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S. HRG. 113–515, Part 3

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 23, JUNE 11, and JUNE 19, 2013

Serial No. J–113–1

PART 3

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THURSDAY, MAY 23, 2013

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

The Committee met, pursuant to other business, at 10:27 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Feinstein, Klobuchar, Franken, Blumenthal, and Grassley.

Senator WHITEHOUSE. The hearing will come back to order. Let me, first of all, welcome everybody and, second, describe how we are going to proceed.

The first thing that we are going to do is let the distinguished Senator from California, Senator Feinstein, introduce Tony West. And when her introduction is complete, we will take a brief recess so that folks can go over and vote. I understand that there is an amendment that will be voted on at 10:30 on the farm bill, and then I will return as quickly as I possibly can, and we will go on with the rest of the proceedings, including the testimony of Tony West and of the two judicial candidates.

So what I would do right now is yield to Senator Feinstein.

PRESENTATION OF DEREK ANTHONY WEST, NOMINEE TO BE ASSOCIATE ATTORNEY GENERAL, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I would like to say a few words to offer my strong support to a native Californian, Tony West, to be Associate Attorney General of the United States. As a matter of fact, I saw his sister-in-law come in the room, and she is the State Attorney General of California, Kamala Harris, and I would very much like to welcome her to

these hearings. I do not see her at the moment. If she would stand, we will give her a round of applause.

[Applause.]

Senator FEINSTEIN. The role of the Associate Attorney General, the third highest ranking position at the Department, is to help lead the Justice Department and to oversee the Department's civil units, such as the Civil Division, Antitrust Division, and Tax Division, as well as the Office of Justice Programs, which works in partnership with State and local law enforcement. They provide grants for crime-fighting strategies to our States, cities, and neighborhoods.

Mr. West is well qualified for this position, having served for over 4 years in the Justice Department's leadership. He has served for over a year as Acting Associate Attorney General. He served for 3 years as Assistant Attorney General of the Civil Division. Now, that is a position to which he was confirmed without controversy after unanimous approval in this Committee. So I am confident that he will do an outstanding job as Associate Attorney General, and he has my strong support.

He was born in California. He earned his B.A. from Harvard in 1987. He was the publisher of the Harvard Political Review. He earned his J.D. from Stanford Law School in 1992 where he was elected president of the Stanford Law Review.

From 1993 to 1994, he served as Special Assistant to Deputies Attorney General Phil Heymann and Jamie Gorelick, working on the 1994 omnibus crime bill, which I was proud to support.

In 1994, he returned home to California where he spent 5 years as an Assistant United States Attorney. He prosecuted a variety of offenses, including high-tech crimes, bank robberies, fraud schemes, and sexual exploitation offenses. I would like to just speak about one and put some others in the record.

He successfully prosecuted members of an international child molestation ring called "the Orchid Club." An article from 1996 points out that this club's members shared homemade pictures, recounted their sexual experiences with children, and even chatted electronically as two of the men molested a 10-year-old girl. West was the sole prosecutor in the case. In cooperation with the FBI and the Customs Service, he put the evidence together to make the case against those who committed these disgusting acts. There were 16 defendants, and all of them were convicted.

From 1999 to 2001, he served as a Special Assistant Attorney General for the State of California. In that role, he worked with Attorney General Bill Lockyer on high-tech, antitrust, and identity theft issues.

In 2009, he was appointed by President Obama and confirmed by the Senate to lead the Civil Division of the Justice Department. In this capacity, he has served with distinction in a number of critical areas, including national security.

For example, he supervised the Government's trial and appellate court litigation with respect to more than 150 habeas corpus petitions filed by detainees at Guantanamo Bay, personally arguing the Government's position in two very important detainee cases in the D.C. Circuit Court of Appeals.

His career has earned him the strong support of law enforcement, particularly in our shared State of California. San Francisco Police Chief Greg Suhr notes that he has known Mr. West personally and professionally for many years, and that he has a deep personal commitment to public safety and excellence in law enforcement.

L.A. Police Chief Charlie Beck echoes Chief Suhr's endorsement, noting that Mr. West served in the trenches with local police officers and Federal agents, prosecuting drug traffickers and violent criminals. Chief Beck also notes that Mr. West is a passionate advocate for law enforcement, pointing to his efforts at the Justice Department to hold companies accountable for knowingly manufacturing and selling defective bulletproof vests that put the lives of our men and women in law enforcement at risk.

And it goes on and on. Bill Bratton has good things to say. To me, that just about sums it up.

Tony West is a distinguished, accomplished lawyer and law enforcement official with a strong commitment to public safety and extensive leadership experience at the Justice Department. He is eminently qualified to serve as Associate Attorney General of the United States, and he has my strong support. I urge my colleagues to support him as well.

I thank you for this privilege, Mr. Chairman, for making these remarks up front.

Senator WHITEHOUSE. I thank Senator Feinstein for her kind remarks. There is no one on this Committee who has more respect from her colleagues than you, Senator, and I know your remarks will be important in these deliberations.

Senator FEINSTEIN. Thank you.

Senator WHITEHOUSE. We do have a vote, and so consistent with what I mentioned, I will put the Committee into recess for a few minutes while we all go over and vote. And then we will proceed upon our return. My apologies to those who will have to wait a few moments, but that is the nature of the beast here in the Senate.

We are in recess.

[Whereupon, at 10:35 a.m., the hearing was recessed.]

[Whereupon, at 10:51 a.m., the Committee reconvened.]

Senator WHITEHOUSE. The hearing will come back to order. I want to welcome my colleague, the distinguished Senator from New York, Kirsten Gillibrand, who wishes to make an introduction, and you have the floor, Senator.

PRESENTATION OF VALERIE E. CAPRONI, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, VERNON S. BRODERICK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, AND DEREK ANTHONY WEST, NOMINEE TO BE ASSOCIATE ATTORNEY GENERAL, BY HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Thank you, Mr. Chairman, and thank you, Mr. Ranking Member and colleagues. I appreciate you being here.

I am here to introduce Valerie Caproni and offer my strong support for her nomination to the United States District Court for the

Southern District of New York. I also want to recognize her sister who has joined us today.

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

I also want to congratulate the other outstanding nominees, Derek Anthony West, who has been nominated to serve as the Associate Attorney General of the United States. As Acting Associate Attorney General, Tony West has proven to be extremely effective as he has served the Office of the Attorney General.

And fellow New Yorker, Vernon S. Broderick, who is also being nominated to serve as United States District Judge for the Southern District of New York. Senator Schumer was supposed to be here to do that full introduction, which will be submitted for the record, but he is dealing with immigration-related business.

I know Ms. Caproni to be a woman with impeccable credentials, incredible intellect, and the kind of fair-minded judgment that we need on the Federal bench. Ms. Caproni serves today as vice president and general counsel for Northrop Grumman Corporation where she leads all aspects of litigation and internal investigations.

Ms. Caproni joined Northrop Grumman from her former position as general counsel for the FBI, a position that FBI Director Robert Mueller personally asked Ms. Caproni to serve in the wake of the horrific attacks of September 11th.

Ms. Caproni knows full well the task at hand for the FBI is never easy, from protecting America from terror and other attacks, balanced with defending our civil liberties and our civil rights. But as she has put it, they always try to do the right thing and to maintain as a lodestar fealty to the Constitution and the rule of law. That is what Ms. Caproni believes to her very core.

Ms. Caproni also served as director of the Pacific Regional Office of the Securities and Exchange Commission where she enforced regulatory programs in the nine-State region. She and her staff strengthened cooperation between the SEC and the U.S. Attorney's Office to crack down on financial fraud.

Ms. Caproni also served as the chief of the Criminal Division in the United States Attorney's Office for the Eastern District of New York and in private practice at many top firms.

Through her breadth of experience, her talent and intellect, and her character, I know Ms. Caproni will be an outstanding jurist. I strongly believe this country needs more women like her serving in the Federal judiciary, an institution 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. While it is true that women 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.

I have no doubt that having Ms. Caproni serving in the Federal judiciary will bring us all closer to that goal. I was honored to recommend her for this position, and I urge swift approval of her nomination.

Thank you, Mr. Chairman. Thank you, Mr. Ranking Member.

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

Senator WHITEHOUSE. Thank you very much, Senator Gillibrand. I appreciate how busy you are, and the time you have taken out to come here and introduce Ms. Caproni is very helpful to the Committee. I know you have other business to get to, so please feel free to go on.

It is now my distinct pleasure to have the opportunity to channel Chuck Schumer for all of you, who could not be here. As Senator Gillibrand said, he is tied up in the immigration bill that passed out of the Judiciary Committee this week, and he is working to get it prepared for, I hope, strong bipartisan passage on the floor. But were he here, he would say that he was extremely pleased to introduce Vernon S. Broderick to this Committee.

While Mr. Broderick's accomplishments and distinguished record would lend themselves to a very lengthy introduction, he would keep his remarks brief. Really.

Mr. Broderick has stellar credentials: a B.A. from Yale, J.D. from Harvard, 8 years in the United States Attorney's Office, and now a partner at the distinguished firm of Weil, Gotshal and Manges. Mr. Broderick has demonstrated his ability to understand the breadth and depth of important legal issues. His practice spans both civil and criminal matters. And while he spent many years as a prosecutor, he has also taken an active role in the criminal defense bar and served on the New York Commission of Public Integrity and the Commission to Combat Police Corruption.

On top of that, Senator Schumer would think it particularly worth noting that Mr. Broderick devotes substantial amounts of his time to giving back to the community. He is actively involved in pro bono work and serves on the board of various organizations dedicated to the improvement of the legal profession.

Finally, Senator Schumer would express his extreme pride that Mr. Broderick would be the first Dominican American Federal judge on the New York bench. In sum, Mr. Broderick's excellent legal background and professional experience, strong ties to New York, intellect, and demonstrated leadership skills make him an excellent choice for the District Court for the Southern District of New York.

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

How did I do?

[Laughter.]

Senator WHITEHOUSE. Chuck would have done it better, but I filled in as best I could.

So at this point, let me ask Mr. West to come forward and let me officially welcome him as the Chairman. I have a statement for the record from Senator Boxer on behalf of Mr. West, and let me, without objection, add that to the record.

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

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator WHITEHOUSE. And let me welcome Mr. West. The position of Associate Attorney General, as those of us know who have served in the Department of Justice, is a critical one with great responsibility. Confirming an outstanding nominee like Mr. West to that position as quickly as possible will help ensure the smooth running of the Department. Mr. West brings exemplary credentials to this, and I look forward to what I hope is a smooth, swift, and uneventful confirmation process.

And without further ado, let me turn to the distinguished Ranking Member of the Judiciary Committee, Senator Grassley.

Senator GRASSLEY. I do not have an opening statement.

Senator WHITEHOUSE. All right. Things are looking smooth already.

Mr. West, I am sure you have friends and family here who you would like to take this opportunity to introduce, and I am sure you have a statement as well. So I invite you to proceed, and I welcome you to the Committee.

STATEMENT OF DEREK ANTHONY WEST, NOMINEE TO BE ASSOCIATE ATTORNEY GENERAL

Mr. WEST. Thank you so much, Mr. Chairman and Mr. Ranking Member. Thank you for having me this morning, and also let me just express my gratitude to Senator Feinstein for her introduction and her support.

There is no higher honor than being able to represent your fellow citizens, and so I am quite honored to be here today with you. And, yes, I do have many family members I would like to introduce to you who have come this morning because the simple fact is that, but for God's grace and their love and support, I simply would not be sitting in this chair.

So, first, Mr. Chairman, if I could introduce my law school classmate, my best friend, and the love of my life, my wife, Maya Harris. Maya is an extraordinary woman of accomplishment, in the law, in philanthropy, in public policy. As much as she has been my partner in life, she has been my teacher, and every day she is in my life is a blessing.

Our daughter in red, Meena, of whom we are ridiculously but deservedly proud, I think. She graduated from Harvard Law School just this last spring, and she is now clerking for the D.C. Court of Appeals.

And next to Meena is my sister-in-law, Kamala, who was introduced a little bit earlier. Kamala sets a remarkably high standard for effective, admirable public service, and her support and love has been unwavering, and I am deeply grateful that she is here with us today.

Also with us is my aunt, Portia, who I am so glad that she could make it. She flew—I think she came right from the airport to be here with us this morning, and her love and support is something that enriches my life, and I am so grateful that she is here.

And then last, but not least, is my mother, who is seated right behind me in blue. She—Peggy——

Senator WHITEHOUSE. The one with the enormous smile, is that——

Mr. WEST. An enormous smile. Her example of strength, of courage, of compassion, and integrity is just something I try to—I strive to emulate in my life every day, and so I am just so grateful she could be here with us this morning.

There are four people who are not with us that I would briefly like to introduce, Mr. Chairman: my two younger sisters, Pamela and Patricia, whose love keeps me grounded as only siblings can; my mother-in-law, Dr. Shyamala Harris, is a brilliant cancer scientist who passed away several weeks before my last confirmation hearing and whose spirit I have carried with me every day since; and my father, who lost his own courageous battle with cancer just 8 weeks ago.

Mr. Chairman, my father was born dirt poor to a family of sharecroppers in the segregated Deep South. The first in his family to attend college, he instilled in me, his only son, a deep love for this country, an abiding faith in her virtues and values, and a unbridled optimism in her possibilities. And his presence certainly fills my heart today.

Mr. Chairman, if confirmed, I want to assure you that I will continue to work tirelessly on behalf of the Department's singular mission to pursue justice on behalf of the American people. I will always strive to ensure that the Department's work is characterized by professionalism, independence, fairness, and nonpartisanship, whether it is through our efforts to protect our national security or recover taxpayer dollars lost to fraud, waste, and abuse, or to fairly and effectively enforce our civil rights laws. And if confirmed, Mr. Chairman, I will continue to seek opportunities to build on my working relationship with this Committee and with others in Congress.

I want to thank you again for this opportunity and for considering my nomination. I want to also thank the President for his confidence and the Attorney General for his confidence in me and nominating me to this position.

[The biographical information of Mr. West appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Mr. West, and let me just take this opportunity, in addition to expressing my appreciation for you being here and for your exemplary public service, to express the great pride and satisfaction that I feel as a former United States Attorney in the manner in which Attorney General Holder is conducting his duties and has directed that Department. I think very, very highly of him, and I have two questions that I will ask of you, and then turn to the Ranking Member, and then to Senator Franken.

America has been described by a number of people as being on the losing end of the biggest transfer of wealth in the history of humankind through the cyber attacks that penetrate our private sector corporations and steal wholesale by the terabyte their intellectual property.

Part of the problem with the cyber situation is that botnets swarm over the Internet. Botnets are groups of computers that have been put under the control of another computer, and unbe-

knownst to their user, they can be slaved and used to attack private corporations, used as vehicles for cyber attacks and so forth. And the Department pulled together a very able group, and they took a very important civil action against the Coreflood, so-called, botnet, and as a result, they took it down.

After that, the participants in the Coreflood operation went back to their individual offices from whence they had come, and the team was disbanded, and I understand that there have been sporadic efforts at botnets in individual U.S. Attorney's Offices, but I want your pledge that, if confirmed, you will sit down with me and any other interested Members of this Committee to discuss how to improve the Department's enforcement through civil means of ridding the Internet of these botnets and using the various hygienic measures to try to clear that out that are available.

Mr. WEST. Mr. Chairman, you have that pledge. This is a top priority for the Department, dealing with the cyber threat, and although much of how we deal with that threat does not fall within my direct management responsibilities, I will certainly be glad to work with you and anyone else on this Committee as we look at different approaches on how best to meet that threat.

We have been taking some steps that I know you are aware of, whether it is the cyber specialist network and trying to pull together prosecutors and agents and investigators who are dedicated to dealing with this threat; whether it is the enhanced coordination by the FBI and other investigators with local and State law enforcement. But as you point out, this is a threat that does not rest, and it is one that requires our continued vigilance, and I look forward to working with you and others on that.

Senator WHITEHOUSE. The second question has to do with the relationship between the Tax Division and the IRS. Now, I have had a hearing that I think has highlighted my concern that there are violations of fairly simple laws, like 18 U.S. Code 1001, the false statements law, which are, I think to use the Department witness' testimony—I forget whether she said "plain vanilla" or "bread and butter" traditional criminal prosecutions that are, I would describe as "open and notorious" at this point and on which the Department has taken no action because of an agreement with the IRS that it will not take action in these matters until there has been a referral by the IRS. And I would like to ask your commitment that, again, with me and any other Members of the Committee who might be interested in that issue, if confirmed, you will come and discuss what would be the appropriate resolution there.

Mr. WEST. Again, I would be happy to have the opportunity to talk with you about that. I want to be careful not to wander too far outside of my lane because the Criminal Division is one of those divisions which is not under the direct management responsibility of the Associate's office. It falls under the purview of the Deputy Attorney General. But having said that, there is also, as the Attorney General has acknowledged, an active inquiry into the IRS. But having said that, you have my commitment that I would be happy to talk with you about these and other issues.

Senator WHITEHOUSE. And as I turn to the distinguished Ranking Member, he kindly reminded me that I had omitted to swear you in.

[Laughter.]

Senator WHITEHOUSE. I think as a matter of law any witness who is testifying before Congress is deemed to be sworn, and I just want to clarify our understanding that your testimony today is as if under oath and that the testimony you give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. WEST. I do. I had assumed as much.

Senator WHITEHOUSE. Yes, thank you.

Senator GRASSLEY. Now, that may sound like I did not believe you were——

[Laughter.]

Mr. WEST. No, not at all, Senator.

Senator GRASSLEY. For procedure, since I may be the only one of my caucus that is here, I will have a lot of questions. So if I would be holding up him in order to take a lot of time for my questions, I would like to have Senator—so I do not hold up the Senator from Minnesota.

Senator FRANKEN. Well, thanks. I will take——

Senator GRASSLEY. Would you like to go ahead?

Senator FRANKEN. Yes. Thank you.

Senator GRASSLEY. Please do.

Senator WHITEHOUSE. Then I recognize the Senator from Minnesota and thank the Ranking Member for his courtesy.

Senator FRANKEN. Yes, I would like to thank the Ranking Member.

Mr. West, when we met in my office, we talked a little bit about the DOJ's case against S&P, against Standard & Poor's, and this has been something I have been following because for the last 3 years I have been looking for a way to reform our credit rating agency—the process by which our credit rating agencies now and have been chosen by the issuers of these structured financial products. The banks will pick their own credit rating agency to do it and give them a handsome fee, and the credit rating agencies know that if they do not give AAA to a product, they will lose the business for the next gig. And your whole case against—what was your capacity in the DOJ case against S&P?

Mr. WEST. Well, Senator, when I was the head of the Civil Division, I pulled together the team to investigate that case and to put it together, and as Acting Associate Attorney General, I was able to approve it going forward with the authority and concurrence of the Attorney General and the Deputy Attorney General. But that is a case that I am very proud of and believe very strongly in.

Senator FRANKEN. Okay. Now, Senator Wicker and I are trying to fix the system. We believe that the issuer-pays model in no small way led to the entire collapse of the financial—the meltdown of the financial system because AAA ratings were given to these subprime mortgage-backed securities, and then to collateralize debt obligations on those, and once they ran out of subprime debt—mortgages to securitize, they then did bets on the bets, and bets on the bets, and bets on the bets.

You gave a speech a couple months ago about this issue, and I thought you got it exactly right. Here is what you said: "Repeatedly S&P promised that its ratings would be objective and independent

even though the banks and other institutions hired S&P to rate these financial products. And even though S&P earned millions as a result of issuing those ratings, S&P promised that its rating would be unaffected by their concerns about market share, revenue, or profits. But the evidence we have uncovered tells a different story."

Could you tell us that story?

Mr. WEST. Well, briefly, Senator, we believe that and we have stated in our complaint that S&P purported to make ratings on products that were independent and objective, that those were ratings that were unaffected by their concerns about market share, about profit, about any fees they may actually be receiving. And we believe that the evidence will demonstrate, as we pursue this case, that that simply was not the case; that business concerns, concerns about market share, concerns about profit did affect the type of ratings that S&P issued. We believe they simply said one thing and did another. And we believe strongly in that case, and the recent motion to dismiss that was filed by S&P does not lead us to conclude any differently.

Senator FRANKEN. As a matter of fact, in that filing they cited an earlier case in which a judge said that their claims to be independent and objective were mere commercial puffery and, therefore, they could not be sued for fraud because they would only be fraudulent if that claim of—if it had not been so—they could only be sued for fraud if you could take that at face value their claims of being independent and objective, and everyone knew—this is what the judges said—that that was just mere puffery.

Do you believe there is a need to reform the way the rating agencies are done, the way they are chosen?

Mr. WEST. Well, I certainly think there is a need for accountability, and that is the purpose that we spent so much time investigating this case and ultimately bringing this case against S&P. We believe that accountability here is extremely important, and we believe, as we have stated in our complaint, that the type of activity that we have outlined is activity that helped contribute to one of the largest financial calamities in the history of the country.

And so, you know, I leave it to policymakers and others to determine what reforms, if any, are necessary. But certainly, you know, as an official of the Department of Justice charged with enforcing the law, we believe that accountability is appropriate here.

Senator FRANKEN. Well, I believe accountability is appropriate. I also believe that we need to change the model by which the credit rating agency is chosen by the issuer of the product and also paid by them. And I think that creates a pretty clear inherent conflict of interest, and that needs to be changed. Thank you for your work on that.

Thank you, Mr. Chairman. I thank the Ranking Member, and the Ranking Member and Senator Whitehouse both voted with Senator Wicker and me on our fix on that, which is to change the issuer-pays model, and I would like to thank them both.

Thank you, Mr. West.

Mr. WEST. Thank you, Senator.

Senator WHITEHOUSE. I recognize our Ranking Member.

Senator GRASSLEY. Mr. Chairman, I will proceed as if there is one round, but if you want to interrupt me for another round for you after a while, I understand.

I have no questions about your qualifications, so my goal is to get some things on the record here. I want to question you about your involvement with the Justice Department quid pro quo/city of St. Paul. The Department declined to interview in two false claims qui tam cases in exchange for the city of St. Paul withdrawing a case pending before the Supreme Court. In a transcribed interview with my staff and staff from the House Judiciary and Oversight Committees, you testified about this. You testified that, as Assistant Attorney General for the Civil Division at the time, you had no personal role in making that arrangement. But you also told us that the law specifically authorizes the Assistant Attorney General for the Civil Division to make the final decision whether or not to intervene or decline qui tam cases. You also testified that you did not delegate this power in the St. Paul case. I read this as being somewhat contradictory.

The Assistant Attorney General for the Civil Rights Division, Mr. Perez, also testified and stated that he traveled to St. Paul February 2012 and personally made the arrangement to decline the two False Claims Act cases in exchange for the city withdrawing the Supreme Court case. So these are questions—I think I will ask three questions in one because they kind of go together.

Given the law requires you to sign off on these matters, why was Mr. Perez in St. Paul settling two False Claims Act cases instead of you? So that would also bring up the question: Did you delegate your authority to Mr. Perez to make this arrangement in your place? Or were you completely uninformed about that happening?

Mr. WEST. Well, Mr. Ranking Member, thank you very much for the opportunity to talk about this case. It is a very important case, and giving me the opportunity to talk about why I am comfortable with the fact that considering the advice that I received from senior career attorneys in the Department of Justice considering the variety of factors, including the fact that the client agency did not support intervention in this case, I appreciate the opportunity to explain why I believe the decision I made in that case was in the best interests of the United States.

One of the things—I think it is an important backdrop. One of the things I am most proud of is, of the 3½ years I led the Civil Division, our ability using the tools that you gave us in the qui tam provisions as part of the False Claims Act to recover more taxpayer dollars lost to fraud than in any other 3½-year period in the history of our country, over $11 billion. And we were able to do that, again, because of your leadership in giving us those tools that allowed us to be aggressive against fraud, waste, and abuse. And the fact is that whistleblowers have a friend in this Justice Department.

When you look at the number of whistleblower suits that were filed under my leadership in the Civil Division, it went up by 50 percent, and that is because whistleblowers believe that they will be fairly heard by this Justice Department.

