern District of Iowa

Counsel for the government:
Robert Teig (retired)
Assistant United States Attorney, Northern District of Iowa
411 First Street SE, Suite 400
Cedar Rapids, IA 52401
(319) 363-6333

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 been engaged in litigation exclusively since I began my legal practice at the Federal Defender's office. In my capacity as Assistant Federal Public Defender, I have also served on court-related committees. I have served on the Northern District of Iowa's Blue Ribbon Committee on criminal matters. As part of that panel, I prepared and distributed a CJA Panel Attorney Survey, seeking input from criminal defense attorneys regarding their experience in federal court. I compiled the responses, which were given to the court for its use in identifying positive feedback, matters of concern, and areas in need of improvement. I serve on the CJA panel selection committee for the Northern District of Iowa, and I am a member of the Facility Security Committee, which was formed in anticipation of the opening of the new federal courthouse in Cedar Rapids, Iowa. I have not performed any lobbying activities on behalf of clients or organizations.

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.

Legal Research and Writing; Appellate Advocacy
University of Illinois College of Law, Champaign, Illinois
1993 to 1994

I do not have a copy of the syllabus for these courses.

Business Law II, Co-instructor
Coe College, Cedar Rapids, Iowa
Spring 2000
Syllabus supplied.

Federal Criminal Law
University of Iowa College of Law, Iowa City, Iowa
Spring 2002
Syllabus supplied.

Trial Advocacy, Co-instructor
University of Iowa College of Law, Iowa City, Iowa
Spring 2004
I do not have a copy of the syllabus for this course.

Criminal Procedure, Co-instructor
University of Iowa College of Law, Iowa City, Iowa
Spring 2006
Syllabus supplied.

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

I do not expect to derive income from any previous business relationships, professional services, firm membership, former employers, clients, or customers.

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 any 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.

Cases arising from the Federal Defender's office in Iowa would initially create potential conflicts of interest. I would work with the Clerk for the Eighth Circuit Court of Appeals to make sure I was not assigned to any cases with which I had any previous involvement. If the issue of a potential conflict of interest is raised by a litigant, I would address those issues on a case by case basis by reference to the Code of Conduct for United States Judges and any other relevant canons and statutes.

I do not have any family members or financial arrangements that are likely to present 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.

I would address any potential conflict of interest matter carefully and thoughtfully, paying close attention to the Code of Conduct for United States Judges as well as any other relevant statutory or regulatory provisions that would provide appropriate guidance.

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 Federal Public Defender, I have represented indigent criminal defendants in federal court since 1994. I also regularly give presentations at our Federal Defender seminars, which offer continuing legal education credits free of cost to criminal defense attorneys and other interested persons. At our local Cedar Rapids, Iowa, office, I also participate several times a year in a lunchtime meeting of CJA panel attorneys to discuss recent developments in federal criminal law and other topics of interest to those taking court-appointed cases in federal court.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your 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 July 2012, I submitted an application to Senator Harkin's office for the upcoming opening on the Eighth Circuit Court of Appeals. On September 14, 2012, I interviewed with members of Senator Harkin's staff in Des Moines, Iowa, and on September 23, 2012, I interviewed with Senator Harkin and two members of his staff in Des Moines, Iowa. A member of Senator Harkin's staff contacted me later to let me know that Senator Harkin had recommended me to the White House. On October 4, 2012, an official from the White House Counsel's Office contacted me to schedule a telephone interview, which took place on October 5, 2012. The following week, he telephoned me again to let me know that

representatives from the Department of Justice would contact me to begin the vetting process.

Since October 10, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 30, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On January 31, 2013, 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.

AO 10
Rev. 1/2012

**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) Kelly, Jane	2. Court or Organization 8th Circuit	3. Date of Report 01/31/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 1/31/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final Sub: <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2012 to 1/28/2013
7. Chambers or Office Address Federal Defender's Office 320 Third St. SE, Suite 200 Cedar Rapids, IA 52401		
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. Insert signature on last page.		

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

NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Kelly, Jane	Date of Report 01/31/2013
---	------------------------------

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 <i>(yours, not spouse's)</i>
1. 2011	Assistant Federal Defender, annual income	\$133,900.64
2. 2012	Assistant Federal Defender, annual income	\$130,929.31
3. 2013	Assistaut Federal Defender, annual income	\$10,031.00
4.		

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

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

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

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

NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Kelly, Jane	Date of Report 01/31/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Kelly, Jane	Date of Report 01/31/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
1. Vanguard 500 Index Fund	A	Dividend	K	T	Exempt					
2. U.S. Bank, cash accounts	A	Interest	N	T						
3. shares in Cox-Kelly Farms (subchapter S corporation)	E	Dividend	O	W						
4. Fidelity Core Account	A	Interest	J	T						
5. Illinois SURS -traditional benefit plan	A	Interest	J	T						
6.										
7.										
8.										
9.										
10.										
11.										
12.										
13.										
14.										
15.										
16.										
17.										

1. Income Code: 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 H=\$1,000,001 - \$5,000,000 I2=More than \$5,000,000
 2. Value Code: J=\$15,000 or less K=\$15,001 - \$50,000 L=\$50,001 - \$100,000 M=\$100,001 - \$250,000
 (See Columns C1 and D3) N=\$250,001 - \$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 P=Assessment T=Cash Market
 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	Date of Report
Kelly, Jane	01/31/2013

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

In Part VII, I have reported the income received from my shares in Cox-Kelly Farms, a subchapter S corporation, and an estimated 'gross value' of my percentage of the value of the farm itself. This is not, however, a liquid asset.

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Kelly, Jane	01/31/2013

IX. CERTIFICATION.

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

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

Signature: *s/ Jane Kelly*

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		411	143	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		31	044	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – personal residence		147	000	Chatel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		11	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		458	032				
Univ. of Illinois SURS pension plan		10	872				
Cox-Kelly Farms (10% share)		580	000	Total liabilities			0
				Net Worth	1	649	091
Total Assets	1	649	091	Total liabilities and net worth	1	649	091
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Listed Securities</u>	
Fidelity Core Account	\$ 6,799
Vanguard 500 Index Fund	24,245
Total Listed Securities	<u>\$ 31,044</u>

AFFIDAVIT

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

2/1/2013
(DATE)

Jane Kelly
(NAME)

Carrie M. Cox
(NOTARY)

NOTARIAL SEAL - STATE OF IOWA
Carrie Mass
Commission Number 778747
My Commission Expires 7/6/15

**§Statement of Senator Chuck Grassley
Before the Committee on the Judiciary
On the Nominations of:**

Jane Kelly, to be United States Circuit Judge for the Eighth Circuit

February 27, 2013

I am particularly pleased to welcome the nominee, Ms. Jane Kelly, her family, friends and guests. Ms. Kelly is nominated to be a United States Circuit Judge for the Eighth Circuit. She presently serves as an Assistant Federal Public Defender and is the Supervising Attorney of the office in Cedar Rapids, Iowa.

Ms. Kelly is a native of Indiana. She received her B.A. from Duke University in 1987. She spent the next ten months in New Zealand as a Fulbright Scholar. She received her J.D. from Harvard University in 1991. Upon graduation, she clerked for Judge Donald J. Porter, United States District Court for the District of South Dakota, then for Judge David R. Hansen of the Eighth Circuit. From 1993 to 1994 she was a Visiting Instructor at the University of Illinois College of Law.

Since 1994, Ms. Kelly has served as an assistant federal public defender in the Federal Public Defender's office for the Northern District of Iowa. She handles criminal matters for indigent defendants and has handled a wide range of crimes. Since 1999, she has been the supervising attorney for the Cedar Rapids office. Ms. Kelly has spent her entire legal career in litigation and has appeared in court frequently. She has tried fourteen cases to jury verdict and has also represented clients before the Eighth Circuit Court of Appeals.

Ms. Kelly is active in the Bar and in District Court matters. She presently serves on the Criminal Justice Act Panel Selection Committee, the Blue Ribbon Panel for Criminal Cases and the Facility Security Committee of the District Court. She has been a member of the Dean Mason Ladd Inn of Court as well as the National Association of Criminal Defense Lawyers.

In 2004 her peers honored her with the John Adams Award from the Iowa Association of Criminal Defense Lawyers and Drake University Law School. She was the unanimous choice for this award which recognizes individuals who show a commitment to the constitutional right to criminal defense.

Judge Hansen, for whom Ms. Kelly clerked, has submitted a letter of support. In that letter he states that Ms. Kelly has practiced law in an exemplary fashion. He notes "She is a forthright woman of high integrity and of honest character." He observed that she possesses an exceptionally keen intellect and a fair and compassionate advocate for her clients. Judge Hansen concludes that "she will be a welcomed addition to the Court if confirmed."

The ABA Standing Committee on the Federal Judiciary has unanimously rated Ms. Kelly as "Qualified".

Again, I welcome Ms. Kelly and look forward to her testimony.

Senator KLOBUCHAR. Very good. Well, we really appreciate you being here. We are excited about your nomination, and I wanted to ask you about that. I think many of us referenced the fact that of the 61 judges that have served on the Eighth Circuit, only one has been a woman. As I noted, Judge Murphy is someone I know well, and, in fact, she currently serves with 10 male judges.

How important do you think it is to include an additional woman on that bench in the Eighth Circuit?

Ms. KELLY. Well, I think it is very important to include quality judges on every level of the federal judiciary, and I truly believe through the course of my practice that there are plenty of very highly qualified women, men, and individuals from a variety of backgrounds, whether that be racial or ethnic or otherwise. So I think we are at a point where we really do have a big pool of folks to choose from.

Senator KLOBUCHAR. And many commented about the fact that we have so many former prosecutors, including myself, that get into positions, whether it is in the U.S. Senate or on the federal judiciary. Could you talk about the importance of including a public defender like yourself on the bench?

Ms. KELLY. I think that each individual judge would bring his or her own perspective and experience, and we all come from different legal experiences. I have, perhaps, an unusual one, at least as the current state of the judiciary stands. But I think it is very helpful to have a variety of views, a variety of backgrounds, and a variety of experiences to reach the best result possible.

I know that if I were fortunate enough to be confirmed, I would be welcoming the views of other members of panels of the Eighth Circuit, and I believe that they would be welcoming mine as well.

Senator KLOBUCHAR. And during your service as a public defender, you have had the opportunity to represent a broad array of clients from veterans to immigrants, Americans of many different backgrounds. Can you talk about how the diversity of your clients has impacted the view that you have of the justice system?

Ms. KELLY. It is true, I have represented a wide range of people from all walks of life who have been charged with a wide variety of criminal offenses, from drug trafficking to high-level fraud, and those individuals vary just like any other litigant that would be presenting their case to a district court or to an appellate court. So I would hope that one thing that my experience has brought me is a broader view of issues and a broader view of the types of experiences that the folks who come into a federal courtroom bringing their cases or controversies to the court, I would hope I would have a good understanding of that.

Senator KLOBUCHAR. You also served as a law clerk to Judge David Hansen on the Eighth Circuit, and as public defender, you have had the chance to argue cases in front of the Eighth Circuit. How will these experiences impact your perspective and decision making as a member of the court?

Ms. KELLY. I think those experiences have been very valuable to me, first of all, as a practicing attorney, but I also believe that they would be very valuable if, again, I were fortunate enough to be confirmed with the circuit court.

Working with Judge Hansen was a wonderful experience. Senator Grassley has spoken a bit about Judge Hansen. He is a very well respected jurist in our community, as well as the Eighth Circuit. And so, very early in my career, I was able to watch what we might call a master at work, and I valued that experience very highly.

I have also, as the Chair has noted, been able to argue cases in front of the Eighth Circuit Court of Appeals on my own, on behalf of my own clients. I think that having clerked for Judge Hansen, it took a bit of the mystique out of going—or the scare out of going into court, but it is still a very solemn task to represent a client at that level of the federal judiciary. And I have had the honor of being able to submit written briefs to the Eighth Circuit Court of Appeals and argue a number of cases in front of the court of appeals as well. So I have that experience from the other side of the bench as well.

Senator KLOBUCHAR. And given those experiences you have had and your experiences as a public defender, what do you see as some of the greatest challenges facing the federal judiciary?

Ms. KELLY. Based on my experience in the federal defender's office and being in court as much as I am, I think I would say one of the more significant challenges to the federal courts right now would be simply the sheer volume of cases that are moving through the courts. Because I work in the criminal area, our cases take priority because of the Speedy Trial Act, the speedy trial restrictions in the Constitution. And there are an increasing number of criminal cases that are being brought, at least that I have noticed over the past couple of decades.

Unfortunately, I think that is sort of squeezing out some of the civil cases from getting docket space, so I would say that that would be one of the biggest challenges I have seen facing the federal courts.

Senator KLOBUCHAR. And one last question. I know they have televised hearings in Iowa in the State court level, and when now-Justice Kagan had her confirmation hearing, she was asked about televising Supreme Court proceedings and was in favor of that. And I know that there can be different arguments made for different levels and concerns at the trial level. But what has been your experience seeing what is happening in Iowa? And do you think it is worth looking at at the Supreme Court level?

Ms. KELLY. I personally do not have any experience with cameras in the courtroom. We do not have them in the Northern District of Iowa, so I have never had that particular experience.

My understanding is that in the Southern District of Iowa, they are working through a trial run of using cameras in the courtroom in at least some limited circumstances. I would be very interested to see how that came out, what the litigants' reactions were, the judges' responses, jurors' responses, to see whether that might be something that we should look out for in more district courts as well.

Senator KLOBUCHAR. I appreciate you being open to that. With that—and so does Senator Grassley—I will turn it over to Senator Grassley.

Senator GRASSLEY. If I live long enough, you will have cameras in the courtroom.

[Laughter.]

Senator GRASSLEY. But having failed now for 10 years, I do not know whether I will live that long.

I think my staff would tell you what I was going to ask, so there should be no surprises here. Given that most of your career has been in trial court, would you please explain your experience at the appellate level and how you are prepared to assume the duties of a circuit judge?

Ms. KELLY. Yes. As noted in a previous discussion, one of my first experiences as a lawyer was working with Judge Hansen on the Eighth Circuit Court of Appeals. That was excellent experience for me and a wonderful one that taught me a great deal about how the appellate process works.

Early, during the first several years of my practice at the federal defender's office, I had a fairly active appellate practice. We did a lot of our own appeals, and I was regularly writing briefs on behalf of my clients and submitting those to the court of appeals and arguing some of those at oral argument in either St. Louis or St. Paul on behalf of my clients. I enjoyed that part of my practice very much and got a lot out of that.

The only reason I have not been doing that as much lately is because of the decision on the part of the federal defender who had decided he wanted to specialize the appellate work in one attorney in the defender's office. So now the vast majority of our appeals go through that one attorney.

I have done some appellate work in brief writing since that time, but none of those have gone to oral argument. But I do try to stay active or connected to my cases that go up on appeal. I communicate closely with our appellate lawyer. I am very interested in the issues that he raises, and we have discussions about strategy concerning those appeals.

Senator GRASSLEY. Thank you.

You have not worked with civil law—at least I would say limited experience. It appears your work has been almost exclusively criminal. How will you get up to speed on civil matters that might come before you, if confirmed?

Ms. KELLY. That is an excellent question, Senator. Thank you. You are correct, I have worked in federal court in criminal law for the bulk of my professional career. As noted, I have had a couple of clerkships, and through those clerkships I was exposed to varied civil matters in that context. But I recognize that was very early in my career and several years ago.

I fully recognize that I have work to do to get up to speed on civil matters because any litigant who comes into the Eighth Circuit Court of Appeals is entitled to that. They are entitled to have a panel of three judges who are fully well versed in the law that is being presented to them.

I will say that through the course of my practice in federal court in the criminal side, I have become very accustomed to using the Rules of Evidence. I am very accustomed to courtroom procedure. And I would hope that some of those experiences would overlap with the civil law. And because I feel very comfortable in the area

of criminal law, I would hope that I would have that extra time to spend whatever is necessary to get up to speed on the civil cases because I do think that that is extremely important and I recognize that I would have work to do.

Senator GRASSLEY. The next question comes because you have been a defense attorney. What assurances can you give to the Senate and the Committee and future parties that would appear before you that you would be impartial and fair to all sides?

Ms. KELLY. I can assure you, Senator, that I would do everything I could to make each litigant who appeared before the court not only feel like they were being treated fairly but that I would treat them fairly. I have been in the courtroom enough to know how important it is that a judge treat both parties or all parties participating fairly and impartially. As a criminal defense attorney, I am often representing someone who, shall I say, is not the most popular person in the room. So I, as much as anyone, know how important it is to be fair and impartial and make decisions based on things other than bias, favor, or prejudice.

Senator GRASSLEY. I think you just answered my next question, but I am going to ask it anyway, and it comes from the fact that you do have this reputation for compassion and fairness. So my question is: To what degree should compassion influence a judge's decision?

Ms. KELLY. Well, if by that you mean, Senator, that a person's case would be viewed differently or a finger would be placed on the side weighing in favor of one party over another because of sympathy or compassion, that does not have a place to play in the courtroom. I would be bound to decide a case based on the facts, the relevant law, and any precedent that would apply.

Senator GRASSLEY. My next question, and I am getting almost to the end: There is a person, Louis Michael Seidman, professor of constitutional law at Georgetown University, who authored an article that you probably have not read, but it is entitled, "Let's Give Up on the Constitution." He argued that many of our Nation's problems are a result of "our insistence on obedience to the Constitution with all its archaic, idiosyncratic, and downright evil provisions."

While you might not be familiar with the article, do you have any thoughts on giving up on the Constitution or on the necessity of judges to obey the Constitution?

Ms. KELLY. We should not give up on the Constitution, and judges should not give up on obeying the Constitution and applying it properly.

Senator GRASSLEY. Thank you.

Senator KLOBUCHAR. And we just hope the person that wrote the article does not come before you in a judicial nomination hearing. [Laughter.]

With that, we turn it over to Senator Franken.

Senator FRANKEN. Thank you, Madam Chairwoman.

I was holding my breath to see how you would answer that. [Laughter.]

I think you did well. Congratulations on your nomination. Of course, the Eighth Circuit covers Minnesota, so Senator Klobuchar

and I are very glad you are here. We congratulate you on your nomination.

Senator Klobuchar and I worked together almost as well as Senator Harkin and Senator Grassley claim to.

Senator KLOBUCHAR. Thank you for mentioning that. [Laughter.] To clarify the record.

Senator FRANKEN. And the fact that you are so heartily supported by both Senators speaks very well of you and this mysterious Judge Hansen. And I know that the Chairwoman mentioned the Infinity Project at the University of Minnesota. I work closely with them as well, and it is good to see added diversity in the form of a second woman in the history of the Eighth Circuit.

I want to talk to you about the role of diversity in terms of—because this compassion and empathy and sympathy and all these words floating around that have become a little controversial. Oliver Wendell Holmes—and I think I have this accurate—said that, “The life of the law has not been logic. It has been experience.” And to me, I would like to get your view on the role of experience in terms of why that is, why diversity in the courts is important—and I think you spoke to that a little bit when Senator Klobuchar was talking to you—and what the role of experience is for a judge and how it relates to diversity.

Ms. KELLY. I think it is extremely important, and at the risk of repeating some of what I had mentioned earlier, I think that one of the values at least at the Eighth Circuit Court of Appeals is that you are deciding cases as a panel, and so you have multiple people giving their input and their viewpoints on a particular issue.

I think we are all defined by our experiences. That is not to say that that changes the law or how one would necessarily apply the law. But I do think we are shaped by those, and we can certainly learn from other individuals a great deal if they can help us understand their experience as well. And I think that translates into the courtroom as well. While compassion and empathy do not decide the case, I do think it allows judges to be more open minded and to maybe hear or listen for things that they would not necessarily otherwise have heard or listened for.

Senator FRANKEN. I would like to kind of make a distinction between compassion and empathy and sympathy. To me, empathy means that you can understand what someone else is—their feelings and see into their experience, not necessarily compassionately or not necessarily sympathetically, but empathy means that you can kind of feel what their experience is. And I think that is important in terms of having a woman. I think that is important in terms of having racial diversity, because different people’s experiences are different, and there is no one who does not have experience. Everyone has experience. So it would be nice if there was not everyone with a uniform experience on the court.

You are different in that—I think prosecutors are great, former prosecutors are great. For example, the Chairwoman is a former prosecutor. So there you have it. [Laughter.]

But public defenders, that is kind of unusual, isn’t it? Do we know how many former public defenders have been on the Eighth Circuit?

Ms. KELLY. I personally do not know of any.

Senator FRANKEN. Okay. So can you tell me something, when you have been in trials, that you have noticed from either prosecutors or judges that in your experience, when you are on the circuit court, that you might—something that you have experienced in that role that might make you more open to an appeal?

Ms. KELLY. My role in the courtroom compared to the role of the prosecutor or the judge is to represent the rights of the individual person, and I—more than anyone in the courtroom understands—I think on a very personal, professional level, if that makes sense. I have spent a lot of time with this individual person—how important the court's result, rulings are to their lives, to their families' lives. And so I think that my perspective would be in viewing it from the individual client's standpoint than perhaps the prosecutor's bigger role, albeit important role nonetheless, of enforcing the laws and reaching justice in their definition.

Senator FRANKEN. Okay. But there is nothing like a certain kind of thing you have seen judges do or prosecutors do that might give you a particular perspective on an appeal?

Ms. KELLY. As I sit here, I cannot think of particular things they do, but certainly when you read transcripts, you can find them.

Senator FRANKEN. Okay, great. I thank you, and, again, congratulations on your nomination.

Ms. KELLY. Thank you, Senator.

Senator KLOBUCHAR. Well, thank you very much.

Are there any other questions? Senator Grassley, do you want to say any closing comments?

Senator GRASSLEY. Good luck to you.

Ms. KELLY. Thank you, Senator.

Senator GRASSLEY. I do not think that you have got to worry about this, but if any Senator writes you questions and wants answers to them, our general practice is you do not come up until those questions are answered. And that really does not cause anybody a problem, but sometimes you do not get the answers, so somebody is going to—you know, any one Senator can stand in the way for a while.

Ms. KELLY. Thank you.

Senator KLOBUCHAR. Well, very good. We are very impressed by your credentials, and hopefully you will even get a positive tweet coming out from Senator Grassley, since he is the Twitter king of the U.S. Senate. [Laughter.]

And hopefully he will spell your name correctly.

Senator GRASSLEY. I am going to hit—

Senator KLOBUCHAR. Oh, no. This is my fault. I asked him if he was going to do one.

Senator FRANKEN. It used to be years ago that “Twitter king” meant something totally else.

Senator KLOBUCHAR. Thank you, Senator Franken.

I suppose you want your hearing to come to an end now, Ms. Kelly. [Laughter.]

Ms. KELLY. I am sort of enjoying it.

Senator KLOBUCHAR. Well, you may be the first person to come before us that said that.

I do want to thank you. As Senator Franken said, we were just so impressed by the strong support you have from both your Sen-

ators from both sides of the aisle. It really means a lot. So thank you so much.

The record will remain open for a week, and with that, this hearing is adjourned.

Ms. KELLY. Thank you.

[Whereupon, at 2:38 p.m., the Committee was adjourned.]

**Senator Chuck Grassley
Questions for the Record**

**Jane Kelly
Nominee, United States Circuit Judge for the Eighth Circuit**

1. In your hearing, you were asked about diversity on the bench. You indicated that it is helpful to have a variety of views, backgrounds and experiences. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.
2. What is the most important attribute of a judge, and do you possess it?
3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
4. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
8. Please describe your understanding of the workload of the Eighth Circuit. If confirmed, how do you intend to manage your caseload?
9. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.
10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

11. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?
12. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
13. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach working with your colleagues?
14. Please describe with particularity the process by which these questions were answered.
15. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Jane Kelly
Nominee, United States Circuit Judge for the Eighth Circuit**

- 1. In your hearing, you were asked about diversity on the bench. You indicated that it is helpful to have a variety of views, backgrounds and experiences. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: Diversity in views, backgrounds, and experiences allows judges, collectively, to have a broader perspective when they consider cases presented to the court. An individual judge's gender, ethnicity, or other demographic factors, however, should have no influence in the ultimate outcome of a case.

- 2. What is the most important attribute of a judge, and do you possess it?**

Response: I believe a judge should possess a number of important attributes. Among these is the ability to be fair and impartial and to make decisions without regard to bias, prejudice, or favor. I believe I possess these attributes.

- 3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be open-minded and have the ability to listen carefully to the positions of all parties involved in a case. A judge should be respectful, patient, and courteous to the litigants, fellow judges, and the public generally. I consider these elements of judicial temperament to be very important, and I believe I could meet this standard if confirmed.

- 4. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would first look carefully at the facts of the case and the relevant statutes. If the answer is not clear from the statute, I would apply standard rules of statutory construction in an effort to reach the proper result. I would also look to decisions in other Circuits that, while not binding, may provide persuasive authority.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would be bound by the decisions of the United States Supreme Court and would follow that precedent. One panel of the Eighth Circuit Court of Appeals is not permitted to overrule another panel, and thus I would be bound by Circuit precedent as well, unless and until the issue was considered by the entire Court of Appeals *en banc*.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A federal court should declare a statute unconstitutional only if the court is convinced, after conducting a thorough analysis of the issue and considering any relevant precedent, that the statute infringes upon a right granted by the federal constitution or that the statute exceeds the authority granted to Congress by the federal constitution.

8. **Please describe your understanding of the workload of the Eighth Circuit. If confirmed, how do you intend to manage your caseload?**

Response: I understand the workload of the Eighth Circuit Court of Appeals is substantial. If confirmed, I would work diligently to resolve cases in a timely manner. I would also seek the assistance of support staff for monitoring deadlines and keeping case files organized and updated.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: Absent binding direction otherwise from the United States Supreme Court, the law of the United States is the only law to use when determining the meaning of the United States Constitution.

10. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I can assure the Committee that, if confirmed, I would base my decisions solely on the facts presented, the applicable statutes, and any relevant precedent. Political ideology or political motivation would have no place in the decision-making process. During the course of my professional career, I have relied on facts, statutes, and legal precedent in my efforts to represent my clients to the best of my ability. At no time has political ideology or political motivation affected my role as an advocate; and it would not affect my decision-making as a judge, if I were to be confirmed.

11. **Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: If the United States Supreme Court modifies, alters, or overturns a prior precedent, the Court of Appeals may have to overturn or revisit some of its own prior precedent as a result. The Court of Appeals should not overturn precedent within the Circuit without an *en banc* consideration of the issue. Pursuant to Federal Rule of Appellate Procedure 35, such review is limited to decisions for which consideration by the full court is “necessary to secure or maintain uniformity of the court’s decisions,” and to decisions involving “a question of exceptional importance.”

12. **You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be the most difficult part of this transition for you?**

Response: If confirmed as a judge, I would consider the facts of each individual case in light of relevant precedent in an effort to reach an objective and reasoned decision in accordance with the governing law. I would rely on applicable statutes, relevant legal precedent, and the United States Constitution in reaching these decisions. I would also consult with the other judges on the Court of Appeals for guidance. I recognize that the role of an advocate and the role of a judge are very different, but I believe both are vital to the administration of justice. I anticipate the most challenging part of the transition for me will be in the area of civil law.

13. **Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach working with your colleagues?**

Response: Yes, I believe collegiality is a very important element of the work of a Circuit Court. If confirmed, I look forward to working with a panel of judges in an effort to reach consensus on a given case. I would welcome the views of other judges and would anticipate respectful, engaging discussions regarding the cases presented to the court for resolution.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on March 6, 2013, and I prepared my answers to them. On March 9, 2013, I reviewed my answers with a representative of the Department of Justice.

15. Do these answers reflect your true and personal views?

Response: Yes.

January 31, 2013
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on January 31, 2013.

**NOMINATION OF GREGORY ALAN PHILLIPS,
OF WYOMING, NOMINEE TO BE CIRCUIT
JUDGE FOR THE TENTH CIRCUIT; AND
KAROL VIRGINIA MASON, OF GEORGIA,
NOMINEE TO BE AN ASSISTANT ATTORNEY
GENERAL**

TUESDAY, MARCH 19, 2013

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

The Committee met, pursuant to notice, at 2:36 p.m., in Room SD-226, Dirksen Senate Office Building, Hon. Richard Blumenthal, presiding.

Present: Senators Blumenthal and Lee.