Now, of course, not every whistleblower suit is as strong as the next, and this is a case—the *Newell* case and the *Ellis* cases were

cases that from the very first time I heard about that from career attorneys in the Justice Department, they were described as "close cases," and ultimately the most senior career Justice Department attorney in the Civil Division, who has decades of experience in False Claims Act litigation, he described it as a "weak case" and recommended against intervention. And so following the normal process that I normally follow when I was in the Civil Division, taking the advice of senior career attorneys, considering all of the various factors, including the fact that HUD, the client agency we would represent, did not support intervention in this case, and considering, you know, a variety of issues, I ultimately determined that intervention was not in the best interests of the United States.

And so that decision was mine. It was the Civil Division's. It was not delegated to anyone else. And so as far as that is concerned, that was my decision, and it is one that I think was the right one.

Senator GRASSLEY. I think you answered the first questions I asked except can you answer the one of—let me start over again. Make clear to me then why Mr. Perez went to St. Paul instead of you on February—or whenever he went up there to deal with the people in St. Paul. Can you answer that for me?

Mr. WEST. Certainly, yes—well, generally, because I am not as clear on the dates when he may or may not have gone. But generally the reason Assistant Attorney General Perez was even involved in this is because he was trying to resolve a case in the Civil Rights Division called *Magner*. When he met with the city, my understanding is that the city linked these two cases together, asked that there be a resolution——

Senator GRASSLEY. I think I can save some time here.

Mr. WEST. Okay.

Senator GRASSLEY. I think you answered that question.

Now, you did give me some answers that in just a minute I am going to raise some questions about the accuracy of what you said.

Mr. WEST. Sure.

Senator GRASSLEY. Initially career attorneys at HUD and in the Minnesota U.S. Attorney's Office and the Civil Division recommended the Department intervene in the case, although I want to emphasize those are career attorneys. After Mr. Perez became involved with HUD and the Civil Division, that recommendation changed. In fact, Mr. Perez informed you that HUD had changed positions, and that informed you in an email on November 30, 2011.

Question: Did you find it odd that Mr. Perez seemed to know more about a case pending in the Civil Division than you did?

Mr. WEST. Well, I do not think I ever had the impression Mr. Perez knew more about a Civil Division case than I did. I can tell you that the only recommendation I received—I subsequently learned more about this case in preparation for the interview I had with your staff. But at the time, the only recommendation I received from career Justice Department attorneys—and not just any career, the most senior career Justice Department attorneys in the Civil Division with the most experience in False Claims Act litigation. The only recommendation I received from them was not to intervene, and I agreed with that recommendation because in the words of one of them, this was a weak case.

Senator GRASSLEY. Okay. The email I was referring to, "I am confident that the position has changed. You will be hearing from Helen today," that is the email I was referring to.

Mr. WEST. And I think I know what email you are talking about. I think, if memory serves, that is an email exchange I had with Mr. Perez—not so much about the merits of the qui tam case but whether or not the client agency, HUD, was—what their position was in that case. And it turned out that I was under the impression that they may be supporting intervention, and it was his impression that they were not.

Senator GRASSLEY. Okay. Now, this is where I want to challenge you on this business of whether it was a close call or not. You testified that Mike Hertz, the highest ranking career attorney in the Civil Division, was initially on the fence about this case, calling it a "close call." You then testified he later said it was a weak case.

Now, we have documents that show that Mr. Hertz thought the quid pro quo arrangement "looks like buying off St. Paul." Mr. Hertz also had concerns and went directly to the Office of Associate Attorney General expressing concerns about the arrangements to then-Associate Attorney General Perrelli's Principal Deputy.

Did Mr. Hertz express these same concerns to you?

Mr. WEST. Not in the way that you have just relayed them. The concerns that—or the sentiments that Mr. Hertz—that I recall Mr. Hertz expressing to me were the first time he mentioned this case to me—and by "this case," I mean the *Newell* case—he said, you know, I think this is a close call. I want the other career attorneys, the more junior career attorneys on his team to do more work.

The more he learned about that case, the more concern he expressed about its viability, because, you know, one of the things we have to remember is that we intervene in only about 25 percent of the cases that are brought to us. The vast majority of cases we do not intervene in. I think one of the reasons we have been so successful in using our False Claims Act tools is because we are choosy. We go with cases where there is evidence to support the allegations.

And the more he learned about this case, the less sanguine he felt about it. Ultimately what he told me is that, in his view, this was a weak case that did not merit intervention.

Senator GRASSLEY. In regard to this—and this is my last question on this point, and then I want to talk to you about whistleblower protection. The extent to which he talked to you or not, we do know that Mr. Hertz went directly to the Associate Attorney General, and not you. Was it because he thought you were complicit with Mr. Perez in cutting a bad deal?

Mr. WEST. I cannot speak to what Mike Hertz's state of mind might have been. I can tell you that what you have just relayed, those concerns or those sentiments were never expressed to me by Mike Hertz. Mike—you know, the thing about Mike—and I know you knew him, Senator. Mike had no compunction with letting people know where he stood on any issue. And I got to tell you, if he had a problem with the case—because there were plenty that he would tell me, "I got a problem with this case or arrangement," he would let me know. And he never let me know that.

Senator GRASSLEY. Let us move on. When you were nominated for Assistant Attorney General, Civil Division, in 2009, I asked you about your commitment to whistleblowers. Specifically I asked you if you would vigorously enforce the laws that protect qui tame relators' false claims. You promised me and pledged to Congress that you would work to protect whistleblowers.

In the St. Paul quid pro quo case, we have Fredrick Newell, the relator. He testified to the House a few weeks ago that he was hung out to dry by the Justice Department's Civil Division.

So in declining to intervene in the case described by the Civil Division career lawyers as "a particularly egregious example" of fraud in exchange for the city dropping the *Magner* case, would you say that you vigorously protected Mr. Newell's interests?

Mr. WEST. I would say, Senator, that if you just look at the facts and the numbers, I think it demonstrates that we vigorously represent whistleblower interests in those cases that we choose to get involved in. I mean——

Senator GRASSLEY. Let me move on.

Mr. WEST. Sure.

Senator GRASSLEY. Okay. I want to go to some questions about possible conflicts between Civil Rights and the Civil Division. If you are confirmed for the position of Associate Attorney General, you will oversee both Civil Rights and Civil Divisions within the Justice Department. In the St. Paul quid pro quo case, you surrendered your authority over false claims in the Civil Division to the Civil Rights Division effectively letting Mr. Perez quarterback this "deal that was not a deal," to quote one of your Civil Division attorneys.

Question: As Associate Attorney General, would you continue to allow the Civil Rights Division to exercise powers of the Civil Division? And if not, would you plan on solving disputes between the Divisions when they arise?

Mr. WEST. Senator, with respect, I have to disagree with the premise of the question. I never abdicated my authority or my responsibility in the Civil Division.

Senator GRASSLEY. Okay. Let us move on.

Mr. WEST. All right.

Senator GRASSLEY. To false claims. During your transcribed interview, you agreed that it would be highly inappropriate for the Justice Department to provide information to qui tam defendants like St. Paul for the purpose of knocking out a relator. But an investigation uncovered the facts that Mr. Perez offered assistance to St. Paul by providing information that would hurt Mr. Newell's case and might even result in its dismissal.

Do you still believe it was inappropriate? And if so, then do you disagree with Mr. Perez's decision to offer assistance to St. Paul in challenging Mr. Newell as an original source?

Mr. WEST. I am sorry. Do I agree what was inappropriate?

Senator GRASSLEY. Our investigation uncovered the fact that Mr. Perez offered assistance to St. Paul by providing information that would hurt Mr. Newell's case and might even result in its dismissal. Do you still believe it would be inappropriate? And if so, then do you disagree with Mr. Perez's decision to offer to St. Paul in challenging Mr. Newell as an original source?

Mr. WEST. So I think this issue concerns the attempt by the city of St. Paul to get discovery outside the normal Toohey process, because I do remember this coming up—I do not remember or I am not aware of some of the conversations as you have related them regarding Tom Perez, but I do remember——

Senator GRASSLEY. But if you do not remember, let me followup to hasten along——

Mr. WEST. Oh, sure, sure.

Senator GRASSLEY. We will submit that to you for answer in writing.

Mr. WEST. Sure.

Senator GRASSLEY. And then go back and do that.

[The information referred to appears as a submission for the record.]

Senator GRASSLEY. In 2011, you responded to questions for the record that I wrote to you regarding changes made to the False Claims Act in the Affordable Care Act. One of those provisions authorized the Department to challenge dismissals sought by defendants on public disclosure grounds. I asked whether you had issued guidance concerning when the Department would oppose these types of motions using this new authority. You stated that the Department does not believe issuing guidance on this provision would be useful. However, in the *Newell* case, this provision could have saved his case from being dismissed on public disclosure grounds. In fact, by choosing not to intervene in the case and choosing not to contest the public disclosure filing by the city of St. Paul, the Department then, as I have said, left Mr. Newell out to dry twice.

Why did the Department choose not to contest the public disclosure bar in Mr. Newell's case? Was it because that would have violated the quid pro quo that Mr. Perez negotiated with your approval?

Mr. WEST. I think the only way I can answer that is, to the best of my knowledge and memory, the *Newell* case was one of the 75 percent of the cases that we chose not to intervene in because it was not strong. And when we do not intervene in a case, it does not end that case. That case can continue, and, in fact, thanks to the qui tam provisions you authored, we will still as the United States be able to recover if Mr. Newell is successful. But the fact of the matter is the vast majority of whistleblower suits under the False Claims Act are not successful, which is why we are so choosy about which ones we devote limited Government resources to support.

Senator GRASSLEY. Our investigation uncovered that Mr. Perez repeatedly asked attorneys in your Division to not mention the deal with St. Paul in the declining memorandum that you submitted to the court in Mr. Newell's qui tam case. On one occasion, Mr. Perez directly called an attorney in Minnesota and left a voicemail telling him not to include a discussion of St. Paul's Supreme Court case, known as the *Magner* case, in the memo. In fact, you conceded in your transcribed interview that you agreed that it would be inappropriate to leave out this discussion.

So then this is my last question to you, on any subject: Explain to me why you believe that it would be inappropriate to leave out this discussion?

Mr. WEST. Well, Senator, I believe you have the memo that I signed suggesting that we would not—or making the decision that we would not intervene in the *Newell* case, and there are a whole variety of factors that I included in that memo. I just believe that when I make those decisions and it is my practice when I make those decisions to include a full discussion of all the relevant factors, and that is what that memo reflects.

Senator GRASSLEY. I do have a rebuttal to the fact that it was—well, I better read it this way. I would like to point out your office description of what occurred. This is from an attachment to an email provided by the Department of Justice, Bates stamped STP1411. "Relators allege in *Newell* that the city of St. Paul falsely certified that it was in compliance with Section 3 of the Housing Act (incentives for low and very low income citizens) when it obtained HUD community development block grants. The Ellis cases alleges that the city of Minneapolis is inappropriately condemning and knocking down low-income housing, which has a disparate racial impact. Government"—and this is emphasis. "Government declined to intervene in *Newell* and has agreed to decline to intervene in Ellis in exchange for"—double emphasis—"in exchange for defendants' withdrawal of a cert. petition in Gallagher case, a civil rights action."

This is not my characterization of the agreement that DOJ reached. This is your office's real-time description of what occurred, and it does not state that it was a close case or a bad case. It does not say that *Magner* was just one of many factors. It says that you dismissed the case in exchange for getting the city to withdraw *Magner*. This is the update of the case your office provided to the Deputy Attorney General and how you described the agreement to him.

So in a sense, how can you sit here today and credibly state otherwise?

Mr. WEST. Because it is the truth, Senator. I mean, you know, I have—as I have said before, I can only tell you what I considered in making the decision not to intervene, and that is all reflected in a memo which we provided to you. There were a number of factors. We were very up front that the *Magner* case was one of the factors, but, candidly, it was not the most important factor to me. It was much more important to know whether or not we were going to be able to have the support of the client agency to devote Government resources to this case. There were other factors that were much more important, the evidentiary basis of the allegations and what-not. But that is all reflected in my memo.

Senator GRASSLEY. I thank you for patience putting up with me.

Mr. WEST. No, not at all, Senator. It is my pleasure to be here and my honor to be here.

Senator WHITEHOUSE. Mr. West, let me just followup briefly. As you know, Senator Grassley is a passionate champion of the rights of whistleblowers and the whistleblower process, and so his questions come in very good faith, I believe, and from a very sincere point of view.

My recollection from whistleblower cases, qui tam cases, when I was U.S. Attorney is, as you have said, that the Government may or may not intervene. If the Government does intervene, it takes

over the litigation and provides resources, but it does not change the legal status of the case in any way. The case has to stand on its own merits, whether it is pursued by the qui tam proponent or whether it is pursued by the Government. And a number of these cases go to trial without the Government and are disposed of without the Government. Some are successful, some are not.

We have spent a lot of attention in the hearing today on the *Newell* case. Can you tell me what the disposition of it was? Did it come to a disposition, and what was it?

Mr. WEST. I do believe the court dismissed the *Newell* case because, I think, of the evidentiary basis. But I do think that that dismissal is being appealed by Mr. Newell, which is his right. And as I say, ultimately if he is successful in proving his allegations in court, the Government will recover, get its share of the recovery of any taxpayer dollars it is entitled to.

Senator WHITEHOUSE. And could you just give us a moment of context in the—we have heard an immense amount about two qui tam cases and one potential appeal. Put that into the context of the scope of work that in your capacity you oversaw during this time period?

Mr. WEST. Well, during the 3½ years I was the head of the Civil Division, as I have said, I think one of the things I am most proud of is the fact that we were able to participate in hundreds of qui tam cases, and the result was we were able to recover more taxpayer dollars lost to fraud than in any other 3½-year period in the history of our country.

No Justice Department has recovered more money in that type of time period before, and we are going to keep trying to set new records every year.

But, again, you know, I have to tell you, I have a great deal of not only respect for Ranking Member Grassley, but also a great deal of gratitude to him because of not only his leadership in championing the qui tam provisions, but the FERA amendments in 2009, which Senator Grassley and Chairman Leahy were really responsible for making sure we had at the Justice Department the tools that we needed to be effective and aggressive against fraud.

Senator GRASSLEY. Can I——

Senator WHITEHOUSE. Please.

Senator GRASSLEY. You are absolutely right, how qui tam works whether the Government is involved or not. But in regard to this, Senator Leahy and I worked very hard—I do not know—2, 3 years ago, whenever we passed some legislation, to take care of the problem. So I want to read something in response.

Mr. Newell lost in court precisely because the U.S. declined to intervene. After the U.S. declined to join the case, the judge dismissed Mr. Newell's case because of, the legal words, "public disclosure bar," finding he was not "original source"—again, a legal term—of the information to the Government. That was the whole point in Mr. Perez's agreement. That is why it was so important to the city of St. Paul that the U.S. not join the case.

So referring to what Senator Leahy and I amended, we amended the False Claims Act several years ago precisely to prevent the outcome like this. Specifically the amendments made clear that the Justice Department can contest the original source dismissal, even

if it fails to intervene, as it did in this case. So the Department did not merely decline to intervene, which was bad enough; the Department affirmatively chose not to contest the city's motion to dismiss. In effect, that decision all but guaranteed that Mr. Newell would be defeated.

When I asked you, Mr. West, about this in 2011, you said it was necessary to issue guidance on this. This would have directly helped Newell, so that I want to know why it was not used at that particular time.

Mr. WEST. Why the guidance was not used?

Senator GRASSLEY. Yes.

Mr. WEST. I do not know the answer to that, Senator. I think to the extent that my office had a role in——

Senator GRASSLEY. But the point was you should have offered guidance.

Mr. WEST. Well, I do not know if we did or did not. I am not familiar with what happened. But I would be happy——

Senator GRASSLEY. Well, then maybe you could answer in writing, please.

Mr. WEST. Sure.

[The information referred to appears as a submission for the record.]

Senator GRASSLEY. I will rest my case.

Senator WHITEHOUSE. Okay.

Senator GRASSLEY. We could go on forever.

Senator WHITEHOUSE. For the record, it is not clear to me why the Department of Justice intervening either in the qui tam case on the merits or in the public disclosure bar issue would change the facts upon which the court ruled against Mr. Newell on that matter. We come in as the new lawyer, but we do not bring new facts when we come in as the Department of Justice. But perhaps that can be further elucidated in the written responses. Mr. West, I encourage you to be prompt with those. I thank my Ranking Member for his attention to an issue that I know commands his passion, and we will conclude this portion of the hearing and take a very brief recess while the seats are exchanged for the two judicial nominees who are present. And I will join my colleagues in welcoming all of Mr. West's family but most particularly his daughter. And as a former Attorney General, let me go out of my way to welcome Kamala Harris, the State Attorney General of California.

Thank you all very much.

Mr. WEST. Thank you, Mr. Chairman. Thank you, Senator.

Senator GRASSLEY. Thank you.

[Pause.]

Senator WHITEHOUSE. The hearing will return to order. Let me welcome Ms. Caproni and Mr. Broderick. Let me do a little bit of administrative work and ask unanimous consent to include in the record the great number of letters of support that we have received for Tony West's nomination, without objection.

[The letters appear as submissions for the record.]

Senator WHITEHOUSE. And let me also put into the record a letter from 18 Bush administration officials that the Chairman and the Ranking Member have received in support of the nomination

of Valerie Caproni. And, without objection, that will also be part of the hearing record.

[The letter appears as a submission for the record.]

Senator WHITEHOUSE. I think given the hour I will forbear from making my opening statement with regard to these two nominees, but I do want to express a particular welcome to Ms. Caproni. When she was general counsel to the FBI, I served on the Intelligence and Judiciary Committees, and we did a lot of work together. She was always entirely competent, knowledgeable, capable, forthright, and a pleasure to work with, and I could not be more pleased that she is a nominee for the New York court.

Mr. Broderick, I welcome you as well. Although we do not have the personal experience with one another, your qualifications speak for you, as did Chuck Schumer through my rather weaker voice this morning.

I know each of you have family members here you would like to introduce and that you have a statement you may wish to make, but before I do that, let me just——

Senator GRASSLEY. I will just put a statement in the record.

Senator WHITEHOUSE. The Ranking Member will put a statement in the record.

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

Senator WHITEHOUSE. Let me have you sworn in. If I can find my little sheet. It is in there somewhere.

Well, never mind. Do you swear that the testimony you give before this Committee today will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CAPRONI. I do.

Mr. BRODERICK. I do.

Senator WHITEHOUSE. Thank you. Please be seated. If I do not know that by heart yet, then I——

[Laughter.]

Senator WHITEHOUSE. Why don't we proceed just across the table, leading with Ms. Caproni.

STATEMENT OF VALERIE E. CAPRONI, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Ms. CAPRONI. Thank you, Mr. Chairman, and thank you for those very kind words. I would like to thank the Committee for having this hearing. I would also like to thank Senator Gillibrand for her very kind introduction and for recommending me to the President. And I would like to thank the President for actually nominating me for this position.

I also want to thank my friends and family for their support through this process in ways large and small. Their help has been invaluable.

I would also like to thank my friends and colleagues from Northrop Grumman who came along today and those who are watching from the office in Falls Church. But it is time for them actually to get back to work, so hopefully this will be short from here on.

I would also like to thank my sister who has come up from Georgia and my brother who is supposedly watching in his office in At-

lanta. Both my parents have passed away recently, but I am sure they are here in spirit.

So, with that, I stand ready to answer any questions.

[The biographical information of Ms. Caproni appears as a submission for the record.]

Senator WHITEHOUSE. Mr. Broderick.

STATEMENT OF VERNON S. BRODERICK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. BRODERICK. Thank you, Chairman. And also thank you for channeling Chuck Schumer earlier today. That was a very good job.

I would like to thank President Obama for his confidence in me and for the honor of the nomination.

I would like to thank Senator Schumer for the recommendation to the President.

I would like to thank Chairman Leahy for scheduling this hearing and for having us both as witnesses.

And I would also like to thank Ranking Member Grassley for his participation in this hearing, and thank you, Senator, for presiding over this hearing.

I do have some introductions. There are a lot of folks here and many listening to the webcast. My mother, Mercedes, is here behind me. I trust she is smiling, although I am not going to turn around to look.

Senator WHITEHOUSE. She is.

Mr. BRODERICK. Thank you.

Senator WHITEHOUSE. Let the record reflect that it is a very large and nice smile.

[Laughter.]

Mr. BRODERICK. Great. My sister, Cecily, and her daughter, Dana, who is 7. Unfortunately, my brothers, Gregory and Cecil, could not be here, but they are listening on the webcast. My girlfriend, Fern Copas, is here. I am not sure exactly where she is—oh, she is right in between my mom and my sister.

I also have Michele Melland and Mitch Strassberg, two of my close friends, who are here with four of my godchildren: Alexander and Stella, who are 9; Oliver, who is 7; Lena, who is 5. I should also mention I have nine godchildren all told, so I almost got a majority of them here.

A college roommate, Dan Kelly, is here with two of his children, Jenna and William. Todd Chandler and Kaylin Johnson are here. Todd is my partner. I also have many other folks here from our D.C. office, including, I think, most of the summer associates from our D.C. office. Just about all of the summer associates in New York are also listening. Laura Wilkinson from the D.C. office, my partner, is also here. And I appreciate their presence. And also Erin Law traveled here, who is a former colleague and friend who is here to support me.

Last, I should mention—and it is one of the reasons I will try and be on my best behavior—apparently the third through the fifth grade class of the Friends Day School in Garden City are also listening. That is Dana's classmates.

Those are the introductions I have. I welcome any questions that you may have for me.

[The biographical information of Mr. Broderick appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much.

Let me ask each of you, I think there are five fairly noncontroversial principles that we expect judges to abide by. I think we expect that judges must respect the role of Congress as representatives of the American people. We expect judges to decide cases based on the law and the facts. We expect judges not to prejudge any case but to listen to every party fairly that comes before them. We expect judges to respect precedent. And we expect judges to limit themselves to the issues that the court must decide.

I believe that those are all noncontroversial, but I would like to ask you for the record that you will adhere to those principles as you conduct yourself in the office for which you seek confirmation.

Ms. CAPRONI. I concur. If I am lucky enough to be confirmed, I completely agree with those five principles.

Mr. BRODERICK. Absolutely, Chairman. I would absolutely abide by those principles.

Senator WHITEHOUSE. Let me ask you one additional question. We have a distinctly American system of Government, one with separated powers between judicial, executive, and legislative branches. It is a system that has served us well through very considerable upheavals and retained its essential nature through our history as a country.

One of those elements, at least according to the Founding Fathers and legal scholars like Blackstone and observers of American history like de Toqueville, is the jury. And they repeatedly assert that the jury has, in addition to its role as a fact finder within judicial proceedings, a larger role within the structure of American Government, a place where no matter where the power structure lies, you can go and be heard before regular people, a place where the decisions of Government are conferred to ordinary citizens rather than officials, a place that can stand against the tides of power and influence that politics often cause to wash about, and a place that is ultimately an instrument of liberty. And I would ask your thoughts on that.

There is fairly considerable pressure to move as much away from the jury as we can, to shunt things off into arbitration, to raise the procedural bars that allow cases to be knocked out before they get to a jury. Every case, of course, has to be decided on its merits, but I am interested in what you see as the role of the jury system. Does it, in your view, have any role beyond being a mere fact-finding adjunct to the court?

Mr. BRODERICK. If I may, the fact finding is obviously a very critical and important factor, but it is more that the jury adds to the legitimacy of the judicial process in this country. It has for decades. I have been fortunate enough as a criminal prosecutor to see a jury in action, and it is impressive. You have citizens that come in, 12 and some alternates that come in, who hear a case, pay careful attention, and render a decision. And I have to say that when you have—and I have represented individual defendants also in criminal matters. And when you have a jury who is sitting there, it gives a level of comfort that you know that the citizens are going to be there and are part of the jury system, and the amount of

dedication that people have, I think it absolutely is a critical part of our judicial system and our way of life.

Senator WHITEHOUSE. Ms. Caproni.

Ms. CAPRONI. I do not have much to add to what my colleague has just said. I think that is totally right. I have served on a jury, and I have also, as a former prosecutor, argued before many juries, and it is actually quite heart-warming how hard normal citizens work to really be a critical part of the justice system, either the criminal justice system or the civil justice system, to listen carefully, really understand what is going on, and they take their job very seriously. And I think we owe citizens who serve on juries a huge debt of gratitude for taking time out of their busy day to serve as part of our judicial system.

Senator WHITEHOUSE. I appreciate that. I think that one of the reasons our system was designed the way it was with the jury system there to protect individuals is because the experience of the Founding Fathers was that the Governors could be corrupted. They thought that very often they were. They were very concerned about the colonial Governors. They thought that passions of the moment could overwhelm legislatures. That was their experience. Thomas Jefferson wrote eloquently about it. They knew that the press could drive public opinion against individuals. And if there you were with the Governor against you, the legislature in the control of your opponent, the folks who owned the presses driving and marshaling public opinion against you, you still had the jury, 12 individuals just selected for that, with no ability to mess with them. Jury tampering is a crime. It is, I think, a very important piece, and I urge you to maintain that thought as you serve with the distinction that I hope we can expect.

Let me turn now to the Ranking Member, Senator Grassley.

Senator GRASSLEY. I will start with Mr. Broderick. I have two questions. And for Ms. Caproni I have five or six.

I see that you are a board member of Latino Justice, formerly known as Puerto Rican Legal Defense and Education Fund. Two questions—well, let me ask them separately.

Could you please explain to the Committee the role that you have played in that organization, including litigation you may have worked on or approved?

Mr. BRODERICK. Sure. At the role of the board, I have not approved specifically litigation. Typically we hold board meetings. There is an annual meeting. There are also periodic meetings, I think once a quarter, where we deal with the business of both fundraising as well as discussion of different projects and expansion of the organization to other regions within the country.

Senator GRASSLEY. So you did not have any role in litigation?

Mr. BRODERICK. That is correct. I did not have any role in the litigations.

Senator GRASSLEY. And then I think you have answered my second question, because I was specifically going to ask if you had played any role in the drafting of the amicus brief of Latino Justice submitted in the *Magner* case.

Mr. BRODERICK. I did not.

Senator GRASSLEY. Okay. For you, Ms. Caproni, in March 2007 I requested copies of unclassified emails relating to exigent letters

issued by the FBI. Director Mueller told this Committee that he thought the emails were probably fairly substantial. After 7 months, the FBI produced a small batch of heavily redacted emails and said it would provide additional documents as its review continued. Fourteen months later, in June 2008, I asked Director Mueller for the remainder of the documents and an explanation for the delay.

At some point, on a visit to my office while briefing my staff on another issue, you were asked about the delay. At that time you said that the documents were on your desk awaiting for review. You left the FBI February 2011 without delivering these documents. I still have not received them.

A, why did you tell my staff the documents were on your desk awaiting your review? And why were the promised emails never delivered to me?

Ms. CAPRONI. Senator, I am sorry. I do not know what documents you are talking about.

Senator GRASSLEY. Okay. Then we will ask you to research that and give us an answer in writing.

Ms. CAPRONI. That is fine. I am just not familiar with the documents you are referring to.

Senator GRASSLEY. Okay. Did you ever write any emails related to exigent letters?

Ms. CAPRONI. I am confident that I did.

Senator GRASSLEY. Do you have a rough idea of how many you wrote and why they were not produced to the Committee?

Ms. CAPRONI. If I understand, you indicated that you made a request for them in March 2007?

Senator GRASSLEY. That is the first one, and then 7 months—or in June 2008, I asked Director Mueller against them, so over the course of March 2007 and again in June 2008.

Ms. CAPRONI. So, Senator, I do not know how many emails I would have drafted that had the word "exigent" letter in it, because I was substantially involved in cleaning up the problem of exigent letters. There would have been a number of emails well after March 2007 that I would have drafted. Before March 2007, I sincerely doubt I had any emails that relate to exigent letters.

Senator GRASSLEY. Let us not take any more time, and I would ask you to respond in writing on that point.

Ms. CAPRONI. Certainly.

Senator GRASSLEY. On those two points.

[The information referred to appears as a submission for the record.]

Senator GRASSLEY. As part of the review of the Inspector General's reports on national security letters, I requested transcripts of interviews the Inspector General conducted with you. However, the Inspector General refused to produce comments that you provided to the draft report. The Inspector General indicated that he would be inclined to produce these comments if you would consent to the release of these comments.

Will you provide the Inspector General your consent to release these comments?

Ms. CAPRONI. Senator, I do not have any reason to believe that—yes, I have no objection to my comments being turned over if the Inspector General wishes to do so.

Senator GRASSLEY. Thank you.

While at the FBI, your office was found to have inaccurately reported its use of national security letters to Congress. Even you called this—and I believe these are your words—"a colossal failure" in 2007 because you knew about this problem before the Inspector General issued his report and yet still did not fix the problem.

Briefly, why was the report inaccurate? Was it an innocent mistake, intentional, or something else?

Ms. CAPRONI. Senator, is your question directly relating to the erroneous report of numbers to Congress, the number of NSLs?

Senator GRASSLEY. Just a minute. Let me find out whether it is that or something else.

Yes, inaccurate report of the number.

Ms. CAPRONI. So, Senator, I learned that the numbers that were being reported were inaccurate at around the time of the Inspector General's report. I was immediately part of the team at FBI who put into place a number of different steps to ensure that the numbers that were reported to Congress were accurate in the future. Specifically, we adopted an electronic system that was used throughout the Bureau that greatly enhanced the accuracy both of national security letters themselves and the reporting of statistics to Congress.

Senator GRASSLEY. During the House Judiciary Committee hearing in 2007, you discussed your concerns about FBI agents that were confused or unfamiliar with different policies and laws. You stated, "The agents my age at the FBI all grew up as criminal agent in a system which is transparent, which, if they mess up during the course of an investigation, they are going to be cross-examined and have a Federal district judge yelling at them."

Is it your experience that district judges yell at agents often for being confused or unfamiliar with policy?

Ms. CAPRONI. Certainly not, and that was not my intent to suggest that a district court judge would yell at an agent for being confused.

Senator GRASSLEY. If confirmed, how would you treat such agents or any other party witness appearing before you?

Ms. CAPRONI. I would treat everyone who appears before me with respect.

Senator GRASSLEY. As you heard the Chairman say, I am pretty up on whistleblowers doing their work because we would never do our work if we did not get this inside information. In fact, let me express a feeling I have. It does not matter whether you have a Republican or Democrat President, where it is in the bureaucracy, whistleblowers are kind of treated like skunks at a picnic.

So with that background, let me ask you this question: In 2008, at American University Washington College of Law, you suggested that FBI whistleblowers should not go public with their information. I am not going to repeat your entire remarks, but you characterized whistleblowers with language such as "a scheme," "cranky employees," or "some nutty whistleblower."

Furthermore, during your tenure at the FBI, whistleblower cases languished for years. For example, Robert Kobis waited nearly 6 years for resolution while the case of Special Agent Jane Turner took nearly 12 years. Why did the FBI under your leadership continue to appeal these cases despite strong investigative findings by the DOJ Inspector General determining that the FBI retaliated against both for protected whistleblowing?

Ms. CAPRONI. So, Senator, let me say that I believe that when I spoke at American University, I also said that whistleblowers can inform and be a very important part of the process, but that while some are, there are others that are not, and some are simply cranky employees. That is not to say they all are, and I certainly think that whistleblowers really are an important part of the system of flushing out information that needs to be disclosed. That said, certainly when I was at the FBI, there were issues about classification and about information that was being disclosed that was classified.

So it is a difficult issue, and each one has to be really considered on the facts of what that particular person is saying and doing.

Senator GRASSLEY. But doesn't it seem like 6 years is an awful long time to keep people hanging out there, or 12 years in the case of Jane Turner? So you kind of get back to the findings of the Justice Department Inspector General saying they were not treated fairly.

Ms. CAPRONI. Senator, I do not have any recollection of one of the cases. My recollection of the Jane Turner case is that it was litigated in Wisconsin or one of the Midwestern States—maybe it was Iowa; I am not sure—and that there was lengthy litigation in connection with that case. But I do not remember much about it beyond that.

Senator GRASSLEY. Well, do you know of any strategy within the Department to drag these cases out as long as possible just so they either die or they give up and go away?

Ms. CAPRONI. Absolutely not. I am not aware of any such thing, and that was certainly not the FBI's position when I was general counsel.

Senator GRASSLEY. I think you answered my question because you did say in your speech at George Washington, you did speak positively about whistleblowers. Why don't you tell me just what you feel about whistleblowers?

Ms. CAPRONI. Again, I think whistleblowers can be incredibly valuable at disclosing information that, for whatever reason, is not being elevated appropriately either within a governmental agency or within a private company. I am now at a private company where whistleblowers are—we have lots of different mechanisms where they can reveal information that they are aware of that involves people within the company not doing the right thing. We encourage employees to come forward with such information, because if we in management are not aware of the information, we cannot fix it.

So from that perspective, we encourage people to come forward with information that they think reveals bad conduct within the company. And similarly within the FBI, I think Director Mueller was a major proponent of encouraging employees to come forward

with information that they were aware of that should be acted on by upper management.

Senator GRASSLEY. How would you approach a qui tam case from the bench if you are a judge?

Ms. CAPRONI. Senator, I would approach a qui tam case like I would approach any case. I would want to know what the facts are. I would want to know what the law is.

Senator GRASSLEY. My last question. The ABA Standing Committee on the Federal Judiciary issued a rating letter last fall which was signed by Judy Perry Martinez, Chair of that committee. According to press releases from her company, she is vice president and chief compliance officer and reports to an individual who is corporate vice president and general counsel. You are also a vice president and deputy general counsel at the same company and report to the same individual as does Ms. Martinez. So Ms. Martinez, who provided the ABA rating, appears to be a colleague of yours, with both of you reporting to the same individual.

My question for you is not about that arrangement but, rather, about your sensitivity to recusal and ethics. If the situation had been reversed, would you have recused yourself from participating in the ABA rating and issuing the letter?

Ms. CAPRONI. So, Senator Grassley, Ms. Martinez was recused from considering my involvement. I think she just signed the transmittal letter. But she was not involved with the committee's consideration of my candidacy.

Senator GRASSLEY. Okay. Then I think that answers my questions. Thank you.

Senator WHITEHOUSE. Very good.

Senator GRASSLEY. Thank you both very much and congratulations.

Senator WHITEHOUSE. I join the Ranking Member in thanking you and in congratulating you, and I wish you expeditious and smooth confirmation through the Committee and then on the floor. And I thank the family for being present or, if they could not be present, for tuning in. And I appreciate the extremely good behavior of the children who are here.

[Laughter.]

Senator WHITEHOUSE. The hearing is adjourned, and we will keep the record open for 1 week for any additional materials that may be required.

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

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Nominations"

Thursday, May 23, 2013
Dirksen Senate Office Building, Room 226
10:30 a.m.

Derek Anthony West, to be Associate Attorney General

Valerie E. Caproni, to be United States District Judge for the Southern District of New York

Vernon S. Broderick, to be United States District Judge for the Southern District of New York

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Derek Anthony West ("Tony")

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

   Associate Attorney General of the United States

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

   U.S. Department of Justice
   950 Pennsylvania Avenue, NW
   Washington, DC 20530

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

   1965; San Francisco, California

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

   Stanford Law School, 1989 – 92; J.D., 1992

   Harvard University, 1983 – 87; A.B., 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.

   U.S. Department of Justice
   2012 – Present
   Acting Associate Attorney General of the United States
   950 Pennsylvania Avenue, NW
   Washington, DC 20530

U.S. Department of Justice, Civil Division
2009 – 12
Assistant Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Morrison & Foerster LLP
Partner
2001 – 09
425 Market Street
San Francisco, CA 94105

Alameda County Democratic Lawyers Club
2004 – 08
Board Member
Alameda County, CA

Board of Directors, U.C. Hastings College of the Law
2004 – 07
Member
200 McAllister Street
San Francisco, CA 94102

California Department of Justice, Office of the Attorney General
1999 – 2001
Special Assistant Attorney General
1300 I St
Sacramento, CA 95814

Board of Directors, The Santa Clara County Volunteer Exchange
1995 – 99
Member
1922 Alameda Street, Suite 211
San José, CA 95126

U.S. Department of Justice, United States Attorney's Office, Northern District of California
1994 – 99
Assistant United States Attorney
150 Almaden Boulevard, Suite 900
San José, CA 95113

Board of Directors, Kids Voting San José/Silicon Valley
1995 – 97
Member
P.O. Box 2565
San José, CA 95109

U.S. Department of Justice, Office of the Deputy Attorney General
1993 – 94
Special Assistant to the Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Bingham McCutchen (formally McCutchen, Doyle, Brown & Enersen, San José office)
1992 – 93
Associate
1900 University Avenue
East Palo Alto, CA 94303-2223

California Democratic Party
1992 – 93
Chief of Staff to the Finance Chairman
1801 Avenue of the Stars
Los Angeles, CA

Tuttle & Taylor
May – July 1991
Summer Associate
40th Floor
355 South Grand Avenue
Los Angeles, CA 90071-3102

Morrison & Foerster LLP
July – August 1991
Summer Associate
755 Page Mill Road
Palo Alto, CA 94304-1018

Swidler & Berlin
May – August 1990
Summer Associate
3000 K Street, N.W., Suite 300
Washington, DC 20007

Democratic Governors' Association
1988 – 89
Finance Director
1401 K Street, NW, Suite 200
Washington, D.C. 20005

Dukakis For President
1987 – 88
Chief of Staff to the Treasurer
Boston, Massachusetts

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

I registered for selective service, but 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.

The Legal Times "Champion" Award, presented by the *National Law Journal*, recognizing legal "trailblazers" for work that has "upheld the legal industry's professional mission of public duty," 2012

FierceBiotech "25 Most Influential People in Biopharma Today," 2012

Centennial Leadership Award, Ancient and Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, 2008

Leading Lawyer in America, Lawdragon, 2008

Northern California Top 100 "Super Lawyers" 2006-08

California's Top 20 Lawyers Under 40, the *Daily Journal*, 2004

Executive Office of U.S. Attorneys Director's Award, presented by Attorney General Janet Reno, 1998

Bill Key Memorial Victim Witness Assistance Award, presented by U.S. Attorney Michael Yamaguchi, 1998

Most Significant High-Tech Case for 1997, High-Technology Crime Investigation Association, 1998

The Yorktown Certificate, awarded by Commissioner of United States Customs George Weise, 1997

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.

Board of Governors Member, Northern California Association of Business Trial Lawyers, 2004 – 09

Northern District of California Lawyer Representative, U.S. Court of Appeals for the Ninth Circuit, 2005 – 08

Member, Alameda County Bar Association, Litigation Section, 2007 – 09

Member, National Bar Association, 2007 – 09

Member, Charles Houston Bar Association, 2005 – 09

Member, Executive Committee of the Bar Association of San Francisco, Litigation Section, 2003 – 09

Member, American Bar Association, 2002 – Present

Member, Earl Warren American Inn of Court, 2002 – 06

Chair, Santa Clara County Bar Association Minority Summer Clerkship Program, 1997 – 98

Member, Federal Bar Association, 2007 – 09

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.

There have been no lapses in my memberships.

May 1993 – Present	California State Bar

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.

There have been no lapses in my memberships.

May 1993 – Present	Superior Court of the State of California
May 1993 – Present	United States District Court for the Northern District of California
March 2003 – Present	United States District Court for the Central District of California
1995 – Present	United States Court of Appeals, Ninth Circuit
2011 – Present	United States Court of Appeals, D.C. Circuit

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.

Attorney Participant, Oakland McCullum Youth Court, Oakland, California, 2007 – 09

Board Member, Alameda County Democratic Lawyers Club, 2004 – 08

Member, Board of Directors, U.C. Hastings College of the Law, San Francisco, California, 2004 – 07

Member, Silicon Valley Housing Leadership Council, San José, California, 1997 – 99

Adjunct Faculty Member, Lincoln Law School of San José, California, 1997 – 99

Participant, The Role Model Program, San José, California, 1996 – 99

Member, Board of Directors, The Santa Clara County Volunteer Exchange, San José, California 1995 – 99

Member, Board of Directors, Kids Voting San José/Silicon Valley, San José, California, 1995 – 97

Member, 100 Black Men of Silicon Valley, Inc., San José, California, 1994 – 98

Member, DC Works, 1993 – 94

I have made financial contributions to other organizations over the years. I have not included in the list above any organization 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 through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

"President's Note," Stanford Law Review, Volume 44, Summer 1992. Copy Supplied.

"John Walker Lindh Plea: Online Discussion with Tony West, Defense Attorney and Co-counsel," Washington Post, July 18, 2002. Copy Supplied.

"Virtual Nightmare: The Orchid Club and Its Aftermath," Prosecutor's Brief, October/November 2004. No Copy Available.

"The Power of Honesty," San Jose Mercury News, September 9, 2005. Copy Supplied.

"Defending the Despised," San Francisco Daily Journal, January 17, 2007. Copy Supplied.

"Only an Informed Public Will Know Whom to Trust," San Jose Mercury News, May 18, 2007. Copy Supplied.

"Hope Begins With You," Obama for America Blog, May 21, 2007. Copy Supplied.

"Barack and Michelle Obama in California: June 2, 11, and 12!," Obama for America Blog, May 22, 2007. Copy Supplied.

"Barack's Vote on Iraq Funding Bill," Obama for America Blog, May 24, 2007. Copy Supplied.

"Notes from Des Moines: Why Barack Obama Will Win the Democratic Nomination," Obama for America Blog, October 19, 2007. Copy Supplied.

"Why Barack?," San Francisco Bay View, February 1, 2008. Copy Supplied.

"Why Barack?" Obama for America Blog, February 4, 2008. Copy Supplied.

"Choose Change on February 5th,"Obama for America Blog, February 4, 2008. Copy Supplied.

"Change: An Idea Whose Time Has Come," Obama for America Blog, February 4, 2008. Copy Supplied.

"[Radiation Exposure Compensation Act] internship focuses locally on uranium exposure," The Navajo Times, April 15, 2010. No Copy Available.

"Introductory Address," St. Thomas Law Journal, Volume 8, Issue 3, Article 2, 2011. Copy Supplied.

"Victims of Financial Fraud Deserve Justice," San Jose Mercury News, April 18, 2011. Copy Supplied.

"Federal Agencies Are Going After Fraudulent Immigration," San Jose Mercury News, June 9, 2011. Copy Supplied.

"Health Care Fraud," Daily Journal, August 10, 2011. No Copy Available.

"Immigration Services Fraud Clinics," El Diario, August 22, 2011. No Copy Available

"How to Avoid Counterfeit Drugs," Web MD Blog, December 8, 2011. Copy Supplied.

"A New Beginning for the U.S.-Tribal Trust Relationship," DOJ The Justice Blog (with AAG Ignacia Moreno), April 11, 2012. Copy Supplied.

"Defending Our Most Vulnerable (Defending Childhood Task Force)," DOJ The Justice Blog, April 24, 2012. Copy Supplied.

"Building Safe and Healthy Communities in Montana Indian Country," DOJ The Justice Blog, June 8, 2012. 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 through a review of my 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:

"Report to the Legislature: The Status of Peace Officer Training on Mental Illness and Developmental Disabilities," California Commission on Peace Officer Standards and Training, September 1, 2004. Copy Supplied.

"Hi-Tech Crime: Protecting Yourself in the Computer Age," Report of the California Attorney General's Office, November 1, 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.

The list below consists of material identified based on my recollection, a review of my personal files and searches of internet databases. Despite my searches, there may be other items I have been unable to identify, find or remember.

Testimony

Testimony before the Senate Committee on the Judiciary, "Effective Strategies for Preventing Health Care Fraud," October 28, 2009. Copy Supplied.

Testimony before the Senate Homeland Security and Governmental Affairs Committee, "Accountability for Foreign Contractors: The Lieutenant Colonel Dominic 'Rocky' Baragona Justice for American Heroes Harmed by Contractors Act," November 18, 2009. Copy Supplied.

Testimony before House Judiciary Committee on Commercial and Administrative Law, "Oversight of the Civil Division of the United States Department of Justice," June 24, 2010. Copy Supplied.

Testimony before the Senate Judiciary Committee, "Protecting American Taxpayers: Significant Accomplishments and Ongoing Challenges in the Fight Against Fraud," January 26, 2011. Copy Supplied.

Testimony before Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, "Fighting Fraud and Waste in Medicare and Medicaid," February 15, 2011. Copy Supplied.

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

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Training Video, "Peace Officer Standards and Training (POST): Racial Profiling Training Video," California Law Enforcement Training Video, 1999. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in training video for police officers on the subject of racial profiling.

Panelist, "September 11, 2002 – Where Are We Now?" Commonwealth Club of San Jose, September 10, 2002. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding legal developments in the year after the September 11, 2001 terrorist attacks.

Speaker, "Remarks to Students: Minority Admit Weekend 2003," Stanford Law School, Palo Alto, CA February 17, 2003. Copy Supplied.

Speaker, "The Case of John Walker Lindh," Palo Alto Legal Secretaries Association (PALSA), February 18, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding *U.S. v. Lindh*.

Speaker, "Attacking the Indictment: United States v. John Walker Lindh," Santa Clara University, Santa Clara, CA, March 17, 2003. Copy Supplied.

Speaker, "Legal Studies Course – National Securities and Civil Liberties," U.C. Santa Cruz, Santa Cruz, CA, April 29, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I spoke to students at U.C. Santa Cruz regarding balancing national security and civil liberties.

Panelist, "Litigating the Right to Access to Witnesses in Defense Department Custody," Legal Aid & Defender Association Conference (Federal Public Defenders), May 9, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding access to witnesses being held by the Department of Defense.

Panelist, "Pleas, Cooperation, and Sentencing Issues," Legal Aid & Defender Association Conference (Federal Public Defenders), May 10, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding criminal defense issues.
Panelist, "Bay Area Reporters Seminar," Bay Area General Reporters Association, May 15, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding issues of importance to reporters in the Bay Area.

Speaker, "Civil Liberties Briefing," ACLU – NC Lawyers Council, June 19, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding civil liberties and related issues.

Panel, "Secrets of Success: What Nobody Tells You About How to Succeed in the Private Sector," University of San Diego, School of Law – California Minorities Attorneys' Conference, San Diego, CA, July 12, 2003. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding the private practice of law.

Speaker, Rotary Club of San José, San Jose, CA, July 23, 2003. Copy Supplied.

Speaker, "Tribute to James J. Brosnahan," San Francisco Maritime Museum, November 12, 2004. Copy Supplied.

Panelist, "Beyond Black Letter Law: Bridging Critical Disparities Confronting Contemporary Black America," Stanford Law School – BLSA, February 19, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion sponsored by Stanford Law School's Black Law Students Association.

Moderator. "Black History Month Judge Panel." Morrison & Foerster, San Francisco, February 24, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. In honor of Black History Month, I moderated a panel of judges.

Speaker. "Oakland Black Caucus – Presentation by Tony West (Attorney for Marcus Williams)." Oakland, CA, March 10, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding *Williams v. Romanowski*.

Speaker. "Law Review Diversity Reception." Stanford Law School, Palo Alto, CA, April 5, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered brief remarks at a reception sponsored by the Stanford Law Review.

Speaker. "Democrats Protecting Our Rights." California Democratic Party State Convention, April 17, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks at the California Democratic Party's state convention

Panel. "A New Day for Diversity: Insights on Success in the Legal Profession." Fifth Annual Diversity Panel, Sponsored by Orrick, Herrington & Sutcliffe, Stanford Law School, Palo Alto, CA, September 8, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding diversity in the legal profession.

Speaker. "50th Anniversary Celebration, Alameda County Democratic Lawyers Club." October 21, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks at an event celebrating the 50th anniversary of the Alameda County Democratic Lawyers Club.

Panel. "Recorder Roundtable on Representing High Profile Clients." The Recorder, November 9, 2005. Copy Supplied.

Speaker. "Legal Ethics for In-House Counsel." Morrison & Foerster LLP MCLE Workshop, January 26, 2006. Copy Supplied.

Speaker. "Black History Celebration: 'Civil Rights Then and Now: Perspectives on the Movement's History and Current Challenges.'" Morrison & Foerster, February 16, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding civil rights and civil liberties at an event celebrating Black History Month.

Speaker. "Speed Candidating (Surrogate Speaker for Mayoral candidate Ronald Dellums)." East Bay Young Democrats, April 6, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Ronald Dellums' candidacy for Mayor of Oakland.

Speaker, "Alumni Panel Discussion, Stanford Law School Admit Weekend," Stanford Law School, Palo Alto, CA, April 9, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion during an event for applicants admitted to Stanford Law School.

Speaker, "Life After Stanford," Stanford Law School, Palo Alto, CA, April 12, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks to Stanford Law students regarding career goals and perspectives.