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

Senator BLUMENTHAL. Welcome, everyone. Today we are considering two very qualified nominees to fill important posts that ensure that the American people are truly served with justice and have access to our justice system. And I am very proud to preside as the Chairman. My name is Richard Blumenthal, and I am a Senator from Connecticut and a member of the Judiciary Committee.

Gregory Phillips, the nominee for the U.S. Court of Appeals for the Tenth Circuit, is currently Attorney General of Wyoming. He has a long and distinguished legal career. He also has the support of the two Wyoming Senators, whom we welcome today, and we appreciate your being here, both Senator Enzi and Senator Barrasso. Thank you.

Karol Mason is the nominee to be Assistant Attorney General for Justice Programs, a very, very important position in the Department of Justice, and she has a very distinguished career as well, having spent 31 years in private and public practice, rising to the top of the legal profession in both areas, and she is a nominee of the highest quality and I hope will be given prompt consideration by the Committee.

I would like to offer Senators Enzi and Barrasso an opportunity to present their nominee, Gregory Phillips, and await Senator Lee or Senator Grassley, when they also have the opportunity to make an opening statement.

Thank you.

**PRESENTATION OF GREGORY ALAN PHILLIPS, NOMINEE TO
BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT, BY HON. MI-
CHAEL B. ENZI, A U.S. SENATOR FROM THE STATE OF WYO-
MING**

Senator ENZI. Thank you, Mr. Chair. It is an honor to introduce Greg Phillips to the Judiciary Committee, who is the nominee for

the U.S. Tenth Circuit Court of Appeals. I want to thank the Chairman and the Ranking Member as well as their staff for acting on Mr. Phillips' nomination in a timely manner.

I believe that Mr. Phillips has all the characteristics necessary to serve as a Federal appellate judge. I served with Greg in the Wyoming Legislature and can say with confidence that he is recognized throughout the Wyoming legal community as a talented and respected and thoughtful attorney. And while I served with him in the State Senate, I can assure you that he was recognized as a talented and respected legislator as well. And I should probably also mention that he sat right across the aisle from me, so we were able to confer a lot and occasionally had differing views.

But Mr. Phillips is currently Wyoming's Attorney General, and this is important to not because the Wyoming Attorney General is not an elected position. Mr. Phillips is a Democrat who was appointed by a Republican Governor and confirmed unanimously by the Wyoming Senate, which is largely Republican. Wyoming Governor and former U.S. Attorney Matt Mead comments that Greg is "a first-rate legal thinker, a tireless worker, and has an abiding sense of fair play." Governor Mead goes on to say that, "if confirmed, all those who appear before Mr. Phillips will find a judge fully prepared, engaged, and respectful to all."

It should be no surprise that the American Bar Association unanimously gave Mr. Phillips its highest rating. Greg has extensive experience practicing law as a deputy county attorney and in private practice with his father and brother.

Before becoming Wyoming's Attorney General, Mr. Phillips served 7 years as Assistant U.S. Attorney for the District of Wyoming, handling criminal prosecutions and appeals. Greg has argued nearly 20 cases before the Tenth Circuit and submitted a variety of briefs, criminal appeals, and responses to the court.

Greg studied economics at the University of Wyoming and graduated with honors from the Wyoming College of Law, where he was on the Law Review. Immediately following law school, Mr. Phillips served as a clerk to U.S. District Judge Alan Johnson of Wyoming. Judge Johnson writes that Greg is devoted to the rule of law and will honor the remarkable judicial officers who preceded him. Specifically, Mr. Phillips' thorough study of the U.S. Sentencing Guidelines, experience as a Federal criminal prosecutor, and an understanding of State and Federal legal issues will serve him well on the Tenth Circuit.

I respectfully ask the Chairman to include the following letters: one from Governor Mead, one from Judge Johnson, and then a very important one from the National Association of Attorney Generals. And one reason that is important is that he has the approval here of 34 of the U.S. Attorney Generals. The only reason there are not more is the time was very short because you scheduled this hearing so quickly. And we are glad for that. We would rather have a quick hearing than a lot of signatures. But I do recall that you were one of those U.S. Attorney Generals for about 20 years.

Senator BLUMENTHAL. Twenty years, right.

Senator ENZI. So you know what credibility those people carry.

I would like to conclude by saying that I can personally attest to his qualifications to serve in the position. As I mentioned, he

served in the legislature with me. He also served on the Judiciary Committee, and Wyoming is proud to call Greg one of our own, and I know that he will bring a depth of knowledge and legal experience to the Federal bench.

Mr. Phillips also brought his family with him today, whom he will introduce when he speaks.

Members of the Committee, Mr. Phillips is highly qualified to serve the U.S. Circuit Court of Appeals for the Tenth Circuit. I thank you again for holding this hearing and ask that you move swiftly to approve the nomination.

Senator BLUMENTHAL. Thank you, Senator Enzi.

Senator BARRASSO.

PRESENTATION OF GREGORY ALAN PHILLIPS, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT, BY HON. JOHN BARRASSO, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator BARRASSO. Thank you very much, Chairman Blumenthal, thank you, Senator Lee, for allowing me to speak in support of the nomination of Greg Phillips to be a judge on the Tenth Circuit Court of Appeals.

Greg is going to make an outstanding judge in the Tenth Circuit. As Senator Enzi has commented, he graduated with honors from the University of Wyoming College of Law and has a distinguished legal career both in the private sector and in the public service. He has prosecuted numerous cases in Federal court. He has appeared in and argued more than a dozen cases before the Tenth Circuit Court of Appeals.

He is an experienced attorney who is up to the challenge of being an outstanding Federal circuit court judge. Greg's peers uniformly praise his intellect, his diligence, and his thoroughness. They also praise his fairness.

His former boss—and Senator Enzi read a little bit of a letter from U.S. District Judge Alan Johnson. Judge Johnson went on to say, "Again and again, local defense attorneys have expressed their appreciation for the fair-handed, respectful, and even-tempered treatment that they have received from Greg Phillips."

Greg Phillips possesses the character and the traits necessary to be a successful and respected member of the Tenth Circuit Court of Appeals. I am confident, Mr. Chairman, that when the Committee has completed the review of his nomination, you will agree that Greg Phillips is an ideal candidate to join the court.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you both, Senators.

Before turning to Senator Lee for his comments, I just want to say about Senator Enzi's remark regarding the timeframe and the pace of moving forward, I think it reflects the qualifications of these nominees. I am sorry that we did not get all the Attorneys General that might have commented, but I am sure there will be time for them to comment as well. We will hold the record open.

But I am hopeful also that the full Senate will move, as well as this Committee, to approve these nominees, and others, because we need to fill openings on our courts. As you well know, there are states of emergencies that have been declared in various circuits,

and I very much appreciate your support for this nominee, who is extraordinarily qualified. I will not hold against him that he is a former Attorney General—or a present Attorney General, and I hold them in the highest respect.

Now, Senator Lee, if you would like to comment.

**STATEMENT OF HON. MIKE LEE, A U.S. SENATOR FROM THE
STATE OF UTAH**

Senator LEE. Thank you very much, Mr. Chairman, and thanks to both of you for coming today. I am particularly pleased to welcome the nominees today, as well as their family members, their friends, and their guests.

Mr. Phillips has been nominated to serve on the U.S. Court of Appeals for the Tenth Circuit. That is a court that I am familiar with and that is important to me since it includes my State. It is also a court where I have argued a couple dozen cases, and so I look forward to our discussion on that nomination.

Mr. Phillips, of course, serves as the Attorney General for the State of Wyoming, which is our peaceful neighbor and one that has never caused Utah any trouble.

Karol Mason is nominated to be an Assistant Attorney General to head the Office of Justice Programs. This is an important office within the Department of Justice, managing a significant portion of the Department's grant programs. In addition, it is an important source of information, training, and coordination for the criminal justice system, for law enforcement, and for the victims of crime.

And with your permission, Mr. Chairman, I will put the rest of my comments that I have prepared in writing for the record.

Senator BLUMENTHAL. Without objection, and also without objection, the letters that have been submitted by Senators Enzi and Barrasso as well will be part of the record. Thank you.

[Letters submitted by Senators Enzi and Barrasso were submitted for the record.]

Senator BLUMENTHAL. Just by way of explanation to folk who are attending, our two Senators may not stay because they have commitments elsewhere with hearings and Committee meetings and so forth. So if they want to excuse themselves, they are free at any time to do so, and we very much appreciate your taking the time. It has been very helpful and informative to have you here, and your support for Mr. Phillips will mean a lot to this Committee. Thank you so much.

I would like to introduce Ms. Mason, who, as I mentioned earlier, has a very distinguished career. She spent 31 years in both private and public sectors. She has been a partner at Alston & Bird, and during her previous service in the Justice Department, she focused on helping State and local governments achieve results for citizens.

She was Deputy Associate Attorney General from 2009 to 2012, and she worked in New Orleans and Memphis to help those cities harness the Department of Justice resources to keep their citizens safe.

She also led the Attorney General's Defending Childhood Initiative and was a driving force behind the Task Force on Children Exposed to Violence. As a partner at Alston & Bird, she helps States, cities, counties, school districts, and nonprofits fund themselves

through the bond market, and she has mastered the art of helping governments and nonprofits use private funds for public purposes.

She has received letters of support from both former Senator Robert Dole, who writes, by the way, that she is an outstanding lawyer; and former Senator Blanche Lincoln, who gives her the “highest recommendation.” Those letters will be placed in the record unless there is an objection.

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

Senator BLUMENTHAL. I also will place in the record two letters of support from Senators of Georgia, unless there is an objection.

[The letters are available as a submission for the record.]

Senator BLUMENTHAL. She is a very highly experienced and qualified nominee, and I am pleased to welcome both her and Mr. Phillips to the witness stand, if you would please take your places. And now if you would please stand so we can swear you in. Do you affirm that the testimony that you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PHILLIPS. I do.

Ms. MASON. I do.

Senator BLUMENTHAL. Each of you now has the opportunity to make an opening statement, and I will turn first to General Phillips.

**STATEMENT OF GREGORY ALAN PHILLIPS, NOMINEE TO BE
CIRCUIT JUDGE FOR THE TENTH CIRCUIT**

Mr. PHILLIPS. Thank you very much, Mr. Chairman—

Senator BLUMENTHAL. And you need to turn on your microphone, if you would.

Mr. PHILLIPS. Thank you very much, Mr. Chairman and Ranking Member Lee. Let me begin by thanking the Committee for setting this hearing so speedily. It is wonderful to be here.

I would next say thank you to the President of the United States for his faith in nominating me to this important position.

And, finally, I would like to thank Senator Enzi and Senator Barrasso for their very kind comments in support of my nomination just now.

Mr. Chairman, I would at this time like to introduce members of my family. Seated immediately behind me is my mother, Clare Elaine Phillips, from Wyoming. And next to her at the far end is my wife, Donna Phillips. And in between the two—so that eyes are watching them, I suppose—are my 16-year-old son, Ryan, and my 14-year-old daughter, Rachel.

In the row behind that, my older brother John is here, my younger brother David is here, my older sister Clare is here together with her husband, Chris Tayback, from California, Washington, and Utah. And my little sister, Lisa, is watching from Thermopolis, Wyoming.

Thank you.

[The biographical information of Mr. Phillips follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Gregory Alan Phillips

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

United States Circuit Judge for the Tenth 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.

Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002

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

1960; Littleton, Colorado

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.

1984 – 1987, University of Wyoming College of Law; J.D. (with Honors), 1987

1978 – 1983, University of Wyoming; B.S., 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.

2011 – Present
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002
Wyoming Attorney General

2010 – 2011
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002
Special Assistant to the Governor for Legislative Affairs

2003 – 2010
United States Attorney's Office
2120 Capitol Avenue
Cheyenne, Wyoming 82001
Assistant United States Attorney

2001 – 2002
Phillips Law Office
2515 Warren Avenue, Suite 501
Cheyenne, Wyoming 82001
Owner

1998 – 2001
Mead & Phillips
2515 Warren Avenue, Suite 501
Cheyenne, Wyoming 82001
Partner

1993 – 1999
Wyoming State Senate
State Capitol
Cheyenne, Wyoming 82002
Senator from Uinta County

1989 – 1998
Phillips Law Offices
912 Main Street
Evanston, Wyoming 82001
Partner

1990 – 1991
Uinta County Attorney's Office
Uinta County Courthouse
225 Ninth Street
Evanston, Wyoming 82930
Part-time Deputy County Attorney

1987 – 1989
Honorable Alan B. Johnson

United States District Court Judge
District of Wyoming
2120 Capitol Avenue
Cheyenne, Wyoming 82001
Law Clerk

Summer 1986
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002
Summer Associate assigned to the Criminal Division

Summer 1985
Phillips Law Offices
912 Main Street
Evanston, Wyoming 82930
Summer Associate

1984
W.F. Anderson Electrical
No address available
Evanston, Wyoming 82930
Laborer

1983
Overthrust Constructors, Inc.
No address available
Evanston, Wyoming 82930
Laborer

Other Affiliations (uncompensated unless otherwise indicated):

2011 – Present
Wyoming Peace Officers Standards and Training Commission
1710 Pacific Avenue
Cheyenne, Wyoming 82002
Commissioner

1995 – 2002
Wyoming Community Development Authority
155 North Beech
Casper, Wyoming 82601
Member, Board of Directors (received nominal compensation and per diem)

1995 – 1997 (approx.)
Evanston Chamber of Commerce

1020 Front Street
Evanston, Wyoming 82930
Member, Board of Directors

1990 – 1992
Pioneer Counseling (local non-profit mental health center)
350 City View Drive, #302
Evanston, Wyoming 82930
Member, Board of Directors

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

I did not serve in the military. In 1980, I timely 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.

U.S. Postal Service Certificate of Appreciation for Assistance in Prosecution of Fraud Case (2005)
Invited to and attended “Program for Emerging Political Leaders” at the University of Virginia (1994)
Special Recognition Award: Wyoming Public Employees Association (1993)
Voted by media as the Outstanding Freshman Senator (1993)
Order of the Coif
Land and Water Law Review
Thurman Arnold academic scholarship in law school
Williams, Porter, Day & Neville academic scholarship in law school

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

Federal Bar Association

Laramie County State Bar Association

Uinta County Bar Association

Wyoming State Bar Association

Wyoming Trial Lawyers 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.

Wyoming, 1987

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 Supreme Court, 2011
United States Tenth Circuit Court of Appeals, 1990
United States District Court for the District of Wyoming, 1987
Wyoming Supreme Court, 1987

There have been no lapses in membership.

11. **Memberships:**

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

American Inns of Court, Ewing T. Kerr Inn (2011 – present)

Cheyenne Country Club (2004 – present)

Evanston Chamber of Commerce
Board of Directors (approximately 1995 – 1997)

Law Enforcement Academy Advisory Board (2011 – present)

National Association of Attorneys General (2011 – present)

Pioneer Counseling
Board of Directors (1990 – 1992)

Rocky Mountain Presidential Primary Task (1998 – 1999)

Rotary Club in Evanston, Wyoming (approximately 1995 – 1998)

Wyoming Community Development Authority
Board of Directors (1995 – 2002)

Wyoming Peace Officers Standards and Training Commission
Commissioner (2011 – present)

Wyoming Task Force on Medicaid Costs (1993 – 1994)

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

Prior to my membership, the Rotary Club limited membership to men. Otherwise, to the best of my knowledge, none of the organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, or religion, or national origin.

12. Published Writings and Public Statements:

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

Letter to the Editor, *Giving Credit Where Credit Is Due*, Uinta County Herald, October 27, 1998. Copy supplied.

Letter to the Editor, *Sen. Phillips Says Candidate Weston Misstating His Position*, Uinta County Herald, October 7, 1994. Copy supplied.

In 1992, in the midst of my general election campaign for state senate, I wrote a letter to the editor addressing misrepresentations that had been made about my positions on certain issues. I have been unable to locate a copy of this letter.

Case Note, *Improper Comment Upon Post-Arrest Silence: Wyoming Returns to the Prejudicial Per Se Rule*, XXI Land & Water L. Rev. 231 (1986). Copy supplied.

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

Wyoming Attorney General's Office FY12 Annual Report, 2012. Copy supplied.

Wyoming Attorney General's Office FY11 Annual Report, 2011. Copy supplied.

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

On February 5, 2013, I appeared before the Wyoming House Judiciary Committee to testify about a bill modifying Wyoming's wiretap statutes. Because the legislature records only joint interim committee meetings, no recording of this session exists. I have no notes, transcript, or recording.

On January 14, 2013, I appeared before the Wyoming Senate Judiciary Committee to testify about a bill modifying Wyoming's wiretap statutes. Because the legislature records only joint interim committee meetings, no recording of this session exists. I have no notes, transcript, or recording.

On December 11, 2012, I appeared before the Joint Appropriations Interim Committee to testify about the proposed budget for the attorney general's office and its divisions. Audio recording supplied.

On November 20, 2012, I joined 41 other attorneys general in a letter to Congressional leadership, urging passage of legislation extending tax relief for citizens who had mortgage debt canceled or forgiven because of financial hardship or a decline in housing values. Copy supplied.

On November 2, 2012, I joined 45 other attorneys general in a letter to Congressional leadership, urging funding to combat human trafficking and modern day slavery in accordance with the Trafficking Victims Protection Reauthorization Act of 2008. Copy supplied.

On October 25, 2012, I appeared before the Joint Judiciary Interim Committee to testify about proposed amendments to Wyoming's wiretap statutes and needed changes in Wyoming's life-without-parole laws for juvenile offenders to comply with recent case law from the United States Supreme Court. Audio recording supplied.

On October 22, 2012, I authored and issued Attorney General's Formal Opinion 2012-001, which interpreted Wyoming statutes and case law in an effort to clarify the respective powers of certain county officers. Copy supplied.

On October 5, 2012, I joined 40 other attorneys general in a letter to Congressional leadership, urging opposition to a bill known as the Consumer Credit Access, Innovation, and Modernization Act, because in our view it would preempt state consumer lending laws and undermine longstanding state consumer protection laws. Copy supplied.

On September 25, 2012, I appeared before the Joint Judiciary Interim Committee to testify about proposed amendments to Wyoming's wiretap statutes. Only a small portion of the hearing was recorded, and is supplied.

On September 24, 2012, I appeared before the Joint Judiciary Interim Committee to testify about the 24/7 sobriety program and about needed changes in Wyoming's life-without-parole laws for juvenile offenders to comply with a recent case from the United States Supreme Court. Audio recording supplied.

On July 31, 2012, I appeared before the Joint Judiciary Interim Committee to testify about the committee possibly sponsoring a bill to establish a 24/7 sobriety program as presently used in Montana and South Dakota. Audio recording supplied.

On July 31, 2012, I appeared before the Joint Judiciary Interim Committee to testify about my proposed eight percent reduction to general fund expenditures for the attorney general's office and its individual divisions. Audio recording supplied.

On May 8, 2012, I joined 37 other attorneys general in a letter to Viacom, Inc., urging that Paramount Pictures eliminate depictions of smoking in movies rated PG-13 or below. Copy supplied.

On May 8, 2012, I joined 50 other attorneys general in a letter to Congressional leadership, urging that the cap be increased on the Crime Victims Fund created under the Victim of Crimes Act of 1984. Copy supplied.

On April 25, 2012, I joined 22 other attorneys general in a letter to Congressman Cliff Stearns and Congressman Heath Shuler, supporting the National Right-to-Carry Reciprocity Act. Copy supplied.

On February 24, 2012, I appeared before the Wyoming Senate Labor Committee at its invitation to testify about the positions set forth in the briefing of the parties in the Affordable Care Act case. Because the legislature records only joint interim committee meetings, no recording of this session exists. I have no notes, transcript, or recording.

On February 22, 2012, I appeared before the Wyoming House Labor Committee at its invitation to testify about the positions set forth in the briefing of the parties in the Affordable Care Act case. Because the legislature records only joint interim committee meetings, no recording of this session exists. I have no notes, transcript, or recording.

On January 11, 2012, I joined 52 other attorneys general in a letter to members of Congress, urging reauthorization of the Violence Against Women Act. Copy supplied.

On January 10, 2012, I appeared before the Joint Appropriations Interim Committee at its invitation to testify about the budget for the Attorney General's office and its divisions. Audio recording supplied.

On December 7, 2011, I joined 53 other attorneys general in a letter to members of Congress, urging opposition to the Mobile Informational Call Act of 2011, which we worried would cause a flood of solicitation, marketing, debt collection, and other unwanted calls and texts to cell phones. Copy supplied.

On November 16, 2011, I joined 34 other attorneys general in a letter to the Secretary of the Federal Trade Commission, responding to a request for public comments on the marketing of high volume, sweetly flavored alcoholic drinks. We expressed concerns about the societal effects of binge drinking and excessive alcoholic consumption. Copy supplied.

On November 9, 2011, I appeared before the Joint Management Audit Committee at its invitation to testify about the Victims Services Division's actions taken in response to an audit report completed before I became attorney general. The staff of the Legislative Service Office has informed me that its recorders were inoperable at this time and thus that this meeting was not recorded.

On November 4, 2011, I joined 38 other attorneys general in a letter to the Federal Trade Commission and the Director of the Bureau of Competition, urging that they consider how Section 5 of the Federal Trade Commission Act could be used to help defeat unfair foreign competition built upon stolen information technology. Copy supplied.

On October 28, 2011, I joined 42 other attorneys general in a letter to the Chairman and Ranking Member of the Senate Committee on Finance, urging that federal laws be amended to allow more access to state attorneys general and state charity officials to obtain certain information possessed by the IRS to enable them to better protect the public interest. Copy supplied.

On October 28, 2011, I joined 43 other attorneys general, seeking funding for programs critical to fighting human trafficking. Copy supplied.

On October 18, 2011, I joined 36 other attorneys general in a letter to the Senate Majority Leader and Minority Leader, supporting former Ohio attorney general Richard Cordray to head the Consumer Financial Protection Bureau. Copy supplied.

On October 10, 2011, I authored and issued Attorney General's Formal Opinion 2011-003, which interpreted federal and state law bearing on two questions: (1) whether the legislature had power to allow holdover state senators (those having served half of their four-year terms at legislative reapportionment) to serve the remaining two years of their term without immediately seeking re-election, and (2) whether the holdover state senators could compel this result if the legislature chose to end the terms of all state senators in its upcoming reapportionment law. Copy supplied.

On October 10, 2011, I authored and issued an informal Attorney General's opinion, which addressed two issues: (1) whether compensation was necessary to move employees voluntarily from permanent to at-will status, and (2) whether unrelated pay adjustments could be withheld to employees who might decline additional compensation and refuse to move to at-will status. Because the agency director requesting the opinion wanted it released, I put this informal opinion on the office's website. Ordinarily informal opinions are covered by the attorney-client privilege and would not be disclosed. Copy supplied.

On August 31, 2011, I joined 45 other attorneys general in a letter written to the attorney for a company known as Backpage.Com, LLC, regarding our views that it served as a hub for human trafficking, including minor children trafficked for sexual exploitation. The letter sought information on the company's policies and practices. Copy supplied.

On August 26, 2011, I joined 41 other attorneys general in a letter written to Congressional leadership, supporting a specific broadband spectrum for wireless communications for law enforcement and emergency responders. Copy supplied.

On August 25, 2011, I authored and issued Attorney General's Formal Opinion 2011-002, which interpreted Wyoming law to determine whether elected officials have power to hire employees "at will" for positions previously held by "permanent" employees. Copy supplied.

On June 28, 2011, I authored and issued Attorney General's Formal Opinion 2011-001, which interpreted Wyoming statutes governing nepotism. Copy supplied.

On June 27, 2011, I joined 45 other attorneys general in a letter written to the Acting Comptroller of the Currency, expressing concerns with the proposed

regulations under Dodd-Frank that in our view might preempt state law and the exercise of state enforcement powers over consumer protection. Copy supplied.

On June 8, 2011, I joined 28 other attorneys general in a letter to the Chairman and Ranking Member of the Senate Judiciary Committee, supporting former Kansas attorney general Steve Six for an appointment to the Tenth Circuit Court of Appeals. Copy supplied.

On May 18, 2011, I joined 13 other attorneys general in a letter to the U.S. Attorney General, continuing to express concerns about the ongoing lack of availability of the drug sodium thiopental. Copy supplied.

On May 16, 2011, I joined 41 other attorneys general in a letter sent to Senator Patrick Leahy, Senator Chuck Grassley, Representative Lamar Smith, and Representative John Conyers, Jr., urging introduction and enactment of rogue site legislation. The letter commended the recipients for their efforts against counterfeiting and piracy of U.S. products on rogue websites. Copy supplied.

On April 26, 2011, I joined 23 other attorneys general in a letter to the Federal Trade Commission, commenting on information collected from alcohol advertisers on their compliance with advertising placement restrictions, sales and marketing expenditures, and alcohol data collection practices. The letter expressed concern with the large number of underage drinkers and the role of advertising in promoting that. Copy supplied.

On April 21, 2011, I appeared before the Joint Judiciary Interim Committee at its invitation to testify about a proposed bill expanding the coverage of the Wyoming Governmental Claims Act. Only a small portion of the hearing was recorded, and is supplied.

On February 25, 2011, I appeared before the Wyoming Senate Judiciary Committee for my confirmation hearing. I introduced myself and talked about my past legal experiences and interest in the job of attorney general. I was approved unanimously by the committee and the full Senate. Because the legislature records only joint interim committee meetings, no recording of this session exists. I have no notes, transcript, or recording.

In 2000, I appeared before the Wyoming Legislature's Joint Judiciary Committee at its request to answer questions about the state's sexual assault statutes and specifically about the effect of statutory changes that I had gotten passed while I was in the legislature. As I remember it, I met with the Committee informally and on an impromptu basis at the end of the legislative session, when the Committee was considering interim topics. I have no notes, transcript, or recording.

In 1999, I appeared before the Wyoming Legislature's Senate and House Committees on Labor, Health, and Social Services to explain amendments sought

by the Office of Medicaid to Wyoming's statutes governing Medicaid benefit recovery. Because the legislature records only joint interim committee meetings, no recording of this session exists. I have no notes, transcript, or recording.

Likely in 1997 or 1998, as a member of the Wyoming Senate Education Committee, I commented during a committee meeting that a state assessment was a way to ensure accountability and value for the money spent to educate students. I have no notes, transcript or recording, but press coverage is supplied.

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

October 6, 2012: I spoke at a Silent Witness ceremony in Kemmerer, Wyoming, sponsored by the Victims Services Division of my office, honoring slain victims of domestic abuse. My comments recognized the dedicated people working on this societal problem and sought to comfort family members gathered together to remember slain victims. I have no notes, transcript, or recording. The Victims Services Division is located at Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002.

July 13, 2012: I gave congratulatory remarks to graduates of the Wyoming Law Enforcement Academy in Douglas, Wyoming. My remarks generally congratulated the graduates and commented upon the importance of law enforcement to society. I have no notes, transcript, or recording. The Wyoming Law Enforcement Academy is located at 1556 Riverbend Drive, Douglas, Wyoming 82633.

July 12, 2012: I gave a congratulatory speech at the Investiture of Kelly H. Rankin as Wyoming's chief federal magistrate judge, held in Cheyenne, Wyoming. I have no notes, transcript or recording. The Joseph C. O'Mahoney Federal Building is located at 2120 Capitol Avenue, Cheyenne, Wyoming 82001.

May 18, 2012: I gave congratulatory remarks to graduates of the Wyoming Law Enforcement Academy in Douglas, Wyoming. My remarks generally congratulated the graduates and commented upon the importance of law enforcement to society. I have no notes, transcript, or recording. The Wyoming Law Enforcement Academy is located at 1556 Riverbend Drive, Douglas, Wyoming 82633.

March 29, 2012: I gave congratulatory remarks to graduates of the Wyoming Law Enforcement Academy in Douglas, Wyoming. My remarks generally congratulated the graduates and commented upon the importance of law enforcement to society. I have no notes, transcript, or recording. The Wyoming Law Enforcement Academy is located at 1556 Riverbend Drive, Douglas, Wyoming 82633.

June 23, 2011: I gave congratulatory remarks to graduates of the Wyoming Law Enforcement Academy in Douglas, Wyoming. My remarks generally congratulated the graduates and commented upon the importance of law enforcement to society. I have no notes, transcript, or recording. The Wyoming Law Enforcement Academy is located at 1556 Riverbend Drive, Douglas, Wyoming 82633.

May 20, 2011: I gave a short speech at a memorial ceremony for fallen officers at the Wyoming Law Enforcement Academy in Douglas, Wyoming. This event is commemorated annually across the country. I have no notes, transcript, or recording. The Wyoming Law Enforcement Academy is located at 1556 Riverbend Drive, Douglas, Wyoming 82633.

May 18, 2011: I gave welcoming remarks at a conference run by the Division of Victims Services, which is within the attorney general's office, praising the work the attendees have done and continue to do to protect children. The conference was held in Cheyenne, Wyoming. I have no notes, transcript, or recording, but press coverage is supplied. The Victims Services Division is located at Herschler Building, 1st Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002.

March 31, 2011: I gave congratulatory remarks to graduates of the Wyoming Law Enforcement Academy in Douglas, Wyoming. My remarks generally congratulated the graduates and commented upon the importance of law enforcement to society. I have no notes, transcript, or recording. The Wyoming Law Enforcement Academy is located at 1556 Riverbend Drive, Douglas, Wyoming 82633.

On March 14, 2011, I spoke at my swearing-in ceremony at the Wyoming Supreme Court building in Cheyenne, Wyoming. Audio recording supplied.

April 16, 2010: I gave a lecture on federal sentencing in Cheyenne, Wyoming. My lecture was sponsored by the Criminal Justice Panel and the Federal Public Defender's office. Materials supplied.

April 22, 2009: I gave a lecture entitled "Statutory and Guideline Sentencing Enhancements: Crimes of Violence and Violent Felonies" at the U.S. Probation Office in Casper, Wyoming. My lecture was sponsored by the Criminal Justice Panel and the Federal Public Defender's office. Materials supplied.

August 10, 2005: I gave a lecture entitled "Law of Custodial Interrogations: Fifth and Sixth Amendments" at the Native American Conference held at the Best Western Inn, 200 Grandview Drive, Lander, Wyoming 82520. This lecture was to law enforcement officers and other conference attendees. Materials supplied.

Fall 1999: I gave a lecture with Matthew Mead entitled "Third Party Liability Reimbursement" at the Wyoming State Bar Association Meeting held in Moran, Wyoming. The lecture sought to educate the state bar members on duties and procedures in reimbursing Medicaid as the payer of last resort. I have no notes, transcript, or recording. The Wyoming State Bar is located at 4124 Laramie Street, Cheyenne, Wyoming 82003.

Summer 1999: I gave a lecture with Matthew Mead entitled "Third Party Liability Reimbursement" at the Wyoming Trial Lawyer's Association Meeting held in Lander, Wyoming. The lecture sought to educate members of the trial lawyers' association on duties and procedures in reimbursing Medicaid as the payer of last resort. I have no notes, transcript, or recording. The Wyoming Trial Lawyer's Association is located at 2111 Warren Avenue, Cheyenne, Wyoming 82001.

May 1997: I gave the commencement address at the graduation ceremony held at Evanston High School in Evanston, Wyoming. As best I can recollect, my speech congratulated the graduates and emphasized the importance of the graduates continuing their education to ensure their futures in the rapidly changing world. I have no notes, transcript, or recording. Evanston High School is now located at 701 West Cheyenne Drive, Evanston, Wyoming 82930.

February 12, 1996: I participated at a meeting sponsored by the Evanston Education Association at a school in Evanston, Wyoming. I predicted how the legislature might continue to respond to a state supreme court decision declaring the state's school financing system unconstitutional. I have no notes, transcript, or recording, but press coverage on February 16, 1996 is supplied in response to Question 12e. The Evanston Education Association is located at 209 Dean Avenue, Evanston, Wyoming 82930.

October 17, 1994: I appeared in a roundtable debate on Wyoming Public Television with my general election opponent. The roundtable debate took place at the studio of Wyoming Public Television in Riverton, Wyoming. I remember the chief topic of discussion being the Watt-Donley proposal to invest state revenues into a low-interest loan program for Wyoming businesses. I have no notes, transcript, or recording. Wyoming Public Television is located at 2660 Peck Avenue, Riverton, Wyoming 82501.

December 2, 1993: I and two other legislators spoke at a League of Women Voters forum before attending the 1994 legislative session. The forum occurred at the city council chambers in Evanston, Wyoming. I have no notes, transcript, or

recording, but press coverage on December 7, 1993 is supplied in response to Question 12e. The League of Women Voters has no physical address.

In addition to the above, I participated at candidate forums in my two legislative races, giving brief comments and taking questions. I believe that the League of Women Voters sponsored each of these forums, which took place soon before the primary and general elections in August and November of 1992 and 1994. The forums included candidates for state and local offices. As I recall, each candidate got a brief time for introductory comments and then answered any questions from the audience. I have no notes, transcript, or recording. The League of Women Voters has no physical address.

I also met with groups of constituents after each of my six legislative sessions to review changes in the law and obtain feedback. For instance, after each session I met with local law enforcement agencies, advising them of changes in the statutes and seeking input for possible future statutory changes. I held similar post-session meetings with local government officials, school officials, and service clubs. These meetings took the form of a general summary of the legislative session, followed by questions and answers. I do not know any dates of these meetings, and I have no notes, transcript, or recordings.

- 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.

Interviews:

Chuck Raasch, *States on Guard for Pot Incursion*, Gannett News Service, January 14, 2013. Copy supplied.

Ben Neary, *U.S. Supreme Court Sets Aside Wyo Teen's Sentence*, Associated Press, October 26, 2012. Copy supplied.

Trevor Brown, *Program Seeks to Protect Military from Consumer Fraud*, Wyo. Trib. Eagle, October 3, 2012. Copy supplied.

Joan Barron, *Consumer Protection Official Urges Financial Education for Service Members*, Casper Star-Trib., October 3, 2012. Copy supplied.

Joan Barron, *Plaintiff Settles for \$25,000 in Torrington First Amendment Lawsuit*, Casper Star-Trib., August 14, 2012. Copy supplied.

Laura Hancock, *New Report Slams Wyoming for Lack of Human Trafficking Law*, Casper Star-Trib., August 13, 2012. Copy supplied.

Trevor Brown, *Does Wyo. Need Laws for Human Trafficking?*, Wyo. Trib. Eagle, August 7, 2012. Copy supplied.

Jeremy Pelzer, *Most 'Tree Street' Residents Accept State Settlements*, Casper Star-Trib., June 18, 2012. Copy supplied.

Jeremy Pelzer, *Senator Under a Microscope*, Casper Star-Trib., February 19, 2012. Copy supplied.

Aerin Curtis, *Legislator Wants Dept. of Education Audited*, Wyo. Trib. Eagle, February 12, 2012. Copy supplied.

Editorial Board, *State Should Have Settled Tree Street Claims Long Ago*, Casper Star-Trib., January 24, 2012. Copy supplied.

Jeremy Pelzer, *Rock Springs Residents, State Enter Mediation on Mine Subsidence Damage*, Casper Star-Trib., January 23, 2012. Copy supplied.

Ben Neary, *Lawyer Wants Hearing for Sheridan Teen in Hearing*, Associated Press, December 22, 2011. Copy supplied.

Ben Neary, *Wyoming Prosecutors Dispute Critical Report*, Casper Star-Trib., December 11, 2011. Copy supplied.

Joan Barron, *Wyoming Attorney General Joins Fight Against Sex Trafficking Ads*, Casper Star-Trib., September 2, 2011. Copy supplied.

Joan Barron, *Wyoming Murder Conviction May Be in Jeopardy*, Casper Star-Trib., June 16, 2011. Copy supplied.

Jeremy Pelzer, *Wyoming Supports Secret Service Agents in Lawsuit*, Casper Star-Trib., April 19, 2011. Copy supplied.

Deborah Demander, *Evanston Resident Sworn in as Wyo. Attorney General*, Uinta County Herald, March 15, 2011. Copy supplied.

Ben Neary, *Mead Announces Greg Phillips to Serve as State AG*, Associated Press, November 23, 2010. Copy supplied.

Tom Morton, *Man Sentenced to 124 Years in Prison after Casper Chase*, Casper Star-Trib., February 7, 2007. Copy supplied.

Cameron Mathews, *Federal and State Agents Hunt Those 'Lying for Money,'* Wyo. Trib. Eagle, February 5, 2007. Copy supplied.

Tom Morton, *Troopers Nab Speeder with 112 Pounds of Pot*, Casper Star-Trib., November 13, 2005. Copy supplied.

Jessica Lowell, *Tax Preparer Sentenced for Fraudulent Returns*, Wyo. Trib. Eagle, July 20, 2005. Copy supplied.

Staff, *Area Meth Sealers Sentenced to Federal Penitentiary*, Uinta County Herald, October 8, 2004. Copy supplied.

Juliette Rule, *Man Gets 7 Years in Standoff*, Wyo. Trib. Eagle, December 30, 2003. Copy supplied.

Staff, *No Democratic Challengers Have Stepped Up to Face Cubin, Thomas*, Associated Press, February 7, 2000. Copy supplied.

Staff, *Former Evanston Senator Receives Appointment to Governor's Rocky Mountain Primary Task Force*, Uinta County Herald, Aug. 11, 1998. Copy supplied.

Tony Monterastelli, *Senate Rejects Pay Raises for DAs*, Wyo. Trib. Eagle, March 10, 1998. Copy supplied.

Staff, *Wyoming Senate Kills Revenue Bond Measure for Schools*, Capital Markets Report, February 19, 1998. Copy supplied.

Staff, *Wyoming Senate Gives Final OK to School Construction Bills*, Capital Markets Report, February 17, 1998. Copy supplied.

Staff, *Wyoming Lawmakers Reviewing Oversight of School Construction*, Capital Markets Report, October 17, 1997. Copy supplied.

Staff, *Accord Reached in Welfare Reform Wyoming Senate, House Iron Out Differences as Session Nears End*, Denver Post, February 28, 1997. Copy supplied.

Staff, *Wyoming Senate Considers Expanding Veterans Tax Exemption*, Capital Markets Report, January 21, 1997. Copy supplied.

Staff, *Wyoming Finance Panel Rejects Statewide Mill Levy Proposal*, Capital Markets Report, December 13, 1996. Copy supplied.

Staff, *Wyo. Panel Approves Local-Control Capital Construction Plan*, Capital Markets Report, September 30, 1996. Copy supplied.

David Carkhuff, *Sen. Phillips Predicts More Money for Local School District*, Uinta County Herald, February 16, 1996. Copy supplied.

Staff, *Phillips Quells Rumors of Run for U.S. Senate*, Uinta County Herald, February 16, 1996. Copy supplied.

On November 8, 1994, a reporter from my local newspaper, the Uinta County Herald, interviewed me after I had won re-election. I have been unable to locate a copy of any resulting article.

In 1993 or 1994, a local television reporter interviewed me for a short clip about the Senate's refusing confirmation for a nominee sent to the Senate by Governor Sullivan. I had supported the nomination. I have been unable to obtain a copy of the recording.

Staff, *Sen Phillips: State Must Be More Diligent in Collecting Money Owed It*, Uinta County Herald, August 5, 1994. Copy supplied.

George Hammond-Kunke, *Sen. Phillips Says Watt-Donley Benefits 'Illusionary at Best'*, Uinta County Herald, April 5, 1994. Copy supplied.

Shawn Hubbel, *Legislators Bash Watt-Donley Plan*, Uinta County Herald, December 7, 1993. Copy supplied.

Staff, *Phillips Named Freshman Senator of the Year by Media*, Uinta County Herald, March 19, 1993. Copy supplied.

I remember being interviewed in January 1993 by the Cheyenne Tribune Eagle about my experiences as a new legislator. I have been unable to locate a copy of any resulting article.

From 1993 to 1998, including the times listed above, I remember television and radio reporters interviewing me about five times for short video and audio clips about legislative issues. I have been unable to obtain a copy of any of the news stories or tapes.

Press Releases:

Press release, *Settlement with Tobacco Companies Protects Wyoming's Tobacco Settlement Payments*, Office of Attorney General Greg Phillips, December 19, 2012. Copy supplied.

Press release, *Governor Appoints New Director of DCI*, Office of Governor Matt Mead, July 17, 2012. Copy supplied.

Press release, *Attorney General Greg Phillips Joins 54 Other Attorneys General in Fight Against Robo-Calls to Cell Phones: Federal Bill Erodes Americans'*

Telephone Privacy, Office of Attorney General Greg Phillips, December 7, 2011. Copy supplied.

Press release, *Governor and Attorney General Appoint New Head of Victims' Services*, Office of Governor Matt Mead, November 21, 2011. Copy supplied.

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

My brother, John Phillips, served as the municipal judge for Evanston and Lyman, Wyoming. From about 1990 to 1996, I was appointed assistant municipal judge to serve in his absence. Accordingly, I sat as the municipal judge about five times, taking pleas at arraignments. I did not issue any opinions or decisions.

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

None.

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

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

None.

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

None.

- 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.

None.

- 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.

None.

- 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.

None.

- 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.

None.

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:

As an assistant municipal judge, I never recused or was asked to recuse.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

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

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

1990 – 1991

Half-time Deputy Uinta County Attorney, Evanston, Wyoming
Appointed by Uinta County Attorney Scott W. Smith

1993 – 1994

Wyoming Task Force on Medicaid Costs
Appointed by Governor Mike Sullivan

1997 – 1998

Precinct Committeeman for Uinta County Democratic Party
Elected by voters

1998 – 1999

Rocky Mountain Presidential Primary Task Force
One of six members from Wyoming
Appointed by Governor Jim Geringer after being nominated by State Senate
President Bob Grieve

1995 – 2002

Wyoming Community Development Authority
Board of Directors
Appointed in 1995 and reappointed in 2000 by Governor Jim Geringer and
unanimously confirmed by the state senate

1993 – 1999

Wyoming State Senator (Uinta County, Democrat)
Elected in 1992 (two-year term after redistricting) and in 1994 (four-year term),
but I did not seek re-election in 1998

2010 – 2011

Wyoming Attorney General's Office

Special Assistant to the Governor for Legislative Affairs
Appointed by Governor Matthew H. Mead

2011 – Present
Wyoming Attorney General
Appointed by Governor Matthew H. Mead

I have had no unsuccessful candidacies for elected 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.

In 1992 and 1994 I was the candidate in two state senate campaigns in Uinta County, Wyoming. In 1992, I had opponents in the primary and general election, and in 1994 I had an opponent in the general election. I prevailed in each election and served as a state senator from January 1993 until January 1999. From 1996 to 1998 I served as minority caucus chairman for the Democrat state senators. In 1996 I was elected for a two-year term (1997-1998) to the office of Precinct Committeeman in Uinta County, Wyoming.

Beginning at age 10, I have distributed campaign literature for many candidates and have continued doing so through several campaigns including those for U.S. Senator Gale McGee's re-election campaign in 1970, Mike Sullivan for Governor in 1986 and U.S. Senate in 1994, and Paul Hickey (co-chairman) and Dave Freudenthal (volunteer) for Governor in 2002.

I have done testimonial radio commercials for Dave Freudenthal and Paul Hickey, and also for Mark Madia, a candidate for city council in Evanston, Wyoming. My mother served six four-year terms as the clerk of district court for the Third Judicial District Court in Evanston, Wyoming. During her races in 1974, 1978, 1982, 1986, 1990, and 1994, I assisted her by addressing mailings and distributing campaign literature.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Honorable Alan B. Johnson, U.S. District Judge, District of Wyoming, from August 1987 to August 1989.

- 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.

1990 – 1991
Uinta County Attorney's Office
Uinta County Courthouse
225 9th Street
Evanston, Wyoming 82930
Part-time Deputy County Attorney

1989 – 1998
Phillips Law Offices
912 Main Street
Evanston, WY 82001
Partner

1993 – 1999
Wyoming State Senate
State Capitol
Cheyenne, WY 82002
Senator from Uinta County

1998 – 2001
Mead & Phillips
2515 Warren Avenue, Suite 501
Cheyenne, WY 82001
Partner

2001 – 2002
Phillips Law Office
2515 Warren Avenue, Suite 501
Cheyenne, WY 82001
Owner

2003 – 2010
United States Attorney's Office
2120 Capitol Avenue

Cheyenne, WY 82001
Assistant United States Attorney

2010 – 2011
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
Special Assistant to the Governor for Legislative Affairs

2011 – Present
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002
Wyoming Attorney General

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

I have not served as a mediator or arbitrator.

b. Describe:

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

When I practiced law in Evanston, Wyoming, which is a town of about 10,000 residents, I practiced a wide variety of law, including in the areas of personal injuries, wills and estates, real property, contracts, workers' compensation, employment, domestic relations, and bankruptcy. For a few months, until a new county attorney could be elected to hire his or her own staff, I served as a part-time deputy county attorney, mostly prosecuting misdemeanor crimes.

In 1998, Matthew H. Mead and I opened a law office in Cheyenne, Wyoming. We handled Medicaid third-party and estate reimbursement for the State of Wyoming as special assistant attorneys general, and we had a broad-ranging practice, including some work in insurance law, banking law, and federal tort claims law. In addition, we defended the State of Wyoming in a tort suit involving an electrocution.

When I began working at the U.S. Attorney's Office in 2003, I split my time between civil and criminal cases. On the civil side, I was co-counsel in a Federal Tort Claims Act case, and I sought civil recovery in other miscellaneous cases. On the criminal side, I prosecuted crimes involving controlled substances, firearms, child exploitation, immigration, fraud, and

violence. After about a year in the office, I began working exclusively on criminal cases.

As the Wyoming Attorney General, I supervise five law divisions—civil, criminal, human services, tort litigation, and water and natural resources. I actively edit briefs and regularly participate in the moot courts preceding our arguments to the Wyoming Supreme Court and Tenth Circuit Court of Appeals. I write AG opinions in cases where I believe that the state official, state agency, or legislature needs to hear directly from the attorney general. I am handling two high-profile cases, one involving term limits on state officials, and another involving a challenge to the Wyoming Legislature's 2012 redistricting law.

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

I have not specialized in any particular area in my career. My typical clients in private practice were Wyoming citizens with all manner of legal needs. In government practice, I have prosecuted a wide array of offenses, handled appeals to the Tenth Circuit Court of Appeals (where I argued 19 cases), and responded to habeas petitions.

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

The percentage of my practice that has involved litigation and court appearances has varied over the years. Although I appeared regularly in state district court while practicing law my first several years, I litigated and appeared in court much more as an Assistant United States Attorney. I estimate that about 50% of my private practice was litigation and 90% of my practice as an AUSA was litigation.

- i. Indicate the percentage of your practice in:

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

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	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 estimate that I tried about 50 cases to final decision. I was lead counsel in about 95% of these cases and associate counsel in about 5% of them.

- i. What percentage of these trials were:
 - 1. jury: 20%
 - 2. non-jury: 80%
- 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.

My office filed a petition for certiorari in *State of Wyoming v. United States Department of Agriculture*, No. 11-1378, *cert. denied*, 133 S. Ct. 417 (2012). The brief can be found at 2012 WL 1773032.

My office filed a brief in opposition to the petition for certiorari in *Bear Cloud v. Wyoming*, No. 11-10616, *cert. granted*, 133 S. Ct. 183 (2012). After granting the petition for certiorari, the Supreme Court vacated the Wyoming Supreme Court's judgment and remanded for further consideration in light of *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). Copy supplied.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- 1. *Maxfield v. State*, No. S-12-0084 (Wyo., argued October 24, 2012).

I represented the State of Wyoming, defending its statute imposing term limits on state officials against challenge under the Wyoming Constitution. In 2004, the Wyoming Supreme Court struck down legislative term limits under the Wyoming Constitution. I briefed and argued the case on different legal grounds than the State had argued in 2004, and I asked that

the Court abandon the reasoning used in the 2004 case. The case is now pending before the Wyoming Supreme Court.

Wyoming Supreme Court: Chief Justice Marilyn S. Kite, Justice William U. Hill, Justice Barton R. Voigt, Justice E. James Burke, and Justice Michael K. Davis.

Counsel for Plaintiff/Appellant:
Bradley Trent Cave
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82003
(307) 778-4200

2. *MacDonald v. United States*, Docket No. 03-CV-023-J (D. Wyo. 1993)

I was second chair on this case soon after joining the U.S. Attorney's Office. The case involved a motorist injured in Yellowstone National Park when a dead tree fell from its base toward the road and broke off a live tree several feet above the ground. The two trees fell toward Mr. MacDonald's approaching truck, striking its hood and roof and injuring him. He filed a claim under the Federal Tort Claims Act, claiming among other things that various governmental policies required inspection for and removal of hazardous trees. I wrote a motion to dismiss under F. R. Civ. P. 12(b)(1), relying on the discretionary function doctrine. The district court denied the motion, and the case settled.

District Judge Alan B. Johnson

Co-Counsel:
Nicholas Vassallo
U.S. Attorney's Office
2120 Capitol Avenue, Fourth Floor
Cheyenne, WY 82002
(307) 772-2124

Counsel for Plaintiff:
Rhonda Woodard
401 West 19th Street, Suite 300
Cheyenne, WY 82003
(307) 635-2876

3. *United States v. Graham*, 413 F.3d 1211 (10th Cir. 2005)

I was the AUSA responsible for prosecuting this case, in which I obtained the conviction of a 57-year-old man from Pennsylvania who traveled to

Wyoming to have sexual intercourse with two girls, ages 7 and 12. In fact, the man had been communicating with an undercover law enforcement officer posing as a mother of two young girls. The man arrived by air in Cheyenne with stuffed animals and sexual implements. In his online chats, he had described a history of sexually abusing children. The district court imposed the highest sentence then allowed. On appeal, the Tenth Circuit affirmed the sentence, finding that the sentencing guideline covers communications with fictional parents of fictional minors and not just communications with fictional minors themselves. It reaffirmed that guideline enhancements do not require actual, real-life victims.

District Judge Clarence A. Brimmer
Tenth Circuit Court of Appeals: Judge Terrence O'Brien, Judge Carlos Lucero, and Judge Stephanie Seymour

Counsel for Defendant:
Robert R. Rogers (deceased)
Assistant Federal Public Defender
214 West Lincolnway, Suite 31-A
Cheyenne, WY 82001
(307) 772-2781

4. *United States v. Hanson*, 534 F.3d 1315 (10th Cir. 2008)

I was the AUSA responsible for prosecuting this case, which involved a methamphetamine user who purchased and possessed a 9mm handgun. After pleading guilty, he sought a reduced sentence under the “sporting exception” to the firearms sentencing guideline. He claimed to have bought the gun only for shooting cans and jackrabbits. The district court denied the sentencing reduction, finding that Hanson had not possessed the firearm solely for sporting purposes. Although the Tenth Circuit panel affirmed Hanson’s sentence, it rejected the government’s argument that “plinking” (casual recreational shooting oftentimes at cans and other items found lying around) did not qualify for the sporting exception as a matter of law. The panel affirmed the district court’s finding that Hanson had not possessed the firearm solely for sporting purposes, reasoning that when one is “deeply involved in a ‘drug lifestyle,’ including use of methamphetamine with its attendant paranoia effects, the court is entitled to view with ‘suspicion’ the defendant’s purchase of a 9 mm handgun.” The sporting exception arises in many firearms cases, and this case considerably clarified its application.

District Judge Alan B. Johnson
Tenth Circuit Court of Appeals

Panel: Judge Michael McConnell, Judge Deanell Tacha, and Judge Robert McWilliams, Jr.

Counsel for Defendant:
Howard Pincus
Assistant Public Defender
633 17th Street, Suite 600
Denver, CO 80202
(303) 294-7002

5. *United States v. Morris*, 562 F.3d 1131 (10th Cir. 2009)

I was the AUSA responsible for prosecuting this case, which involved a convicted felon, Morris, who stole a firearm while burglarizing a home. At issue was whether he qualified for a sentencing guideline increase for having “possessed the firearm in connection with another felony offense.” The district court applied the sentencing enhancement. In a case of first impression in our circuit, the Tenth Circuit panel affirmed the enhanced sentence even though Morris was not armed before entering the home but only after stealing the firearm during the burglary. The sentencing enhancement at issue arises often in firearm cases, and this case considerably clarified its application.

District Judge Alan B. Johnson
Tenth Circuit Court of Appeals: Judge Paul Kelly, Judge Timothy Tymkovich, and District Judge Timothy DeGiusti

Counsel for Defendant:
Wendy C. Palen
Palen Law Offices, LLP
P.O. Box 156
Glendo, WY 82213
(307) 735-4022

6. *United States v. Scoville*, 561 F.3d 1174 (10th Cir. 2009)

I was the AUSA responsible for prosecuting this case, which involved a felon (Scoville) who possessed a firearm after previously being convicted of three separate Ohio felony burglaries. At issue in the case was whether the three prior convictions were for “violent felonies.” If so, he would qualify as an armed career criminal, subjecting him to a mandatory minimum 15-year sentence. The district court found that each of the three Ohio burglary convictions qualified as violent felonies and imposed a 15-year sentence. On appeal, the Tenth Circuit panel affirmed the sentence after agreeing with the government that two of the disputed Ohio burglaries presented similar risk to that created in generic burglaries (any

crimes with the generic elements of unlawful or unprivileged entry into, or remaining in, a building or structure with intent to commit a crime). By clarifying how the residual clause of the Armed Career Criminal Act works (what crimes present a similar risk to generic burglary), this case made more certain how sentencing courts in the Tenth Circuit should analyze prior convictions under the Act. This issue arises often and its outcome can dramatically increase sentences.

District Judge William F. Downes
Tenth Circuit Court of Appeals: Judge Timothy Tymkovich, Judge Paul Kelly, and District Judge Timothy DeGiusti

Counsel for Defendant:
Daniel G. Blythe
Assistant Federal Public Defender
214 West Lincolnway, Suite 31-A
Cheyenne, WY 82001
(307) 772-2781

7. *United States v. Pena*, 279 Fed. Appx. 702 (10th Cir. 2008)

I was the AUSA responsible for prosecuting this case, which involved the final prosecution in a series of drug and firearms indictments. This case involved two Wyoming men who transported cash and stolen firearms to a methamphetamine source in California (Pena) in exchange for methamphetamine to sell back in Wyoming. Pena interrupted jury selection with inappropriate outbursts and after the jury was taken from the courtroom asked in a stray comment while the district judge was speaking, “[c]an I represent myself?” When Pena refused the district court’s pleas to behave, he was removed from the courtroom and watched and listened to a trial with a television in his holding cell. Ultimately, still expressing dissatisfaction with his appointed counsel (after insisting that his first counsel be discharged and then trying to re-obtain him) Pena returned to the courtroom and caused no more disturbances. After being convicted by a jury, Pena contended on appeal that the district court had erred in not allowing him to represent himself, in not recusing the jury panel after his outburst, and in not allowing him counsel of his choice. On appeal, the Tenth Circuit panel affirmed each of the district court’s decisions. This case provides considerable guidance to all district courts on how to respond lawfully to disruptive defendants and to vague requests for self-representation.

District Judge Clarence A. Brimmer
Tenth Circuit Court of Appeals: Judge Robert Henry, Judge William Holloway, Judge Neil Gorsuch

Trial Counsel for Defendant:
Steven Rozan
2777 Allen Parkway
10th Floor
Houston, TX 77019
(713) 627-3608

Appellate Counsel for Defendant:
Ronald Pretty
313 West Lincolnway
Cheyenne, WY 82001
(307) 634-0586

8. *United States v. Jolley*, 275 Fed. Appx. 758 (10th Cir. 2008)

I was the AUSA assigned to prosecute this case, which involved the final prosecution in a series of drug conspiracy indictments in which several people were convicted of selling methamphetamine in Casper, Wyoming. Evidence at trial proved that Jolley operated a large methamphetamine distribution ring and that he repeatedly used firearms to intimidate others. Because of this conduct, the government charged him with multiple drug and firearms counts, each by statute with consecutive mandatory minimum sentences. After a jury convicted Jolley on all counts, he received a 1,495-month sentence. On appeal, Jolley contended that this sentence violated the Eighth Amendment's prohibition against cruel and unusual punishment. Based on Jolley's egregious conduct, the Tenth Circuit panel affirmed as constitutional the lengthy sentence, allowing multiple consecutive sentences for independent instances of using firearms to distribute drugs.