Panel, "Handle With Care: Managing Explosive Evidence in Morally Charged Cases," Northern District of California Judicial Conference, April 28, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding handling evidence in sensitive or controversial cases.

Speaker, "Ensuring Our Legacy: The Nuts and Bolts of Running for Public Office," California Association of Black Lawyers, May 5, 2006. Copy Supplied.

Panel, "Campaign Finance Reform: California Cities Take the Lead," Commonwealth Club of California, August 2, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding campaign finance reform.

Speaker, "Introduction of San Francisco District Attorney, Kamala D. Harris," California Association of Black Lawyers, May 6, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered brief remarks introducing San Francisco District Attorney Kamala Harris.

Speaker, "EJS Rollback Campaign," Morrison & Foerster, August 2, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered informal remarks regarding the Equal Justice Society's work at a reception for law firm summer associates.

Moderator, "Campaign Finance Reform: California Cities Take the Lead," Commonwealth Club of California, August 2, 2006, available at: www.commonwealthclub.org audio/06-08calcitiesfinancepanel-complete.ram

Speaker, "100 Days Before Trial," Bar Association of San Francisco, San Francisco, CA, August 16, 2006. Copy Supplied.

Panel, "The Use and Abuse of Peremptory Challenges," Association of Business Trial Lawyers, September 26, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding the use of peremptory challenges at trial.

Speaker, "The American Taliban: John Walker Lindh," University of San Francisco School of Law, San Francisco, CA, October 5, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding *U.S. v. Lindh*.

Speaker, "Elected Official Honorarium (Surrogate Speaker for Mayor-Elect Ronald Dellums)," Charlse Houston Bar Association, October 12, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Ronald Dellums' candidacy for Mayor of Oakland.

Speaker, "Mark Klein Case," ACLU Lawyers Council, November 14, 2006. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding *Hepting v. AT&T*.

Panelist, "Progress and the Law: How Progressive Lawyers Can Make a Difference Even in Unlikely Places," American Constitution Society – University of California at Davis, January 23, 2007. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding the legal profession.

Speaker, "Civil Liberties after 9/11, November 18, 2006. Copy Supplied.

Speaker, "Obama Campaign Fundraiser," Emeryville, California, May 7, 2007. available at: www.youtube.com/watch?v=qtj0mN39p78

Speaker, "Obama Campaign Fundraiser," San Francisco, California, November 14, 2007, available at: www.youtube.com/watch?v=qTJ0mn39p78.

Speaker, "Represent Sen. Barack Obama," Stanford Black Alumni Association, January 27, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Barack Obama's candidacy for President.

Speaker, "Welcoming Remarks," Obama Lawyers Training, February 4, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Barack Obama's candidacy for President.

Speaker, "Barack Obama's Campaign and What's Next," BWAPA, February 6, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Barack Obama's candidacy for President.

Speaker, "African Americans in Politics," Bingham McCutchen, February 29, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding the role and influence of African Americans in politics.

Panel, "Minority Membership Panel," Stanford Law Review, April 2, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion sponsored by the Stanford Law Review.

Panel, "Stanford Law School Alumni Showcase," Stanford Law School, Palo Alto, CA, April 13, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion sponsored by the Stanford Law Review.

Speaker, "Obama Rally – Nation for Change Nationwide Rally in Support of Sen. Barack Obama," April 19, 2008, available at: www.youtube.com/watch?v=xVHwrz7heQ&feature=playlist&p=2b0EEF217B539595&index=0&playnext=1

Panel, "Political Organizing," AFL-CIO Labor Council, April 24, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding political organizing.

Speaker, "University of California Hastings College of the Law BLSA 2008 Commencement," University of California Hastings College of the Law, San Francisco, CA, May 17, 2008. Copy Supplied.

Speaker, "Practical Politics," California State University, East Bay Hayward Campus, Political Class, Hayward, CA, May 22, 2008. Copy Supplied.

Speaker, "Represent Barack Obama," LPOA Annual Meeting, May 24, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Barack Obama's candidacy for President.

Panel, "Choosing America's Next President: How Gender, Race, and the Media Affect Our Choices," Minority Bar Coalition's 2008 Unity Conference, October 10, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion regarding the presidential election.

Panel, "Vote Smart Challenge: Represent Sen. Barack Obama," Dominican University of California, San Rafael, CA, October 23, 2008. Copy Supplied.

Speaker, "Founder's Day," Los Angeles Consistory No. 26, Ancient and Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, Los Angeles, CA, October 26, 2008. Copy Supplied.

Speaker, "Obama Presidential Campaign," Antioch Missionary Baptist Church, November 2, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding Barack Obama's candidacy for President.

Speaker, "Civil Rights Post-Obama Election," NAACP Annual Leadership Retreat, Long Beach, CA, January 2, 2009. I have not been able to locate

prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding civil rights issues in the Obama presidency.

Speeches/Talks as Assistant Attorney General for the Civil Division

Speaker, "Installation Ceremony of Assistant Attorney General Tony West," U.S. Department of Justice, Washington, D.C., April 24, 2009, available at: http://www.youtube.com/watch?v=9f0Gucb/KnQ&feature=youtube_gdata_player.

Speaker, "HHS Inspector General's Honor Awards Ceremony," U.S. Department of Health and Human Services, Washington, D.C., June 2, 2009. Copy Supplied.

Press Conference, "CPSC Fireworks Safety," U.S. Consumer Product Safety Commission, Washington, D.C., June 30, 2009. Copy Supplied.

Press Conference, "'Operation Short Change' (business opportunity fraud)," Federal Trade Commission, Washington, D.C., July 1, 2009. Copy Supplied.

Speaker, "Welcoming Remarks," Annual OIL Immigration Litigation Conference, National Advocacy Center, Columbia, SC, July 20, 2009. Copy Supplied.

Speaker, "Department's Efforts to Combat Fraud," Council of Inspectors General on Integrity and Efficiency, Washington, D.C., July 28, 2009. Copy Supplied.

Speaker, "Closing the Justice Gap: Expanding Access to Civil Justice," American Bar Association, Litigation Section, Chicago, IL, July 31, 2009. Copy Supplied.

Speaker, "Building Partnerships to Protect Customers," Conference of Western Attorneys General (CWAG), Annual Conference, Sun Valley, ID, August 2, 2009. Copy Supplied.

Speaker, "Closing the Justice Gap: Expanding Access to Civil Justice," National Bar Association, Annual Meeting, San Diego, CA, August 3, 2009. Copy Supplied.

Speaker, "Department's Efforts to Combat Mortgage Fraud," HUD-OIG, Joint Managers' Conference, Philadelphia, PA, August 25, 2009. Copy Supplied.

Press Conference, "Announcement of Pfizer Resolution (Health Care Fraud)," U.S. Department of Justice, Washington, D.C., September 2, 2009. Copy Supplied.

Panel, "Coordination between Main Justice and the U.S. Attorney's Offices," Orientation for New Assistant U.S. Attorneys, Washington, D.C., September 9, 2009. Copy Supplied.

Speaker, "Department's Efforts to Combat Health Care Fraud," National Association of Medicaid Fraud Control Units, 2009 Annual Training Program, Louisville, KY, September 14, 2009. Copy Supplied.

Speaker, "Public Information Officers," USAO's Conference, Washington, D.C., September 25, 2009. Copy Supplied.

Speaker, "Immigration Issues," OIL Conference, Washington, D.C., October 8, 2009. Copy Supplied.

Press Conference, "Department's Efforts to Combat Health Care Fraud," U.S. Department of Health and Human Services, Washington, D.C., October 15, 2009. Copy Supplied.

Speaker, "Department's Efforts to Combat Fraud," U.S. Department for Justice, Civil Fraud Orientation, Washington, D.C., October 27, 2009. Copy Supplied.

Panel, "Department's Pro Bono Efforts," U.S. Department of Justice, Pro Bono Week, Washington, D.C., October 27, 2009. Copy Supplied.

Speaker, "Department's Efforts to Combat Health Care Fraud," The Pharmaceutical Compliance Forum, Pharmaceutical Regulatory Compliance Congress & Best Practices Forum, Washington, D.C., November 12, 2009. Copy Supplied.

Press Conference, "Department's Efforts to Combat Mortgage Fraud," Las Vegas Mortgage Fraud Awareness, Las Vegas Metropolitan Police Department Convention Center Command Center, Las Vegas, NV, November, 24, 2009. Copy Supplied.

Speaker, "Department's Efforts to Combat Procurement Fraud," ABA Public Contract Law Section, Government and Corporate Counsel Committee, General Counsels Committee Dinner, Fort Myer, VA, November 29, 2009. Copy Supplied.

Panel, "Introduction to the Civil Division," U.S. Department of Justice, ASUA Orientation Panel, Washington, D.C., December 2, 2009. Copy Supplied.

Speaker, "Awards Ceremony," U.S. Department of Justice, ASUA Orientation Panel, Washington, D.C., December 3, 2009. Copy Supplied.

Press Conference, "Announcement of Small Smiles Resolution (Health Care Fraud)," U.S. Department of Justice, Washington, D.C., January 20, 2010. Copy Supplied.

Speaker, "Access to Justice: Practicing Dr. King's Legacy," Lawyers' Committee for Civil Rights, Washington, D.C., January 28, 2010. Copy Supplied.

Speaker, "Introduction to Civil Division," U.S. Department of Justice, New Attorney Orientation, Washington, D.C., February 2, 2010. No Copy Available.

Press Conference, "Operation Bottom Dollar (Business Opportunity Fraud)," Federal Trade Commission, Washington, D.C., February 17, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Fraud," Association of Government Accountants, 2010 National Leadership Conference, Washington, D.C., February 18, 2010. Copy Supplied.

Press Conference, "Department's Efforts to Combat Mortgage Fraud," U.S. Department of Justice, Financial Fraud Enforcement Task Force, Mortgage Fraud Working Group, Miami, FL, February 24, 2010. Copy Supplied.

Panel, "Criminal and Civil False Claims Liability: Changes in Attitudes, Changes in Latitudes," ABA, Criminal Justice Section, Annual National Institute on White Collar Crime, Miami, FL, February 25, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Mortgage Fraud," U.S. Department of Justice, Mortgage Fraud Task Force Conference, National Advocacy Center, Columbia, SC, March 2, 2010. Copy Supplied.

Speaker, "Public Service," Harvard Black Law Student Association, Annual Spring Conference, Cambridge, MA, March 6, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Violence Against Women," Pacific Lutheran University, Tacoma, WA, March 11, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Violence Against Women," Norfolk State University, Norfolk, VA, March 23, 2010. Copy Supplied.

Panel, "Discussion of Financial Fraud Enforcement Task Force," U.S. Attorney's Conference, Tempe, AZ, March 24, 2010. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I served on a panel at the U.S. Attorneys' Conference and discussed the work of the Financial Fraud Enforcement Task Force.

Speaker, "Government Lawyering – Policy and Practice," U.S. Department of Justice, Washington, D.C., April 6, 2010. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered remarks regarding government service as part of a Department of Justice event.

Press Conference, "Department's Efforts to Combat Mortgage Fraud," U.S. Department of Justice, Financial Fraud Enforcement Task Force, Mortgage Fraud Summit, Detroit, MI, April 23, 2010. Copy Supplied.

Press Conference, "Announcement of AstraZeneca Resolution (Health Care Fraud)," U.S. Department of Justice, Washington, D.C., April 27, 2010. Copy Supplied..

Speaker, "Civil Division's Priorities and Accomplishments," National Advocacy Center, Civil Chiefs Conference, Columbia, SC, May 5, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Health Care Fraud," ABA's 20th Annual National Institute on Health Care Fraud, Miami, FL, May 13, 2010. Copy Supplied.

Speaker, "Commencement Address," Hastings College of the Law, San Francisco, CA, May 16, 2010. Copy Supplied.

Speaker, "Department's Efforts to Fight Health Care Fraud," U.S. Department of Justice, Pharmaceutical and Device Fraud Conference, Washington, D.C., May 19, 2010. Copy Supplied.

Speaker, "Access to Justice," Maryland Legal Aid Bureau, Annual Equal Justice Council Recognition Breakfast, Baltimore, MD, May 20, 2010. Copy Supplied.

Speaker, Graduation Remarks, Washington Jesuit Academy Graduation, Washington, D.C., May 26, 2010. Copy Supplied.

Speaker, "Department's False Claims Act Enforcement Efforts," ABA's 8th Annual National Institute on the False Claims Act and Qui Tam Enforcement, Washington, D.C., June 3, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Elder Abuse," U.S. Health and Human Services, World Elder Abuse Awareness Day Event, Washington, D.C., June 15, 2010. Copy Supplied.

Panel, "Coordination between Main Justice and the U.S. Attorney's Offices," Orientation for new Assistant U.S. Attorneys, Washington, D.C., July 9, 2010. Copy Supplied.

Speaker, "Priorities and Perspectives of the Civil Division," ABA Annual Meeting, San Francisco, CA, August 6, 2010. Copy Supplied.

Press Conference, "Announcement of Allergan Resolution (Health Care Fraud)," U.S. Department of Justice, Washington, D.C., September 1, 2010. Copy Supplied.

Speaker, "Financial Fraud Enforcement Task Force," HNBA - 35th Annual Convention, Minneapolis, MN, September 9, 2010. Copy Supplied.

Speaker, "Civil Division Priorities and Accomplishments," USDA OGC Management Conference, Washington, D.C., September 14, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Fraud," Government Accountants' Internal Control & Fraud Conference, Washington, D.C., September 16, 2010. Copy Supplied.

Speaker, "Office of Immigration, Litigation Successes," Annual OIL Immigration Litigation Conference, National Advocacy Center, Columbia, SC, September 27, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Mortgage Fraud," U.S. Department of Justice, Financial Fraud Enforcement Task Force, Mortgage Fraud Summit, Fresno, CA, September 29, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Mortgage Fraud," U.S. Department of Justice, Financial Fraud Enforcement Task Force, Mortgage Fraud Summit, Los Angeles, CA, September 30, 2010. Copy Supplied.

Press Call, "Announcement of Resolution of *Keepseagle v. Vilsack*," U.S. Departments of Justice and Agriculture, Washington, D.C., October 20, 2010. Copy Supplied. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a conference call with the press to announce the settlement of *Keepseagle v. Vilsack*, a discrimination action brought by Native American farmers and ranchers against the Department of Agriculture.

Speaker, "Department's Health Care Fraud Efforts," Pharmaceutical Regulatory Compliance Congress, Washington, D.C., October 20, 2010. Copy Supplied.

Press Conference, "Announcement of Enforcement Action Against American Therapeutic Corporation (Health Care Fraud)," U.S. Attorney's Office for the Southern District of Florida, Miami, FL, October 21, 2010. Copy Supplied.

Press Conference, "Announcement of GlaxoSmithKline Resolution (Health Care Fraud)," U.S Attorney's Office for the District of Massachusetts, Boston, MA, October, 26, 2010. Copy Supplied.

Speaker, "Introduction of Attorney General Holder – Government Pro Bono Week," U.S. Department of Justice, Washington, D.C., October 27, 2010. Copy Supplied. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered brief remarks introducing Attorney General Holder at an event celebrating Government Pro Bono Week.

Speaker, "Department's Relationship with Native American Community," National Congress of American Indians Annual Conference, Albuquerque, NM, November 15, 2010. Copy Supplied.

Press Conference, "Announcement of FY 2010 False Claims Recoveries," U.S. Department of Justice, Washington, D.C., November 22, 2010. Copy Supplied.

Speaker, "Introduction of John Warshawsky, winner of Government Pro Bono Award," Washington Council of Lawyers Annual Awards Reception, Washington, D.C., December 7, 2010. Copy Supplied.

Press Conference, "Announcement of Resolutions with Pharmaceutical Companies (Health Care Fraud)," U.S. Department of Justice, Washington, D.C., December 7, 2010. Copy Supplied.

Panel, "Why You Should Care About IP Crime," U.S. Department of Justice, BJA, IP Forum, Washington, D.C., December 8, 2010. Copy Supplied.

Speaker, "Awards Ceremony," U.S. Department of Justice, Civil Division Awards, Washington, D.C., December 8, 2010. Copy Supplied.

Panel, "Dangers of Counterfeit Pharmaceuticals," White House Forum on Intellectual Property Theft, Washington, D.C., December 14, 2010. Copy Supplied.

Speaker "Mortgage Fraud Working Group: Accomplishments and Next Steps," Annual Meeting of the Financial Fraud Enforcement Task Force, December 14, 2010. Copy Supplied.

Press Conference, "Announcement of Filing of Civil Action in Deepwater Horizon Oil Spill," U.S. Department of Justice, Washington, D.C., December 15, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Health Care Fraud," U.S. Department of Justice and Health and Human Services, Health Care Fraud Prevention Summit, Boston, MA, December 16, 2010. Copy Supplied.

Speaker, "Department's Efforts to Combat Elder Abuse," National Advocacy Center, Elder Justice Care Seminar, Columbia, SC, January 5, 2011. Copy Supplied.

Speaker, "Civil Division Enforcement Priorities," American University Washington College of Law, Admin. Law Review Symposium, Washington, D.C. January 31, 2011. Copy Supplied.

Panel, "A Brave New World in Consumer Protection Law: A View from the Top," George Washington University, Consumer Protection Conference, Washington, D.C., February 3, 2011. Copy Supplied.

Speaker, "Remarks and Moderator for DAAG panel," U.S. Department of Justice, Civil Division New Attorney Orientation and Reception, Washington, D.C., February 8, 2011. Copy Supplied.

Speaker, "Leadership," Department of Transportation Black History Month Event, Washington, D.C., February 10, 2011. Copy Supplied.

Speaker, "National Security and Guantanamo Bay Detention," ABA Standing Committee on Law and National Security Breakfast, Washington, D.C., February 18, 2011. Copy Supplied.

Press Call, "Agriculture Secretary Tom Vilsack and Assistant Attorney General Tony West Announce Process to Resolve Discrimination Claims of Hispanic and Women Farmers," U.S. Department of Justice and Agriculture, Washington, D.C., February 25, 2011. Copy Supplied.

Speaker, "Black History Month," U.S. Attorney's Office for the Eastern District of Virginia, Black History Month Event, Alexandria, VA, February 28, 2011. Copy Supplied.

Press Conference, "Operation Empty Promises (Business Opportunity Fraud)," Federal Trade Commission, Washington, D.C., March 2, 2011. Copy Supplied.

Panel, "The American Executive Branch in the Early 21st Century: Challenges and Opportunities," Stanford Law School, Office of Alumni Relations, Washington, D.C., March 3, 2011. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel hosted by Stanford Law School and discussed the work of the Department of Justice.

Speaker, "Black History Month," U.S. Department of Justice, Black History Month Program – "African Americans and the Civil War," Washington, D.C., March 4, 2011. Copy Supplied.

Speaker, "Preserving a Legacy of Service," Legal Services Corporation Black History Month Event, Washington, D.C., March 15, 2011. Copy Supplied..

Speaker, "Department's Defense of Constitutional Torts Litigation," University of St. Thomas Law's Law Journal Spring Symposium on Govt. Liability, Minneapolis, MN, March 18, 2011. Copy Supplied.

Speaker, "Department's Efforts to Combat Procurement Fraud," Department of Defense, Procurement Fraud Training Seminar, Daytona Beach, FL, April 12, 2011. Copy Supplied.

Speaker, "Civil Division Priorities and Accomplishments," University of Chicago, ABA Event, Chicago, Illinois, April 27, 2011. Copy Supplied.

Speaker, "Department's Efforts to Combat Fraud," Department of Energy, CIGIE Conference, Washington, D.C., May 4, 2011. Copy Supplied.

Speaker, "Department's Diversity and Inclusion Efforts," U.S. Department of Justice, Main Justice, Diversity Workshop, Washington, D.C., May 4, 2011. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered brief remarks at a workshop regarding the Department of Justice's diversity and inclusion initiative.

Speaker, "Immigration Issues," ILRC 21st Phillip Burton Immigration and Civil Rights Awards Dinner, San Francisco, CA, May 19, 2011. Copy Supplied.

Speaker, "Graduation Remarks," St. Francis Xavier Academy Graduation, Washington, D.C., June 3, 2011. Copy Supplied.

Press Conference, "Announcement of Interagency Effort to Combat Immigration Services Fraud," U.S. Citizenship and Immigration Services, Washington, D.C., June 9, 2011. Copy Supplied.

Speaker, "Department's Health Care Fraud Enforcement Efforts," Philadelphia Health Care Fraud Prevention Summit, Philadelphia, PA, June 17, 2011. Copy Supplied.

Speaker, "Take Charge of Your Career," U.S. Department of Justice, 2011 LEAP Class Professional Development Event, Washington, D.C., June 21, 2011. Copy Supplied.

Press Conference, "Operation Rescue Me (Mortgage Fraud)," U.S. Attorney's Office for the Southern District of Florida, Miami, FL, July 6, 2011. Copy Supplied.

Speaker, "Civil Division Priorities and Accomplishments," Southern District of Ohio 37th Annual Federal Law Seminar, Miami, FL, July 13, 2011. Copy Supplied.

Press Call, "Filing in *U.S. v. Alabama*," U.S. Department of Justice, Washington, D.C., August 1, 2011. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a conference call with press to announce the Department's filing of a preemption lawsuit against the State of Alabama's immigration law, HB 56.

Speaker, "Summer Intern Lecture Program," U.S. Department of Justice, Washington, D.C., August 2, 2011. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered brief remarks to law students serving as summer interns at the Department of Justice.

Press Conference, "Announcement of Maxim Resolution (Health Care Fraud)," U.S. Attorney's Office for the District of New Jersey, Newark, NJ, September 12, 2011. Copy Supplied.

Speaker, "Keynote Address," Court of Federal Claims Annual Judicial Conference, Berkeley, CA, October 19, 2011. Copy Supplied.

Speaker, "Department's Efforts to Combat Health Care Fraud," 12th Annual Pharmaceutical Regulatory and Compliance Congress, Washington, D.C., November 2, 2011. Copy Supplied.

Speaker, "Prepared Remarks of Assistant Attorney General Tony West at a Pen-and-Pad Briefing,"Alabama, November 28, 2011. Copy Supplied.

Speaker, "Awards Ceremony," U.S. Department of Justice, Civil Division Awards, Washington, D.C., December 8, 2011. Copy Supplied.

Panel, "Civil Division Priorities and Accomplishments," U.S. Department of Justice, Main Justice, Civil Division New Attorney Orientation, Washington, D.C., December 13, 2011. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I participated in a panel discussion with Civil Division leadership during an orientation for new Civil Division Attorneys.

Speaker, "Civil Division Priorities and Accomplishments," Bar Association of San Francisco, San Francisco, CA, December 16, 2011. I have not been able to locate prepared remarks, notes, a transcript, or a recording. I delivered informal remarks regarding the Civil Division's work and accomplishments at an event sponsored by the Bar Association of San Francisco.

Press Conference, "FY 2011 False Claims Act Recoveries," U.S. Department of Justice, Washington, D.C., December 19, 2011. Copy Supplied.

Speaker, "Immigration Issues," American Bar Association Meeting, Las Vegas, NV, January 13, 2012. Copy Supplied.

Speaker, "False Claims Act Enforcement Efforts," 25th Anniversary of the False Claims Act Amendments of 1986, Washington, D.C., January 31, 2012. Copy Supplied.

Speaker, "Immigration Issues," American Constitution Society Southeast Symposium of State Immigration Laws, Atlanta, GA, February 7, 2012. Copy Supplied.

Speeches/Talks as Acting Associate Attorney General.

Speaker, "Civil Division Priorities and Accomplishments," Wayne State University, Senior Scholars Lecture, Detroit, MI, March 8, 2012. Copy Supplied.

Speaker, "Department's Consumer Protection Efforts," Consumer Federation of America's Consumer Assembly, Washington, D.C., March 16, 2012. Copy Supplied.

Speaker, "Department's Youth Violence Prevention Efforts," White House Champions of Change Event, National Forum on Youth Violence Prevention, Washington, D.C., April 4, 2012. Copy Supplied.

Speaker, "Tribal Trust Settlements," White House Ceremony to Commemorate Tribal Trust Claim Settlements, Washington, D.C., April 11, 2012. Copy Supplied.

Speaker, "Department's Domestic and Youth Violence Prevention Efforts," The Y Factor: Men Leading By Example, Futures Without Violence, San Francisco, CA, April 12, 2012. Copy Supplied.

Speaker, "Earth Day," U.S. Department of Justice, ENRD Earth Day Celebration, Marvin Gaye Park, Washington, D.C., April 20, 2012. Copy Supplied.

Speaker, "Department's Youth Violence Prevention Efforts," Defending Childhood Task Force Hearing, Wayne State University, Detroit, MI, April 24, 2012. Copy Supplied.

Speaker, "Department's Efforts to Prevent and Respond to Sexual Assault," Office on Violence Against Women Sexual Assault Awareness Month Event, Washington, D.C., April 26, 2012. Copy Supplied.

Press Conference, "Announcement of Abbott Laboratories Resolution (Health Care Fraud)," U.S. Department of Justice, Washington, D.C., May 7, 2012. Copy Supplied.

Speaker, "Access to Legal Assistance," California Bar Foundation Spring Reception, Morrison & Foerster, San Francisco, CA, May 10, 2012. Copy Supplied.

Speaker, "Department's E-Discovery Efforts, "U.S. Department of Justice Advanced E-Discovery Training, VTC from Washington, D.C., May 16, 2012. Copy Supplied.

Speaker, "Department's AAPI Diversity and Inclusion Efforts," U.S. Department of Justice, Asian American Pacific Islander Heritage Month Observance Program, Washington, D.C., May 21, 2012. Copy Supplied.

Press Conference, "Announcement of Department's Sexual Assault Response Team Initiative," U.S. Attorney's Office for the District of Montana, Crow Agency, MT, June 6, 2012. Copy Supplied.

Speaker, "Department's Consumer Protection Efforts," FTC Common Ground Conference - Federal Enforcers Roundtable, Chicago, IL, June 12, 2012. Copy Supplied.

Speaker, "Department's Elder Abuse Prevention and Enforcement Efforts," White House World Elder Abuse Awareness Day Event, Washington, D.C., June 14, 2012. Copy Supplied.

Speaker, "Work of NIJ," National Institute of Justice Conference, Arlington, VA, June 18, 2012. Copy Supplied.

Press Call, "Announcement of COPS Hiring Program grants," COPS and Office of the Vice President, Washington, D.C., June 25, 2012. Copy Supplied.

Speaker, "Department's LGBT Inclusion Efforts," U.S. Department of Justice, LGBT Inclusion Event, Washington, D.C., June 25, 2012. Copy Supplied.

Press Conference, "Department's Youth Violence Prevention Efforts," OJP National Forum of Youth Violence Prevention, Boston Site Visit, Dorcester, MA, July 24, 2012. Copy Supplied.

Speaker, "Tribal Youth," OJP/OJJDP, 4H Youth Conference Center, Intertribal Youth Summit, Chevy Chase, MD, July 30, 2012. Copy Supplied.

Speaker, "Memorial Service Remarks," U.S. Department of Justice, Memorial Service for Michael Hertz, Washington, D.C., July 30, 2012. Copy Supplied.

Speaker, "Offender Re-entry," Department of Labor, Re-Entering Through Employment Summit, Washington, D.C., July 31, 2012. Copy Supplied.

Speaker, "Introduction of Morris Dees," U.S. Department of Justice, Morris Dees Diversity Event, Washington, D.C., July 31, 2012. Copy Supplied.

Speaker, "Keynote Address and Announcement of L. Anthony Sutin Civil Imagination Award Winners," COPS Annual Conference, Bethesda, MD, August 1, 2012. Copy Supplied.

Speaker, "Department's Community Revitalization Efforts," United Neighborhood Centers Association, 2012 Neighborhood Revitalization Conference, Washington, D.C., August 2, 2012. Copy Supplied.

Speaker, "Department's Anti-Bullying and Youth Violence Prevention Efforts," Federal Partners in Bullying Prevention, National Bullying Prevention Summit, Washington, D.C., August 7, 2012. Copy Supplied.

Press Conference, "Department's Youth Violence Prevention Efforts," OJP National Forum of Youth Violence Prevention, San Jose Site Visit, San Jose, CA, August 14, 2012. Copy Supplied.

Speaker, "Violence Against Women in Indian Country," Four Corners Indian Country Conference, Pojoaque, NM, August 28, 2012. Copy Supplied.

Speaker, "Prepared Remarks of Acting Associate Attorney General Tony West at the Community Relations Service Sikh Cultural Competency Training Preview," Washington, D.C., September 19, 2012. Copy Supplied.

Speaker, "Keynote address regarding access to criminal legal aid and support of UN principles and guidelines regarding the same" Permanent Mission of the Republic of South Africa to the United Nations, High-Level Breakfast Meeting on Access to Criminal Legal Aid, New York, NY, September 26,2012. Copy Supplied.

Press Conference, Residential Mortgage Backed Securities Working Group case filing by the New York Attorney General against JPMorgan, U.S. Department of Justice, Washington D.C. October 2, 2012. Copy Supplied.

Speaker, "ENRD Awards," U.S. Department of Justice, Washington, D.C. October 18, 2012. Copy Supplied.

Speaker, "Closing the Justice Gap: Federal Efforts to Address the Need for Increased Access to Justice," U.S. Department of Justice, Washington, D.C. November 13, 2012. Copy Supplied.

Press Conference, Criminal Resolution regarding BP Deepwater Horizon Incident, New Orleans, Louisiana, November 15, 2012, available at: http://www.c-span.org/Events/BP-to-Pay-45-Billion-in-Settlement-with-Government-Over-Oil-Spill/10737435896-2/.

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 through a review of my 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:

Interview, "Ex Guard Arrested after artifacts listed at auction," San Jose Mercury News, October 28, 1994. Copy Supplied.

Interview, "INS Clerk Accused of Forgery" Documents," San Jose Mercury," San Jose Mercury News, November 11, 1994. Copy Supplied

Interview, "Conviction in Museum Theft," The San Francisco Chronicle, May 27, 1995. Copy Supplied.

Interview, "Ex- Clerk Admits Selling Fake ID's" San Jose Mercury News, June 20, 1995. Copy Supplied.

Interview, "Multiple Escapes Nabbed in S.J.," San Mercury News, September 9,1995. Copy Supplied.

Interview, "Child Porn on Internet Charged International Tip Leads to U.S. Officers to a Freemont Man" San Jose Mercury News, December 20, 1995.Copy Supplied.

Interview, "Man Accused of Selling Child Porn over the Internet," San Francisco Chronicle, December 20, 1995. Copy Supplied.

Interview, "San Jose Food Processing Firm Charged with Selling Bad Meat," San Jose Mercury News, May 3, 1996. Copy Supplied.

Interview, "Ex-Intel Engineer Gets Prisons Self Proclaimed High-Tech Spy Passed Information to AMD," San Jose Mercury News, June 25, 1996. Copy Supplied.

Interview, "16 Indicted On Charges Of Internet Pornography," The New York Times, July 17, 1996. Copy Supplied.

Interview, "Live Child Porn Sent on Internet, 13 Arrested in 'Photo Shoot' of Girl, 10," San Jose Mercury News, July 17, 1996. Copy Supplied.

Interview, "16 Indicted in Group for Child Sex on the Internet," Detroit Free Press, July 18, 1996. Copy Supplied.

Interview, "13 to Face Charges Of Child Pornography" The Washington Post, July 18, 1996. Copy Supplied.

Interview, "Teacher Wins Bail in Child Porn Case," San Jose Mercury News, August 18, 1996. Copy Supplied.

Interview, "Net Porn Suspect in Court Man Admits Role in Pedophilia Ring," San Jose Mercury News, September 20, 1996. Copy Supplied.

Interview, "Canadian Arrest Is Tied To U.S. Child-Porn Ring," The New York Times, November 5, 1996. Copy Supplied.

Interview, Australian Man Identified in Internet Child Porn Ring" Agence France Presse, November 6, 1996 Copy Supplied.

Interview, "Porn Club Pleas; Net Ring Avoid Trial," San Jose Mercury News, November 6, 1996. Copy Supplied.

Interview, "1,000 Pack Hearing on Sikh Temple," San Jose Mercury News September 25, 1997. Copy Supplied.

Interview, "Decision on Sikh Temple Delayed," San Jose Mercury News, September 26, 1997. Copy Supplied.

Interview, "Federal Judge Sentences Three In Internet Child Pornography Ring," San Jose Mercury News October 23, 1997. Copy Supplied.

Interview, "Net Pedophile Case Hits Home," Daily Telegraph, March 8, 1998. Copy Supplied.

Interview, "46 People Arrested at Rally Over Riverside Police Shooting," The Los Angeles Times, May 11, 1999. Copy Supplied.

Interview, "Moving Beyond Stereotypes in the Legislature," Sacramento Bee, December 7, 2000. Copy Supplied.

Interview, "Security or Freedom," October 28, 2001, San Jose Mercury Editorial Board, October 28, 2001. Copy Supplied.

Interview, "MoFo Adds Another From U.S. Attorney's Office," The Recorder, November 16, 2001. Copy Supplied.

Interview, "MoFo Adds Another Ex-DOJ Attorney" S.F. Daily Journal, November 16, 2001. Copy Supplied.

Interview, "Bay Area Community Leader Joins Taliban Defense," San Jose Mercury News January 29, 2002. Copy Supplied.

Interview, "Lindh Disillusioned By 9/11, His Lawyers Say," USA Today, March 15, 2002. Copy Supplied.

Interview, "U.S. Troops Took Photos of Blindfolded Walker Lindh," CNN.com, April 12, 2002. Copy Supplied.

Interview, "U.S. Troops Posed With Bound Lindh," Washington Post, April 13, 2002. Copy Supplied.

Interview, "Lindh a Good American Claims Parents," The Abrams Report, MSNBC, July 16, 2002. Copy Supplied.

Interview, "A Legal War Without Victory," Salon.com, July 16, 2002. Copy Supplied.

Interview, "John Walker Lindh Plea," Washington Post.com, July 18, 2002. Copy Supplied.

Interview, "Lindh Plea," MSNBC- Abrams Report, July 23, 2002. Copy Supplied.

Interview, "Spann Dad Asks to Testify Against Lindh," The Washington Times, July 24, 2002. Copy Supplied.

Interview, "Lawyers: Lindh Seeks Forgiveness," Fox News, August 31, 2002. Copy Supplied.

Interview, "Current Quotations," The Associated Press State & Local Wire August 31, 2002. Copy Supplied.

Interview, "Lindh Is Fully Cooperating with Government, His Lawyers Say," Los Angeles Times, September 1, 2002. Copy Supplied.

Interview, "'Sorry' Lindh Singing to the Feds," The New York Post, September 11, 2002. Copy Supplied.

Interview, "The Cell Broker," The Recorder, September 16, 2002. Copy Supplied.

Interview, "Lindh Upholding Plea Agreement," The Washington Post, September 28, 2002. Copy Supplied.

Interview, "The Long Road Home - Crime & Courts" Vol. 58 No. 15, People.com, October 7, 2002. Copy Supplied.

Interview, "Does An Audio Tape Prove That Alleged Sniper John Lee Malvo Was Not Just an Impressionable Young Kid?," The Abrams Report, MSNBC, November 1, 2002. Copy Supplied.

Interview, "Lindh Plea," MSNBC-Abrams Report, November 23, 2002. No Copy Available.

Interview, "BBC Documentary on John Walker Lindh", 2002. No Copy Available.

Interview, "Attorney Says Lindh is Fine Except for Bruise on Forehead," AP, March 6, 2003. Copy Supplied.

Interview, "Assault on Lindh Probed by FBI," Lost Angeles Times, March 7, 2003. Copy Supplied.

Interview, "American Taliban Prisoner attacked at Victorville Assault: The Attorney for John Walker Lindh Says his Client Suffered No Serious Injuries, The Press Enterprise, March 7, 2003. Copy Supplied.

Interview, "Threats and Responses: The American Fighter: Taliban Ally Hurt in Attack While in Prison," The New York Times, March 7, 2003. Copy Supplied.

Interview, "Walker Lindh Bashed in Jail," The Advertiser, March 8, 2003. Copy Supplied.

Interview, "Lost in the Jihad-Why Did The Government's Case Against John Walker Lindh Collapse," The New Yorker, March 10, 2003. Copy Supplied.

"Prisoner Pummels Lindh in Slammer," The New York Post, July 4, 2003. Copy Supplied.

Commentary, "Kobe Bryant Case," ESPN NEWS, August 2, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, August 3, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, August 6, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, August 10, 2003. No Copy Available.

"Black Like Me John Walker Lindh's Hip-Hop Daze," East Bay Express, September 3, 2003. Copy Supplied.

Commentary, "Kobe Bryant Case," ESPN NEWS, September 9, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, October 5, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, October 6, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, October 8, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, October 9, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN NEWS, October 12, 2003. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN Sport Center Special, October 15, 2003. No Copy Available.

Interview, "Romanowski's Supporters Stand Fast" The New York Times December 26, 2003. Copy Supplied.

Interview, "Maurice Clarett and Legal Changes to the NFL Draft," ESPN Hotlist, February 6, 2004. No Copy Available.

Interview, "Steroid Charges Bypass Athletes," The San Francisco Chronicle February 15, 2004. Copy Supplied.

Commentary, "Violence in the NHL," ESPN, March 12, 2004. No Copy Available.

Interview, "White House Agrees to Allow National Security Adviser Condoleeza Rice to Testify Under Oath Before 9/11 Commission," The Abrams Report, MSNBC, March 30, 2004. Copy Supplied.

Commentary, "Court TV: Jayson Williams," Court TV, March 31, 2004. No Copy Available.

Interview, "Maurice Clarett/NFL," ESPN Hotlist, April 4, 2004. No Copy Available

Interview, "Tony West Named to Daily Journal's Top 20 Under 40 List," The Daily Journal, May 5, 2004. Copy Supplied.

Commentary, "Kobe Bryant Case," ESPN, June 10, 2004. No Copy Available.

Interview, "It's Party Time: Bay Area Faithful Head to Boston for their Moment in the Spotlight," Alameda Times-Star July 25, 2004. Copy Supplied

"Interview, "Democrat's Affection Endures for Bill Clinton," San Jose Mercury News, July 27, 2004. Copy Supplied.

Interview, "An Energized Party: Bay Area Delegates," Alameda Time-Star, August 1, 2004. Copy Supplied.

Commentary, "Kobe Bryant Case," ESPN, September 1, 2004. No Copy Available.

Commentary, "Kobe Bryant Case," ESPN News, September 2, 2004. No Copy Available.

Interview, "Democratic Gadflies Take on the RNC," Daily Review, September 2, 2004. Copy Supplied.

Commentary, "ESPN Sport Center: Kobe Bryant," ESPN, September 5, 2004. No Copy Available.

Commentary, "John Walker Lindh," ABC News, December 1, 2004. No Copy Available.

Commentary, "Game Night," ESPN Radio, December 7, 2004. No Copy Available.

Commentary, "Major League Baseball Drug Testing, ESPN "Outside the Line," 2004. No Copy Available.

Interview, "Romanowski Likened to Jekyll, Hyde," The San Francisco Chronicle, March 18, 2005. Copy Supplied.

Interview, "Romanowski Must Pay," San Jose Mercury News, March 23, 2005. Copy Supplied.

Interview, "Internet and Politics," Connections: Bellarmine College Prepartory Magazine, Spring 2005. Copy Supplied.

Commentary, "Libby Indictment," CBS-5, October 28, 2005. No Copy Available.

Commentary, "Libby Indictment," CNN, October 31, 2005. No Copy Available.

Commentary, "Libby: Vice President Dick Cheney Named Two of His Top Staffer Members Monday to Replace I. Lewis 'Scooter' Libby, Who Resigned Last Week after Being Indicted in the CIA Leak Investigation," CNN, October 31, 2005. No Copy Available.

Commentary, "Libby Pleads Not Guilty," KCBS, November 3, 2005. No Copy Available.

Commentary, "Libby Pleads Not Guilty," CNN, November 3, 2005. No Copy Available.

Commentary, "Terrell Owens," ESPN, November 8, 2005. No Copy Available.

Commentary, "Terrell Owens," ESPN, November 9, 2005. No Copy Available

Interview, "Silent Treatment," Marin Independent Journal, November 21, 2005. Copy Supplied.

Interview, "Dover Intelligence Design Case," CNN Prime News Tonight, December 20, 2005, available at:
http://www.veracast.com/moto/clips/events/player.asx/1031_Tony_West_CNN_Prime_News_Tonite_Intelligent_Design_12202005.asx

Commentary, "Barry Bonds Case," CNN, March 24, 2006. No Copy Available.

Commentary, "Barry Bonds Case," CBS-5, March 24, 2006. No Copy Available.

Commentary, "Barry Bonds lawsuit re 'Game of Shadows,'" CNN Headline News, March 25, 2006. No Copy Available.

Commentary, "Scooter Libby Goes to the Grand Jury," CNN-HN, April 6, 2006, available at:
http://www.veracast.com/moto/clips/events/player.asx/1041_Tony_West_CNN-HN_Libby_Case_040606.asx

Commentary, "Moussaoui Trial," KCBS-5, CA, April 14, 2006.
No Copy Available.

Commentary, "Barry Bonds Case," CNN Headline News, April 14, 2006. No Copy Available.

Interview, "The Perjury Evidence against Bonds," The San Francisco Chronicle, April 16, 2006. Copy Supplied.

Commentary, "Rosenthal Appeal," CBS-5, April 26, 2006. No Copy Available

Interview "Even in His Toughest Year, Bonds Still Can Inspire His Fans," The San Francisco Chronicle, April 27, 2006. Copy Supplied.

Commentary, "Moussaoui Verdict," KCBS-5, CA, May 3, 2006. No Copy Available.

Interview, "Trainer's Silence Could Be Key to Bonds Case," The New York Times, July 22, 2006. Copy Supplied

Panel Moderator, "Scooter Libby Goes to the Grand Jury," Commonwealth Club of California, broadcast on National Public Radio, August 2, 2006, available at: http://www.veracast.com/mofo/clips/events/player_asx/1041_Tony_West_CNN-HN_Libby_Case_040606.asx

Interview, "Dellums' Team Tours Gritty West Oakland," The San Francisco Chronicle, December 17, 2006. Copy Supplied.

Commentary, "Reaction to Stimson's Comments," CBS-5, January 14, 2007. No Copy Available.

Interview, "Defending the Despised," Perspectives, KQED FM, January 22, 2007. No Copy Available.

Commentary, "Libby Case Goes To Jury," CBS-5, February 21, 2007. No Copy Available.

Interview, "Candidacy More Complex than Black or White: Obama Straddles a Fine Line on Race," Contra Costa Times, March 16, 2007. Copy Supplied.

Commentary, "Police Transparency," Perspectives, KQED FM, May 22, 2007, available at: http://www.veracast.com/mofo/clips/events/player_asx/1071_Tony_West_KQED_Police_Transparency_052207.asx

Commentary, "Libby Commutation," CBS-5, July 2, 2007. No Copy Available.

Commentary, "Barry Bonds Case," CBS-5, July 5, 2007. No Copy Available.

Interview, "White House, Congress Showdown Intensifies over Executive Privilege," KCBS-5 News, CA, July 11, 2007. Copy Supplied.

Interview "Dems Talk Early Campaign Strategies Inside Bay Area," Inside Bay Area, July 16, 2007. Copy Supplied.

Commentary, "Michael Vick Case," CNN Headline News, July 23, 2007. No Copy Available.

Commentary, "Legal Roundup," CNN Headline News, July 25, 2007. No Copy Available.

Commentary, "Michael Vick Case," CNN Headline News, July 26, 2007. No Copy Available.

Commentary, "Michael Vick Case," CNN Headline News, August 17, 2007. No Copy Available.

Interview, "Attorney General Alberto Gonzales Resigns," KCBS-5, All News 740 AM, CA, August 27, 2007, available at: http://www.veracast.com/mofo/clips/events/player_asx/1101_Attorney_General_Roberto_Gonzales_Resigns_08272007.asx

Commentary, "Senator Craig Case," CNN, September, 5, 2007. No Copy Available.

Commentary, "Sex offender Conviction Overturned," CNN Headline News, September 14, 2007. No Copy Available.

Commentary, "Dogfighting Charges against Michael Vick," CNN, Headline Prime News, Erica Hill, July 23, 2007, YouTube, Sep 14, 2007, available at: http://www.youtube.com/watch?v=ZIOYHHKI6WM.

Commentary, "OJ Simpson Memorabilia Case," CNN Headline News, September 19, 2007. No Copy Available .

Commentary, "OJ Simpson Memorabilia Case," CNN Headline News, November 8, 2007. No Copy Available.

Commentary, "OJ Simpson Memorabilia Case," CNN, November 9, 2007, No Copy Available.

Interview, "Obama Campaign," You Tube, November 14, 2007. No Copy Available

Commentary, "Ed Jew Indictment," KCBS, November 16, 2007. No Copy Available.

Commentary, "Barry Bonds Case," CNN Headline News, November 16, 2007. No Copy Available.

Interview, "Legal Lines Are Drawn as Bonds Waits," New York Times, November 17, 2007, Copy Supplied.

Commentary, "Barry Bonds Case," KCBS, December 7, 2007. No Copy Available.

Interview, "California's Primary Could Yet Be Decisive, The San Francisco Chronicle, December 10, 2007, Copy Supplied.

Interview, "Clemens Strongly Denies Allegations By His Ex-Trainer," New York Times, December 19, 2007, Copy Supplied.

Interview, "Obama Presidential Campaign," Zennie62Media, Zennie Abraham, December 27, 2007, "Tony West of SF Obama For America On Barack Obama," YouTube, Dec 27, 2007, available at: http://www.youtube.com/watch?v=_Pb5PhdgF5Y&feature=relmfu.

Interview, "Attorneys Working Toward The Tipping Point for Diversity, The Bar Association of San Francisco, San Francisco Attorney, Winter 2007, Copy Supplied.

Interview, "The Diversity Pipeline-Plugging the Leak," Bar Association of San Francisco - San Francisco Attorney Magazine, Winter 2007, Copy Supplied.

Interview, "Mail Ballots Could Make California Vote Meaningful," The San Francisco Chronicle, January 4, 2008, Copy Supplied.

Commentary, "Iowa Caucus Results," KPCC, January 4, 2008. No Copy Available.

Commentary, "Obama New Hampshire Primary," ABC-7, January 8, 2008. No Copy Available.

Commentary, "Obama Super Tuesday," ABC-7, January 12, 2008. No Copy Available.

Interview, "Herhold: Political Pros Find Obama Remarkable," San Jose Mercury News January 13, 2008, Copy Supplied.

Interview, "The Beer or Wine Decider," The San Francisco Chronicle, January 16, 2008, Copy Supplied.

Interview, "Represent Barack Obama," KRON-4, CA, January 23, 2008, No Copy Available.

Interview, "Ex-Prosecutors Question Handling of Spying Case," New York Times, February 3, 2008, Copy Supplied.

Interview, "Obama Presidential Campaign (Youth Vote)," San Francisco Chronicle, Phillip Matier and Andrew Ross, February 3, 2008, Copy Supplied.

Interview, "Obama Campaign Analysis," KRON-4, CA, February 5, 2008, No Copy Available.

Interview, "Potomac Results," ABC-7 KGO, Mark Matthews, CA, February 12, 2008, No Copy Available.

Commentary, "Roger Clemens Congressional Testimony," CNN Headline News, February 13, 2008. No Copy Available.

Interview, "L.A. to Try Tallying Ballots Left Out," San Francisco Chronicle, February 13, 2008. Copy Supplied.

Interview, "Obama Presidential Campaign (California Primary)," San Francisco Chronicle, Joe Garofoli, San Francisco, CA, February 13, 2008, Copy Supplied.

Interview, "Obama Presidential Campaign," KCBS-5, Hank Plante, CA, February 29, 2008. No Copy Available.

Interview, "Obama Presidential Campaign," San Francisco Chronicle, Joe Garofoli, San Francisco, CA, March 1, 2008. Copy Supplied.

Interview, "Obama Presidential Campaign," KPCC Pat Morrison Show, March 4, 2008. No Copy Available.

Interview, "Obama Campaign," KPCC, March 18, 2008. No Copy Available.

Interview, "Barack Obama's Speech," CNN Radio, March 19, 2008. No Copy Available.

Interview, "Plans twist and turn for Olympic Torch's S.F. Route," The San Francisco Chronicle, March 26, 2008. Copy Supplied.

Interview, "Obama Campaign," Youtube, March 30, 2008. No Copy Available.