District Judge Clarence A. Brimmer
Tenth Circuit Court of Appeals: Judge Michael Murphy, Judge William Holloway, Judge Timothy Tymkovich

Counsel for Defendant:
Timothy Kingston
408 West 23rd Street, Suite 1
Cheyenne, WY 82001
(307) 638-8885

9. *United States v. Dowlin*, 408 F.3d 647 (10th Cir. 2005)

Almost immediately after beginning work at the U.S. Attorney's office, I was assigned to second chair this prosecution. The government charged Dowlin and Naylor, a couple, with conspiracy to transport in interstate commerce money and securities taken by fraud, wire fraud, securities

fraud, and mail fraud. Included in the frauds were promised exorbitant returns from fake Philippine gold certificates. The schemes produced more than a million dollars to the defendants. Despite Naylor's claim of a good faith belief in the legitimacy of the gold certificates, and despite Dowlin's claim that she was a hapless victim of Naylor's deceptions, a jury found them guilty on all counts. On appeal, handled by the lead prosecutor in the case, the Tenth Circuit panel affirmed the convictions.

District Judge Alan B. Johnson
Tenth Circuit Court of Appeals: Judge Timothy Tymkovich, Judge Michael Murphy, Judge Stephen Anderson

Co-Counsel:
Lisa Leschuck
2124 Capitol Avenue, Fourth Floor
Cheyenne, WY 82003
(307) 772-2124

Counsel for Defendant Dowlin:
James Barrett
Assistant Federal Public Defender
214 West Lincolnway, Suite 31-A
Cheyenne, WY 82001
(307) 772-2781

Trial Counsel for Defendant Naylor:
Ronald Brown (deceased)

Appellate Counsel for Defendant Naylor:
Maynard Grant
PMB 150, 3213 West Wheeler Street
Seattle, WA 98199
(206) 286-0121

10. *Dunker v. Town of Mountain View*, Civil No. 90-57 (3d Jud. Dist. 1991)

I was the attorney representing Mr. Dunker, a fired police officer. The issue in the case was whether the town could suspend and later terminate Dunker from employment for the same alleged deficient conduct. The case settled after the district court denied my second motion for summary judgment.

Counsel for Defendant:
Judge Jeffrey Donnell
Second Judicial District Court
Albany County Courthouse, Room 303

Laramie, WY 82070
(307) 745-3337

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

The most significant litigation I was involved with that did not proceed to trial was for the wrongful death of an oilfield worker killed in an explosion at a Wyoming gas plant. Many other employees were injured too. Our law firm in Evanston associated with Robert Chaffin in Houston, Texas, and filed suit in Texas. One defendant tried to force us to Wyoming to participate in the ongoing litigation involving the other injured men. I wrote the brief opposing this move and argued it to U.S. Chief Magistrate Judge William C. Beaman in Cheyenne, Wyoming. Judge Beaman ruled in our favor and adopted my brief's arguments. After discovery, the case then settled in Texas. While we researched and advised Mr. Chaffin on questions of Wyoming law, he did the depositions and provided much of the expertise in settling the case. The Texas case was *Reed v. Amoco Production Company, et al.*, No. 91M1109 (149th Jud. Dist. 1991). The Wyoming case was *Duggan v. Dresser-Rand Co., et al.*, Case No. 90-CV-0198-B (D. Wyo. 1991).

I have also pursued legal activities unrelated to the practice of law but helpful to my communities. I helped shape Wyoming's statutes during my six years in the state senate and applied the legal knowledge gained in the legislature when serving on numerous state and local boards and commissions to promote the public interest. For example, from 1995 to 2002, I served on the Board of the Wyoming Community Development Authority, and I presently serve as a Commissioner on the Wyoming Peace Officers Standards and Training Commission.

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.

I have not taught any courses.

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

customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

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

The Wyoming Attorney General's Office has cases that are pending in the Tenth Circuit Court of Appeals. If confirmed, I would recuse myself from those cases. In addition, I would recuse myself from any cases in which the Wyoming Attorney General's office is involved when I left the office.

- 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 follow the Code of Conduct for United States Judges, as well as any other applicable ethical rules or statutes.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in

serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my private practice years from 1989 to 2001, I regularly did pro bono work. I found that many people who could not afford legal representation needed help in domestic relations cases. When the parties had children, they oftentimes needed help navigating through the child support guidelines and necessary paperwork. I have no records by which to compile a list of specific instances and amounts of time for any of these clients. In addition, in Uinta County, I regularly attended “Bar Night,” which was a monthly gathering of lawyers at the courthouse to advise people on their legal problems and at the least to get them headed in the right direction.

After coming back to government employment at the United States Attorney’s Office and the Wyoming Attorney General’s Office, fewer opportunities for pro bono work arose. In these positions, the citizens we see are generally victims of crime. We work diligently with them through our victim services people to ensure that their rights are protected.

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 October 23, 2012, an official from the White House Counsel’s Office emailed me to ask if I was interested in serving on the Tenth Circuit Court of Appeals. On October 26, 2012, that official called me and asked me preliminary questions about my interest in and suitability for the job. On November 9, 2012, the same official called me again, this time telling me that I would be contacted by representatives from the Department of Justice to begin the vetting process for this position.

Since November 9, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 21, 2012, I met with officials from the White House Counsel’s Office and the Department of Justice in Washington, DC. On January 31, 2013, 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.

AO 10*
Rev. 1/2012

**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) Phillips, Gregory A.	2. Court or Organization United State Court of Appeals 10th Circuit	3. Date of Report 01/31/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) US Circuit Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination Date 01/31/2013 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input checked="" type="checkbox"/> Amended Report	6. Reporting Period 01/01/2012 to 1/16/2013
7. Chambers or Office Address 123 Capitol Building, Cheyenne, WY 82002		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.</i>		

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

NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Attorney General	State of Wyoming
2. Wyoming Peace Officers Standards & Training Commissioner	State of Wyoming
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 8

Name of Person Reporting Phillips, Gregory A.	Date of Report 01/31/2013
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2011	State of Wyoming - Salary	\$126,851.00
2. 2012	State of Wyoming - Salary	\$143,328.00
3. 2013	State of Wyoming - Salary	\$11,944.00
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. 2012	Laramie County School District #1 - Salary
2. 2013	Laramie County School District #1 - 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 8

Name of Person Reporting Phillips, Gregory A.	Date of Report 01/31/2013
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting Phillips, Gregory A.	Date of Report 01/31/2013
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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.)

1.	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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)		
		Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)		
IRA #1												
2.	-Columbia Marsico Intl Opportunities MAIOX		None	J	T							
3.	-Federated Kaufmann LG Cap KLCA	A	Dividend	J	T							
4.	-Goldman Sachs Small Mid Cap Growth GSMAX		None	J	T							
5.	-JP Morgan US LG Cap JLCAX	A	Dividend	J	T							
6.	-Lord Abbett Fundamental Equity LDFVX	A	Dividend	J	T							
7.	-Lord Abbett Dev Growth LAGWX		None	J	T							
8.	-Nuveen Tradewinds Intl Value NAIGX	A	Dividend	J	T							
9.	-Oppenheimer Steelpath MLP Income MLPDX	A	Dividend	J	T							
10.	-Virtus Real Estate Securites PHRAX	A	Dividend	J	T							
11.	-JP Morgan Core Bond PGBOX	A	Dividend	J	T							
12.	-Franklin/Templeton Global Bond TPINX	A	Dividend	J	T							
13.	-Federated Prudent Bear BEARX		None	J	T							
14.	-Rydex/S&I L/S Commodities RYLBX		None	J	T							
15.	-Rydex/S&I Managed Futures RYMTX		None	J	T							
16.	-Franklin Income FKINX	A	Dividend	J	T							
17.	403B #1											

1. Income Gain Codes: A=\$1,000 or less; B=\$1,001 - \$2,500; C=\$2,501 - \$5,000; D=\$5,001 - \$15,000; E=\$15,001 - \$50,000
 (See Columns B1 and D4) F=\$50,001 - \$100,000; G=\$100,001 - \$1,000,000; H1=\$1,000,001 - \$5,000,000; H2=More than \$5,000,000
 2. Value Codes: J=\$15,000 or less; K=\$15,001 - \$50,000; L=\$50,001 - \$100,000; M=\$100,001 - \$250,000
 (See Columns C1 and D3) N=\$250,001 - \$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 5 of 8

Name of Person Reporting Phillips, Gregory A.	Date of Report 01/31/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period			D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)	
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)	
18. -Columbia Marsico Intl Opportunities MAIOX		None	J	T						
19. -Federated Kaufmann LG Cap KLCAX	A	Dividend	J	T						
20. -Goldman Sachs Small Mid Cap Growth GSMAX		None	J	T						
21. -JP Morgan US LG Cap JLCAX	A	Dividend	J	T						
22. -Lord Abbett Fundamental Equity LDFVX	A	Dividend	J	T						
23. -Lord Abbett Dev Growth LAGWX		None	J	T						
24. -Nuveen Tradewinds Intl Value NAIGX	A	Dividend	J	T						
25. -Oppenheimer Steelpath MLP Income MLPDX	A	Dividend	J	T						
26. -Virtus Real Estate Securities PHRAX	A	Dividend	J	T						
27. -JP Morgan Core Bond PGBOX	A	Dividend	J	T						
28. -Franklin/Templeton Global Bond TPINX	A	Dividend	J	T						
29. -Federated Prudent Bear BEARX		None	J	T						
30. -Rydex/SGI L/S Commodities RYLBX		None	J	T						
31. -Rydex/SGI Managed Futures RYMTX		None	J	T						
32. -Franklin Income FKINX	A	Dividend	J	T						
33. Brokerage Account #1										
34. -Blackrock Global Allocation MDLOX	A	Dividend	J	T						

1. Income Gain Codes: A=\$1,000 or less; B=\$1,001 - \$2,500; C=\$2,501 - \$5,000; D=\$5,001 - \$15,000; E=\$15,001 - \$50,000
 (See Columns B1 and D4) F=\$50,001 - \$100,000; G=\$100,001 - \$1,000,000; H=\$1,000,001 - \$5,000,000; I=\$5,000,001 - \$25,000,000
 2. Value Codes: J=\$15,001 - \$50,000; K=\$50,001 - \$100,000; L=\$100,001 - \$500,000; M=\$500,001 - \$1,000,000; N=\$1,000,001 - \$5,000,000; O=\$5,000,001 - \$25,000,000; P=\$25,000,001 - \$50,000,000; Q=Appraisal; R=Cost (Real Estate Only); S=Assessment; T=Club Market
 (See Columns C1 and D3) 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; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting Phillips, Gregory A.	Date of Report 01/31/2013
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place '(X)' after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. -First Eagle Global SGENX	A	Dividend	J	T					
36. -Ivy Asset Strategy WASAX	A	Dividend	J	T					
37. Franklin 529 Stable Value Fund		None	M	T					
38. Wyoming Retirement 457									
39. -Life Path Index 2030		None	K	T					
40. Bank of the West Cash Accounts	A	Interest	M	T					
41. Mineral Royalty, Uinta County, Wyoming		None	J	W					

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 8

Name of Person Reporting	Date of Report
Phillips, Gregory A.	01/31/2013

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 8

Name of Person Reporting	Date of Report
Phillips, Gregory A.	01/31/2013

IX. CERTIFICATION.

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

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

Signature: *s/* Gregory A. Phillips

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS			LIABILITIES				
Cash on hand and in banks		160	002	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		365	042	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 - see schedule		443	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		38	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		211	551				
Wyoming Retirement System		149	423				
				Total liabilities			0
				Net Worth	1	352	144
Total Assets	1	352	144	Total liabilities and net worth	1	352	144
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

Columbia Marsico International Opportunities (MAIOX)	\$ 13,035
Federated Kaufmann Lg Cap Fund (KLCAX)	10,600
Goldman Sachs Small Mid Cap Growth Fund (GSMAX)	8,747
JP Morgan US Large Cap Core Plus Fund (JLCAX)	20,247
Lord Abbett Fundamental Equity (LDFVX)	9,666
Lord Abbett Developing Growth Fund (LAGWX)	8,454
Nuveen Tradewinds International Value (NAIGX)	11,071
Oppenheimer Steelpath MLP Income Fund (MLPDX)	8,836
Virtus Real Estate Securities Fund (PHRAX)	5,678
JP Morgan Core Bond Fund (PGBOX)	6,603
Franklin/Templeton Global Bond Fund (TPINX)	7,741
Federated Prudent Bear Fund (BEARX)	9,493
Rydex/SGI L/S Commodities Strategy (RYLBX)	5,313
Rydex/SGI Managed Futures Strategy (RYMTX)	5,741
Franklin Income (FKINX)	13,177
Blackrock Global Allocation Fund (MDLOX)	6,603
First Eagle Global Fund (SGENX)	3,552
Ivy Asset Strategy Fund (WASAX)	3,597
Franklin 529 Plan Stable Value Fund	165,656
Lifepath Index 2030 Fund	41,232
Total Listed Securities	\$ 365,042

Real Estate Owned

Personal residence	\$ 350,000
Family home (25% interest)	80,000
Undeveloped property	3,000
Royalty interest	10,000
Total Real Estate Owned	\$ 443,000

AFFIDAVIT

I, Gregory Alan Phillips, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

January 31, 2013
(DATE)

Gregory Alan Phillips
(NAME)



Deborah Jourgensen
(NOTARY)

Senator BLUMENTHAL. Ms. Mason.

STATEMENT OF KAROL VIRGINIA MASON, NOMINEE TO BE AN ASSISTANT ATTORNEY GENERAL

Ms. MASON. Thank you, Senator Blumenthal, for your kind and generous introduction, and thank you, Senator Lee, for holding this hearing.

I would first like to thank the President for the confidence he has shown in nominating me; the Attorney General for his strong support; and, of course, Chairman Leahy and Ranking Member Grassley and all of the members of the Committee for holding this hearing and considering my nomination.

I would like to take a moment to introduce members of my family who are here with me today: my twin brother, Dr. Kevin Mason, in the second row behind me; my younger brother, Glenn Mason. Kevin is a pediatrician who serves a low-income population at Atlanta, Georgia, and Glenn is a high school social studies teacher in Harlem, New York.

I also want to acknowledge and thank my many friends who are my extended family for joining me today. Thank you for traveling here to Washington to be my rock.

I want to say a special thank you to Cindy Hamilton, sitting here in the front, who has been my assistant and friend for nearly 20 years. Thank you for understanding how much I want to return to public service and for forgiving me for leaving you again.

I am so grateful for the opportunity, if I am confirmed, to lead the Office of Justice Programs to play a role in making the Nation's criminal justice and juvenile justice systems more responsive to the needs of State, local, and tribal governments and their citizens.

My sister and mother are retired public school teachers, and my late father was a public health and hospital administrator. I grew up teaching adult literacy at night, working as a summer counselor for underprivileged youth, and in programs for migrant children. We learned early that education, health care, and programs to engage youth early are critical to creating an environment to break the cycle of crime, and that knowledge was reinforced many times over during my time at the Department of Justice working with the many dedicated professionals at the Office of Justice Programs.

If I am confirmed, I look forward to continuing that work and partnering with law enforcement, victims' advocates, the science community, and other national and community-based organizations to leverage the taxpayer dollars you have entrusted to the Office of Justice Programs to create safer communities. I look forward to answering the Committee's questions. Thank you.

[The biographical information of Ms. Mason follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

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

Assistant Attorney General for the Office of Justice Programs
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.

Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
4. **Birthplace:** State date and place of birth.

1957; Copaigue, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

University of Michigan Law School, J.D., 1982
Attended from August 1979 to May 1982

University of North Carolina at Chapel Hill, A. B. Mathematics, 1979
Attended from August 1975 to May 1979
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
Partner
February 2012 -- Present

U.S. Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530
Deputy Associate Attorney General
April 2009 – January 2012

Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
Partner, January 1990 - April 2009
Associate, November 1983 – December 1989

Judge John F. Grady
U.S. District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Judicial Law Clerk
October 1982 to November 1983

King & Spalding
1180 Peachtree Street, N.W.
Atlanta, Georgia 30309
Summer Associate
July 1982 – August 1982

Alston, Miller & Gaines (now Alston & Bird LLP)
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
Summer Associate
May 1982 – July 1982

Hogan Lovells (f/k/a Hogan & Hartson)
555 13th St NW # 800E
Washington, DC 20004
May 1981 – August 1981

Summer of 1980, I worked for a very small law firm in Houston, Texas that no longer exists. The primary lawyer I worked for at the time was Jim Plummer. His current contact information is:

Plummer Law Group
4203 Montrose Blvd.
Suite 270
Houston, Texas 77006
Summer Associate

N.A.A.C.P. Legal Defense and Educational Fund
 1444 I Street, N.W.
 Washington, D.C. 20005
 Summer of 1979, primarily for Elaine Jones
 Summer Intern

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

I have not served in the U.S. Military.

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

U.S. Attorney General's Distinguished Service Award, 2011
 Distinguished Service Medal, University of North Carolina at Chapel Hill, 2010
 Breaking the Glass Ceiling Award, Leadership Institute for Women of Color Attorneys in Law and Business, 2009
 Diversity Leadership Award, Alston & Bird, 2008
 Chair of Partners Committee (firm management committee), Alston & Bird, 2007
 Elected Member of Partners Committee (firm management committee), Alston & Bird 2004 through 2007
 Harvey Beach Award, University of North Carolina at Chapel Hill, 2004
 Leadership Georgia, Class of 1999
 Leadership Atlanta, Class of 1993
 Distinguished Young Alumna Award, The University of North Carolina at Chapel Hill, 1991
 Keynote Speaker, The University of North Carolina at Chapel Hill Cavalcade of Scholars, Recognition Ceremony of Academic Performance, 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.

State Bar of North Carolina 2002 - Present
 State Bar of Georgia - 1983 - Present
 Atlanta Bar Association 1983 - 2009
 National Association of Bond Lawyers 1983 - 2009, 2012 - Present
 National Association of College and University Attorneys 2012 - Present
 Gate City Bar Association 1983 - 2009
 Georgia Association of Black Women Attorneys 1983 - 2009

10. **Bar and Court Admission:**

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

State Bar of Georgia: November 1983 – Present
 State Bar of North Carolina: Fall 2002 – Present

There have been no lapses in my bar memberships.

- 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.

Superior Court of Fulton County, Georgia, 1983
 State Court of Fulton County, Georgia, 1984
 Georgia Supreme Court, 1984
 Georgia Court of Appeals, 1984
 U.S. District Court for the Northern District of Georgia, 1984

There have been no lapses in my 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.

Woodruff Arts Center, Member of the Board of Trustees, 2012 – Present
 Vineyard Square Homeowners Association for my townhouse community in Chapel Hill, North Carolina, 2005 - Present
 Children's HealthCare of Atlanta, Inc., Member of the Board of Directors, 2003 – 2009, Chair of Audit Committee
 University of North Carolina at Chapel Hill, Member of the Board of Trustees, 2001 – 2009, Vice Chair (2007 – 2009), Chair of Audit and Finance Committee (2005 – 2007)
 High Museum of Art, Member of the Board of Directors, 1997 – 2002 and 2004 – 2009, Chair of Community Relations Committee
 National Black Arts Festival, Member of the Board of Directors, 1995 - 2000
 The University of North Carolina at Chapel Hill, Member of the Board of Visitors, 1995 - 1999
 The University of North Carolina Arts and Sciences Foundation, Member of the Board of Directors, 1993 – 1999
 Wesley Homes, Inc., Chairperson and Member of the Board of Directors; Wesley Woods, Inc. and Wesley Woods Geriatric Hospital, Inc., Member of the Board of Directors, 1992 – 2008/2009
 City of Atlanta-Fulton County Recreation Authority, Member of the Board, 1991 - 1998

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in programmatic activities, although the organization may have labeled me as a member.

- 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 to my knowledge.

12. Published Writings and Public Statements:

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

I have done my best to identify published materials including thorough a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

Employment Discrimination Against the Overweight, University of Michigan Journal of Law Reform, Winter 1982. Copy supplied.

Solving Race Problems (Op. Ed. Piece), Atlanta Business Chronicle, April 9 – 15, 1999. Copy supplied.

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

I have done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, I have been unable to identify, find or remember any materials.

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

I have done my best to identify all official statements or other communications relating to public policy or legal interpretation, including a thorough review of my personal files and searches on publicly available electronic databases. Despite my searches, I have been unable to identify, find or remember any materials.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the

date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

For the following, I was a seminar leader or participant in seminars for lawyers, explaining the various requirements for the issuance of tax-exempt bonds to finance capital projects for local governments, non-profit organizations and small manufacturing facilities. All of the Bond Attorneys Workshops were held in Chicago, Illinois. The Georgia related seminars all occurred in Georgia, most likely in Atlanta or Savannah, but I don't have records to confirm. I believe that the Southern One-Day Regional Conference took place in Little Rock, Arkansas, but I do not have records to confirm.

- Spring 1986 - Seminar participant - Effect of H.R. 3838 on Tax Exempt Financing, Annual Meeting of the Georgia State Bar Association.
- Summer 1988 - Seminar participant - Local Government Financing: An Update in the Wake of the Tax Reform Act of 1986.
- Fall 1988 - Speaker, National Association of Bond Lawyers' Thirteenth Annual Bond Attorneys' Workshop
- Fall 1989, Speaker, National Association of Bond Lawyers' Fourteenth Annual Bond Attorneys' Workshop
- Fall 1991, Speaker, National Association of Bond Lawyers' Sixteenth Annual Bond Attorneys' Workshop
- Fall 1993, Speaker, National Association of Bond Lawyers' Eighteenth Annual Bond Attorneys' Workshop
- Winter 1997, Speaker, Georgia School Boards Association E. Freeman Leveret Law School Seminar – Special Purpose Local Option Sales Tax
- Fall 2000, Speaker, Economic Development in Georgia Seminar, Institute of Continuing Legal Education in Georgia
- Fall 2002, Speaker, Economic Development in Georgia Seminar, Institute of Continuing Legal Education in Georgia
- Fall 2003, Speaker, Downtown Development Authority Seminar, Institute of Continuing Legal Education in Georgia
- Spring 2004, Presenter, Society for College and University Planning, Southern One-Day Regional Conference, "New Partnerships for Campuses: Planning Partnerships to Deliver Facilities Solutions"

I have not been able to locate any notes or outlines relating to these seminars.

- May 14, 2005, Ph.D. Hooding Ceremony, University of North Carolina at Chapel Hill, Remarks as a Member of the Board of Trustees. Copy supplied.
- May 15, 2005, Commencement Address, University of North Carolina School of Dentistry. Copy supplied.
- June 6, 2007, Speaker, Introduction of Michelle Obama, Atlanta Women for Obama Luncheon. Copy Supplied.
- December 2007, Commencement Remarks, University of North Carolina at Chapel Hill, as Vice Chair of the Board of Trustees. Copy supplied.
- June 29, 2009, Remarks at the Attorney General's Section 904 Violence Against Women in Indian Country Task Force Meeting, Washington, D.C., as Deputy Associate Attorney General. Copy supplied.
- December 18 and 23, 2009, Tribal Consultation Script for Remarks on the Grants Consolidation Proposal Calls, as Deputy Associate Attorney General. Copy supplied.
- February 1, 2010, Remarks at the U. S. Department of Justice's Office on Violence Against Women's STOP Conference, San Francisco, California, as the U.S. Department of Justice leadership representative. Copy supplied.
- April 16, 2010, Talking Points, Quarterly Meeting of the Attorney General's Coordinating Council on Juvenile Justice and Delinquency Prevention, as Deputy Associate Attorney General. Copy supplied.
- June 16 -18, 2010, Panelist, Department of Justice, "Tribal Justice, Safety and Wellness Session" in South Dakota, Rushmore Plaza Civic Center, 444 N. Mount Rushmore Road, Rapid City, SD 57701-1197. I do not have any notes or outlines. Press release supplied.
- July 12, 2010, Remarks at the International Family Violence and Child Victimization Research Conference, Portsmouth, New Hampshire, as Deputy Associate Attorney General. Copy supplied.
- July 19, 2010, Panelist, "Listening to the Voices of Tribal Youth Circle," Tribal Youth Summit, Institute of American Indian Arts, Santa Fe, New Mexico. I do not have any notes or outlines. Press release supplied.
- September 28, 2010, Remarks at the OVW Culturally and Linguistically Specific Services, Program and Sexual Assault Services Culturally Specific Program conference and training, Santa Fe, New Mexico as Deputy Associate Attorney General. I do not have a copy of my remarks, notes or outlines. Press Release supplied.
- October 5, 2010, Remarks at the Coordinated Tribal Assistance Solicitation Consultation Session, Spokane, Washington, as Deputy Associate Attorney General. Copy supplied.
- November 23, 2010, Speaker, remarks at the Department of Justice Council on Native American Affairs as Deputy Associate Attorney General. Copy Supplied.

November 29, 2010, Speaker, FY2011 CTAS Kick-off Meeting Remarks as Deputy Associate Attorney General. Copy Supplied.

January 12, 2011, CTAS Presentation at Indian Country SORNA Implementation Session, Washington, D.C., as Deputy Associate Attorney General. Copy supplied.

March 29, 2011, CTAS Presentation at MAST Impact Week, Washington, D.C., as Deputy Associate Attorney General, explaining coordinated tribal grant application process. Copy supplied.

July 11, 2011, Strong Cities, Strong Communities Rollout in Memphis, Tennessee, Remarks as Administration Team Leader for Memphis, as Representative of the U.S. Department of Justice. Copy supplied.

October 13, 2011, Suggested Remarks for Associate Attorney General Thomas J. Perrelli, delivered by Karol Mason as his Deputy, Office of Juvenile Justice and Delinquency Prevention National Conference, "Children's Justice & Safety: Unite, Build, Lead." Gaylord National Hotel and Convention Center, National Harbor, Maryland. Copy supplied.

December 14, 2011, Remarks at the Attorney General's Re-chartered Section 904 Violence Against Women in Indian Country Task Force Meeting, Washington, D.C., as Deputy Associate Attorney General. Copy supplied.

December 16, 2011, Remarks at the Coordinated Tribal Assistance Solicitation Consultation Session, Santa Ana Pueblo, New Mexico, as Deputy Associate Attorney General. Copy supplied.

2010 or 2011, Talking Points, Tribal Crime Data Uniform Crime Reporting Training for Tribal Partners, Washington, D.C. Copy supplied.

March 14, 2012, Featured Guest, Question and Answer Session, UNC Alumni Association, National Press Club, Washington, D.C. I do not have any notes or outlines related to this 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.

I have done my best to identify all interviews given, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

1990, *Atlanta Journal and Constitution*, "Law firm's first black female partner not annoyed by role as 'milestone.'" Copy supplied.

October 15 – 31, 1997, *The Atlanta Tribune*, “Legal Eagles, From complex litigation and international banking to criminal defense and white-collar crimes, Atlanta’s African-American attorneys make a formidable ‘Dream Team.’” Copy supplied.

May 2004, *The Atlanta Tribune*, “Legal Eagle, Atlanta’s first black female partner soars as example of leadership. Copy supplied.

Atlanta Woman, “Legal Eagles, Profile on Karol Mason, Partner, Alston & Bird LLP. Copy supplied.

April 19, 2007, *Cox News Service*, “Democrats, Obama Win Race For Georgia Campaign Dollars.” Copy supplied.

2009, *Fulton County Daily Report*, “Alston partner takes DOJ post.” Copy supplied.

Fall 2009, *University of Michigan Law School, Law Quadrangle*, Feature, Karol V. Mason, Deputy Associate Attorney General. Copy supplied.

April 2, 2011, *The Commercial Appeal, Memphis, Tennessee*, “Federal officials look at Memphis’ crime-prevention efforts.” Copy supplied.

13. Public Office, Political Activities and Affiliations:

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

I served as an appointed member of the Atlanta-Fulton County Recreation Authority from 1991 to 1998. I was appointed by the Fulton County Board of Commissioners. This was a volunteer public service position.

I served as a member of the University of North Carolina at Chapel Hill Board of Trustees from July 2001 to June 2009. I was appointed by the Board of Governors of the University of North Carolina System. This was a volunteer public service position.

I served as the Deputy Associate Attorney General from April 2009 through January 2012.

I have never run for elective office.

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

I served as a member of President Obama's National Finance Committee from 2007 to 2008, and beginning in February 2012 through December 2012, which was the campaign's fundraising component.

I served as a member of President Obama's Voter Protection Team in 2008 and in 2012. I provided legal assistance to address voting issues in Georgia, North Carolina and Texas during Presidential primaries and elections.