Interview, "Obama Presidential Campaign," KCBS-5, Hank Plante, CA, April 2, 2008. No Copy Available.

Interview, "Forum-Life and Career of Barack Obama," KQED, April 3, 2008. No Copy Available.

Interview, "Obama Presidential Campaign," KTVU, April 6, 2008. No Copy Available.

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Interview, "Obama Campaign," CBS-5, April 22, 2008. No Copy Available.

Interview, "Obama Presidential Campaign," CBS, Live Special, April 22, 2008. No Copy Available.

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Interview, "Democrats' Hopes on Line Today In Indiana, North Carolina," The San Francisco Chronicle, May 6 2008. Copy Supplied.

Interview, "Obama Presidential Campaign (Indiana Primary)," KCBS-5, CA, May 6, 2008, available at: http://www.youtube.com/watch?v=W3pLak_8MGY

Interview, "Graham Found Guilty of Lying in Balco Case," New York Times, May 30, 2008. Copy Supplied.

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Interview, "Best of 2008," July, 2008. Copy Supplied.

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Commentary, "The California Report - Decision 2008, California's Landslide for Obama," NPR Election Show, November 5, 2008, available at: http://www.californiareport.org/archive/R811051201/a.

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Interview, "Obama Campaign," YouTube, November 10, 2008. No Copy Available.

Interview, "Obama Presidential Campaign," Zennie62Media, Zennie Abraham, San Francisco, CA, November 12, 2008, YouTube, Tony West: Of Obama For America On Obama And The Future, November 12, 2008, available at: http://www.youtube.com/watch?v=nf9fiqL9N0k.

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Interview, "How a Long-Shot Campaign Led to the Whitehouse," Mercury News, January 13, 2009. Copy Supplied.

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Interview, "Democracy: the Upgrade," San Francisco Magazine. February 2009. Copy Supplied.

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Interview, "Health Care Fraud," Washington Post, Katherine Weymouth, Washington, D.C., July 27, 2009. No Copy Available.

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Interview, "Pfizer Settlement," Oakland Tribune, Bay Area News Group, Drew Voros, September 14, 2009. No Copy Available.

Press Lunch, "Pfizer Settlement," Washington Post, Eva Rodriguez and Jonathan Capehart, Washington, D.C., September 22, 2009. No Copy Available.

Interview, "Pfizer Settlement," National Law Journal, Mike Scarcella, Washington, D.C., Main Justice, October 6, 2009. No Copy Available.

Interview, "Defense of Marriage Act Litigation," Associated Press, Devlin Barrett, Washington, D.C., October 30, 2009. Copy Supplied.

Interview, "Department of Justice Portrait Series," MainJustice.com, Steve Bagley (article by Joe Palazzolo), November 5, 2009. Copy Supplied.

Interview, "Pro Bono Clients Receive Legal Boost from Federal Attorneys," Washington Lawyer, Thai Phi, December 17, 2009. Copy Supplied.

Interview, "Tony and Maya: Partners in Public Service," Stanford Lawyer Magazine, Sharon Driscoll, January 13, 2010. Copy Supplied.

Interview, "Small Smiles Centers Settlement," WJR 760 AM, Paul W. Smith, January 22, 2010. "A United States Department of Justice Attorney talks to Paul W. Smith about a disturbing dental case involving children," January 22, 2010, available at: http://www.wjr.com/article.asp?id=1669986&spid=34612.

Interview, "GCs in D.C.: Counsel to Government," Stanford Lawyer Magazine interview, Rick Schmitt, February 12, 2010. Copy Supplied.

Interview, "20 People Who Make Healthcare Better-' Tony West: Waging War on Medicare, Medicaid Fraud.'" Health Leaders Media, John Commins, September 21, 2010. Copy Supplied.

Interview, "Radio Interview RE: Mortgage Fraud Summit," Los Angeles, CA, September 30, 2010. No Copy Available.

Interview, "Civil Division," San Jose Mercury News, Editorial Board, San Jose, CA, November 4, 2010. No Copy Available.

Interview, "Civil Division," San Francisco Chronicle, Editorial Board, San Francisco, CA, November 5, 2010. No Copy Available.

Interview, "Civil Division," CNBC, Washington, D.C., Main Justice, December 13, 2010. No Copy Available.

Interview, "Forest Pharmaceuticals," New York Times Magazine, Tara Parker-Pope, March 9, 2011. No Copy Available.

Interview, "Meet Tony West," Compliance Today (v. 13, no. 4, Apr. 2011), Frank Sheeder, April 1, 2011. No Copy Available.

Interview, "Article re: Attorney General Holder," Newsweek, Philip Shenon, April 18, 2011. No Copy Available.

Interview, "False Claims Act Hospital Investigations," New York Times, Reed Abelson, May 5, 2011. No Copy Available.

Interview, "Office of Consumer Protection Litigation," MainJustice.com, Channing Turner, June 21, 2011. Copy Supplied.

Interview, "Golinski v. OPM Oral Argument," The Advocate, Andrew Harmon, December 15, 2011. Copy Supplied.

Interview, "Golinski v. OPM Oral Argument," KQED, NPR, Cy Muskier, San Francisco, CA, December 16, 2011. Copy Supplied.

Interview, "Consumer Protection: Counterfeit Goods," The Michael Eric Dyson Show (radio), Washington, D.C., December 19, 2011. Copy Supplied.

Pen and Pad with Reporters, "FY 2011 False Claims Act Press Event," Main Justice, December 19, 2011. No Copy Available.

Interview, "Whistleblowers Key in Health Care Fraud Fight," USA Today, Kelly Kennedy, February 23, 2012. Copy Supplied.

Interview, "Justice Dept. Lawyer Tony West to take over as Acting Associate Attorney General," Washington Post, Sari Horwitz, February 27, 2012. Copy Supplied.

Interviews as Acting Associate Attorney General:

Interview, "Tribal Trust Fund Settlements," Federal News Radio (News Radio 1500 AM), Federal Drive, Tom Temin and Emily Kopp, Washington, D.C., April 17, 2012. Copy Supplied.

Interview, "Financial Fraud," Daily Journal, Jill Redhage, San Francisco, CA, May 10, 2012. No Copy Available.

Interview, "Financial Fraud Enforcement Task Force RMBS Working Group," June 1, 2012. No Copy Available.

Interview, "Personal Upbringing and DOJ Efforts to Combat Sexual Assault in Indian Country," Montana and N. Wyoming Public Radio, Home Ground Brian Kahn, Billings, MT, June 7, 2012, available at: http://yprpc.streamguys.net/podcast/homeground/hg120619.mp3

Interview, "The Legal Times Awards: Champions & Visionaries," The National Law Journal/Legal Times, Mike Scarcella, Washington, D.C., June 29, 2012. Copy Supplied.

Interview, "Tony West se siente satisfecho de estar en la Isla (President's Task Force on Puerto Rico and Public Safety Working Group)," El Nuevo Dia, San Juan, Puerto Rico, July 12, 2012, available at: http://www.elnuevodia.com/videos-noticias-tonywestsesientesatisfechodeestarenlaisla-1732403709001.html

Interview, "False Claims Act and Financial Fraud Prosecutions," New York Times, Michael Schmidt and Edward Wyatt, by phone, August 3, 2012. Copy Supplied.

Interview, "National Forum on Youth Violence Prevention, Gang Violence Prevention in San Jose," KQED, NPR, News Staff, San Jose, CA, August 15, 2012. Copy Supplied.

Interview, "National Forum on Youth Violence Prevention, Gang Violence Prevention in San Jose," KGO-7, Karina Rusk, San Jose, CA, August 15, 2012. Copy Supplied.

Interview, "National Forum on Youth Violence Prevention, Gang Violence Prevention in San Jose," KQED, NPR, News Staff, San Jose, CA, August 15, 2012. Copy Supplied, and available at: http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=8773994

Interview, "National Forum on Youth Violence Prevention, Gang Violence Prevention in San Jose," KLIV 1590, San Jose, CA, August 15, 2012. No Copy Available.

Interview, "Public Safety and Violence Against Women in Indian Country," Santa Fe Reporter & KUNM (NPR Radio), Colleen Keane, New Mexico, August 28, 2012. 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.

1996 – 98: Commissioner, City of San José Planning Commission (appointed by Mayor Susan Hammer and the San José City Council)

1998: Candidate, San José City Council (unsuccessful)

2000: Candidate, California State Assembly (unsuccessful)

2000 – 02: Commissioner, Juvenile Justice Commission of Santa Clara County (appointed by the Board of Supervisors of Santa Clara County)

2004 – 07: Member, Board of Directors, U.C. Hastings College of the Law (appointed by California Governor Arnold Schwarzenegger)

2005 – 08: Northern District of California Lawyer Representative, U.S. Court of Appeals for the Ninth Circuit (Appointed by Chief Judge Vaughn Walker of Northern District)

2009 – 12: Assistant Attorney General, Civil Division, U.S. Department of Justice (appointed by President Barack Obama and confirmed by the U.S. Senate)

2012 – Present: Acting Associate Attorney General of the United States, U.S. Department of Justice (appointed 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.

Summer, 1984: Massachusetts State Delegation, Democratic National Convention, Volunteer (assisted in floor coordination during national convention)

1987 – 88: Dukakis For President, Chief of Staff to the Treasurer (assisted national campaign Treasurer Robert A. Farmer in building and leading national fundraising effort for presidential candidate Michael S. Dukakis)

1988 – 89: Democratic Governors' Association, Finance Director

1992 – 93: California Democratic Party, Chief of Staff to the Finance Chairman (assisted in fundraising for the 1992 Democratic Coordinated Campaign)

1992: Democratic National Convention, Electoral Delegate California (Clinton)

2000: Al Gore for President, Fundraiser (assisted in fundraising for the Al Gore presidential campaign)

2002 – 03: Kamala Harris for District Attorney of San Francisco, Advisor, Member of Finance Committee (advised on all aspects of the campaign; assisted in fundraising)

2004: Kerry/Edward Presidential Campaign, Member of Finance Committee (assisted in fundraising for Kerry/Edwards presidential campaign)

2004: Democratic National Convention, Electoral Delegate California (Kerry)

2004 – 05: Campaign to Re-Elect Kamala Harris as District Attorney of San Francisco, Advisor, Member of Finance Committee (advised on all aspects of the campaign; assisted in fundraising)

2006: Oakland Mayor-Elect Ronald V. Dellums Transition Committee, Co-Chair (assisted transition team of Mayor Dellums)

2007 – 08: Obama for America, Co-Chair, National Finance Committee (assisted in California fundraising for the Obama presidential campaign)

2007 – 08: Obama California Leadership Circle, Member (assisted in Obama campaign in building a statewide, grassroots organization)

Fall, 2008: Obama/Biden Presidential Campaign, Volunteer (field coordinator, surrogate speaker)

2008: Democratic National Convention, At-Large Delegate (Obama)

2008 – 09: Kamala Harris for California Attorney General, Advisor, Member of Finance Committee (advised on all aspects of the campaign; assisted in fundraising)

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 did not clerk.

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.

U.S. Department of Justice
2012 – Present
Acting Associate Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

U.S. Department of Justice, Civil Division
2009 – 12
Assistant Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Morrison & Foerster LLP
Partner
2001 – 09
425 Market Street
San Francisco, CA 94105

California Department of Justice, Office of the Attorney General
1999 – 2001
Special Assistant Attorney General
1300 I St
Sacramento, CA 95814

U.S. Department of Justice, United States Attorney's Office, Northern District of California
1994 – 99
Assistant United States Attorney
150 Almaden Boulevard, Suite 900
San José, CA 95113

U.S. Department of Justice, Office of the Deputy Attorney General
1993 – 94
Special Assistant to the Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Bingham McCutchen (formally McCutchen, Doyle, Brown & Enersen, San José office)
1992 – 93
Associate
1900 University Avenue
East Palo Alto, CA 94303-2223

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.

Public Service

Following graduation from Stanford Law School, I practiced for seven years in federal and state government.

From 1993 through 1994, I served as a Special Assistant in the U.S. Department of Justice. Under the direction of U.S. Deputy Attorneys General Philip Heymann and Jamie Gorelick, as well as Attorney General Janet Reno, I worked on the development of national crime policy, including the 1994 Omnibus Crime Bill.

From 1994 to 1999, I served as an Assistant United States Attorney for the Northern District of California, prosecuting a variety of cases, including sexual exploitation offenses against children, high-tech crimes, bank robberies, financial fraud schemes, economic espionage, firearms violations, tax offenses and government malfeasance.

From 1999 to 2001, I served as state Special Assistant Attorney General, an appointee of California Attorney General Bill Lockyer. In that capacity, I advised Attorney General Lockyer on various matters including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

Since April 2009, I have served as a senior official in the U.S. Department of Justice. From 2009 to 2012, I served as the Assistant Attorney General of the Civil Division, the Justice Department's largest litigating component with over 1400 employees. The Civil Division represents the United States in legal challenges to Congressional statutes, Administration policies, and federal agency actions. . The Division practice also includes affirmative litigation and the defense of the President, Cabinet officers, and other federal employees in lawsuits filed against them throughout the country. As head of the Civil Division, I oversee these traditional areas, as well as the Civil Division's affirmative civil enforcement efforts.

Since March 2012, I have served as Acting Associate Attorney General of the United States. In this role, I assist the Attorney General and Deputy Attorney General in the management of the Department by supervising our civil components (Antitrust, Civil, Civil Rights, Environment and Natural Resources, Tax, Community Relations Service, Executive Office of U.S. Trustees, Office of Information Policy, Foreign Settlement Claims Commission) and the grant-making components (Office of Justice Programs, Office on Violence Against Women, Community Oriented Policing Services (COPS)). In addition, I have continued my predecessor's emphasis on improving the federal government's relationship with American Indians and Native Alaskans.

Private Practice

Between 2001 and 2009, I practiced at a private law firm, Morrison & Foerster, representing a wide range of clients from indigent individuals in civil rights litigation to multinational corporations in complex commercial matters. My civil matters included:

- representation of several public companies in various securities class action suits;
- trial co-counsel for former Oakland Raiders football player, in a successful tort action against fellow teammate; and
- trial co-counsel for plaintiff and her children who suffered civil rights violations following the police shooting of a family member (jury found that law enforcement officers violated plaintiff's Fourth Amendment rights and awarded punitive damages).

My criminal matters included:

- representation of a municipal securities firm president in a multi-state, FBI criminal investigation and federal prosecution that resulted in no charges filed against client.
- representation of a Fortune 500 computer hardware manufacturer in a federal criminal probe that resulted in no charges filed against the company; and
- representation of an individual in connection with FBI political corruption investigation that resulted in no charges filed against individual.

Community Service

Before my appointment and confirmation as Assistant Attorney General of the Civil Division in 2009, I served on the Board of Governors for the Northern California Association of Business Trial Lawyers and on the Bar Association of San Francisco's Litigation Section Executive Committee. I was also a participant in Oakland's McCullum Youth Court. In addition, I have served on the Board of Directors of U.C. Hastings College of the Law, as an adjunct faculty of Lincoln Law School of San José (Trial Advocacy), and as a Northern District of California Ninth Circuit Lawyers Representative.

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

As an Assistant U.S. Attorney, Assistant Attorney General and currently as Acting Associate Attorney General, my client has been the United States, and I have specialized in both criminal and civil litigation and public policy.

While in private practice, my typical clients included individuals and companies who retained me in a variety of complex civil and criminal matters. I specialized in complex commercial litigation, white-collar criminal defense, civil rights and civil liberties matters and securities litigation.

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

As Acting Associate Attorney General, my primary responsibility is to advise and assist the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs related to a broad range of issues. In that capacity, approximately 70% of my work involves supervising the Department's five civil litigating components (Antitrust Division, Civil Division,

Civil Rights Division, Environment and Natural Resources Division, and Tax Division).

As Assistant Attorney General of the Civil Division, nearly 100% of my work involved managing the civil and criminal litigation in which the Division was involved.

In private practice, approximately 90% of my practice was in litigation; approximately 10% consisted of strategic and public relations advice. From 1994 to 1999, I appeared frequently in court (as a federal prosecutor). Between 2001 and 2009, I appeared in state and federal court as a civil litigator. Since 2009, I have appeared in federal court twice to argue cases on behalf of the United States.

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

United States Attorney's Office, Northern District of California (1994 – 99)
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies. 0%

California Department of Justice, Office of the Attorney General (1999 – 2001)
   1. federal courts: 2%
   2. state courts of record: 98%
   3. other courts: 0%
   4. administrative agencies. 0%

Morrison & Foerster LLP (2001 – 09)
   1. federal courts: 48%
   2. state courts of record: 48%
   3. other courts: 0%
   4. administrative agencies. 4%

U.S. Department of Justice (2009 – Present)
   1. federal courts: 94%
   2. state courts of record: 2%
   3. other courts: 2%
   4. administrative agencies. 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings;
   2. criminal proceedings.

United States Attorney's Office, Northern District of California (1994 – 99)

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

California Department of Justice, Office of the Attorney General (1999 – 2001)

1. civil proceedings: 50%
2. criminal proceedings. 50%

Morrison & Foerster LLP (2001 – 09)

1. civil proceedings: 65%
2. criminal proceedings. 35%

U.S. Department of Justice (2009 – Present)

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

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

I have tried at least four cases to verdict as sole counsel, at least one case to verdict as chief counsel, and at least four cases to verdict as associate counsel.

i. What percentage of these trials were:

1. jury: 100%
2. non-jury. 0%

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

I have not argued any cases before the Supreme Court nor have I served as the primary author on any briefs submitted to the court. However, in my capacity as Assistant Attorney General of the Civil Division, and in accordance with Department procedure, my name appeared on hundreds of briefs filed in the U.S. Supreme Court between 2009 and 2012 (including briefs filed at the certiorari stage and briefs filed at the merits stage).

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

a. the date of representation:

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

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

1. *Hamad v. Obama et al.; Gul v. Obama et al.*

Citation(s)/docket number(s):

Nos. 10-5117 & 10-5118 (D.C. Cir.)
Gul v. Obama, 652 F.3d 12 (D.C. Cir. 2011)

Party represented:
President Barack Obama et al.

Summary of case:

These were habeas corpus petitions brought by two former detainees at Guantanamo Bay challenging the lawfulness of their prior detention. The district courts had dismissed these and other habeas petitions of the former habeas petitions (approximately 105 in total), holding that the petitions became moot when petitioners were transferred beyond the control of the United States. Petitioners appealed.

Gul and Hamad's appeals were consolidated to become the lead test case at the D.C. Circuit. The D.C. Circuit affirmed the district court's dismissal of the petitions as moot, holding that the former detainees suffered no collateral consequences of detention sufficient to preserve a constitutional case or controversy under Article III.

Nature of participation:

As the Assistant Attorney General of the Civil Division, I became personally involved in this matter after briefing in the D.C. Circuit, where I presented oral argument for the government.

Final disposition:

The petitions were dismissed, and that dismissal was affirmed. Petitions for rehearing en banc and certiorari were denied.

Date of representation:

Though I was Assistant Attorney General during the pendency of this case, my personal involvement was from March 2011 to July 2011, when the court of appeals ruled in our favor.

Name of court and judge(s):

United States Court of Appeals for the District of Columbia Circuit – Judge Douglas Ginsburg, David Tatel, and Janice Rogers Brown

Co-counsel:

Robert M. Loeb
Benjamin S. Kingsley
Attorneys, Appellate Staff, Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W., Room 7261
Washington, DC 20530-0001
(202) 353-8253

Counsel for other parties:

Steven T. Wax, Federal Public Defender
Stephen R. Sady, Chief Deputy Federal Public Defender
Amy Baggio, Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204
(503) 326-2123
(Attorneys for petitions Nazul Gul and Adel Hamad)

2. *Golinski v. OPM et al.*

Citation(s)/docket number(s):

No. 10-cv-00257-JSW (N.D. Cal.)
Golinski v. U.S. Office of Pers. Mgmt., 824 F. Supp. 2d 968 (N.D. Cal. 2012)

Party represented:
OPM et al.

Summary of case:

An employee of the Ninth Circuit filed a constitutional challenged to Section 3 of the Defense of Marriage Act, requesting an order requiring that OPM enroll her same-sex spouse in a Federal Employees Health Benefit plan. The Department of Justice, pursuant to the determination of the President and Attorney General on the constitutionality of Section 3 of DOMA, declined to defend, and the Bipartisan Legal Advisory Group ("BLAG") of the United States House of Representatives intervened to defend Section 3. Following briefing and argument on motions to dismiss and for summary judgment, the district court held that Section 3 is unconstitutional and ordered relief for plaintiff.

Appeals are currently pending in the Ninth Circuit, and the Department of Justice has filed a petition for certiorari before judgment as well, to allow the Supreme Court to resolve this or another case challenging Section 3 as quickly as possible.

Nature of participation:

As the Assistant Attorney General of the Civil Division, I became personally involved in this matter during briefing before the district court, and I presented argument for the government at the district court's hearing on dispositive motions.

Final disposition:

The district court held that Section 3 of DOMA is unconstitutional and ordered relief for the plaintiff. Appeals and a petition for certiorari before judgment are pending.

Date of representation:

Though I was Assistant Attorney General during the pendency of this case in the district court, my personal involvement was from June 2011 to February 2012, when the district court ruled in our favor.

Name of court and judge(s):

United States District Court for the Northern District of California – Judge Jeffrey S. White

Co-counsel:

Michael F. Hertz
Deputy Assistant Attorney General
Arthur R. Goldberg
Assistant Branch Director
Christopher R. Hall
Trial Attorney
Attorneys, Federal Programs Branch, Civil Division
U.S. Department of Justice
P.O. Box 883
Washington, D.C. 20044
(202) 514-4778

Counsel for other parties:

James R. McGuire
Gregory P. Dresser
Rita F. Lin
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Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

(415) 268-7000
(Attorneys for plaintiff Karen Golinski)

Jon W. Davidson
Jennifer C. Pizer
Tara L. Borelli
Lambda Legal, Western Regional Office
3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010-1729
(213) 382-7600
(Attorneys for plaintiff Karen Golinski)

3. *United States v. Riva, et al.*

Citation(s)/docket number(s):

96-CR-20113 JW
United States v. Laney, 189 F.3d 954 (9th Cir. 1999)
United States v. Tank, 200 F.3d 627 (9th Cir. 2000)

Party represented:

United States of America

Summary of case:

The defendants in this criminal prosecution were the 16 members of an Internet chat room called the "Orchid Club." Members of the Orchid Club, who lived in four different countries, discussed, traded, and produced child pornography. They also engaged in the on-line molestation of a young girl. All were indicted on various counts of sexual exploitation of children under 18 U.S.C. § 2251 and/or 18 U.S.C. § 2252.

Nature of participation:

As an Assistant U.S. Attorney, I served as the lead attorney investigating and prosecuting these cases through trial and on appeal.

Final disposition:

All 16 defendants were convicted, either by guilty plea or at trial. The convictions of those defendants who appealed were affirmed.