I served as a member of the Democratic National Convention's Credentials Committee as a Georgia Delegate in 2008 and 2012.

I served as a member of the fundraising team and voter protection team for Mayor Shirley Franklin's campaign in 2001.

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

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

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

I served as a judicial law clerk for Judge John F. Grady, U.S. District Court for the Northern District of Illinois, October 1982 to October 1983.

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

I have not practiced alone.

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

Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
Partner
February 2012 – Present

U.S. Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530
Deputy Associate Attorney General
April 2009 – January 2012

Alston & Bird LLP
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
Partner, January 1990 - April 2009
Associate, November 1983 – December 1989

Judge John F. Grady
U.S. District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Judicial Law Clerk
October 1982 to November 1983

King & Spalding
1180 Peachtree Street, N.W.
Atlanta, Georgia 30309
Summer Associate
July 1982 – August 1982

Alston, Miller & Gaines (now Alston & Bird LLP)
1201 W. Peachtree Street
Atlanta, Georgia 30309-3424
Summer Associate
May 1982 – July 1982

Hogan & Hartson (now Hogan Lovells)
555 13th St NW # 800E
Washington, DC 20004
Summer Associate
May 1981 – August 1981

Plummer Law Group
4203 Montrose Blvd.
Suite 270
Houston, Texas 77006
Summer Associate
Summer 1980

N.A.A.C.P. Legal Defense and Educational Fund
1444 I Street, N.W.
Washington, D.C. 20005
Summer Intern
Summer 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.

From November 1983 through 2009, and February 2012 to the present, I served as bond counsel, underwriter's counsel, issuer's counsel and borrower's counsel in tax-exempt financings for cities, counties, school districts, universities, hospitals and other non-profits and state-wide issuers, including the States of Georgia and North Carolina. In my first few years of practice, I also worked on general corporate matters, such as 10K filings and mergers and acquisitions for firm clients, and represented healthcare clients in general matters.

At the Department of Justice, my primary responsibilities were to oversee the Tax Division and the Grant making components at the Department of Justice, including the Office of Justice Programs, the Office on Violence Against Women and the COPS Office.

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

During my time at the Department of Justice, I oversaw the Office of Justice Programs, the Office on Violence Against Women and the Community Oriented Policing Services Office ("COPS", and collectively the "grant components"), Community Relations Services and the Tax Division.

I led a cross-Department initiative to address criminal justice issues in New Orleans, and convened and led a team comprised of representatives from each of the Department's grant components, the Civil Rights Division, the U.S. Attorney's Office, the FBI, DEA and Community Relations Services. The New Orleans model we established serves as the model for other cross-Department initiatives.

I led the Attorney General's initiative, known as Defending Childhood, to address children exposed to violence. I led the identification and implementation of six demonstration sites, two of which are in Indian Country. I was also the driving force behind the creation of the Attorney General's Task Force on Children Exposed to Violence, which is Co-Chaired by Joe Torre and Robert Listenbee. I also brought the Department of Health and Human Services and the Department of Education in as partners in this initiative.

I led the Department's consolidation of all Tribal grants under a single solicitation. In previous years, Tribes were required to respond to more than 20 separate grant solicitations. I also developed a partnership with the U.S. Attorneys in Indian Country and convinced them to be session leaders at the annual Tribal Youth Summit hosted by the Department.

I was the leader of the Memphis Team for the White House's Strong Cities, Strong Communities initiative. Our team brought together the Departments of Justice, Education, Health and Human Services, Labor, Transportation and Treasury to develop a plan for the federal government to help Memphis address labor preparedness and access, education and criminal justice issues.

In private practice at Alston & Bird, my typical clients are governmental entities and not-for-profit organizations, such as local school districts and municipalities. My clients are, among others, Fulton County, Georgia, the States of Georgia and North Carolina, the Georgia Higher Education Facilities Authority, the Private Colleges and Universities Authority and Grady Memorial Hospital. I also represent investment banks, such as Wells Fargo, as underwriters of local school bond issues or university bond issues.

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

- i. Indicate the percentage of your practice in:

1. federal courts: 0%

I have not practiced in federal courts.

2. state courts of record:

During my time at the Department of Justice, I did not practice in state courts. In Georgia, my court practice was limited to validation proceedings in County Superior Courts, which is a constitutionally required prerequisite to issuing bonds in Georgia. Validation is a very perfunctory process. You are required to place a notice in the county's legal organ for two consecutive weeks and then appear before the Superior Court of the County the following week to present an order to the Judge. None of my validations ever involved an intervention, so the orders were signed as a matter of routine by the presiding Judge.

I served as bond counsel for a bond issue in Clark County, Georgia where a resident objected to the school district demolishing a school as provided in the bond documents. I participated in the hearing before the Superior Court and in the final argument before the Georgia Supreme Court.

3. other courts:

I have not been involved in proceedings in any other courts

4. administrative agencies

Neither my work at the Department of Justice nor my private practice involved appearing before administrative agencies

- ii. Indicate the percentage of your practice in:

1. civil proceedings:

Less than 5%

2. criminal proceedings:

0%.

- 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 never tried a case to verdict, judgment or final decision.

i. What percentage of these trials were:

1. Jury: 0%;
2. non-jury: 0%.

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

I have 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:

I served as bond counsel for a bond issue in Clark County, Georgia where a resident objected to the school district demolishing a school as provided in the bond documents. I participated in the hearing before the Superior Court and in the final argument before the Georgia Supreme Court.

Below is the requested information relating to this case:

a. the date of representation;

July 13, 1998, James F. Thornton; James Moses and Carl P. Jordan, individually and on behalf of Similarly Situated Taxpayers, Residents and Voters of Athens-Clarke County, Georgia, filed a Complaint and Petition for Judicial Review; Writ of Mandamus; and Temporary and Permanent Injunctive Relief, against Clarke County School District, Individually and as a "Local Unit of Administration" for the State Board of Education and as Political Subdivision of the State of Georgia, Civil Action No. SU-98-CV-1145-S, July 13, 1998, in the Superior Court of Athens-Clarke County, Georgia.

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

The Complaint and Petition was filed in the Superior Court of Athens-Clarke County, Georgia. The Case was assigned to the Honorable Lawton E. Stephens, Judge of said Court.

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

Defendant, Clarke County School District, was defended by the Law Firm of McLeod, Benton, Begnaud and Marshall, L.L.P. The pleadings were signed by Terrell W. Benton, Jr., Malcolm C. McArthur, and William C. Berryman, Jr., whose address at that time was The Franklin House, 480 East Broad Street, P. O. Box 8108, Athens, Georgia 30603.

Presently, the address of Terrell W. Benton, Jr., and Malcolm C. McArthur is:

Hall Booth Smith, P.C.
440 College Avenue North
Suite 120
Athens, Georgia 30601-2773
Telephone: 706-316-0231

The Plaintiffs were represented by the following Attorney, whose address at that time is stated below:

Alan M. Alexander, Jr.
485 Huntington Road
Suite 195
Athens, Georgia 30606

The present mailing address of Alan M. Alexander, Jr. is:

Alan M. Alexander, Jr.
1091 Founders Boulevard
Suite C
Athens, Georgia 30606

I was not listed as Attorney of Record in the Case in the lower Court; however, I signed the Brief of Appellee in Case No. S98A1977 in the Supreme Court, State of Georgia, which was filed on or about October 21, 1998.

Oral Argument was heard in the Case of Thornton et al v. Clarke County School District et al, Case No. S98A1977 on Tuesday, November 10, 1998. I was present for Oral Argument; I was listed as Counsel for the Defendant, Clarke County School District. The Decision in Thornton et al v. Clarke County School District et al, Case No. S98A1977 was rendered March 8, 1999. I was listed in the Decision as Counsel for Appellee.

I am also providing the following legal references:

Thomas J. Perrelli
Former Associate Attorney General
Jenner & Block
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
202-639-6000

Larry Thompson
Former Deputy Attorney General
Executive Vice President, Government Affairs, General Counsel and Corporate Secretary
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577
914-253-3633

Richard Deane
Former U.S. Attorney for the Northern District of Georgia
Jones Day
1420 Peachtree Street, NE
Suite 800
Atlanta GA 30309-3053
404-581-8502

Judge John F. Grady
U.S. District Court for the Northern District of Illinois
Everett McKinley Dirksen U.S. Courthouse
219 South Dearborn Street
#2286
Chicago, Illinois 60604
312-435-5670

Steven M. Collins
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, Georgia 30309
404-881-7149

Patricia Timmons-Goodson
Retired Justice, North Carolina Supreme Court
(910) 308-3677

Willis Whichard
Retired Justice, North Carolina Supreme Court
Moore & Van Allen
430 Davis Drive
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Morrisville, NC 27560
(919) 286-8054

Robert D. McCallum Jr.
Former Associate Attorney General
1327 Peachtree Road
Apt #904
Atlanta, GA 30309-3255
404-228-3737

Wright Banks
Deputy Georgia Attorney General
40 Capitol Square, SW
Atlanta, GA 30334
404- 651-6247

Patricia Ferrari
Senior Advisor
MBIA Insurance Corporation
113 King Street
Armonk, NY 10504
914-765-3153

Michael D. Smith
Synovus Financial Corp.
Synovus Centre
Suite 501
1111 Bay Avenue
Columbus, GA 31909
706-649-2007

Lance P. Dunnings
General Counsel
Clark Atlanta University
223 James P. Brawley Drive, SW
Harkness Hall
Room 312
Atlanta GA 30314
404- 880-8051

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 Deputy Associate Attorney General at the U.S. Department of Justice from the end of April 2009 to the end of January 2012, I oversaw the Office of Justice Programs, the Office on Violence Against Women and the Community Oriented Policing Services Office ("COPS"), and collectively the "grant components"), Community Relations Services and the Tax Division.

I created a cross-Department initiative to address criminal justice issues in New Orleans, and convened and led a team comprised of representatives from each of the Department's grant components, the Civil Rights Division, the U.S. Attorney's Office, the FBI, DEA and Community Relations Services. The New Orleans model she established serves as the model for other cross-Department initiatives, including the work in Puerto Rico.

I led the Attorney General's initiative to address children exposed to violence, known as Defending Childhood. I led the identification and implementation of six demonstration sites, two of which are in Indian Country. I was also the driving force behind the creation of the Attorney General's Task Force on Children Exposed to Violence, which is Co-Chaired by Joe Torre and Robert Listenbee. I remained involved in the work of the task force, through the release of their report in December 2012. I also brought the Department of Health and Human Services and the Department of Education in as partners in this initiative.

I led the Department's consolidation of all Tribal grants under a single solicitation. In previous years, Tribes were required to respond to more than 20 separate grant solicitations. She also developed a partnership with the U.S. Attorneys in Indian Country and convinced them to be session leaders at the annual Tribal Youth Summit hosted by the Department.

I was the leader of the Memphis Team for the White House's Strong Cities, Strong Communities initiative. Our team brought together the Departments of Justice, Education, Health and Human Services, Labor, Transportation and Treasury to develop a plan for the federal government to help Memphis address labor preparedness and access, education and criminal justice issues.

I demonstrated an ability to create collaborations and partnerships across the Department of Justice and across the Administration. I believe that the time I spent in the leadership offices of the Department of Justice will enable me to identify opportunities for collaboration across the Department. My role in overseeing all of the Department's grant components also equips me to implement stronger collaboration and efficiencies across the grant components. My work with the COPS office and the initiatives that I developed with the U.S. Attorneys' Offices will give me a foundation to help build relationships with the larger law enforcement community.

I was the first African American woman to become a partner at a major law firm in the City of Atlanta, and the first African American women to be elected to its management committee. I also was elected to serve as chair of the management committee, one of the first African American women to hold this position at a national law firm.

In addition to my work at Alston & Bird, I served as Vice Chair of the Board of Trustees at The University of North Carolina at Chapel Hill and served as a member of the Board for eight years. I was the first African American woman elected to serve as Vice Chair of the Board of Trustees, and the first woman to chair the Audit and Finance Committee at the University.

My practice centers on providing financing for governmental bodies, non-profits and hospitals to finance capital projects. I served as primary finance counsel for Grady Memorial Hospital, the largest public hospital in the State of Georgia and one of the largest in the southeast, for over twenty years. In this capacity, I advised Grady as it embarked on a major expansion and renovation program. I was also key in helping to develop the financing strategy to rehabilitate several inner city neighborhoods in the City of Atlanta that are now thriving examples of public private partnerships, such as the Summerhill and East Lake Communities. I also developed the financing structure to assist the Universities of Tennessee Knoxville and Chattanooga in implementing their student housing master plan.

Through my work as bond counsel in Georgia, North Carolina, Tennessee and Alabama, I have broad experience in working with local governments and assisting local governments and private developers in finding creative solutions to help convert depressed neighborhoods into thriving economically successful communities.

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.

Other than teaching classes for Teach for America and Junior Achievement as a volunteer professional, I have not had served as a teacher. I no longer have any notes or materials for these classes.

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 expect to receive an annual payment of approximately \$126,200 from Alston & Bird upon my retirement if I am confirmed for this position. This is a five year supplemental retirement benefit that I earned as a partner at the firm for over 25 years. A portion of the benefit will be a return on capital and the remainder will be a taxable benefit. The benefit will be paid on a monthly basis for five years.

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.

I have no such plans.

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 SF278.

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.

- 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.

As a member of the Board of Trustees of the University of North Carolina at Chapel Hill, I focused on providing access to higher education for disadvantaged youth and worked with the University leadership to make sure that the University is accessible to students with limited or no financial resources.

I have mentored many young students, college and law school, over the years, and I have served as a mentor for minority and women lawyers across the City of Atlanta and the State of North Carolina, not simply Alston & Bird.

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	0
U.S. Government securities-add schedule	0	Notes payable to banks-unsecured	172,133
Listed securities-add schedule	1,955,286	Notes payable to relatives	0
Unlisted securities--add schedule	0	Notes payable to others	25,000
Accounts and notes receivable:	0	Accounts and bills due	6,000
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	591,507
Real estate owned-add schedule	950,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	0
Autos and other personal property	102,500		0
Cash value-life insurance			0
Other assets itemize:			0
Cash Balance Plan	514,083		0
Monthly Rent on Chapel Hill, NC Townhouse	800 per month		0
		Total liabilities	654,640
		Net Worth	2,571,723
Total Assets	3,226,369	Total liabilities and net worth	3,226,369
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	0	Are any assets pledged? (Add schedule)	Only real estate mortgages
On leases or contracts	4,500 per	Are you defendant in any suits	No

	month		or legal actions?	
Legal Claims	None		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	None			
Other special debt	None			

AFFIDAVIT

I, Karol V. Mason, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

(DATE) Karol V. Mason
(NAME)

Miriam Brios
(NOTARY) MIRIAM BRIOS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 14, 2014

917

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March 14, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

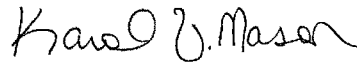
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Karol V. Mason

Dear Chairman Leahy and Senator Grassley,

I am enclosing the following document, which was listed under Question 12d of my Questionnaire but not included in the attachment: April 16, 2010, Talking Points, Quarterly meeting of the Attorney General's Coordinating Council on Juvenile Justice and Delinquency Prevention, as Deputy Associate Attorney General."

Sincerely,



Karol V. Mason

Enclosure

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Talking Points
Quarterly Meeting of
AG's Coordinating Council on Juvenile Justice and
Delinquency Prevention
April 16, 2010

- When the Attorney General served as the Deputy Attorney General, he led an interagency effort to address the issue of children exposed to violence. This effort led to development of a program called Safe Start, a highly successful multi-year demonstration project. While we have made some progress and learned more about the different types of interventions that can be successful, children continue to face extremely troubling realities. Our research tells us that children exposed to violence are at a higher risk for school failure, delinquency, gang involvement, and criminal behavior in adulthood.
- The current Initiative, with the working title “the Attorney General’s Children Exposed to Violence Initiative,” is a multi-year effort to (a) reduce childhood exposure to violence, (b) increase knowledge and awareness of the causes and characteristics of children exposed to violence, and (c) reduce the negative impact of children’s exposure to violence. The Initiative plans to build on the findings and conclusions of Safe Start, as well as other Department efforts and programs. We also hope to build on the findings and conclusions from each of your agencies’ work in this area.
- Phelan Wyrick, Senior Advisor to the Assistant Attorney General, Office of Justice Programs and I are co-leading this initiative for the Department of Justice.
- On March 17th, the Department convened a meeting of experts, so that we could learn from them about strategies that have proven to be successful in reducing children’s exposure to violence and in mitigating the negative impacts of these exposures.
- On March 31st, the Department released grant announcements of more than \$5 million to address the high incidence of American children’s exposure to violence. The solicitations target planning, outreach, research, and best practices.
- Demonstration Project. A key component of the Initiative is a demonstration project, which will be divided into planning and implementation phases. During the planning phase, the Department will fund up to eight sites to develop comprehensive, multi-disciplinary approaches to address the needs of children (ages 0 – 18) exposed to violence. Two of the eight sites will be awarded to tribal communities

- For the implementation phase, the Department will fund up to four sites (one tribal) for the comprehensive delivery of services. During both phases, the sites will receive technical assistance and training. For those initial sites not selected for the implementation phase (and for other applicants), the Department plans to make seed grants available. The solicitation for the planning sites was released on March 31, 2010.
- Funding. For FY 2010, the Initiative will largely be funded by appropriations allotted for the Children and Youth Exposed to Violence Grant Program, created by the Violence Against Women Act of 2005, OJJDP's Tribal Youth Grants, and OVC. On February 1, 2010, the President released the 2011 budget, which included a request for \$37 million for the Initiative.
- Department Working Group. The Department's working group includes representatives from the Office of Justice Programs, including the Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime, the National Institute of Justice and the Bureau of Justice Statistics. The Office on Violence Against Women and the Office of Community Oriented Policing Services, as well as representatives from the Executive Office of U.S. Attorneys and the FBI are part of the core working group.
- Interagency Partnerships will be critical to the success of this Initiative. The Department of Health and Human Services and the Department of Education are partners in this Initiative with the Department of Justice
- We would like to have the other agencies represented on the JJ Council to become our partners in this Initiative as well.
- The ideal individual will:
 - Have a leadership role within the agency, to serve as the agency's spokesperson on the larger working group committee.
 - Be able to bring the right agency representatives to the table to join our working groups.
 - Have an understanding of the resources available within the agency to support the initiative.
 - Be in a position to gain commitments of agency resources to support the initiative.
 - Have knowledge of the issues and a passion to join in developing solutions.
 - Be able to commit time to this initiative and to attend meetings.

Senator BLUMENTHAL. Thank you both, and welcome to all of your family, loved ones, friends who are here. I think that the two nominees would agree that you have had a very pivotal role in their being in these positions of great responsibility and distinction today, and thank you for being here, and thank you to the immediate families for the sacrifices in time and effort that you have made because your understanding, I think we all know in public life, is very, very important to their being able to do what they have done. So welcome and thank you.

I will begin the questioning by simply asking General Phillips, you have had a really wide array of experiences, and I wonder if you can cite particular cases that may have especially impacted your view of the law and how you would conduct yourself as a judge.

Mr. PHILLIPS. Thank you, Mr. Chairman. I have had—as you say, I have been in State courts and Federal courts with civil and criminal matters and appeal as well as trial. I do not know that any particular case sticks out, but in the almost 8 years that I prosecuted Federal crimes on behalf of the District of Wyoming, certainly there were some cases there that I will never forget and some intervention by victims services people that has made a huge difference in people's lives. I would say that those stand out the most because they have the most effect on human beings.

Senator BLUMENTHAL. Would you say that there is a need for greater advocacy on behalf of victims?

Mr. PHILLIPS. I cannot speak to that nationally, Mr. Chairman, because I do not know. But within my own district, I think that we do a good job with that, both State and Federal. As Attorney General, we have a Division of Victims' Services, and I have seen with my own eyes what they do across the State with limited funds, and it is quite a bit.

Senator BLUMENTHAL. And would you as a member of the Tenth Circuit have a particular interest, whether it is civil or criminal—I recognize that the cases would be in both, but would you have a particular interest in terms of writing or taking opinions?

Mr. PHILLIPS. Mr. Chairman, I think I would be more versed in the criminal right off the bat. I have seen a lot of the civil-type actions when I was a law clerk and then also some in civil practice. And I think that the ones that I would be the most prone to want to get involved with the most are in areas that I do not know anything about. For example, I have never had an antitrust case, and so I would be eager to learn in those areas that I have not been exposed to.

Senator BLUMENTHAL. Thank you.

If I may ask you, Ms. Mason, I noticed that a number of the letters of support—well, you have a diverse group of people writing on your behalf, a very impressive list, but I was particularly interested in the letters from tribal nations, from Native American groups. And I wonder if you could talk a little bit about how your new position, assuming that you are confirmed, would impact or serve those Native American tribal nations.

Ms. MASON. Thank you, Senator. During the time when I was with the Department of Justice as an Deputy Associate Attorney General, a Deputy to Tom Perrelli, one of the things that Mr.

Perrelli charged me with was simplifying the grantmaking process for our tribal applicants. And I like to tell the story that when I met with the staff in December 2009, I told them that in the grants that we were going to release in 2010 we were going to manage to put all the grant programs across the Department into a single solicitation. And to their credit, they looked at me like I was crazy, but then they really rolled up their sleeves and did it. And I do not know if you all remember that we had a huge snowstorm in the interim, and those people worked night and day through the snowstorm from their homes to make sure that we kept that on track.

So if I am fortunate enough to be confirmed to head the Office of Justice Programs, one of my priorities will be to continue moving that forward to making sure that we provide the necessary resources to help our tribal partners improve community safety in their tribal lands.

Senator BLUMENTHAL. Thank you. Would your office have jurisdiction over the school resource officer grants that are made to local school boards and communities for school resource officers?

Ms. MASON. Senator, the Office of Justice Programs, as is the whole Department, is very interested in figuring out how we can protect the safety of our children, as you know what happened in your own State. And we were all deeply moved by what happened. That particular grant is handled by the COPS office, but the Department of Justice and the Office of Justice Programs does work closely to figure out how we can make sure that we leverage the resources that we are given appropriately.

Senator BLUMENTHAL. Well, I would suggest that that be an area of interest for you, because I think that school districts around the country, not just in Connecticut but really all around the country, have a much greater and heightened sense of interest in school safety. And so I would suggest respectfully that someone in your position could inform and improve that program by taking an active interest in it.

Ms. MASON. I agree, Senator. Thank you.

Senator BLUMENTHAL. Thank you.

Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman, and thanks to both of you for joining us.

Mr. Phillips, why don't we start with you? I have got one important question to address at the outset. Will Ryan and Rachel call you "Dad," "Your Honor," "Judge," or will they keep calling you "General" if you are confirmed?

[Laughter.]

Mr. PHILLIPS. I would take any of the above over what I get now.

[Laughter.]

Senator LEE. I will have to consult with Ryan and Rachel afterwards and see if they agree with that.

I want to start with a question about constitutional interpretation. Justice Scalia a few years ago, while giving a speech—I think it was in 2005—said, "I think it is up to the judge to say what the Constitution provided. Even if what it provided is not the best answer, even if you can think it should be amended, if that is what it says, then that is what it says."

Do you agree with Justice Scalia on that point?

Mr. PHILLIPS. I agree as far as I understand what he was saying, which is that the judge ultimately is responsible to interpret the Constitution with the tools that are available to the judge.

Senator LEE. What about the judge's own preferences? Should those factor into the constitutional analysis?

Mr. PHILLIPS. I think the Constitution, like any written document, should be determined based on the meaning of the words that are used.

Senator LEE. And the words that were used should control then, even to the extent that they are at odds with the judge's preferences, with the judge's views on what the policy should be?

Mr. PHILLIPS. Absolutely. I think that the judicial branch is given a lot of ground already when we go back 210 years ago to what Chief Justice Marshall said. It is emphatically the duty and the province of the courts to say what the law is. That is a lot of real estate. And so my own opinion on this is that, to the extent a judge goes further than that and starts to weigh whether a constitutional decision or a statutory interpretation decision based on what that particular judge thinks is good policy, that judge has strayed.

Senator LEE. My personal record for handling a case before the Tenth Circuit is 27 months that a case was held under advisement after argument. I will not tell you who was on the panel because we do not need to get through that. Do you think that is an acceptable amount of time for a single case to be held under advisement?

Mr. PHILLIPS. Senator, I do not, and my own cases, I argued 19 and briefed others that were not heard, and I did not have any that were nearly that long. And it seems like the ones I lost—

Senator LEE. Neither did I, fortunately. That was an outlier.

Mr. PHILLIPS. So I think that to the extent that it is taking more than a few months, that that would be the far end of what it should be.

Senator LEE. Okay. On several occasions you joined some of your fellow State Attorneys General in a letter supporting Richard Cordray to be nominated to head the Consumer Financial Protection Bureau. As you know, the President purported to make a recess appointment of Mr. Cordray on January 4th of 2012. I strongly disagreed with that action and disputed the President's authority to make that as a recess appointment because, among other things, it was made at a time when the Senate did not consider itself in recess.

In *Noel Canning v. NLRB*, the D.C. Circuit ruled that recesses are limited to intersession recesses and, therefore, appointments the President made to the NLRB and to the CFPB were invalid from their inception.

Regardless of the views that you may have expressed with regard to Richard Cordray's qualifications, do you agree with that ruling by the D.C. Circuit?

Mr. PHILLIPS. If I am lucky enough to be confirmed as a member of the Tenth Circuit Court of Appeals, I would apply whatever the binding precedent is from the U.S. Supreme Court as well as the Tenth Circuit.

To the extent that I start to announce a view early, then I think I have done the court a disservice because—and the litigants who

would come before me with a similar or the same issue and that they would always question my impartiality. If I were to rule the same way that I opined, they would think they did not get a fair shake. If I were to go the other direction on this issue or any other, then they may think I overcorrected so I would not appear to be unfair. So I do not think it is appropriate for me to respond.

Senator LEE. Understood. Understood. I suspect that case may be resolved finally by the time or not too far after the Senate processes your nomination, but we will leave it at that. Thank you.

Ms. Mason, with the Chair's indulgence, I will continue on even though my time is running short. Ms. Mason, as I recall, you left the Department of Justice a little over a year ago, I think in January 2012, and you went back to private practice, I believe. Are you ready to come back for more?

Ms. MASON. Very much so.

Senator LEE. And the reasons that caused you to go back into private practice are not going to continue to apply anymore if you are confirmed to this position, you will feel comfortable jumping back into the Department of Justice?

Ms. MASON. Senator, if I am fortunate enough to be confirmed, I will be retiring from private practice, and I will actually—I am old enough to retire this time from the law firm.

Senator LEE. I sense a tremendous amount of relief from you as you make that statement.

[Laughter.]

Ms. MASON. Yes.

Senator LEE. With no apologies to the managing partners at Alston & Bird.

Ms. MASON. None whatsoever.

Senator LEE. That is great. That is great. It has got to feel good.

You have been a high-profile supporter of our President and were very involved in fundraising activities and other campaign activities. Is there anything about your participation—you had a very close involvement with the Obama campaign—that you feel might in any way jeopardize your objectivity, your ability to administer these important programs within the Department of Justice which serve all the country, regardless of political affiliation?

Ms. MASON. None whatsoever, sir.

Senator LEE. Okay. Thank you very much.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Lee.

That ends the questioning. I think in this hearing either of you is free to make a closing statement if you wish.

Mr. PHILLIPS. Nothing from me. Thank you, Mr. Chairman.

Ms. MASON. Nothing from me other than thank you.

Senator BLUMENTHAL. Wisely said.

[Laughter.]

Senator BLUMENTHAL. I just want to assure, again, members of the audience that the lack of full attendance at this hearing and its apparent speed really reflects the lack of controversy, which is a good thing. So I want to again thank everyone for being here today, and most especially the two nominees for your willingness and determination to seek a career of public service, which makes you, I think, role models for all of us in the sacrifices that you are

willing to make, that your families are willing to make, that your friends and loved ones have supported you in making.

So, with that, I am going to close the hearing. The record will be kept open for 1 week in case there are any questions from other members of the Committee or any additional submissions.

And with that, this Committee is adjourned.

[Whereupon, at 3:06 p.m., the Committee was adjourned.]

**Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Judicial Nominations
March 19, 2013**

Today the Judiciary Committee welcomes two more of President Obama's nominees, and I thank Senator Blumenthal for chairing this important hearing. Gregory Phillips is nominated to a vacancy on the U.S. Court of Appeals for the Tenth Circuit, and Karol Mason is nominated to lead the Office of Justice Programs at the Department of Justice. This is our fourth nominations hearing this year, and we continue to work to make progress in the consideration of the President's nominees.

I expect that at our next hearing, which will be after the recess, we will finally be able to proceed with the nomination of Sri Srinivasan, who is nominated to the U.S. Court of Appeals for the D.C. Circuit. His hearing has been delayed from our first hearing this year to accommodate demands from the other side of the aisle to obtain information from the Department of Justice to assess whether Mr. Srinivasan had any role in the legal issues being discussed between the Department and the City of St. Paul. Of course, if Senators still have questions or concerns about his actions, they can ask Mr. Srinivasan directly at his hearing.

Questions for Gregory Phillips (10th Circuit)
Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

**Senator Chuck Grassley
Questions for the Record**

**Karol Virginia Mason
Nominee, Assistant Attorney General (Office of Justice Programs)**

1. I know that you are a close friend with very senior officials of the Obama administration. You were a major “bundler,” you were one of the nation’s top fundraisers for the Obama campaign, and served on his campaign’s National Finance Committee. At the time of your appointment as Deputy Associate Attorney General, you admitted your lack of litigation experience and reported that you would work with the Associate Attorney General – Mr. Perrelli – on “special projects.”

Would you please describe to the Committee your qualifications to be appointed to this important position? I am particularly interested in your experience to manage a large organization and its substantial budget.
2. Can you shed some further light on your decision to leave the Department of Justice last year? Why do you want to return after such a short absence?
3. As I understand, most of your professional career has been as a bond attorney. Given your lack of general litigation experience and your limited experience with criminal justice issues, how do you plan to bring yourself up to speed on the many law enforcement and criminal justice issues that the Office of Justice Programs is commissioned to handle?
4. In an interview, you stated, “all I care about is helping the President be successful in implementing his policies and programs.” While I am sure the President appreciates your loyalty, you are being considered for a position in a Department which must serve all Americans. Do you think you can be an independent voice and administer the programs and grants in a fair, accessible and transparent fashion?
5. Are there any of the President’s policies and programs that you would not support? If you had disagreement with an administration proposed policy or program, would you have the independence to express your opposition?
6. You helped extensively with the Obama campaign and served on the campaign’s Voter Protection Team in both 2008 and 2012. Do you believe that voter identification laws mitigating election fraud are intended to suppress the electoral base?
7. Last year, the Government Accountability Office (GAO) found that DOJ grant programs overlap and that this overlap contributes to the risk of unnecessarily duplicate grant awards for the same or similar purposes. Furthermore, the DOJ Inspector General’s office continues to include DOJ’s grants management among its list of top challenges affecting the department.

- a. What actions did you take, while serving as Deputy Associate Attorney General to help eliminate this overlap and duplication?
 - b. What specific steps do you plan to implement to address this problem within the Office of Justice Programs, if you are confirmed as an Assistant Attorney General?
8. The GAO report states that “OJP defines duplicative funding to include only instances where grantees are using federal money for the same exact item. In doing so, OJP excludes from its purview all federal funding that grant applicants have been awarded to carry out the same or similar activities within a proposed project. Thus, in making funding decisions without asking for information about and considering other sources of an applicant’s federal funding to carry out the same or similar activities, OJP may be awarding funds for proposed projects that are already partially or fully funded. It may also be doing so at the expense of other applicants who, in the absence of other funding sources, may demonstrate to OJP greater financial need for their proposals.”
 - a. Please explain the extent to which you agree or disagree with this assessment.
 - b. If confirmed, will you take a broader view of “duplication” to ensure that more grant applicants have a possibility of obtaining some federal funding?
9. DOJ grants management programs vary from office to office.
 - a. As Deputy Associate Attorney General, with oversight for the grant making components of the Department, what steps did you take to consolidate, reform, or coordinate grant management programs such as GMS and CMS?
 - b. If confirmed, will you commit resources to unifying these systems?
10. A DOJ Inspector General audit of OJP’s management of its Offender Reentry Initiatives in 2010 concluded that OJP did not establish an effective system for monitoring the SVORI and PRI grantees to assess whether they were meeting program goals. Their review of OJP’s official SVORI grant files identified little to no documentation of grant monitoring activities. They found a reduced quality in the desk reviews prepared for the PRI grant program. Their audit also identified significant design flaws in the initial implementation of OJP’s SVORI and PRI reentry grant programs. In their report, they made 11 recommendations to assist OJP in designing and managing current and future reentry grant programs.
 - a. What was your involvement with the audit or implementation of any recommendations?
 - b. During your tenure as Deputy Associate Attorney General, what measurable improvements were made in recidivism rates in general, and Offender Reentry programs in particular?

- c. If confirmed, to head OJP, what priority will you give this issue and what steps will you undertake to ensure recommendations are fully implemented?
11. I am concerned about conference costs and reporting requirements. Please explain what involvement you have had in this area in your previous DOJ position, and what you will do as head of OJP to minimize conference costs.
12. If confirmed, what will be your priorities at the Department of Justice? What are the big issues you need to address at the Office of Justice Programs?
13. What will be the most significant challenges you will face, if confirmed to this position, in addressing those priorities?
14. In your opening statement at your hearing you stated that “education, health care, and programs to engage youth early are critical to creating an environment to break the cycle of crime.” Can you please identify what programs within the Office of Justice Programs address education and health care?
15. Please describe with particularity the process by which these questions were answered.
16. Do these answers reflect your true and personal views?

**Senator Chuck Grassley
Questions for the Record**

**Gregory Alan Phillips
Nominee, United States Circuit Judge for the Tenth Circuit**

1. As Wyoming Attorney General in 2012, you defended a city's Mayor and Police Chief against a First Amendment Challenge by an 86-year-old former State Senator. In that case, the individual had approached the Mayor following a budget hearing to comment further and ask questions. An officer interpreted this behavior as aggressive and asked the individual to leave. The individual later received a letter from the Police Chief who remarked that his behavior was harassing, and that he would be charged with criminal trespassing if he entered any public buildings until the city approved its budget. The Plaintiff won \$25,000 settlement in that case. In another free speech case, the State of Wyoming settled with WyWatch Family Action for nominal damages and attorney fees.
 - a. Could you please explain the nature of your advocacy on behalf of the city and the legal theory you presented in the budget hearing case?
 - b. Can you explain your involvement in the WyWatch Family Action case?
 - c. If confirmed, how would you approach First Amendment issues, particularly those regarding speech, assembly, and the right to petition the Government?

2. You joined with other attorneys general to urge Congress to reauthorize the Violence Against Women's Act. While that reauthorization passed with bipartisan support, VAWA and other laws present questions of the proper Constitutional boundary between federal and state powers.
 - a. In your opinion, what powers are reserved to the States under the Tenth Amendment?
 - b. In U.S. v. Morrison the Supreme Court held that the Commerce power has obvious limits by striking down the federal regulation of intrastate, non-commercial activities. To what extent does the Commerce Clause permit the federal government to assert power traditionally exercised by the States—such as domestic and family law?

3. You served as a Democratic Senator in the Wyoming Legislature and have done campaign worker for Democratic candidates.
 - a. In what ways, if any, did this political experience affect your service as an Assistant United States Attorney or your present service as Wyoming Attorney General?
 - b. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation and that you will be fair to all parties who come before you, regardless of political affiliation?
4. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.
5. What is the most important attribute of a judge, and do you possess it?
6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?
7. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?
8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?
9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?
10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?
11. Please describe your understanding of the workload of the Tenth Circuit. If confirmed, how do you intend to manage your caseload?
12. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?
14. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?
15. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?
16. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?
17. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?
18. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?
19. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?
20. Do you believe that the death penalty is an acceptable form of punishment?
21. 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?
22. Do you believe there is a right to privacy in the U.S. Constitution?
 - a. Where is it located?
 - b. From what does it derive?
 - c. What is your understanding, in general terms, of the contours of that right?

23. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the “penumbras” and “emanations” of the Constitution.
 - a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by “reading between the lines”?
 - b. Is it appropriate for a judge to go searching for “penumbras” and “emanations” in the Constitution?
24. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.
 - a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?
 - b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?
25. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?
26. What would be your definition of an “activist judge”?
27. Please describe with particularity the process by which these questions were answered.
28. Do these answers reflect your true and personal views?

Questions for the Record

Hearing: Nominations

March 19, 2013

Submitted by Senator Amy Klobuchar

Questions for Karol Mason:

1. Throughout your legal career you have had considerable experience in public finance. How will this experience help you maximize the cost effectiveness of grants administered by the Office of Justice Programs?
2. If confirmed, what would be your primary goals as Assistant Attorney General?

Questions for the Record

Hearing: Nominations

March 19, 2013

Submitted by Senator Amy Klobuchar

Questions for Gregory Alan Phillips:

1. If you had to describe it, how would you characterize your judicial philosophy? How do you see the role of the judge in our constitutional system?
2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?
3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?

**Response of Gregory Alan Phillips
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Ted Cruz**

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is that judges must confine themselves to their constitutional and statutory role and then exercise that limited role. Judges administer justice by fully advising themselves on applicable law and fully examining the record. I believe that policy-making belongs to the other two branches of government. I believe that by using strong legal reasoning and by conducting themselves professionally in the courtroom judges promote our citizens' faith in our government.

I am not familiar enough with the judicial philosophies of justices from these Courts to compare mine to theirs.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I believe that original meaning should be used to interpret the Constitution.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a circuit court judge, I would reconsider circuit precedents only in those rare circumstances allowing *en banc* consideration. I would recognize that my circuit disfavors *en banc* review and considers it available only in extraordinary circumstances. Accordingly, as directed by Tenth Circuit rules, I would recognize that *en banc* review is intended to focus the entire court upon an issue of exceptional public importance or upon a panel decision that conflicts with an earlier decision of the Supreme Court or the Tenth Circuit. In those limited circumstances, I would consider overruling a circuit precedent. The Supreme Court alone can overrule its own precedents. I would follow Supreme Court precedents whether I personally agreed with them or not.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: In *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), the Supreme Court explained how the Constitution protects State sovereign interests by embedding State influence into the structure of the federal government. *Id.* at 550-51. If confirmed, I would apply *Garcia* and all other Supreme Court cases, whether I personally agreed with them or not.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In cases “span[ning] more than a century,” the Supreme Court has found that the Commerce Clause allows congressional regulation of three categories of activity: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that “substantially affect” interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005) (citations omitted). In *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court found that Congress had exceeded its power under the Commerce Clause by criminalizing the possession of firearms in a school zone—a non-economic activity that neither arises out of nor is “connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.” *Id.* at 561. Citing this passage from *Lopez*, Justice Scalia has observed that “Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce.” *Gonzales*, 545 U.S. at 37 (Scalia, J., concurring). As in all other instances, if confirmed I would apply Supreme Court precedent whether I agreed with it or not.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court found no authority for President Truman to seize the steel mills amid a proposed work stoppage. *Id.* at 589. The Supreme Court pronounced that “[t]he President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.” *Id.* at 585. In his concurring opinion, Justice Robert Jackson set forth the standard by which the Court still measures judicially enforceable limits on a President’s executive orders. *Id.* at 634-55 (Jackson, J., concurring). If confirmed, I would apply that precedent and other Supreme Court precedent defining the limits of a President’s power.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Court summarized what fundamental rights and liberty interests receive heightened protection against government

interference. *Id.* at 720. It further restated its longstanding substantive due process analysis, saying that “the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition,’ and ‘implicit in the concept of ordered liberty,’ such that ‘neither liberty nor justice would exist if they were sacrificed[.]’” *Id.* (internal citations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court applies strict scrutiny to classifications involving suspect classes such as race and national origin, and to classifications involving fundamental rights such as the equal right to vote and the right to travel. The Supreme Court applies intermediate scrutiny to classifications involving quasi-suspect classes such as gender and illegitimacy.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no expectation on this. If confirmed, I would apply applicable Supreme Court precedent including *Grutter* unless the Supreme Court modifies or overrules it, regardless of whether I agreed with that precedent or not.

**Response of Gregory Alan Phillips
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Chuck Grassley**

1. **As Wyoming Attorney General in 2012, you defended a city's Mayor and Police Chief against a First Amendment Challenge by an 86-year-old former State Senator. In that case, the individual had approached the Mayor following a budget hearing to comment further and ask questions. An officer interpreted this behavior as aggressive and asked the individual to leave. The individual later received a letter from the Police Chief who remarked that his behavior was harassing, and that he would be charged with criminal trespassing if he entered any public buildings until the city approved its budget. The Plaintiff won \$25,000 settlement in that case. In another free speech case, the State of Wyoming settled with WyWatch Family Action for nominal damages and attorney fees.**
 - a. **Could you please explain the nature of your advocacy on behalf of the city and the legal theory you presented in the budget hearing case?**

Response: By statute, the Wyoming Attorney General's Office defends peace officers acting within the scope of their duties who are sued in their individual capacities for allegedly violating citizens' civil rights. In late April 2012, at a budget session for the Town of Torrington, Russ Zimmer and local officials got into some sort of a dispute. After consulting with the town's attorney and its mayor about this event, the police chief delivered a letter to Mr. Zimmer barring him from town government buildings and meetings for about two months. Mr. Zimmer sued the Town of Torrington, its mayor, its police chief, and its police department.

Unfortunately, neither the town nor its officials sought any advice from us before barring Mr. Zimmer from public meetings and buildings. We learned of the dispute only after being served with a notice of claim and civil complaint. After researching the law, we determined that barring Mr. Zimmer from public meetings likely amounted to a prior restraint in violation of his right to free speech. Accordingly, on behalf of the police chief in his individual capacity, and about a month after filing our answer to the complaint, we joined with counsel for the other defendants in offering judgment for \$25,000, which Mr. Zimmer accepted.

- b. **Can you explain your involvement in the WyWatch Family Action case?**

Response: In early February 2011, during a general session of the state legislature, the president of WyWatch Family Action, Inc. obtained a permit to set up a booth in a hallway regularly used by legislators and citizens. Although it did not set up a booth,

the group did display two large pro-life signs. After receiving complaints, the state employee who had approved the permit removed the signs from the hallway. Although I was not the Attorney General at that time, I understand that no one consulted with the Attorney General's Office before removing the signs. In early March 2011, I was sworn in as Wyoming's Attorney General, an appointed position, and in April 2011, I first became involved in the WyWatch case after receiving a letter from WyWatch's attorneys asserting constitutional violations. Over the next several months, I or attorneys in my office advised the state officials on applicable law.

As Wyoming's Attorney General, I defended the January 2012 federal suit brought by WyWatch in which it sought injunctive relief, declaratory relief, and nominal damages under 42 U.S.C. § 1983. After the district court denied WyWatch's motion for a preliminary injunction, the parties settled the suit, agreeing in a Consent Order that the defendants had "unconstitutionally prevented Plaintiff from engaging in protected expression in the Herschler Gallery in February 2011 by enforcing an unconstitutionally vague policy against the Plaintiff and by enforcing that policy in such a way to discriminate against the viewpoint of Plaintiff's expression." The State agreed to pay \$1 in nominal damages and \$30,000 in legal fees. During the 2013 legislative session, under a policy now in effect, WyWatch and all other groups desiring to display their materials and messages in the hallway did so. My office drafted the policy for the state officials' review.

c. If confirmed, how would you approach First Amendment issues, particularly those regarding speech, assembly, and the right to petition the Government?

Response: I would approach First Amendment issues the same way I would any issue—I would review the applicable case law from the Supreme Court and Tenth Circuit and apply it against the facts to determine whether the government acts would violate or had violated civil rights of its citizens.

2. You joined with other attorneys general to urge Congress to reauthorize the Violence Against Women's Act. While that reauthorization passed with bipartisan support, VAWA and other laws present questions of the proper Constitutional boundary between federal and state powers.

a. In your opinion, what powers are reserved to the States under the Tenth Amendment?

Response: By its terms, the Tenth Amendment reserves to the States all powers not prohibited to them or delegated to the United States by the Constitution or reserved to the people. The Supreme Court has spoken to limits on the federal government in dealing with the States. *See, e.g., New York v. United States*, 505 U.S. 144, 162 (1992) (“While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions.”); *Printz v. United States*, 521 U.S. 898, 925 (1997) (“[T]he Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs.”).

- b. **In *U.S. v. Morrison* the Supreme Court held that the Commerce power has obvious limits by striking down the federal regulation of intrastate, non-commercial activities. To what extent does the Commerce Clause permit the federal government to assert power traditionally exercised by the States—such as domestic and family law?**

Response: In *United States v. Morrison*, 529 U.S. 598 (2000), the Court rejected “the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce.” *Id.* at 617. In guarding the boundaries of traditional State authority, the Court said that “we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.” *Id.* at 618 (citations omitted). In cautioning against overreliance on the Commerce Clause to justify federal intrusion into the States’ domain, the Supreme Court cited family law as another area of traditional State regulation. *Id.* at 615-16.

3. **You served as a Democratic Senator in the Wyoming Legislature and have done campaign worker for Democratic candidates.**
- a. **In what ways, if any, did this political experience affect your service as an Assistant United States Attorney or your present service as Wyoming Attorney General?**

Response: I have always performed my duties as an Assistant United States Attorney and as Wyoming’s Attorney General without regard to political considerations. In a non-political way, my legislative experience has assisted me by informing me on legislative processes, by educating me on a wide variety of Wyoming substantive law

that I had not encountered in private practice, and by the friendships and acquaintances I made with people still serving in the legislature and the Legislative Service Office.

- b. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation and that you will be fair to all parties who come before you, regardless of political affiliation?**

Response: I can assure the Committee that throughout my legal career—working in three branches of government, in state and federal courts, and in trial and appellate courts—I have always applied the law to persons without any consideration of the characteristics mentioned.

- 4. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

Response: No. Whatever a judge's gender, ethnicity, or other demographic factor, the text of any disputed Constitutional provision, statute, or regulation remains the same.

- 5. What is the most important attribute of a judge, and do you possess it?**

Response: I believe the most important attribute of a judge is a strong work ethic fueled by intellectual curiosity. I believe I possess this.

- 6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that a judge exhibits appropriate temperament by always treating everyone including counsel respectfully and by patiently and attentively listening to and fully considering all arguments impartially. I believe I have this temperament.

- 7. In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would first look to the plain language of the law at issue and give it a fair reading. In doing so, I would also examine other related statutory or constitutional language. If the meaning of the disputed legal text were ambiguous, I would rely upon accepted canons of construction to help give meaning to the ambiguous language. I would also look to Supreme Court and Tenth Circuit cases for their reasoning in related contexts. If there were no Supreme Court or Tenth Circuit precedents involving related issues, I would research case law to learn whether any other circuit or district court had provided persuasive reasoning in addressing the same issue.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed, I would be bound as a circuit court judge to apply Supreme Court precedent whether I agreed with it or not. I would also be bound to apply circuit precedents except in those rare instances in which the Tenth Circuit had granted *en banc* review.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Although Congress' statutes are presumed constitutional, I believe a federal court with jurisdiction must declare a Congressional enactment unconstitutional if a party challenging the constitutionality of the statute has met its burden to show that in enacting the statute Congress had exceeded its enumerated powers under the Constitution or otherwise violated the Constitution.

11. **Please describe your understanding of the workload of the Tenth Circuit. If confirmed, how do you intend to manage your caseload?**

Response: Although I am not fully informed on the Tenth Circuit's case load, I understand informally that the Court is busy but does a good job staying current on its work. If confirmed, I would rely on court staff and other judges to guide me on best practices in managing my case load.

12. **In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.**

Response: No, except that English common law may assist a court in determining the meaning of language in our Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 582 (2008).

13. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I would rely upon my record over the past 26 years—from law clerk, to private attorney, to state legislator, to Assistant United States Attorney, and to Wyoming Attorney General—in which I believe I have demonstrated that I have always put aside personal views and treat fairly all parties appearing before me.

14. **Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: The rule in the Tenth Circuit is that a panel cannot overrule circuit precedent. But under Rule 35 of the Federal Rules of Appellate Procedure a majority of the active service judges in a circuit may order *en banc* consideration of an appeal or other proceeding in two narrow circumstances: (1) to secure or maintain uniformity of the court’s decisions; or (2) to address a question of exceptional importance. The petition must state that the panel decision conflicts with Supreme Court or Tenth Circuit precedent or involves a question of exceptional importance, *e.g.*, it conflicts with authoritative decisions of other circuit courts. Tenth Circuit Rule 35.1 tracks this standard, finding *en banc* consideration disfavored and an extraordinary procedure. Accordingly, if confirmed, I would consider these factors before voting to overturn circuit precedent.

15. **You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I would study the briefs of counsel until I understood the arguments and supporting law, I would review the record on appeal for facts relevant to issues on appeal, I would independently research the applicable law, and then I would apply the law to the facts. If confirmed, I think the most difficult part of the transition

would be setting up my office and learning the administrative side of the circuit court system.

16. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: Yes. I would always strive to maintain cordial relations with fellow judges and staff. Throughout my career, I have seen for myself that the quality of work increases when decision-makers work together in a friendly, cooperative atmosphere.

17. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

Response: I would first look to the plain language of the law at issue and give it a fair reading. I would find and apply all controlling decisions from the Supreme Court and Tenth Circuit. Absent any controlling decisions, I would review case law from other circuits and from district courts, looking for persuasive reasoning.

18. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

Response: I see no role for that.

19. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

Response: I have not researched this area in any depth and have not dealt with it in my 26 years practicing law. In the research I did to try to answer this question, I see two recent cases that may apply to the question. In *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S. Ct. 694, 706 (2012), the Supreme Court found that the Establishment Clause and the Free Exercise Clause both barred suits brought by ministers against their churches under employment discrimination laws. This case illustrates the two clauses working in tandem. In *Cutter v. Wilkinson*, 544 U.S. 709 (2005), the Supreme Court rejected a facial challenge to the Religious Land Use and Institutionalized Persons Act of 2000, which disallows governments from imposing "a substantial burden on the religious exercise of a person residing in an institution" unless the burden furthers "a compelling government interest" and does so by the "least restrictive means." The Court reaffirmed that "there is room for play in the joints between" the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free

exercise requirements, without offense to the Establishment Clause.” 544 U.S. at 712-14 (citations omitted).

20. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has found that the death penalty is an acceptable form of punishment, and I would apply its precedents.

21. 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 believe that the Constitution evolves by amendment under Article V of the Constitution.

22. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Supreme Court has found a right of privacy in a line of cases “relating to marriage, procreation, contraception, family relationships, and child rearing and education.” *Paul v. Davis*, 424 U.S. 693, 713 (1976). If confirmed, I would apply these and all other Supreme Court precedents whether I agreed with them or not.

a. Where is it located?

Response: The Supreme Court has found a right of privacy in the liberty component of the Fourteenth Amendment’s Due Process Clause. For example, in Justice Kennedy’s opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003), the majority stated that “[w]e conclude the case should be resolved by determining whether the Petitioners were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution.” *Id.* at 564.

b. From what does it derive?

Response: Please see previous answer.

c. What is your understanding, in general terms, of the contours of that right?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court listed a “long line of cases” in which “the ‘liberty’ specially protected by the Due

Process Clause” included “the rights to marry, to have children, to direct the education and upbringing of one’s children, to marital privacy, to use contraception, to bodily integrity, and to abortion.” *Id.* at 720 (internal citations omitted). The Supreme Court also noted that it had “also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment.” *Id.* (citation omitted).

- 23. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the “penumbras” and “emanations” of the Constitution.**

- a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by “reading between the lines”?**

Response: If confirmed, I would apply Supreme Court precedent whether I agreed with it or not. However, as noted above, I also understand that more recent Supreme Court cases have based the right to privacy in the liberty component of the Due Process Clause of the Fourteenth Amendment.

- b. Is it appropriate for a judge to go searching for “penumbras” and “emanations” in the Constitution?**

Response: If confirmed, I would see no place for me to undertake such searches. My job as a circuit court judge would be to search for controlling precedent from the Supreme Court and the Tenth Circuit.

- 24. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.**

- a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

Response: If confirmed, I would see no place for me as a circuit court judge to conduct research outside the record of the cases before me.

- b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: If the record on appeal included psychological and sociological scientific studies, appellate judges might properly consider them in narrow circumstances—for example, an appellate court might be called upon to decide whether such studies, considered by the district court, supported its decision to admit or exclude an expert opinion based on related scientific issues, all under Rule 702 of the Federal Rules of Evidence.

25. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: While *District of Columbia v. Heller*, 554 U.S. 570 (2008), did not state which standard of heightened scrutiny applies, it did rule out the deferential rational-basis standard. *Id.* at 628 n.27. The Tenth Circuit has applied intermediate scrutiny to a Second Amendment challenge to 18 U.S.C. § 922(g)(8). *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010). If confirmed, I would follow relevant Supreme Court and Tenth Circuit precedent on this matter as on all other matters.

26. What would be your definition of an “activist judge”?

Response: I would define an “activist judge” as one who substitutes his or her personal policy views for Congress’s policy views as expressed in its statutes.

27. Please describe with particularity the process by which these questions were answered.

Response: I reviewed the questions as they came to me, prepared answers, reviewed my answers with a representative from the Department of Justice, and requested that my answers be submitted to the Senate Judiciary Committee.

28. Do these answers reflect your true and personal views?

Response: Yes.

**Response of Gregory Alan Phillips
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is that judges must confine themselves to their constitutional and statutory role and exercise that limited role. Judges administer justice well by fully advising themselves on applicable law and fully examining the record. I believe that policy-making belongs to the other two branches of government. I believe that by using strong legal reasoning and by exhibiting professional conduct in the courtroom judges promote our citizens' faith in our government.

I believe that Chief Justice Marshall stated the role of judges in our constitutional system well and succinctly when he said in *Marbury v. Madison* that it is "emphatically the province and duty of the judicial department to say what the law is."

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: The best assurance I can give is from my history of having applied laws and rules to people without any regard for any of those characteristics. I have done so as a federal prosecutor, a state prosecutor, a lawyer in private practice, a state legislator, Wyoming's attorney general, and a member of community boards. If confirmed as a circuit court judge, I would continue to do so. I believe in the rule of law.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The Supreme Court has legal standards by which it can reconsider its precedents. Only it can decide in a given case how tightly to bind itself to its own precedents. If confirmed as a circuit court judge, I would apply all Supreme Court precedents and reconsider circuit precedents only in the circumstances allowing *en banc* consideration. I would recognize that my circuit disfavors *en banc* review and considers it an extraordinary procedure. Accordingly, complying with circuit rules, I would recognize that *en banc* review is intended to focus the entire court upon an issue of exceptional public importance or on a panel decision that conflicts with an earlier decision of the Supreme Court or the Tenth Circuit. District courts must apply stare decisis to decisions of the Supreme Court and their circuit court.

Questions for the Record

Hearing: Nominations

March 19, 2013

Submitted by Senator Amy Klobuchar

Karol Virginia Mason

Nominee, Assistant Attorney General (Office of Justice Programs)

Questions for Karol Mason:

1. Throughout your legal career you have had considerable experience in public finance. How will this experience help you maximize the cost effectiveness of grants administered by the Office of Justice Programs?

Response:

During my time in private practice, a majority of my practice involved building public and private partnerships. If I am confirmed to serve as the Assistant Attorney General for the Office of Justice Programs, I plan to seek opportunities to partner with the other grant components, other agencies across the federal government, law enforcement, victims' advocates, the science community and other public and private partners to leverage the taxpayer dollars entrusted to the Office of Justice Programs.

2. If confirmed, what would be your primary goals as Assistant Attorney General?

Response:

If confirmed, my priorities will be to: 1) work collaboratively with the Office on Violence Against Women and the COPS Office to leverage the taxpayer dollars awarded to address criminal justice and juvenile justice issues; 2) continue the dissemination of best practices and solutions to criminal justice issues to communities across the country; and 3) identify proven strategies to address and prevent youth violence.

**Senator Chuck Grassley
Questions for the Record**

**Karol Virginia Mason
Nominee, Assistant Attorney General (Office of Justice Programs)**

1. I know that you are a close friend with very senior officials of the Obama administration. You were a major “bundler,” you were one of the nation’s top fundraisers for the Obama campaign, and served on his campaign’s National Finance Committee. At the time of your appointment as Deputy Associate Attorney General, you admitted your lack of litigation experience and reported that you would work with the Associate Attorney General – Mr. Perrelli – on “special projects.”