Date of representation:

June 1996 - January 2000

Name of court and judge(s):

United States District Court for the Northern District of California – Judge James Ware

United States Court of Appeals for the Ninth Circuit – Judges Stephen Reinhardt, Thomas Nelson, and Phyllis Kravitch (sitting by designation)

United States Court of Appeals for the Ninth Circuit – Judges Harry Pregerson, Charles Wiggins, and David Carter (sitting by designation)

Co-counsel:

Carlos Singh
United States Attorney's Office
150 Almaden Blvd., Suite 900
San Jose, CA 95113
(408) 535-5061

Counsel for other parties:

Carleen R. Arlidge
111 West St. John Street, Suite 555
San Jose, CA 95113
(408) 288-8533
(408) 971-8295240 Stockton Street #400
San Francisco, CA 94108-2479 E. Bayshore Road #703
Palo Alto, CA 94303
(Defense Counsel for David Vernon Tank)

Philip Howard Pennypacker
Santa Clara Courthouse
191 N. First Street
San Jose, CA 95113
(408) 556-3000
(Defense Counsel for Christopher Jon Saemisch)

Stuart D. Kirchick
Law Offices of Stuart D. Kirchick
1143 Story Road, Suite 210
San Jose, CA 95122
(408) 291-0418
(Defense Counsel for Michael Allen Grumboski)

Mark D. Flanagan
WilmerHale
1117 California Avenue
Palo Alto, CA 94304
(650) 858-6047

(Defense Counsel for Timothy James Zanor)

Alfredo Martin Morales
Morales & Leanos
75 E. Santa Clara Street #250
San Jose, CA 95113
(408) 294-5400
(Defense Counsel for Kurt Schaefer)

Jennifer Stisa Granick
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333
(Defense Counsel for Franklin Stephen Palm)

Thomas Kelley
Kelly & Jacobson
220 S. 6th Street, Suite 215
Minneapolis, MN
(612) 339-5055
(Defense Counsel for Joseph Peter Lepore)

Thomas Joseph Nolan, Jr.
Nolan Armstrong et al LLP
600 University Ave
Palo Alto, CA 94301
(650) 326-2980
(Defense Counsel for Stephen L. Calhoun)

Jeffery Steinbock
53 West Jackson Blvd., Suite 1420
Chicago, IL 60604
(Defense Counsel for Corey J. Soderquist)

Gail R. Shifman
44 Montgomery Street Ste 3850
San Francisco, CA 94104
(415) 551-1500
(Defense Counsel for Paul Colin Freeland)

4. *Hepting v. AT&T Corp., et al.*

Citation(s)/docket number(s):

06-CV-0672-VRW
Hepting v. AT&T Corp., 439 F. Supp. 2d 974 (N.D. Cal. 2006)
Hepting v. AT&T Corp., 539 F.3d 1157 (9th Cir. 2008)

Party represented:

Mark Klein (witness)

Summary of case:

Plaintiffs, customers of AT&T, alleged that AT&T was collaborating with the National Security Agency in a massive warrantless wiretapping program that tracks and records the domestic and foreign communications of millions of Americans in violation of the U.S. Constitution and various federal and state statutes. Mark Klein, a former AT&T employee, had first-hand knowledge of the government's wiretapping program and the nature and extent of AT&T's cooperation in that program.

Nature of participation:

As a partner at Morrison & Foerster LLP, I provided advice and assistance to Mr. Klein by, for example, drafting amicus papers submitted in opposition to the defendants' motion to dismiss and helping to develop a litigation and media strategy.

Final disposition:

The case was ultimately dismissed following a motion by the United States asserting state secrets.

Date of representation:

April 2006 – March 2009

Name of court and judge(s):

United States District Court for the Northern District of California – Judge Vaughn Walker

United States Court of Appeals for the Ninth Circuit – Judges Harry Pregerson, Michael Daly Hawkins, and Margaret McKeown

Co-counsel:

James J. Brosnahan
Brian J. Martinez
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Counsel for other parties:

Cindy Ann Cohn
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333
(Counsel for Plaintiffs)

Bruce A. Ericson
David L. Anderson
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94120-7880
(415) 983-1000
(Counsel for Defendants)

5. *Mendez v. County of San Bernardino, et al.*

Citation(s)/docket number(s):

CV 04-7131 SVW (RCx) (C.D. Cal.)
Mendez v. County of San Bernardino, 540 F.3d 1109 (9th Cir. 2008)

Party represented:

Plaintiffs Evangelina and Angel Mendez

Summary of case:

The plaintiffs, a woman and her young son, were detained and interrogated by deputies of the San Bernardino Sheriff's Department following the fatal shooting of their deaf son/brother. Plaintiffs filed a federal civil rights action against the County of San Bernardino under 42 U.S.C. § 1983 for violations of the Fourth Amendment and false arrest and imprisonment under state law based on the arrest of the plaintiffs and the search of their home. A one-week jury trial was held in federal court in Los Angeles in April 2005. I argued successfully before the United States Ninth Circuit Court of Appeals reversing the District Court's denial of attorney's fees.

Nature of participation:

As a partner at Morrison & Foerster LLP, I supervised all pre-trial matters, including discovery and motion practice. Additionally, I was trial co-counsel and successfully argued before the Ninth Circuit on appeal.

Final disposition:

The jury found that the San Bernardino Sheriff's Department committed two constitutional violations. On appeal, the Ninth Circuit reversed the district court's order denying attorneys' fees to the plaintiffs and affirmed the district court's orders granting partial summary judgment for the defendant, denying the plaintiffs' motion for a new trial, and reducing punitive damages. Upon remand, the district court entered an order granting plaintiffs' motion for attorneys' fees.

Date of representation:

April 2003 – March 2009

Name of court and judge(s):

United States District Court for the Central District of California – Judges Virginia Phillips, George Schiavelli (Ret.), and Stephen Wilson

United States Court of Appeals for the Ninth Circuit – Judges Raymond Fisher, Michael Daly Hawkins, and Stephen Trott

Co-counsel:

Arturo J. González
Geoffrey Graber
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Counsel for other parties:

Eugene P. Ramirez
Trevor Grimm
Patrick Hurley
Manning & Marder, Kass, Ellrod, Ramirez, LLP
801 S. Figueroa Street
15th Floor
Los Angeles, California 90017
(Counsel for Defendants)

6. ***In re JDS Uniphase Corp. Securities Litigation***

Citation(s)/docket number(s):

C-02-1486 CW
In re JDS Uniphase Corp. Securities Litigation, 2007 U.S. Dist. LEXIS 66085 (N.D. Cal., Aug. 27, 2007)

Party represented:

JDS Uniphase Corporation, Charles Abbe, Jozef Straus, and Anthony Muller

Summary of case:

The plaintiffs, a class of stockholders, alleged that, during the class period, the defendants engaged in a scheme to artificially inflate the price of JDS stock by falsely representing that demand for JDS products was strong and by overstating the value of its inventory by failing to write off excess inventory. The plaintiffs alleged that the defendants benefited from this scheme by selling stock at inflated prices and by using the value of JDS stock to purchase other companies for less than their worth. The plaintiffs asserted causes of action for violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Nature of participation:

As a partner at Morrison & Foerster LLP, I took and defended key depositions relating to class certification, and handled a variety of matters relating to discovery disputes. I also identified, interviewed and deposed several of the plaintiff's confidential witnesses.

Final disposition:

Jury verdict for the defendants

Date of representation:

May 2002 – December 2008

Name of court and judge(s):

United States District Court for the Northern District of California – Judge Claudia Wilken

Co-counsel:

James P. Bennett
Jordan Eth
Terri Garland
Philip T. Besirof

Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Counsel for other parties:

Mark S. Arisohn
Anthony J. Harwood
Labaton Sucharow LLP
140 Broadway
New York, NY 10005
(212) 907-0840
(Counsel for Plaintiffs)

7. ***United States v. Kim, et al.***

Citation(s)/docket number(s):

CR 06-0692 PJH

Party represented:

Individual witness, Charles Byrd, in federal antitrust investigation into the DRAM market.

Summary of case:

The United States brought charges against various individuals for violations of the federal antitrust laws in connection with alleged price fixing in the DRAM market.

Nature of participation:

As a partner at Morrison & Foerster LLP, I represented a former employee of the company that was under federal antitrust investigation. In that capacity, I responded to government subpoenas, represented my client in government interviews and in connection with grand jury testimony, and negotiated with government attorneys.

Final disposition:

The government chose not to prosecute my client in exchange for his agreement to cooperate with the investigation. He did not have to testify at trial.

Date of representation:

March 2005 – November 2008

Name of court and judge(s):

United States District Court for the Northern District of California - Judge Phyllis Hamilton

Co-counsel:

N/A

Counsel for other parties:

Nat Cousins
United States Department of Justice
Antitrust Division
450 Golden Gate Avenue
Room 10-0101, Box 36046
San Francisco, CA 94102
(415) 436-6705
(Attorney for United States)

8. *Bradlow v. Grant Thornton LLP*

Citation(s)/docket number(s):

CGC-04-437423

Party represented:

The defendant Grant Thornton LLP

Summary of case:

A court-appointed receiver filed this professional negligence and fraud action on behalf of PipeVine, Inc., a non-profit organization that facilitated on-line charitable donations. PipeVine is a former customer of Grant Thornton, and its allegations stemmed from an audit that Grant Thornton conducted, as well as other accounting services that it performed, on PipeVine's behalf.

Nature of participation:

As a partner at Morrison & Foerster LLP, I managed the litigation and helped direct all aspects of litigation strategy and trial preparation. In addition, I directed discovery and was involved in both a mediation and settlement negotiations with the plaintiff.

Final disposition:

Settlement

Date of representation:

February 2003 – March 2009

Name of court and judge(s):

San Francisco County Superior Court – Judge Patrick Mahoney

Co-counsel:

David B. Bayless
Covington & Burling LLP
One Front Street
San Francisco, CA 94111-5356
(415) 591-7005

Counsel for other parties:

Michael Eagan
Law Offices of Michael Q. Eagan
Three Embarcadero Center, 8th Floor
San Francisco, CA 94111
(415) 765-4600

9. *United States v. Lindh*

Citation(s)/docket number(s):

Crim. No. 02-37-A

Party represented:

Defendant John Phillip Walker Lindh

Summary of case:

In December 2001, the United States took John Walker Lindh, an American citizen, into custody in Afghanistan after Lindh surrendered to the Northern Alliance. Mr. Lindh had briefly served in the Afghan army under the Taliban to defend Afghanistan against the Northern Alliance in an internal civil war. The United States charged Mr. Lindh with 11 criminal counts. After an exhaustive investigation and litigation, the government dropped all charges accusing Mr. Lindh of fighting against Americans or engaging in terrorist activities.

The United States dismissed all terrorism-related charges and Mr. Lindh, who pled guilty to one count of violating Title 50, United States Code, Section 1705(b), Title 18, United States Code, Section 2, and Title 31, Code of Federal Regulations, Sections 545.204 and 545.206(a) and one count of violating Title 18, United States Code, Section 844(h)(2).

Nature of participation:

As a partner at Morrison & Foerster LLP, I was one of the members of Mr. Lindh's four-person defense team, and I assisted with the development of a defense strategy. I also directed discovery, drafted and argued motions, and participated in negotiations with the federal government.

Final disposition:

After pleading guilty to two criminal counts, Mr. Lindh was sentenced to 20 years imprisonment.

Date of representation:

December 2001 – February 2007

Name of court and judge(s):

United States District Court for the Eastern District of Virginia Judge Thomas Ellis III

Co-counsel:

James J. Brosnahan
George C. Harris
Raj Chatterjee
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
(415) 268-7000

William B. Cummings
William B. Cummings, P.C.
112 South Pitt Street
Alexandria, Virginia 22314
(703) 836-7997

Counsel for other parties:

Randy I. Bellows
Fairfax Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030
(703) 246-2221

David N. Kelley
Cahill Gordon & Reindel
Eighty Pine Street
New York, NY 10005

(212) 701-3050

10. *Williams v. Romanowski*

Citation(s)/docket number(s):

RG03122024

Party represented:

Plaintiff Marcus Williams

Summary of case:

The plaintiff, formerly a professional football player for the Oakland Raiders, brought a civil action against William Romanowski, a teammate, for battery, negligence, and intentional infliction of emotional distress. The case arose out of an incident at football practice during which Mr. Romanowski attacked Mr. Williams, forcibly removed his helmet, and punched him in the face. Mr. Williams suffered broken bones around his eye and other significant injuries, and was unable to resume his playing career. After a trial, a jury in Alameda County found Mr. Romanowski liable for battery.

Nature of participation:

As a partner at Morrison & Foerster LLP, I was involved in all aspects of litigation and trial and was trial co-counsel.

Final disposition:

After a jury ruled in Mr. Williams' favor, the parties settled to avoid further litigation.

Date of representation:

October 2003 – November 2005

Name of court and judge(s):

Alameda County Superior Court – Judge Cecilia Castellanos

Co-counsel:

James J. Brosnahan
Wendy M. Garbers
Brian J. Martinez
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
(415) 268-7000

Counsel for other parties:

Jeffrey A. Springer
Springer and Steinberg, P.C.
1600 Broadway, Suite 1200
Denver, CO 80202
(303) 861-2800

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.)

From 1994 to 1999, I served as an Assistant United States Attorney in the Northern District of California. In that position, I prosecuted violent and white collar crime, including high-tech crime, the sexual exploitation of children, tax offenses, bank robberies, federal firearms violations, economic espionage, drug crimes, and fraud. During my tenure in the U.S. Attorney's Office, I led the successful investigation and prosecution of the "Orchid Club," a thirteen-member international child pornography production and distribution ring that operated over the Internet.

From 1999 to 2001, I served as a Special Assistant Attorney General in the California Attorney General's Office. In that capacity, I advised Attorney General Lockyer on various legal and policy issues, including high-tech crime, identity theft, Internet policy, civil rights, elder abuse, and crime prevention. I also worked with state Attorneys General around the country on investigations and enforcement actions, including the Microsoft antitrust litigation.

From 2001 until 2009, I was a Partner at Morrison & Foerster LLP and my practice included both civil and criminal matters. Representative civil matters included representation of several public companies in various securities class action suits; representation of a residential real estate developer in an ongoing District Attorney investigation alleging environmental violations; and counsel for a national law firm that completes disparity studies for states, cities, counties, special districts, housing authorities, transportation agencies and other governmental entities throughout the country. Representative criminal matters included representation of a municipal securities firm president in a multi-state, FBI criminal investigation and federal prosecution that resulted in no charges filed against the client; representation of a Fortune 500 computer hardware manufacturer in a federal criminal probe that resulted in no charges filed against the company; representation of individual in connection with an FBI political corruption investigation that resulted in no charges filed against the individual; representation of an international accounting firm in a state and federal criminal investigation that resulted in no action against the company; representation of an international chemical company executive in a federal criminal antitrust investigation that resulted in no action against the client; and successful representation of a Hollywood actor in connection with criminal charges stemming from the client's political activism.

Since April 2009, I have served as a senior official in the U.S. Department of Justice. From 2009 to 2012, I served as the Assistant Attorney General of the Civil Division, the Justice Department's largest litigating component with over 1400 employees. The Civil Division represents the United States in legal challenges to Congressional statutes, Administration policies, and federal agency actions. The Division practice also includes affirmative litigation and the defense of the President, Cabinet officers, and other federal employees in lawsuits filed against them throughout the country. As head of the Civil Division, I oversaw these traditional areas, as well as the Civil Division's affirmative civil enforcement efforts.

Since March 2012, I have served as Acting Associate Attorney General of the United States. In this role, I assist the Attorney General and Deputy Attorney General in the management of the Department by supervising our civil components (Antitrust, Civil, Civil Rights, Environment and Natural Resources, Tax, Community Relations Service, Executive Office of U.S. Trustees, Office of Information Policy, Foreign Settlement Claims Commission) and the grant-making components (Office of Justice Programs, Office on Violence Against Women, Community Oriented Policing Services (COPS)). In addition, I have continued my predecessor's emphasis on improving the federal government's relationship with American Indians and Native Alaskans.

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.

Adjunct Faculty Member, Lincoln Law School of San José, California, 1997 – 1999.

I taught a trial advocacy course. The major topics taught were fact investigation, brief writing, and oral advocacy. I do not have a syllabus.

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

None, except that as a U.S. Government employee, I participate in the Thrift Savings Program.

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

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 SF 278.

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 Assistant Attorney General, I encouraged pro bono activities by Civil Division attorneys and staff by revising our pro bono policy to facilitate such activities and creating a special division award recognizing dedicated pro bono service. In addition, I personally participated in several pro bono activities, such as staffing a local legal clinic and taking part in a panel celebrating Government Pro Bono Week, to encourage greater attorney pro bono participation.

As an attorney in private practice, I devoted a significant amount of time mentoring young adults seeking advice about career paths, and volunteered my time to the following organizations:

Oakland McCullum Youth Court, CA, 2007 – 09

The Role Model Program, 1996 – 99

Board of Governors for the Northern California Association of Business Trial Lawyers, 2004 – 09

Northern District of California Ninth Circuit Lawyer Representative, 2005 – 08

Board of Directors of U.C. Hastings College of the Law, 2004 – 07

Adjunct Faculty of Lincoln Law School of San José (Trial Advocacy), 1997 – 99

In addition, as an attorney in private practice, I devoted substantial time to the following pro bono endeavors:

Parole Suitability Matters, 2006 – 09

- Guadalupe Amezcua, CDC W-43127, Parole Suitability
- Terri Devereaux, CDC W-52194, Parole Suitability
- Betty Jacobs, CDC W-37570, Parole Suitability
- Linda Sue Rodrigues, CDC W-38150, Parole Suitability
- Joan Starr, CDC W-37775, Parole Suitability

The League of Women Voters of Iowa, Intervenors, 2004

Mendez v. County of San Bernardino, et al., 2003 – 09

Common Sense Media (video game violence watchdog group for parents), 2004 – 06

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.

***NOTE:** All amounts listed below are approximations.

ASSETS		LIABILITIES	
Cash on hand and in banks	$15,000	Notes payable to banks-secured	$0
U.S. Government securities-add schedule	$0	Notes payable to banks-unsecured	$0
Listed securities Morrison & Foerster LLP Retirement Plan (Schwab 401(k))	$202,000	Notes payable to relatives	$0
Unlisted securities—add schedule	$0	Notes payable to others	$0
Accounts and notes receivable		Accounts and bills due	$10,400
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 Mortgage balance on Primary Residence (200 Lakeside)	$310,000
Real estate owned Primary Residence (Oakland, CA) GMAC Mortgage Balance Owed $310,000	$650,000	Chattel mortgages and other liens payable	$0
Real estate mortgages receivable	$0	Other debts-itemize	
Autos and other personal property	$125,000	Student Loans	$52,000
Cash value-life insurance	$400		
Other assets itemize	$0		
		Total liabilities	$377,000
		Net Worth	$615,400
Total Assets	$992,400	Total liabilities and net worth	
CONTINGENT LIABILITIES		**GENERAL INFORMATION**	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	$0

On leases or contracts 6 mo. apartment lease, 4 mos. remaining (425 Massachusetts Ave. NW, PH 111, Washington, DC) 1 yr. apartment lease, 11 mos. remaining (522 West 57th Street, Unit 21P, NY, NY)	$8600 $60,500	Are you defendant in any suits or legal actions?	No
Legal Claims	$0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	$25,000		
Other special debt	$0		

AFFIDAVIT

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

11 16 2012
(DATE)

(NAME)

SHERYL LYNETTE THOMPKINS
NOTARY PUBLIC
MY COMMISSION EXPIRES 8/14/2016
VIRGINIA

(NOTARY)

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

March 20, 2013

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

Dear Mr. Chairman:

I reviewed the Senate Judiciary Questionnaire filed on November 16, 2012, in connection with my nomination to be Associate Attorney General of the United States. I certify that, with the incorporation of additional information included below, the information contained in that document is and remains, to the best of my knowledge, true and accurate.[1]

Question 12.d.:

Speaker, "Federal Agencies Developing Tools, Technologies and Process for the 21st Century," Federal E-Discovery Working Group Conference, Arlington, VA, November 20, 2012. Copy Supplied.

Speaker, "Tax Division Awards," U.S. Department of Justice, Washington, D.C., November 26, 2012. Copy Supplied.

Speaker, "Department's Indian Country Efforts," Department of Justice American Indian and Alaska Native Heritage Month Event, U.S. Department of Justice, Washington, D.C., November 27, 2012. Copy Supplied.

Press Conference, Announcement of FY 2012 False Claims Act Recoveries, U.S. Department of Justice, Washington, D.C., December 4, 2012. Copy Supplied.

Speaker, "Strengthening and Advancing the Government to Government Relationship," White House Tribal Nations Conference, Department of the Interior, Washington, D.C., December 5, 2012. Copy Supplied.

Speaker, "Civil Division Awards," U.S. Department of Justice, Washington, D.C., December 6, 2012. Copy Supplied.

[1] I am submitting a separate letter updating the confidential portion of my Senate Judiciary Questionnaire.

Speaker, "Department's Indian Country Efforts," Office for Victims of Crime Indian Nations Conference, Agua Caliente, CA, December 7, 2012. Copy Supplied.

Speaker, "Department's Immigration and Access to Justice Efforts," American Constitution Society Student Chapter at Yale Law School Core Event, Yale Law School, New Haven, CT, December 10, 2012. Copy Supplied.

Speaker, Office of Juvenile Justice and Delinquency Prevention Quarterly Meeting, U.S. Department of Justice, Washington, D.C., December 12, 2012. Copy Supplied.

Speaker, "Can You Have it All?" A Conversation with Anne-Marie Slaughter, U.S. Department of Justice, Washington, D.C., December 17, 2012. Copy Supplied.

Speaker, "Department's Anti-Human Trafficking Efforts," Anti-Human Trafficking Symposium: Transforming the Coalition, Georgetown University, Washington, D.C., January 30, 2013. Copy Supplied.

Press Conference, Announcement of Civil Lawsuit Against Standard & Poor's Ratings Services, U.S. Department of Justice, Washington, D.C., February 5, 2013. Copy Supplied.

Speaker, National Association of Attorneys General Winter/Spring Annual Meeting, Ritz Carlton, Washington, D.C., February 25, 2013. Copy Supplied.

Speaker, Office of the Vice President's Roundtable on Federal Efforts to Prevent Teen Dating Violence, Eisenhower Executive Office Building, Washington, D.C., February 28, 2013. Copy Supplied.

Speaker, "Taking Care of Business" Capitol Hill Briefing (Hosted by Congressman Danny Davis), Rayburn House Office Building, Washington, D.C., March 5, 2013. Copy Supplied.

Speaker, Federal Advisory Take Force on Research on Violence Against American Indian and Alaska Native Women Living in Tribal Communities, Office of Justice Programs, Washington, D.C., March 8, 2013. Copy Supplied.

Speaker, "50 Years Later: The Legacy of *Gideon v. Wainwright*," 50th Anniversary of the U.S. Supreme Court Decision in *Gideon v. Wainwright*, Washington, D.C., March 15, 2013. Copy Supplied.

Question 12.e.:

Interview, "Tocan dema de la demanda federal contra la Policía," El Nuevo Dia, News Staff, San Juan, PR, January 4, 2013. Copy available at:
http://www.elnuevodia.com/tocantemadelademandafederalcontralapolicia-1420965.html

Interview, "Obama's Mortgage Crisis Working Group Falls Short of Billing," Huffington Post, Sam Stein and Ryan Grim, Washington, D.C., February 12, 2013. Copy available at: http://www.huffingtonpost.com/2013/02/12/obama-mortgage-crisis_n_2666449.html

Question 15:

2. *Golinski v. OPM et al.*

Final disposition:

The district court found that Section 3 of DOMA is unconstitutional and ordered relief for the plaintiff. The parties appealed the district court's judgment to the Ninth Circuit Court of Appeals. While the appeal was pending, the United States petitioned the Supreme Court for a writ of certiorari before judgment. The Ninth Circuit issued an order holding the case in abeyance pending the Supreme Court's consideration of the government's petition. After the Supreme Court granted certiorari in another DOMA matter, *United States v. Windsor*, the Ninth Circuit issued a second order holding the *Golinski* appeal in abeyance pending the resolution of *Windsor*. The government's petition for a writ of certiorari before judgment in *Golinski* is still pending before the Supreme Court.

I am also submitting an updated Financial Statement (Net Worth), which is enclosed.

Thank you and the Committee for consideration of my nomination.

Sincerely,

Tony West
Acting Associate Attorney General

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

Enclosure

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Valerie Elaine Caproni

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.

   2980 Fairview Park Drive, M/S 12161A
   Falls Church, Virginia 22042

   Residence: Washington, DC

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

   1955; Lee County, Alabama

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

   1976 – 1979, University of Georgia School of Law; J.D. (*summa cum laude*), 1979

   1973 – 1976, Tulane University Newcomb College; B.A. (*magna cum laude* with departmental honors), 1976

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

   2011 – Present
   Northrop Grumman Corporation
   2980 Fairview Park Drive

M/S 12161A
Falls Church, Virginia 22042
Vice President and Deputy General Counsel

2003 – 2011
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535
General Counsel

2001 – 2003
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
Counsel

1998 – 2001
Securities and Exchange Commission
Pacific Regional Office
5670 Wilshire Boulevard
Los Angeles, California 90036
Regional Director

1992 – 1998
Office of the United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Chief, Criminal Division (1994 – 1998)
Chief, Organized Crime & Racketeering Unit (1993 – 1994)
Chief, Special Prosecutions Unit (1993)
Assistant United States Attorney, Criminal Division (1992)

1989 – 1992
New York State Urban Development Corp. (now Empire State Development)
633 Third Avenue
New York, New York 10017
General Counsel and Senior Vice President – Legal

Note: by virtue of being General Counsel of UDC, I also served as General Counsel of various subsidiaries of UDC, including Hudson River Park Conservancy, 42nd Street Redevelopment Corp. and Queens West Development Corp. There may have been other subsidiaries as well, but those listed above were the primary operating subsidiaries with which I was affiliated.