Would you please describe to the Committee your qualifications to be appointed to this important position? I am particularly interested in your experience to manage a large organization and its substantial budget.

Response:

As a Deputy Associate Attorney General at the U.S. Department of Justice from the end of April 2009 to the end of January 2012, I oversaw the Office of Justice Programs, the Office on Violence Against Women and the Community Oriented Policing Services Office (“COPS”, and collectively the “grant components”), Community Relations Services and the Tax Division. During my tenure at the Department of Justice, I demonstrated an ability to develop collaborations and partnerships across the Department of Justice, across the federal government and in the communities served by the Department of Justice. I believe that my role in overseeing the Department’s grant components will equip me to identify and implement opportunities to leverage the Department’s grant resources across the grant components.

During my tenure at the Department, I also worked closely with the Justice Management Division (JMD), the Office of Management and Budget (OMB) and each of the grant components on budget issues. I participated in discussions with the Associate, the budget staff at JMD, OMB and the leaders of each of the grant components in developing the budgets for the grant components and absorbing changes in the actual budgets adopted by Congress.

In private practice, I was a member of the law firm’s nine member management committee for four years, and its chair in my final year on the committee. The management committee has responsibility for all financial and human capital decisions of a firm of over 1,600 employees. I also served as Chair of the Audit and Finance Committee of the Board of Trustees for the University of North Carolina at Chapel Hill. The University’s overall budget is approximately \$3 billion. The Audit and Finance Committee had responsibility for monitoring the University’s budget, addressing budget shortfalls and monitoring overall financial issues for the University.

2. Can you shed some further light on your decision to leave the Department of Justice last year? Why do you want to return after such a short absence?

Response:

Serving as the Assistant Attorney General for the Office of Justice Programs would be a great honor and an opportunity to participate in improving our criminal justice and juvenile justice systems. If I am confirmed, I will retire from the law firm. When I left the Department in January 2012, I did not know that I would be offered this opportunity, and I am eager to return to public service.

3. As I understand, most of your professional career has been as a bond attorney. Given your lack of general litigation experience and your limited experience with criminal justice issues, how do you plan to bring yourself up to speed on the many law enforcement and criminal justice issues that the Office of Justice Programs is commissioned to handle?

Response:

If I am confirmed, I will build on the relationships that I developed during my time at the Department of Justice. I created a cross-Department initiative to address criminal justice issues in New Orleans on a comprehensive basis, using resources across the Department of Justice. This team was comprised of representatives from each of the Department's grant components, the Civil Rights Division, the U.S. Attorney's Office, the FBI, DEA and Community Relations Services. The New Orleans model I established serves as the model for other cross-Department initiatives.

I led the Attorney General's initiative to address children exposed to violence, known as Defending Childhood. I led the identification and implementation of six demonstration sites, two of which are in Indian Country. I was also the driving force behind the creation of the Attorney General's Task Force on Children Exposed to Violence, which was Co-Chaired by Joe Torre and Robert Listennee. I remained involved in the work of the task force, through the release of their report in December 2012. I also brought the Department of Health and Human Services and the Department of Education in as partners in this initiative.

I led the Department's consolidation of all Tribal grants under a single solicitation. In previous years, Tribes were required to respond to more than 20 separate grant solicitations. I also developed a partnership with the U.S. Attorneys in Indian Country and enlisted their participation as session leaders at the annual Tribal Youth Summits hosted by the Department.

I was the leader of the Memphis Team for the White House's Strong Cities, Strong Communities initiative. Our team brought together the Departments of Justice, Education, Health and Human Services, Labor, Transportation and Treasury to develop a plan for the federal government to help Memphis address labor preparedness and access, education and criminal justice issues.

I demonstrated an ability to create collaborations and partnerships across the Department of Justice and across the federal government. I believe that the time I spent in the leadership offices of the Department of Justice will enable me to identify opportunities for collaboration across the

Department. My role in overseeing all of the Department's grant components also equips me to implement stronger collaboration and efficiencies across the grant components. My work with the COPS office and the initiatives that I developed with the U.S. Attorneys' Offices will give me a foundation to help build relationships with the larger law enforcement community.

4. In an interview, you stated, "all I care about is helping the President be successful in implementing his policies and programs." While I am sure the President appreciates your loyalty, you are being considered for a position in a Department which must serve all Americans. Do you think you can be an independent voice and administer the programs and grants in a fair, accessible and transparent fashion?

Response:

Yes.

5. Are there any of the President's policies and programs that you would not support? If you had disagreement with an administration proposed policy or program, would you have the independence to express your opposition?

Response:

I can assure you that integrity is fundamental to how I live my life, and I make decisions based on what I think is the right thing to do. My practice is to determine the facts and gather the information necessary to make an informed decision based on the best information I can obtain.

6. You helped extensively with the Obama campaign and served on the campaign's Voter Protection Team in both 2008 and 2012. Do you believe that voter identification laws mitigating election fraud are intended to suppress the electoral base?

Response:

My involvement in voter protection was limited to making sure that on election day, voters in the states where I volunteered understood what was required to exercise their right to vote and that they complied with the law. I have no expertise with respect to voter identification laws, and at this time I do not anticipate having a role in voting matters if I am confirmed to serve as the Assistant Attorney General for the Office of Justice Programs.

7. Last year, the Government Accountability Office (GAO) found that DOJ grant programs overlap and that this overlap contributes to the risk of unnecessarily duplicate grant awards for the same or similar purposes. Furthermore, the DOJ Inspector General's office continues to include DOJ's grants management among its list of top challenges affecting the department.
- a. What actions did you take, while serving as Deputy Associate Attorney General to help eliminate this overlap and duplication?

Response:

During my time at the Department of Justice, I created a cross-component team including the Office of Justice Programs, the Office on Violence Against Women, the COPS Office and representatives of the Justice Management Division, which met bi-weekly, to identify opportunities to share best practices, streamline administrative functions, and develop common policies across the grant components. We also included the Office of the Inspector General (OIG) in our meetings, in order to improve communication between the OIG and the grant components. The objective was to be proactive in identifying and addressing potential issues and to improve the grant components' responsiveness to issues raised by the OIG. As the OIG has noted, there are marked improvements in the grant components' responsiveness and implementation of practices proposed by the OIG as a result of this team's work.

- b. What specific steps do you plan to implement to address this problem within the Office of Justice Programs, if you are confirmed as an Assistant Attorney General?

Response:

If I am confirmed, I will continue to meet regularly with the leadership of OVW and COPS to identify ways that the grant components can work together to leverage the taxpayer dollars we are given to address criminal justice and juvenile justice issues.

8. The GAO report states that "OJP defines duplicative funding to include only instances where grantees are using federal money for the same exact item. In doing so, OJP excludes from its purview all federal funding that grant applicants have been awarded to carry out the same or similar activities within a proposed project. Thus, in making funding decisions without asking for information about and considering other sources of an applicant's federal funding to carry out the same or similar activities, OJP may be awarding funds for proposed projects that are already partially or fully funded. It may also be doing so at the expense of other applicants who, in the absence of other funding sources, may demonstrate to OJP greater financial need for their proposals."

- a. Please explain the extent to which you agree or disagree with this assessment.

Response:

I am not in the Department, and I am not in a position to address this question. If I am confirmed, I will encourage increased communication between the grant components so that opportunities to leverage taxpayer dollars are identified and the Department of Justice maximizes the number of grantees it serves.

- b. If confirmed, will you take a broader view of "duplication" to ensure that more grant applicants have a possibility of obtaining some federal funding?

Response:

If I am confirmed, I would work to make sure that the Office of Justice Programs communicates internally and with the other grant components to avoid unnecessary duplication and to leverage taxpayer dollars to maximize the number of grantees served by the Department.

9. DOJ grants management programs vary from office to office.

- a. As Deputy Associate Attorney General, with oversight for the grant making components of the Department, what steps did you take to consolidate, reform, or coordinate grant management programs such as GMS and CMS?

Response:

During my time at the Department of Justice, I created a cross-component team including the Office of Justice Programs, the Office on Violence Against Women, the COPS Office and representatives of the Justice Management Division, which met bi-weekly, to identify opportunities to share best practices, streamline administrative functions, and develop common policies across the grant components. We also included the Office of the Inspector General (OIG) in our meetings, in order to improve communication between the OIG and the grant components. The objective was to be proactive in identifying and addressing potential issues and to improve the grant components' responsiveness to issues raised by the OIG. For example, this team developed a Department-wide process for dealing with high risk grantees across the three grant components. As the OIG has noted, there are marked improvements in the grant components' responsiveness and implementation of practices proposed by the OIG as a result of this team's work.

I also led the Department's consolidation of all Tribal grants under a single solicitation. In previous years, Tribes were required to respond to more than 20 separate grant solicitations.

One of my last tasks before leaving the Department of Justice in 2012 was to initiate a cross-grant component team to examine the best options for addressing the differing grants management systems at the Department.

- b. If confirmed, will you commit resources to unifying these systems?

Response:

If I am confirmed, one of my priorities will be to work with the leadership and staff of OVW and COPS to explore how to develop a grants management system that would address the needs of all of the grant components. The challenge will be how to accomplish this goal with the limited financial resources available.

10. A DOJ Inspector General audit of OJP's management of its Offender Reentry Initiatives in 2010 concluded that OJP did not establish an effective system for monitoring the SVORI and PRI grantees to assess whether they were meeting program goals. Their review of OJP's official SVORI grant files identified little to no documentation of grant monitoring activities. They found a reduced quality in the desk reviews prepared for the PRI grant program. Their

audit also identified significant design flaws in the initial implementation of OJP's SVORI and PRI reentry grant programs. In their report, they made 11 recommendations to assist OJP in designing and managing current and future reentry grant programs.

- a. What was your involvement with the audit or implementation of any recommendations?

Response:

I am not familiar with the specifics of this report or the specific recommendations contained in the report. I believe that this audit covered periods before 2009. Since 2009, the Office of Audit, Assessment and Management (OAAM) at the Office of Justice Programs has made substantial inroads in developing and implementing policies to address the concerns raised in reports issued by the Office of the Inspector General (OIG) generally. During my time at the Department of Justice, I met regularly with OAAM, OVW, COPS, the Justice Management Division and the OIG to make sure that each of the grant components were implementing the recommendations from a report issued by the OIG specifically to improve grants management. We also developed a process for sharing results of OIG audits so that recommendations for improvement could be shared across the grant components.

- b. During your tenure as Deputy Associate Attorney General, what measurable improvements were made in recidivism rates in general, and Offender Reentry programs in particular?

Response:

I am no longer at the Department of Justice, so I do not have the information to respond to this question.

- c. If confirmed, to head OJP, what priority will you give this issue and what steps will you undertake to ensure recommendations are fully implemented?

Response:

If I am confirmed, I will work with OAAM and the OIG to make sure that the Office of Justice Programs continues to operate in a manner which is responsive to concerns raised by the OIG. I will meet regularly with OVW, COPS, JMD and the OIG to be sure that OJP maintains a track record of improving grants management.

11. I am concerned about conference costs and reporting requirements. Please explain what involvement you have had in this area in your previous DOJ position, and what you will do as head of OJP to minimize conference costs.

Response:

During my prior service at the Department, I convened a cross-grant component team, which also included representatives from the Justice Management Division, to discuss how the Department could improve its conference process to minimize costs and improve oversight. If I am confirmed, I will continue to look for ways to lower conference costs and to improve reporting and oversight.

12. If confirmed, what will be your priorities at the Department of Justice? What are the big issues you need to address at the Office of Justice Programs?

Response:

If confirmed, my priorities will be to: 1) work collaboratively with the Office on Violence Against Women and the COPS Office to leverage the taxpayer dollars awarded to address criminal justice and juvenile justice issues; 2) continue the dissemination of best practices and solutions to criminal justice issues to communities across the country; and 3) identify proven strategies to address and prevent youth violence.

13. What will be the most significant challenges you will face, if confirmed to this position, in addressing those priorities?

Response:

The biggest issue will be how best to fulfill the mission of the Office of Justice Programs at a time of shrinking federal resources.

14. In your opening statement at your hearing you stated that “education, health care, and programs to engage youth early are critical to creating an environment to break the cycle of crime.” Can you please identify what programs within the Office of Justice Programs address education and health care?

Response:

During my time at the Department of Justice, we worked closely with the Departments of Education and Health and Human Services to leverage resources to develop a comprehensive strategy to address certain criminal justice and juvenile justice issues, such as youth violence. The Attorney General’s Defending Childhood initiative is one example of this collaboration.

15. Please describe with particularity the process by which these questions were answered.

Response:

I reviewed your questions and prepared my responses. I had conversations with representatives at the Department of Justice who are familiar with this process, and I asked a friend to review my draft to identify grammatical errors. I sent my responses to the Department of Justice for submission to you.

16. Do these answers reflect your true and personal views?

Response:

Yes.



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Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

January 31, 2013

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: Nomination of Gregory A. Phillips
To the United States Circuit Court for the Tenth Circuit**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gregory A. Phillips who has been nominated for a position on the United States Circuit Court for the Tenth Circuit. As a result of our investigation, the Committee is of the opinion that Attorney General Phillips is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Attorney General Phillips.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Gregory A. Phillips
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

January 31, 2013
Page 2

This letter was sent to Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on January 31, 2013.

State Attorneys General

**A Communication from the Chief Legal Officers
of the Following States and Territories:**

**Alaska * Arizona * Arkansas * Colorado * Connecticut * Delaware
Guam * Hawaii * Idaho * Indiana * Iowa * Kansas * Kentucky
Louisiana * Maine * Maryland * Massachusetts * Minnesota * Mississippi
Missouri * Nebraska * New Hampshire * New Mexico * North Carolina
North Dakota * Oklahoma * Oregon * Rhode Island * South Dakota
Tennessee * Utah * Vermont * Washington * Wisconsin**

March 18, 2013

The Honorable Harry Reid
Senate Majority Leader
United States Senate

The Honorable Mitch McConnell
Senate Minority Leader
United States Senate

The Honorable Patrick Leahy
President Pro Tempore
Ranking Member, Judiciary Committee
United States Senate

The Honorable Chuck Grassley
Ranking Member, Judiciary Committee
United States Senate

Dear Senator Harry Reid, Senator Mitch McConnell, Senator Patrick Leahy, and Senator Chuck Grassley,

The undersigned State Attorneys General write to express our support for the nomination of Wyoming Attorney General Gregory Alan Phillips to the Tenth Circuit of the United States Court of Appeals. We believe he has the knowledge, experience, and leadership skills to serve in this position.

Since March 2011, Gregory Phillips has served as Attorney General of Wyoming, successfully litigating a wide range of cases. With a strong record of public service, General Phillips served the state of Wyoming for two terms as State Senator. He then went on to join the United States Attorney's Office for the District of Wyoming and handled criminal prosecutions and appeals on behalf of the government. As an Assistant United States Attorney, General Phillips argued nineteen cases before the United States Court of Appeals for the Tenth Circuit.

General Phillips' extensive leadership and experience with United States Courts make him particularly well qualified to serve as a judge for the United States Court of Appeals. For the past two years he has diligently served the state of Wyoming as the chief law enforcement officer. The United States Court of Appeals has great power as it hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. This critical judgeship calls for the legal experience and dedication that General Phillips embodies. That knowledge combined with his keen intellect and experience as a lawyer and a

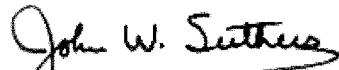
prosecutor make him well qualified for this position. He is also a fair-minded man with sound judgment and great personal integrity.

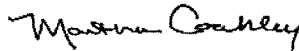
General Phillips grew up in Evanston, Wyoming, and he received his B.A. from the University of Wyoming in 1983 and his J.D. with honors from the University Of Wyoming College Of Law in 1987. After graduating from law school, he served as a law clerk to the Honorable Alan B. Johnson of the United States District Court for the District of Wyoming from 1987 to 1989.


As Attorneys General from across the country, we are united in our support for General Phillips. He is certainly qualified to carry out the responsibilities of this position.

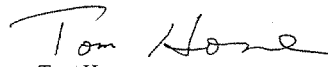
Thank you for your consideration of this letter.

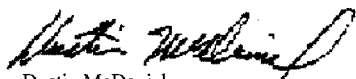
Sincerely,

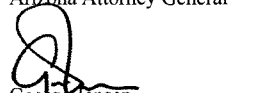

John Suthers
Colorado Attorney General

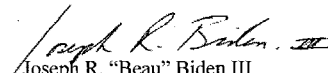

Martha Coakley
Massachusetts Attorney General

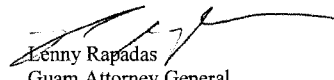

Michael Geraghty
Alaska Attorney General



Tom Horne
Arizona Attorney General

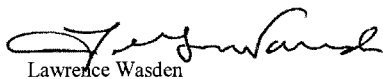

Dustin McDaniel
Arkansas Attorney General

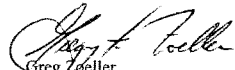

George Jepsen
Connecticut Attorney General



Joseph R. "Beau" Biden III
Delaware Attorney General

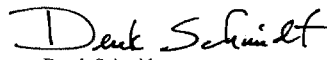

Lenny Rapadas
Guam Attorney General



David Louie
Hawaii Attorney General



Lawrence Wasden
Idaho Attorney General

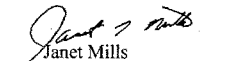

Greg Zoeller
Indiana Attorney General

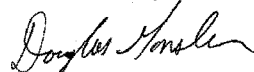

Tom Miller
Iowa Attorney General



Derek Schmidt
Kansas Attorney General

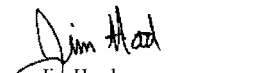

Jack Conway
Kentucky Attorney General

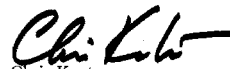

James "Buddy" Caldwell
Louisiana Attorney General

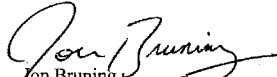

Janet Mills
Maine Attorney General

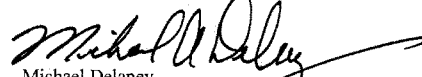

Douglas F. Gansler
Maryland Attorney General

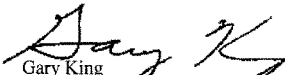

Lori Swanson
Minnesota Attorney General


Jim Hood
Mississippi Attorney General



Chris Koster
Missouri Attorney General


Jon Bruning
Nebraska Attorney General

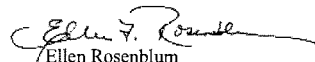

Michael Delaney
New Hampshire Attorney General

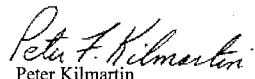

Gary King
New Mexico Attorney General

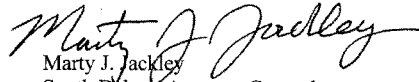

Roy Cooper
North Carolina Attorney General

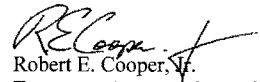

W. Wayne Stenehjem
North Dakota Attorney General

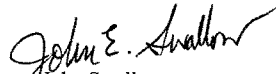

Scott Pruitt
Oklahoma Attorney General

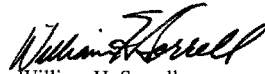

Ellen Rosenblum
Oregon Attorney General

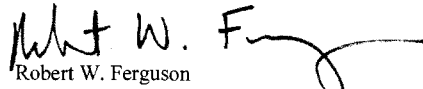

Peter F. Kilmartin
Rhode Island Attorney General

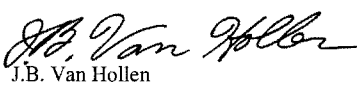

Marty J. Jackley
South Dakota Attorney General


Robert E. Cooper, II
Tennessee Attorney General


John Swallow
Utah Attorney General


William H. Sorrell
Vermont Attorney General


Robert W. Ferguson
Washington Attorney General


J.B. Van Hollen
Wisconsin Attorney General

cc: Senate Judiciary Committee

MATTHEW H. MEAD
GOVERNOR



STATE CAPITOL
CHEYENNE, WY 82002

Office of the Governor

March 14, 2013

United State Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Mr. Chairman and Members of the Senate Judiciary Committee:

Thank you for this opportunity to be heard on the nomination and potential confirmation of Greg Phillips to serve as a judge on the U.S. Court of Appeals for the Tenth Circuit Court.

I have known Greg for about 30 years. We were close friends in law school and later partners in a two-attorney private law firm. I hired Greg as an Assistant United States Attorney after I became the U.S. Attorney for the District of Wyoming. I hired him as Wyoming's Attorney General after I was elected Governor. He was my first and only choice to serve as our Attorney General.

Although appointing Greg as Wyoming's Attorney General might have raised some eyebrows – since he is a Democrat and I am a Republican – he was unanimously confirmed by the state senate. I am sure one reason for this was that he had served in the legislature with many of the senators, and they knew what I knew – Greg is a first-rate thinker and writer, a tireless worker, a friendly colleague, and a very trustworthy person.

Greg has many qualities that would serve him well as a federal appellate judge. I have seen for myself that he enjoys and excels in legal research and writing, respects the rule of law above all else, and is governed by an abiding sense of fair play. He is a thoughtful person who considers all sides of an issue before making up his mind. All those appearing before him would find a judge fully prepared, engaged and respectful to all.

In sum, I believe Greg Phillips is the best person I know to serve as a federal appellate judge, and I know he would serve our state and country proudly and well.

Sincerely,

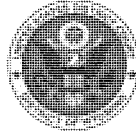
A handwritten signature in black ink, appearing to read "Matthew H. Mead".

Matthew H. Mead
Governor

MHM:mdm

**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

Alan B. Johnson
U.S. District Judge



(307) 433-2170
Fax (307) 433-2175
wyojudgeabj@wyd.uscourts.gov

March 18, 2013

Honorable Mike Enzi
United States Senator
379A Senate Russell Office Building
Washington, DC 20510

Re: Enzi Nomination of Greg Phillips

Dear Senator Enzi:

This letter reminds me of my nomination and hearing before the Judiciary Committee over twenty-eight years ago. How proud I was to have Senators Malcolm Wallop and Al Simpson on my right and left on that daunting occasion. My friend, Greg Phillips, will be equally proud and honored to have you at his side on this important and memorable event in his life. Greg Phillips will honor the remarkable judicial officers who have preceded him by virtue of his devotion to the rule of law, his willingness and energy he will devote to finding the right result, and his unflagging honesty and good will. His steady industry and courtesy will certainly generate respect among colleagues and litigants.

My friendship with Greg Phillips began when I selected him to serve as an elbow clerk just as I was experiencing the complexities of being a newly sworn trial judge. Greg was at the top of his class at the University of Wyoming, and my recollection of his service is one of long hours and intense study as both of us managed the docket. Greg was an outstanding law clerk and an easy person to be around when we traveled to trial locations in Wyoming and Colorado. He was also a favorite and helpful figure in the Office of the Clerk of Court by the time he finished his term in my chambers.

Throughout later years I have followed Greg's progress as a lawyer. First he returned to Evanston, Wyoming, where his father maintained a busy and respected practice and his mother served as the Clerk of the District Court. Greg became established in his home area and was soon elected to the State Senate for two terms. After moving to the State Capitol in 1998, a successful law practice was established with Greg's friend, Matt Mead. I was pleased when Greg followed Matt to the Office of the

March 18, 2013

Page 2

United States Attorney as an Assistant United States Attorney because Greg would appear in federal court more frequently. His thorough study of the United States Sentencing Guidelines earned respect of the Judges and opposing counsel. In 2010 Mead was elected Governor of Wyoming and again sought Greg's talent by nominating and appointing him to serve as Wyoming Attorney General. As Attorney General, Greg has assumed responsibility for major litigation conducted by the State and has managed that large law firm successfully during a period of transition.

I have tried to quickly summarize Greg Phillip's background because it is crucial to an understanding of the scope of experience that he will bring to the Tenth Circuit. An understanding of the legislative process and respect for the differing roles of each branch of government will serve his work in the court. His work as a State official provides a depth of understanding of issues State and Federal and provides an exposure that very few lawyers possess. His work at the Office of the United States Attorney and the experience of bringing cases reflecting the work of dedicated federal agents results in an understanding of the processes behind the investigation and prosecution of federal criminal cases. Again and again, local defense attorneys have expressed their appreciation for the fair handed, respectful, and even tempered treatment they have received from Greg Phillips.

Finally, I end this overly long letter by stating without any equivocation that Greg Phillips is a good man, an involved and nurturing father, and a loving husband, who somehow maintains a remarkable balance between work and family. I hope that this letter allows you to feel the same pride and respect as I do toward this son of Wyoming who is your nominee to the Tenth Circuit Court of Appeals.

Yours very truly,



ALAN B. JOHNSON
United States District Judge

ABJ/abj

G. K. BUTTERFIELD
1ST DISTRICT, NORTH CAROLINA

2305 RAYBORN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3301
TELEPHONE: (202) 225-3101
FACSIMILE: (202) 225-3354
www.house.gov/butterfield



Congress of the United States
House of Representatives

COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEES
RAVAGING MEMBER, COMMERCE,
MANUFACTURING & TRADE
ENVIRONMENT & THE ECONOMY

CHIEF DEPUTY WHIP

February 26, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I support the nomination of Karol Mason to be Assistant Attorney General for Justice Programs at the Department of Justice. Ms. Mason is a dedicated public servant committed to bringing people together to address difficult challenges.

As a former North Carolina Supreme Court justice, and a Congressman representing one of the poorest districts in the country, I understand the importance of criminal justice programs in empowering communities. Ms. Mason previously served as a Deputy Associate Attorney General where she oversaw several key offices including the Office of Justice Programs, Office on Violence Against Women, and the Community Oriented Policing Services Office. In this role, she was a leader in the Attorney General's Defending Childhood initiative that provided resources to children who are exposed to violence. Ms. Mason engaged the Departments of Health and Human Services and Education in this effort to release a report on best practices for working with children who may need counseling or other assistance. Ms. Mason also led the Memphis Team for the White House's Strong Cities, Strong Communities initiative. The program was a collaboration of several agencies to help cities address labor preparedness, education, and criminal justice challenges. These efforts were critical for the economic health and safety of communities in greatest need.

In her efforts to support Tribal communities, Ms. Mason worked to simplify the application process for Tribal grants by reducing the number of grant solicitations from twenty to a single solicitation. Ms. Mason's leadership in this and other major initiatives demonstrates her qualifications for the appointment.

DISTRICT OFFICES

216 N.E. NASH STREET, 5TH. B
WELDON, NC 27893
TELEPHONE: (252) 237-9816
FACSIMILE: (252) 291-0356

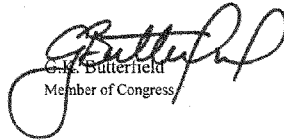
309 WEST THIRD STREET
WELDON, NC 27890
TELEPHONE: (252) 538-4123
FACSIMILE: (252) 538-6516

Ms. Mason has a distinguished legal career outside of government including making partner at a national law firm with more than 900 attorneys, serving on several boards of directors, publishing articles, and serving as a featured speaker at events.

Based on her prior experience at the Department of Justice, her commitment to public service, and her impressive legal career, I strongly support the appointment of Karol Mason as Assistant Attorney General for Justice Programs at the Department of Justice.

Thank you very much.

Very truly yours,



G. L. Butterfield
Member of Congress

ALSTON & BIRD LLP

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404

202-239-3300
Fax: 202-654-4850
www.alston.com

Senator Robert J. Dole

Direct Dial: 202-654-4848

Email: bob.dole@alston.com

February 27, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the
Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the
Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support for Nomination of Karol V. Mason as Assistant Attorney
General for Justice Programs, Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to respectfully express my strong support for the confirmation of my colleague Karol V. Mason to serve as Assistant Attorney General for the Office of Justice Programs in the United States Department of Justice. I recommend Ms. Mason because of her demonstrated ability as a lawyer and her outstanding record of public service.

I have had the privilege of working with Ms. Mason during her time at Alston & Bird LLP, both before and after her tenure as Deputy Associate Attorney General at the Department. In that position, she oversaw all of the Department's grant components and demonstrated an ability to create collaborations across the Department and the Administration. Her work with the COPS office and the initiatives she developed with the U.S. Attorneys' Offices will give her a foundation to help build relationships with the larger law enforcement community.

Since returning to Alston & Bird LLP, Ms. Mason has served as a partner on the same floor as me here in our Washington, D.C. office. She is a leader of the firm, having served on the firm's management committee, and has been an invaluable member of the firm's Real Estate Finance & Investment Group. Ms. Mason is an outstanding lawyer

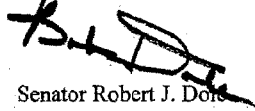
February 27, 2013

Page 2

that always provides the utmost in client service. While her clients and colleagues will miss having her here at the firm, we know that it is in the Nation's best interest that Ms. Mason return to public service.

I can without hesitation testify that Ms. Mason possesses the necessary character, experience, and ability to serve effectively as Assistant Attorney General. I recommend her for this position without reservation, and I ask that you move forward with her prompt confirmation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. J. Dorn", written over the printed name.

Senator Robert J. Dorn

971

Robert D. McCallum, Jr.
2440 Peachtree Road NW
No. 15 Regents Park
Atlanta, GA 30305
(404) 228-3737

February 28, 2013
(Sent by email and by fax to (202) 224-9516)

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Karol V. Mason for Assistant Attorney General for the Office of Justice Programs

Gentlemen:

I am a former member of the Department of Justice, having served as the Assistant Attorney General for the Civil Division from 2001 to 2003 and as the Associate Attorney General from 2003 to 2006. From 2006 to 2009, I continued my government service in the Department of State as the U. S. Ambassador to Australia. All three of those positions required Senate confirmation, two beginning before your Judiciary Committee and the third before the Foreign Relations Committee.

Karol V. Mason, whom I know well and hold in especially high regard, has been nominated to become Assistant Attorney General for the Office of Justice Programs. Given my experience with the confirmation process, I thought that it would be helpful to the majority and minority members of the Committee for me as a political appointee in a Republican administration to provide my perspective on her ability, integrity, judgment, and managerial skills.

Karol is quite simply one of the most talented, diligent, and effective people I have ever known. She was my law partner at the law firm of Alston & Bird before I left private practice for government service, and I had the great pleasure of watching her become one of the most influential and productive partners in the firm. To lawyers outside the firm, she became one of the best known and respected bond lawyers in the State of Georgia. Inside and outside the firm,

her integrity and candor were unquestioned. If Karol did it or said it, you could take it to the bank. In addition to the practice of law, she made remarkable contributions to her community in the arts, education, health care, and local government. She managed people with style, grace, and good humor. She is someone who both demanded and, by her own example, was able to get the very best from others working with her. Her fellow partners always marveled at how she found the time and energy to do it all. These accomplishments, in and of themselves, recommend her to you for this position.

In addition, Karol brings to this position a wealth of experience at DOJ and the Office of Justice Programs in particular. As a Deputy Associate Attorney General, she had oversight responsibility for the Office of Justice Programs and for other DOJ programmatic divisions. She is familiar with all of OJP's varied moving parts and grant processes. She played leadership roles in various initiatives coordinating activities between these grant making entities and the litigation/law enforcement sectors. My career colleagues at DOJ and the staff members of the ASG office all gave her rave reviews whenever I encountered them.

I strongly support Karol's nomination. I urge your Committee to act promptly in considering her nomination and forwarding it to the entire Senate for confirmation. Her confirmation will be a great benefit to DOJ and OJP. We need people like Karol in leadership roles in our federal, state, and local governments, and I am so proud of her for contributing to our country through her government service.

I stand ready to respond to any questions that you or any staff members may have about her qualifications for this important position. With that in mind, I am copying the staff members listed below with an email copy of this letter. Each of them should feel free to contact me at any time.

Yours,

ROBERT D. MCCALLUM, JR.

CC: Maggie Whitney (Senior Counsel to Chairman Leahy)
Zach Blau (Majority Nominations staff)
David Best (Chief Nominations Counsel for RMM Grassley)
Kevin Courtois (Minority Nominations Staff)

POLICE**CHARLOTTE-MECKLENBURG POLICE DEPARTMENT**

Senator Patrick Leahy, Chairman
Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510


Dear Senators Leahy and Grassley:

As the Chief of the Charlotte-Mecklenburg Police Department (CMPD) in Charlotte, North Carolina, I am writing to you in support of Karol Mason's nomination to be the Assistant Attorney General for the Office of Justice Programs (OJP). I have reviewed her credentials for this position, and it is my belief that Ms. Mason is an outstanding choice to serve our country in leadership of OJP.

Ms. Mason most recently served as a Deputy Associate Attorney General, overseeing the Office of Justice Programs, as well as the Office on Violence Against Women and the Community Oriented Policing Service Office ("COPS"), the Community Relations Service and the Tax Division. Ms. Mason's work in collaboration with law enforcement will serve her well in taking on the leadership of OJP. As the Chief of a police department with more than 1,600 officers, I consider our partnership with OJP to be critically important, and look forward to working with Ms. Mason and in her capacity as the leader of OJP.

Thank you for your consideration of my support of Ms. Mason for this important position.

Sincerely,


Rodney Mohroe
Chief of Police

Building Partnerships To Prevent The Next Crime.

Police Department • 601 East Trade Street • Charlotte, N.C. 28202-2940

BLANCHE L. LINCOLN
UNITED STATES SENATOR
ARKANSAS

March 1, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the
Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the
Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support for Nomination of Karol V. Mason as Assistant Attorney
General for Justice Programs, Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

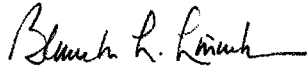
I am respectfully writing to express my strong support for the confirmation of my colleague Karol V. Mason to serve as Assistant Attorney General for the Office of Justice Programs in the United States Department of Justice. I recommend Ms. Mason because of her demonstrated ability as a lawyer and her outstanding record of public service.

It was an honor and a privilege to serve with both of you, especially on the Senate Committee on Agriculture, Forestry and Nutrition. As the former Chairman of the Senate Agriculture Committee, like you, I held numerous confirmation hearings and have a unique vantage point to assess Ms. Mason's credentials for public service. In short, her credentials are exceptional and our country will be well served by her confirmation and subsequent service.

I have had the privilege of working with Ms. Mason during her most recent time at Alston & Bird LLP, after her tenure as Deputy Associate Attorney General at the Department. She has served as a partner and part of the management committee of the firm and is an invaluable member of the firm's Real Estate Finance & Investment Group. Ms. Mason is an outstanding lawyer who serves the firm's clients well and conducts herself with the utmost professionalism and grace. It has been my privilege to work with her.

Ms. Mason possesses the character, intelligence, experience, and ability to serve as Assistant Attorney General. She has my highest recommendation, and I ask that you move forward with her prompt confirmation. If I can further advocate on her behalf, I hope you will not hesitate to contact me.

Sincerely,



Blanche L. Lincoln

March 2, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: Nomination of Karol V. Mason as Assistant Attorney General
for the Office of Justice Programs of the U.S. Department of Justice**

Dear Chairman Leahy and Ranking Member Grassley,

Having served as Assistant Attorney General for the U.S. Department of Justice's Office of Justice Programs (OJP) for nearly 10 years during two administrations, I write to express my support for the confirmation of Karol V. Mason for that position.

As you know, OJP's mission is unlike that of other components in the U.S. Department of Justice. But its role is a vital one -- supporting innovation and knowledge development about "what works" in addressing crime, and serving as the link between the Department and states, localities and tribal communities on criminal and juvenile justice and assistance to victims of crime. Having worked closely with Ms. Mason for my three years in the Obama Justice Department, I believe she has the qualities needed to lead OJP as Assistant Attorney General.

During her tenure as Deputy Associate Attorney General at the Justice Department from 2009 through the beginning of 2012, Ms. Mason worked hand-in-hand with not only OJP, but also with the Community Oriented Policing (COPS) Office and the Violence Against Women Office, as well as the Community Relations Service and the Tax Division. During my work with Ms. Mason, I saw a person of great integrity and intellect, and was impressed with her

976

leadership skills in bringing together different parts of the Department and different agencies in productive collaborations; frequently, these also involved outside organizations and communities. I was struck from the beginning of our working relationship with Ms. Mason's ability to bring people together, work out solutions to problems, and, in a non-bureaucratic fashion, get results -- whether the subject was streamlining Department grants for tribal communities, exploring avenues to assist New Orleans in addressing its criminal justice problems, or finding comprehensive ways to help children exposed to violence.

This set of leadership skills, as well as her talent at collaboration, are particularly needed at this time of challenges in government. I encourage your prompt action on her nomination, and appreciate the opportunity to provide these views.

Respectfully submitted,

Laurie Robinson

Laurie O. Robinson
Clarence J. Robinson Professor of
Criminology, Law and Society
George Mason University

Assistant Attorney General, 1993 - 2000
and 2009 - 2012

977

RICHARD H. DEANE, JR.

1420 PEACHTREE STREET, N.E. • SUITE 800
ATLANTA, GEORGIA 30309-3053
404-581-8502

Direct Number: (404) 581-8007
rhdeane@jonesday.com

March 4, 2013

VIA EMAIL AND FACSIMILE (202) 224-9516

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Karol V. Mason as Head of the Justice Department's Office of
Justice Programs

Dear Chairman Leahy and Ranking Member Grassley:

I write you in support of the nomination of Karol V. Mason to fill the position as head of the Justice Department's Office of Justice Programs. I had the great honor of serving in the Justice Department for almost twenty years, the last four of which were as United States Attorney in Atlanta for three years under President William J. Clinton and one year under President George W. Bush.

As a prosecutor for almost two decades, I understand how critically important the Office of Justice Programs can be to funding research and programs that offer new approaches and insights into dealing with the issues confronting the criminal justice system. I am convinced that Karol Mason has the experience and judgment to serve effectively as the head of this office. I have known Karol since she was a law student and I was on staff at the University of Michigan Law School. Karol has always impressed me as brilliant and hardworking. As Deputy Associate Attorney General, Karol oversaw and regularly interacted with the office of the Justice Programs; the Community Relations Services and the Community Oriented Policing Services Office ("COPS"). Karol gained invaluable experience from this service. She formulated and led a team of DOJ representatives across various component offices to address wide-ranging criminal justice issues in New Orleans. Karol also led the Attorney General's initiative to

ATI-2551232v1

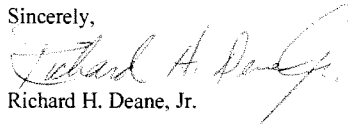
The Honorable Patrick J. Leahy
The Honorable Chuck Grassley
March 4, 2013
Page 2

provide support to children exposed to violence, known as Defending Childhood. Karol led the effort which resulted in the creation of six demonstration sites, two of which were in Indian County, to address the traumatic effect of violence on the lives and development of children.

I know Karol to be a person of immense energy and intellect. She has the ability to successfully draw people of diverse interests and backgrounds into a common endeavor. Karol is very well-suited by temperament and judgment to serve in this important position. As a longtime prosecutor and as someone who recognizes the immeasurable value of innovative and alternative approaches to law enforcement, I highly recommend Karol for this position.

Thank you for your consideration of this letter in support of Ms. Mason.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard H. Deane, Jr.", is written over the typed name.

Richard H. Deane, Jr.

Larry D. Thompson
24 Lakewood Circle North
Greenwich, CT 06830

March 4, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Karol V. Mason
Nominee
Assistant Attorney General for the Office of Justice Programs, U.S.
Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

It is with a great deal of pleasure that I write to strongly support the nomination of Karol V. Mason as Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice.

I have known Karol for at least thirty years. She is simply a wonderful person – honest, hard-working, thoughtful and fair. She also possesses a very large dose of common sense which, in my experience with the Justice Department, is a huge factor in becoming a successful leader in the Department.

Karol is also a very accomplished lawyer. She had a thriving practice in Atlanta prior to joining the Department in 2009 and was a leader in both the Atlanta and Georgia bars. Again, it is my experience with the Justice Department that a successful lawyer in private practice most likely will be a successful leader in the Department.

Karol previously served as Deputy Associate Attorney General in the Department, and I know how much she enjoyed her work in the Associate Attorney General's office. Karol's work in overseeing the Office of Justice Programs, the Office on Violence Against Women, the COPS Office, Community Relations Services and the Tax Division all make her uniquely qualified to be Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice. In fact, I can attest to the fact that she will be outstanding based on my thirty plus year experience with her.

980

The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
March 4, 2013
Page 2

When Karol left the Department, I personally thanked her for her service. I now thank her for offering to lead this very important function in the Department. The Office of Justice Programs could not be in better hands.

Sincerely,

A handwritten signature in black ink, appearing to read 'LDT', with a long horizontal flourish extending to the right.

Larry D. Thompson
Former Deputy Attorney General
Of the United States

cc: Members of the Senate Committee on the Judiciary

LDT/dpb



March 5, 2013

**NORTH CAROLINA
POLICE BENEVOLENT ASSOCIATION, INC.**

A Division of Southern States Police Benevolent Association, Inc.

2155 Highway 42 S
McDonough, GA 30252-7636
(770) 389-5391 • (800) 233-3506
Fax: (770) 389-4572 • (866) 337-7722
www.sspba.org

RECEIVED MAR 05 2013

The Honorable Patrick Leahy, Chairman
437 Russell Senate Building
Washington, D.C. 20510
Via Facsimile to 202-224-3479

The Honorable Charles Grassley, Ranking Member
135 Hart Senate Office Building
Washington, D.C. 20510
Via Facsimile to 202-224-6020

Re: Nomination of Karol Mason as Assistant Attorney General for Justice Programs

Dear Senators Leahy and Grassley:

Our association has been active for several decades in representing the law enforcement community including on legislative matters and judicial nominations before the U.S. Senate.

We respectfully urge you to support the confirmation of Ms. Karol Mason as Assistant Attorney General for Justice Programs.

We are familiar with the background, experience and extraordinary record of service of Ms. Mason. She is extremely well qualified for this important position. Ms. Mason has earned a number of honors of special appreciation by our association and the law enforcement community.

Ms. Mason has developed an exceptionally close professional working relationship with the law enforcement community. She has vast knowledge of the needs of the police community and has the leadership ability to develop partnerships with other segments of the criminal justice community to successfully carry out Justice Programs.

Thank you for your consideration.

Sincerely

Randy Byrd, President



State of North Carolina
Department of Justice

Roy Cooper, Attorney General
March 7, 2013

The Hon. Patrick Leahy, Chairman
United States Senate Judiciary Committee
Russell Senate Office Bldg., Room 437
Washington, D. C. 20510

RE: Karol V. Mason
Assistant Attorney General for Justice Programs

Dear Senator Leahy:

I am writing to give my strong recommendation to Karol V. Mason who has been nominated by the President to the position of Assistant Attorney General for Justice Programs. I wholeheartedly support her confirmation by the Senate Judiciary Committee.

Although Karol was born in New York, we claim her here in North Carolina as she received her undergraduate degree at the University of North Carolina at Chapel Hill. She has had an outstanding career as a private practice attorney having become the first African-American woman partner of the law firm of Alston & Bird. She served with distinction for eight years on the Board of Trustees of the University of North Carolina at Chapel Hill and she has participated in other worthy charitable and civic causes.

As Attorney General and the Chief Law Enforcement Officer of my state, I know that the very best way to fight crime is to prevent it from happening to start with. Karol will play an important role in this effort by administering the Office of Juvenile Justice and Delinquency Prevention within the office. I know she is deeply committed to making sure that we use effective strategies to keep kids out of trouble and push them down the path of quality education and good-paying jobs.

From everything I know about Karol, her character and reputation are impeccable. She is an excellent attorney and a committed public servant. She will do a great job in this position. Please call or write if you have any questions.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "RC", with the name "Roy Cooper" printed below it.

Roy Cooper



**NATIONAL ORGANIZATION OF
BLACK LAW ENFORCEMENT EXECUTIVES**

HUBERT T. BELL, JR. OFFICE COMPLEX
4609 PINECREST OFFICE PARK DR. • SUITE F
ALEXANDRIA, VA 22312-1442
(703) 658-1529 • FAX: (703) 658-9479
Website: <http://www.noble-national.org>

March 13, 2013

Senator Patrick Leahy, Chairman
Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The National Organization of Black Law Enforcement Executives (NOBLE) is comprised of approximately 2,500 primarily African-American law enforcement CEOs and command level officials in federal, state, county and local agencies throughout the United States and we are committed to improving the quality of law enforcement service in communities throughout this nation.

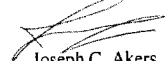
It is my pleasure to write this letter in support of Karol V. Mason for the position of Director of the US Department of Justice (DOJ), Office of Justice Programs (OJP). Throughout her tenure at DOJ, Ms. Mason has demonstrated a strong commitment to collaboration and clearly possesses the skills necessary to lead a diverse entity like DOJ.

Ms. Mason's record of achievement indicates her preparedness for the position and her unique ability to perform beyond expectations. She is not only intelligent and hard-working, but in her years at DOJ she was a difference maker and was often called upon to take on some of the more challenging assignments and to streamline processes to make them client friendly.

NOBLE believes that Ms. Mason is uniquely qualified for the position based on her experience and ability to bring non-traditional partners both civilian and governmental together to focus on positive change. She is competent and caring and the right fit for the department.

In conclusion, it is our honor to recommend Ms. Mason. We fully support her and look forward to working with her to keep our nation safe and improve our criminal justice system.

Sincerely,


Joseph C. Akers, Jr.
Interim Executive Director

RECEIVED MAR 18 2013

RECEIVED MAR 18 2013



Sent Via Fax:
 Chairman Leahy (202) 224-9516
 Ranking Minority Member Grassley (202) 224-9102

March 15, 2013

The Honorable Patrick Leahy
 Chairman
 Committee on the Judiciary
 U.S. Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Charles Grassley
 Ranking Minority Member
 Committee on the Judiciary
 U.S. Senate
 152 Dirksen Senate Office Building
 Washington, DC 20510

Re: Nomination of Ms. Karol Virginia Mason as Assistant Attorney General, Justice Programs

Dear Chairman Leahy and Ranking Minority Member Grassley:

The Jamestown S'Klallam Tribe strongly supports the nomination of Ms. Karol Virginia Mason as the new Assistant Attorney General for Justice Programs in the Department of Justice (DOJ). Ms. Mason previously served as a Deputy Associate Attorney General where she oversaw several key offices including the Office of Justice Programs, Office on Violence Against Women, and the Community Oriented Policing Services Office.

Ms. Mason was also instrumental in implementing the Coordinated Tribal Assistance Solicitation (CTAS) process, a streamline process for Tribal communities to request department funding to various public safety initiatives. The CTAS process has saved time and resources, which helped the Department of Justice gain a better understanding of Tribes' overall public safety needs. Ms. Mason understands the unique relationship that exists between Tribal governments and the United States and seeks to build partnerships where there are none.

It is the recommendation of the Jamestown S'Klallam Tribe that you approve the appointment of Ms. Mason to Assistant Attorney General for Justice Programs. We believe her experience and knowledge will be an asset to the cadre of Assistant Attorneys General at the Department of Justice.

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen".

W. Ron Allen, Tribal Chairman/CEO
 Jamestown S'Klallam Tribe

RECEIVED MAR 18 2013



Sent Via Fax:
 Chairman Leahy (202) 224-9516
 Ranking Minority Member Grassley (202) 224-9102

March 14, 2013

The Honorable Patrick Leahy
 Chairman
 Committee on the Judiciary
 U.S. Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Charles Grassley
 Ranking Minority Member
 Committee on the Judiciary
 U.S. Senate
 152 Dirksen Senate Office Building
 Washington, DC 20510

Re: Nomination of Ms. Karol Virginia Mason as Assistant Attorney General, Justice Programs

Dear Chairman Leahy and Ranking Minority Member Grassley:

The Lummi Indian Nation applauds the nomination of Ms. Karol Virginia Mason as the new Assistant Attorney General for Justice Programs in the Department of Justice (DOJ). We were fortunate to work with Ms. Mason when she was the Deputy Associate General and we would welcome the opportunity to do so again. She understands the unique relationship that exists between Tribal governments and the United States and seeks to build partnerships where there are none.

We recommend unequivocally that the Senate Judiciary Committee advances this nomination post haste. The experience and knowledge of Ms. Mason would be an asset to the cadre of Assistant Attorneys General at the Department of Justice.

Hy'shqe.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Ballew, II", is written over a large, loopy flourish that extends to the left and then curves back down to the signature.

Timothy Ballew, II
 Chairman

RECEIVED MAR 18 2013



Nooksack Indian Tribe

5016 Deming Road - P.O. Box 157 - Deming WA 98244 360.592.5176 (fax) 360.592.2125

Sent Via Fax:
Chairman Leahy (202) 224-9516
Ranking Minority Member Grassley (202) 224-9102

March 15, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Minority Member
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ms. Karol Virginia Mason as Assistant Attorney General, Justice Programs

Dear Chairman Leahy and Ranking Minority Member Grassley:

The Nooksack Indian Tribe supports the nomination of Ms. Karol Virginia Mason as the new Assistant Attorney General for Justice Programs in the Department of Justice (DOJ). Ms. Mason recognizes and understands our concern for the welfare of our people and has worked with American Indians and Alaska Natives while serving as the former Deputy Associate Attorney General.

It is the recommendation of the Nooksack Indian Tribe that you approve the appointment of Ms. Mason to Assistant Attorney General for Justice Programs. We believe her experience and knowledge will be an asset to the cadre of Assistant Attorneys General at the Department of Justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Kelly", written over a faint, circular stamp or watermark.

Bob Kelly, Chairman
Nooksack Indian Tribe

RECEIVED MAR 18 2013



SQUAXIN ISLAND TRIBE

Sent via fax (202) 224-9516 and (202) 224-9102

March 15, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Minority Member
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ms. Karol Virginia Mason to be the Assistant Attorney General for Justice Programs, Department of Justice

Dear Chairman Leahy and Ranking Minority Member Grassley:

The Squaxin Island Tribe strongly supports the nomination of Ms. Karol Virginia Mason as the new Assistant Attorney General for Justice Programs in the Department of Justice (DOJ). While serving as the Deputy Associate Attorney General, Ms. Mason played a key role in the establishment of the Coordinated Tribal Assistance Solicitation (CTAS).

During the DOJ consultation process with Tribes, Ms. Mason encouraged Tribal leaders to continue to apply for all other non-Tribal specific grant programs offered by the Department of Justice DOJ, such as the Bureau of Justice Assistance's Drug Court Grants Program, the Office on Violence against Women's Legal Assistance to Victims' Grant Program and COPS general Hiring Grants Programs.

The Squaxin Island Tribe recommends the Senate Judiciary Committee approve the nomination of Ms. Karol V. Mason. Thank you.

Sincerely,

Dave Lopeman, Chairman
Squaxin Island Tribe

S.E. 70 Squaxin Lane Shelton, WA 98584 Phone (360) 426-9781

RECEIVED MAR 18 2013

Sac and Fox Nation

920833 S. Hwy. 99 Bldg. A • Seward, OK 74079

Principal Chief GEORGE THURMAN
Second Chief ORVENA (TWIGGY) GREGORY
Secretary JACKLYN K. WILLIAMS
Treasurer CARLA REED
Committee Member STELLA NULLAKE



Sent via fax (202) 224-9516 and (202) 224-9102

March 15, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Minority Member
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ms. Karol Virginia Mason to be the Assistant Attorney General for Justice Programs, Department of Justice

Dear Chairman Leahy and Ranking Minority Member Grassley:

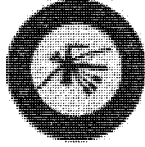
The Sac and Fox Nation supports the nomination of Ms. Karol Virginia Mason as the new Assistant Attorney General for Justice Programs in the Department of Justice (DOJ). Ms. Mason recognizes and understands our concern for the welfare of our people and has worked with American Indians and Alaska Natives while serving as the former Deputy Associate Attorney General. Through joint efforts, the Coordinated Tribal Assistance Solicitation (CTAS) was implemented, allowing Tribes to submit a single application and select from several competitive grant programs. This approach allows the Department's grant-making components to consider the totality of a Tribal community's overall public safety needs.

We propose Ms. Mason's nomination receives the full approval of the Committee. Thank you.

Sincerely,

George Thurman, Chief
Sac & Fox Nation

RECEIVED MAR 18 2013



Choctaw Nation of Oklahoma
PO Box 1210 • Durant, Oklahoma 74702-1210 • (580) 924-8280

Gregory E. Pyle
Chief

Gary Batton
Assistant Chief

Sent via fax (202) 224-9516 and (202) 224-9102

March 15, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Minority Member
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ms. Karol Virginia Mason to be the Assistant Attorney General for Justice Programs, Department of Justice

Dear Chairman Leahy and Ranking Minority Member Grassley:

On behalf of the Choctaw Nation of Oklahoma we support the nomination for Ms. Karol Virginia Mason as the Assistant Attorney General for Justice Programs in the Department of Justice (DOJ). Ms. Mason has experience in Tribal Affairs as the former Deputy Associate Attorney General working with American Indians and Alaska Natives for several years.

In her efforts to support Tribal communities Ms. Mason along with others spearheaded the Coordinated Tribal Assistance Solicitation (CTAS), which has been effective in streamlining and integrating the grant application process. Ms. Mason understands the unique relationship that exists between Tribal governments and the United States and seeks to build partnerships where there are none.

We applaud this nomination and recommend that Ms. Karol's nomination receives the full approval of the Committee. Thank you.

Sincerely,

Gregory E. Pyle, Chief
Choctaw Nation of Oklahoma



March 28, 2013

Chairman:
Joe Torre

President:
Alice W. Torre

Executive Director:
Judith Ann Lynn

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I respectfully support the nomination of Karol Mason to be Assistant Attorney General for Justice Programs at the Department of Justice.

I worked with Karol Mason when I had the honor to serve on the National Advisory Committee for the Office on Violence Against Women and as a co-chair for Defending Childhood Task Force, addressing children's exposure to violence.

Karol is a leader, a great collaborator and committed to public service, and someone who truly cares about the welfare and well-being of this country and its citizens—qualities and character extremely important for public service.

Respectfully,

Joseph P. Torre
Chairman

**Introduction by
Senators Saxby Chambliss (R-GA) and Johnny Isakson (R-GA)**

**Senate Judiciary Committee
Nominations Hearing**

Karol Virginia Mason, to be an Assistant Attorney General

March 19, 2013

Introduction

Chairman Leahy, Ranking Member Grassley thank you for the opportunity to introduce Ms. Karol Mason, who has been nominated for the position of Assistant Attorney General for the Office of Justice Programs.

Ms. Mason brings an impressive background to this important position. Ms. Mason has degree in Mathematics from the University of North Carolina at Chapel Hill and a law degree from the University of Michigan. She began her legal career in the distinguished position of a judicial law clerk for the Honorable John F. Grady, United States District Judge for the Northern District of Illinois.

Although Ms. Mason was born in New York and lived for a time in North Carolina, we are lucky to call her a Georgia resident now, where she has established extensive roots in the community. Since 1990, Ms. Mason has been a partner in the distinguished Atlanta, Georgia law firm of Alston & Bird. Her clients have included the State of Georgia, the Georgia Board of Regents, and Grady Memorial Hospital, which is the largest public hospital in the Southeast. Ms. Mason has also held Board leadership positions at several of Georgia's major charitable institutions, such as Children's Healthcare of Atlanta, the High Museum of Art, and the Wesley Woods Geriatric Hospital.

The nominee also has a strong family connection to the Peach State. Mentioning just a few, for about 20 years until her retirement, Ms. Mason's sister taught math at Norcross High School, an International Baccalaureate school in Gwinnett County. The nominee has a twin brother whom we understand is here this afternoon – he is a pediatrician in Cobb County, and who in 1983 chose Emory University School of Medicine in Atlanta for his residency. Ms. Mason's parents moved to Georgia about 10 years ago to join their children, and her mother still lives in Cobb County.

In 2009, Ms. Mason left her private practice to come to the Department of Justice, where she served as Deputy Associate Attorney General. Ms. Mason's experience at the Department of Justice makes her especially well-suited for the position for which she is nominated. Ms. Mason oversaw grant making components at the Department, including the Office of Justice Programs as well as the Office on Violence Against Women and the Community Oriented Policing Services Office (COPS). Ms. Mason also led the Attorney General's Defending Childhood initiative. For her accomplishments at the Department, Ms. Mason received, in 2011, the U.S. Attorney General's Distinguished Service Award.

Ms. Mason has a background worthy of the important position for which she has been nominated.