1985 – 1989
Office of the United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Assistant United States Attorney, Criminal Division

1980 – 1985
Cravath, Swaine & Moore
825 Eighth Avenue
New York, New York 10019
Litigation Associate

1979 – 1980
Hon. Phyllis Kravitch
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, NW
Atlanta, Georgia 30303
Judicial law clerk

Summer 1978
Smith, Cohen, Ringel, Kohler & Martin (Disbanded)
Atlanta, Georgia
Summer associate

Summer 1977
Araguel, Sanders & Carter (Disbanded)
Columbus, Georgia
Summer associate

Summer 1976
Brookhaven YMCA
1175 Martin Luther King Jr. Boulevard
Columbus, Georgia 31906
Lifeguard and swimming instructor

Summer 1976
Moose Lodge
Phenix City, Alabama
Lifeguard and swimming instructor

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

I did not serve in the military. I was not required to register for the selective service.

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

AAG Award for Special Achievement in Supporting NSD's National Security Mission (2011)

Intelligence Community Legal Award for Attorney of the Year (2011)

Intelligence Community Legal Award for Team of the Year (2007)

Presidential Rank Award for Meritorious Executive (2005)

Attorney General's Award for Distinguished Service (1997)

Stimson Medal from the Association of the Bar of the City of New York (1996)

Special Achievement Award from the Department of Justice in recognition of Sustained Superior Performance of Duty (1987)

Order of the Coif (1980)

Outstanding Woman Law Student Award from the Georgia Association of Women Lawyers (1979)

Academic scholarship at University of Georgia School of Law (1977 and 1978)

Research editor, *Georgia Law Review* (1978 – 1979)

Winner of 2nd year intramural moot court competition at University of Georgia School of Law (1978)

Staff member, Georgia Law Review (1977 – 1978)

Winner of 1st year intramural moot court competition at University of Georgia School of Law (1977)

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

American Bar Association (early 1980s, 2011 – present)
Standing Committee on Law and National Security (2012 – Present)

In or around 1997 or 1998, I participated in a bar committee that was recommending changes to the local rules governing criminal procedure for the Southern and Eastern Districts of New York.

10. **Bar and Court Admission**:

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

Georgia, 1980 (currently inactive)
New York, 1981
Virginia (as corporate counsel), 2012

There have been no lapses in membership, although my Georgia bar membership is currently 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.

United States Court of Appeals for the Fifth Circuit, 1981
United States Court of Appeals for the Second Circuit, 1986
United States District Court for the Southern District of New York, 1982
United States District Court for the Eastern District of New York, 1983
United States District Court for the Northern District of New York, 1989
United States District Court for the Western District of New York, 1989

There have been no lapses in membership.

11. **Memberships**:

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

Cornell Club, New York (2011 – present)

Eastern District Association (2001 – present)
Executive Board Member

University of Georgia Law School Alumni Association Council (1994 – 1999)
Out of state representative

University of Georgia School of Public and International Affairs Board of Visitors (2012 – 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, no organization 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 those 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.

Valerie Caproni & Steve Siegel, *National Security Letters*, in Patriots Debate: Contemporary Issues in National Security Law, American Bar Association Standing Committee on Law and National Security (2012). Copy supplied.

Letter to the Editor, N.Y. Times, April 1, 2011. Copy supplied.

Valerie Caproni, *Why I Support Georgia Law*, The Georgia Advocate, Summer/Spring 2008. Copy supplied.

Surveillance and Transparency, 11 Lewis & Clark L. Rev. 1087 (2007) (transcription of oral remarks at conference). Copy supplied.

Asset Freezes in SEC Enforcement Actions, paper presented at the 2002 ABA White Collar Crime Conference. Copy supplied.

With Co-Authors, *Developments in Georgia Law: Debtor Creditor Rights*, 12 Georgia L. Rev. 814 (1978). Copy supplied.

With Douglas Levine, Edgar O'Neal, Peter McDonald and Gray Garwood, *Seating Position, Instructor's Eye Contact Availability, and Student Participation in a Small Seminar*, 103 J. of Soc. Psychol. 315 (1977). 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.

The Attorney General's Guidelines for Domestic FBI Operations, September 2008. Copy supplied.

The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (December 13, 2006). Copy supplied.

The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006). The Guidelines are classified.

Report of the Department of Justice's Task Force on Intellectual Property, October 2004. I played no role in drafting the report, but reviewed and commented on it prior to its release. 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 my official capacity I have testified, made official statements and communicated with public bodies and public officials on a number of occasions relating to matters of public policy or legal interpretation. To the extent I retained my talking points, prepared statements or correspondence or could find any record of such communications, that information has been provided. To the extent I did not retain records of the communication, the tenor and basic themes would be similar to the testimony, statements and communications listed below.

Letter to Congressman Darrell Issa, Chair of the House Committee on Oversight and Government Reform, on behalf of Northrup Grumman Corporation, October 24, 2012. Copy supplied.

Statement for the Record, Oral Statement and testimony provided at a hearing before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security (February 17, 2011). Copy supplied.

Testimony before the Portland, Oregon, City Council regarding the FBI's Joint Terrorism Task Force, February 15, 2011. Video of the hearing is available at www.portlandonline.com/index.cfm?c=49508&a=338704.

Statement for the Record. Oral Statement and testimony provided at a hearing before the House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, regarding the Inspector General's report "A Review of the Federal Bureau of Investigation's Use of Exigent Letters and Other Informal Requests for Telephone Records" (April 14, 2010). Copy supplied.

Testimony provided at a classified hearing before the Senate Select Committee on Intelligence regarding legislative sunsets contained in the USA Patriot Act and the FISA Amendments Act (May 21, 2009). I have no notes, transcript or recording.

Joint Statement for the Record. Oral Statement and testimony provided at a hearing before the Senate Select Committee on Intelligence regarding the New Attorney General Guidelines for Domestic Intelligence Collection (September 23, 2008) and subsequent correspondence with the Committee (December 15, 2008). Copy supplied.

Statement for the Record. Oral Statement and testimony provided at a hearing before the Senate Judiciary Committee regarding Coercive Interrogation Techniques (June 10, 2008). Copy supplied.

Statement for the Record. Oral Statement and testimony provided at a hearing before the House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, regarding the National Security Letters Reform Act of 2007 (April 15, 2008). Copy supplied.

Testimony provided at a classified hearing before the Senate Select Committee on Intelligence regarding efforts to modernize the Foreign Intelligence Surveillance Act (September 20, 2007). I have no notes, transcript or recording.

Statement for the Record. Oral Statement and testimony provided at a hearing before the House Judiciary Committee regarding the Inspector General's Independent Report on the Federal Bureau of Investigation's Use of National Security Letters (March 20, 2007). Copy supplied and video is available at http://www.c-spanvideo.org/program/BIU.

Statement for the Record. Oral Statement and testimony provided at a hearing before the Senate Select Committee on Intelligence regarding the USA Patriot Act (May 24, 2005). Copy supplied.

Testimony provided at a classified hearing before the Senate Select Committee on Intelligence regarding the USA Patriot Act (April 21, 2005). I have no notes, transcript or recording.

Testimony provided at a classified hearing before the Senate Judiciary Committee regarding the USA Patriot Act (April 12, 2005). I have no notes, transcript or recording.

Testimony provided at a closed hearing before the House Permanent Select Committee on Intelligence regarding interrogation techniques (July 14, 2004). I have no notes, transcript or recording.

Testimony provided at a classified hearing before the Senate Select Committee on Intelligence regarding the Federal Bureau of Investigation's use of certain tools provided by the USA Patriot Act (October 23, 2003). I have no notes, transcript or recording.

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

In my official capacity I have participated in many panel discussions at many conferences. To the extent I retained my talking points or prepared speeches, they have been provided. To the extent I did not retain notes of my speech and do not have a record of a particular speech, the tenor and basic themes would be similar to the speeches listed below.

October 5, 2012: Spoke to students at University of Georgia School of Law, Athens, GA. Notes supplied.

November 11, 2011: Guest lecturer at New York University Law School, New York, NY. I discussed the rules that govern the FBI's use of informants. I have no notes, transcript recording. I was invited by Adjunct Professors John Gleeson and James Orenstein, 225 Cadman Plaza East, Brooklyn, NY 11201.

November 10, 2011: Panelist at New York University law School Alumni Association Fall Lecture, "You Are Here: Location Data, Tracking Technology, and Consumer Privacy Law," New York, NY. Video available at: http://www.youtube.com/watch?v=HH44AQBkiy0.

November 2, 2011: Panelist at Union of International Lawyers Annual Congress, Miami, FL. Notes supplied.

August 19, 2011: Panelist at a meeting of the Federal Public Defenders and the United States Attorneys from the Ninth Circuit; the meeting occurred following the Ninth Circuit Judicial Conference, San Diego, CA. My recollection is that I addressed the FBI's policy regarding recording interviews and took questions

from the attendees. This was a very informal event. I have no notes, transcript or recording.

May 17, 2011: Panelist at The Brookings Institution, Reforming the Electronic Communications Privacy Act, Washington, DC. Transcript supplied and video is available at: http://www.youtube.com/watch?v=_gxSRTmS0MU&feature=player_embedded.

April 27, 2011: Guest lecturer at Fordham University Law School, New York, NY. I discussed the FBI's role in national security matters. I have no notes, transcript or recording. I was invited by Adjunct Professor Andrew Weissmann, 935 Pennsylvania Avenue, NW, Washington, DC 20535.

March 3, 2011: Panelist at ABA Homeland Security Conference, Washington, DC. I discussed the FBI's role in national security matters. I have no notes, transcript or recording. The sponsor of the conference was the American Bar Association, 321 North Clark Street, Chicago, IL 60654.

November 9, 2010: Speaker at a "train the trainer" course at the National Advocacy Center. The subject of the course was joint prosecutor-law enforcement training regarding discovery obligations in criminal cases. I have no notes, transcript or recording. The sponsoring organization was the Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530.

October 18, 2010: Guest lecturer at New York University School of Law, New York, NY. Notes supplied.

May 6, 2010: Panelist for "Prosecution and Defense Perspectives: Admissibility of Forensic Evidence and the Impact of the NAS Report," Joint Judicial Conference, District of Columbia Courts, Washington, DC. The panel was comprised of criminal law practitioners (defense and prosecution), and the panelists discussed the use of forensic evidence in criminal trials. I have no notes, transcript or recording. The sponsoring organization was the Judicial Conference of the District of Columbia Courts, 500 Indiana Avenue, NW, Washington, DC 20001.

April 19, 2010: Guest lecturer at Fordham University Law School. I was a guest speaker along with the Assistant Attorney General for National Security. We fielded questions about national security issues and careers in the Department of Justice and the Federal Bureau of Investigation. I have no notes, transcript or recording. I was invited by Adjunct Professor Andrew Weissmann, 935 Pennsylvania Avenue, NW, Washington, DC 20535.

March 12, 2010: Law in The 21st Century: Enduring Traditions, Emerging Challenges, Mercer University, Macon, GA. A video of the speech is available at http://www.youtube.com/watch?v=RwxunAYKzmw.

March 5, 2010: Guest lecturer at New York University Law School, New York, NY. I discussed the FBI's role in national security. I have no notes, transcript or recording. I was invited by Professor Sam Rascoff, New York University School of Law, 139 MacDougal Street, New York, NY 10012.

March 4, 2010: Panelist at ABA Homeland Security Conference, Washington, DC. Notes supplied.

February 22, 2010: Luncheon Speaker at Federal Bar Association, Capitol Hill Chapter, Washington, DC. Notes supplied.

November 3, 2009: Guest lecturer at the National War College, Washington, DC. Notes supplied.

October 29, 2009: Speaker at National Security Higher Education Advisory Board, FBI Headquarters, Washington, DC. I briefed the members of the Board on the impact on college campuses of the then-new Attorney General Guidelines for FBI Domestic Operations and the FBI's Domestic Investigations and Operations Guide. I have no notes, transcript or recording. The sponsoring organization was the Federal Bureau of Investigation, 935 Pennsylvania Avenue, NW, Washington, DC 20535.

June 11, 2009: Luncheon Speaker at Fulton County Women's Bar Association, Atlanta, GA. Notes supplied.

June 2, 2009: Speaker at Creating the Future, Computers Freedom & Privacy Conference 2009, The Future of Security v. Privacy, Washington, DC. Notes supplied and video available at: http://www.c-spanvideo.org/program/PrivacyandTe.

May 17, 2009: Commencement Speech, Cleveland State University Law School, Cleveland, OH. Speech supplied.

May 8, 2009: Panelist at ABA's Section on Business Law, Criminal Justice Section and Center for Continuing Legal Education, "What the Government Expects from Companies," Washington, DC. Transcript supplied.

May 1, 2009: Law Day Speaker, Dallas Bar Association, Dallas, TX. Speech supplied.

April 16, 2009: Suzette Talarico Lecture, "Current Challenges for the FBI: View from the General Counsel," Political Science Department, University of Georgia, Athens, GA. Notes supplied.

March 19, 2009: Panelist at The Future of the Forensic Sciences: A Symposium, "The Prosecutors' Perspective," Cleveland-Marshall College of Law, Cleveland State University, Cleveland, Ohio. Video is available at http://mediasite.ulib.csuohio.edu/mediasite/Viewer/?peid=c64a197e208f4c649db b93d47ca9d1821d.

February 26, 2009: Speaker at University of Georgia Alumnae Meeting, Atlanta, GA. Notes supplied.

December 2, 2008: Speaker at Harvard Law School Forum, Cambridge, MA. Audio of the speech is available at http://www.law.harvard.edu/news/2008/12/fbi-general-counsel-.html.

November 13-14, 2008: Panelist at National Association of Minority and Women Owned Law Firms Annual Meeting, Dallas, TX. I have no recollection of the nature of my remarks. I have no notes, transcript or recording. The sponsoring organization was National Association of Minority and Women Owned Law Firms, 735 North Water Street, Suite 1205, Milwaukee, WI 53202.

March 25, 2008: Panelist at "Behind the Blindfold of Justice: Security, Individual Rights and Minority Communities after 9/11" conference at Yale Law School, New Haven, CT. Notes supplied.

January 17, 2008: Speaker at ABA Homeland Security Conference, Washington, DC. Notes supplied.

November 14, 2007: Panelist at "Privacy in the Age of National Security," hosted by The Center on Law and Security, NYU Law School, New York, NY. Notes supplied.

October 23, 2007: Panelist at Joint American Banking Association/American Bar Association Conference, Washington, DC. Notes supplied.

September 21, 2007: Panelist at American University Law School Symposium, "Left Out in the Cold? The Chilling of Speech, Association and the Press in Post-9/11 America," Washington, DC. Speech supplied.

April 20, 2007: Speaker at Lewis & Clark Law School Conference, Portland, OR. I have no notes, transcript, or recording, but my remarks were substantially the same as the 2007 article supplied in response to Question 12a.

March 29, 2007: Panelist for the ABA Standing Committee on National Security, Responding to The Department of Justice Inspector General's Report on the Use of National Security Letters, Washington, DC. The Section's newsletter, which substantially summarized my remarks, is supplied. The full audio is available in

two parts at http://www.abanet.org/natsecurity/multimedia/WS_30059_pt1.rm and http://www.abanet.org/natsecurity/multimedia/WS_30059_pt2.rm)

February 15, 2007: Speaker at civil rights conference in Norfolk, VA. Notes supplied.

January 18, 2007: Panelist at ABA Homeland Security Conference, Washington, DC. Notes supplied.

October 11, 12, 2006: Speaker at Law Enforcement Executive Development Seminar, Rogersville, AL. My recollection is that I discussed First Amendment issues as they affect law enforcement employees. I have no notes, transcript or recording. The sponsor of this event was Federal Bureau of Investigation, 935 Pennsylvania Ave., NW, Washington, DC 20535.

June 15, 2006: Speaker at Arizona Bar Conference, Phoenix, AZ. I have no recollection of what I discussed. I have no notes, transcript or recording. The sponsor of the conference was the State Bar of Arizona, 4201 North 24th Street, Suite 100, Phoenix, AZ 85016.

April 24, 2006: Speaker at conference hosted by FBI, local law enforcement and civil rights community, Birmingham, AL. Notes supplied.

February 14, 2006: Speaker at Youth Leadership Forum, Arlington, VA. Notes supplied.

November 23, 2005: Speaker at NYU – Europe and the United States: A Transatlantic Dialogue, New York, NY. I have no notes, transcript or recording, but NYU Law School coverage is supplied. The event was co-sponsored by the Hauser Global Law School, a program of New York University School of Law, and the Center on Law and Security, both at 139 MacDougal Street, New York, NY 10012.

November 17, 2005: Speaker at graduation of Citizen's Academy, sponsored by the Federal Bureau of Investigation's New York Office, Brooklyn, NY. I have no notes, transcript or recording. The sponsor of the event was Federal Bureau of Investigation, 26 Federal Plaza, New York, NY 10278.

November 3, 2005: Panelist at ABA, University of Virginia and Duke University Conference, "National Security in a Changed World," Arlington, VA. Notes supplied.

September 27, 2005: Participant at "Debate on the Proposed Federal Law to Create a Reporter/Source Privilege: Good Policy or an Impediment to Justice," Cleveland State University, Cleveland-Marshall College of Law, Cleveland, OH. I discussed the then-current Department of Justice regulations concerning

subpoenas to members of the media. I have no notes, transcript or recording. Although there is an internet link to the presentations on Cleveland-Marshall Law School's website, it appears to be non-functional. The sponsoring organization was Cleveland-Marshall College of Law, 1801 Euclid Avenue, Cleveland, OH 44115.

April 29, 2005: Speaker at a meeting of the New York Chapter of Infoguard, New York, NY. I discussed the national security mission of the FBI. I have no notes, transcript or recording. The sponsor of the event was the New York office of the Federal Bureau of Investigation, 26 Federal Plaza, New York, NY 10278.

April 21, 2005: Speaker at breakfast meeting of the ABA International Section, California Chapter, Los Angeles, CA. Notes supplied.

April 19, 2005: Speaker at Smithsonian Associates presentation, Washington, DC. Notes supplied.

March 22, 2005: Panelist at Emerging Issues in National and International Security Conference, "They Want Your Secrets: Personal Information Privacy in the Post-9/11 World," American University Law School, Washington, DC. Notes supplied and video is available at http://www.c-spanvideo.org/program/186015-2.

March 2-4, 2005: Panelist at ABA White Collar Crime Conference, Las Vegas, NV. Notes supplied.

April 21, 2004: Speaker at Sidley Austin Brown & Wood LLP Women & Leadership Program: "Privacy in the Era of Homeland Security," Washington, DC. Notes supplied.

February 17 or 18, 2003: Panelist at Federal Bar Council annual meeting, Maui, HI. I have no notes, transcript or recording. The sponsor of the meeting was the Federal Bar Council, 123 Main St., Suite L100, White Plains, NY 10601.

November 3, 2002: Panelist at PLI conference on securities enforcement in New York, NY. I have no notes, transcript or recording. Based on press reports of the conference, it appears that I discussed the impact on companies of the fallout from the Enron implosion. Press coverage supplied. The sponsor of the conference was the Practising Law Institute, 810 Seventh Avenue, New York, NY 10019.

June 3, 2002: Panelist at Stanford University Director's College, Stanford, CA. I likely discussed the Securities and Exchange Commission's enforcement priorities. I have no notes, transcript or recording. The sponsor of the event was Stanford Law School, Stanford University, Stanford, CA 94305.

February 28, 2002: Panelist at ABA White Collar Crime Conference, Miami, FL. I have no notes, transcript or recording. My written submission for the

conference (paper supplied in response to Question 12a) discussed SEC asset forfeiture. My recollection is that the panel included attorneys from the SEC and from private practice and featured a wide ranging discussion of the priorities and tactics of the SEC's Enforcement Division. The sponsor of the event was the American Bar Association, 321 North Clark Street, Chicago, IL 60654.

June 20-21, 2001: Speaker at California CPA Conference, San Francisco and Los Angeles, CA. Notes supplied.

June 13, 2001: Speaker at Director's Roundtable Event, Calgary, Canada. Notes supplied.

May 18, 2001: Panelist at Rocky Mountain Securities Conference, Denver, CO. Notes supplied.

May 10, 2001: Panelist at an ABA Conference, Scottsdale, AZ. Notes supplied.

March 9, 2001: Panelist at American Bar Association White Collar Crime Conference, San Francisco, CA. I discussed the Securities and Exchange Commission's enforcement priorities. I have no notes, transcript or recording. The sponsor of the conference was the American Bar Association, 321 North Clark Street, Chicago, IL 60654.

February 20, 2001: Panelist at an event hosted by PricewaterhouseCoopers, Palo Alto, CA. Notes supplied.

January 31, 2001: Speaker at Director's Roundtable Event, Orange County, CA. Notes supplied.

October 20 & 22, 2000: Panelist at conferences jointly sponsored by SEC and NASDAQ regarding Regulation FD, Los Angeles and San Francisco, CA. Notes supplied.

September 26, 2000: Panelist at ABA White Collar Crime Section meeting (LA Chapter), Los Angeles, CA. Notes supplied.

September 21-22, 2000: Speaker at AICPA Conference, Las Vegas, NV. Notes supplied.

August 10-11, 2000: Panelist at Advanced Securities Law Workshop, San Diego, CA. Notes supplied.

July 28, 2000: Panelist at PLI conference, Securities Law and The Internet: Doing Business in a Rapidly Changing Marketplace, San Francisco, CA. Notes supplied.

May 30, 2000: Speaker at Director's Roundtable Event, Vancouver, Canada. Notes supplied.

May 20, 2000: Speaker at SEC and Financial Regulation Institute, Pasadena, CA. Notes supplied.

May 11-12, 2000: Panelist at Business Trial Lawyers and Damages Expert Conference, Palm Springs, CA. Notes supplied.

April 18, 2000: Guest lecturer at University of Southern California School of Law, Los Angeles, CA. I discussed the Securities and Exchange Commission and its enforcement priorities. I have no notes, transcript or recording. I was invited by Professor Jennifer Arlen, who is currently on faculty at New York University School of Law, 139 MacDougal Street, New York, NY 10012.

February 24-25, 2000: Panelist at 20th Annual Northwest Securities Institute, Portland, OR. Notes supplied.

January 26-28, 2000: Panelist at Securities Regulation Institute, San Diego, CA. Notes supplied.

November 17, 1999: Speaker at Know Fraud event in Phoenix, AZ. I have no notes, transcript or recording, but press coverage is supplied. I do not recall who the actual sponsor of the event was (I believe I was invited to speak by the Postal Inspector in Phoenix, AZ).

October 7, 1999: Speaker at a seminar, San Francisco, CA. I discussed the Securities and Exchange Commission's priorities. I have no notes, transcript or recording. The sponsor of the event was Association of Western Securities Management, address unknown.

September 14, 15 & 16, 1999: Speaker at a series of Director's Roundtable events in La Jolla, Newport Beach and Los Angeles, CA. I discussed enforcement priorities of the Securities and Exchange Commission. I have no notes, transcript or recording. The sponsor of the event was Director's Roundtable, 1222 South Genesee Avenue, Los Angeles, CA 90019.

May 12, 1999: Speaker at American Society of Corporate Secretaries, Burbank, CA. Notes supplied.

February 26, 1999: Panelist at annual "SEC Speaks" Conference, Washington, D.C. I have no notes, transcript or recording, but press coverage is supplied. The sponsor of the conference was the Practising Law Institute, 810 Seventh Avenue, New York, NY 10019.

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.

Profile in Simpson Thacher's Women's Connection, July 2012. Copy supplied.

Federal Dogs, University of Georgia, Georgia Magazine, March 2012. Copy supplied.

Charlie Savage, *F.B.I. Focusing on Security Over Ordinary Crime*, N.Y. Times, August 24, 2011. Copy supplied.

Matt Apuzzo and Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, Associated Press, August 23, 2011. Copy supplied.

Charlie Savage, *F.B.I. Agents Get Leeway to Push Privacy Bounds*, N.Y. Times, June 12, 2011. Copy supplied.

Barton Gellman, *Cover Story: Is the FBI Up to the Job 10 Years After 9/11?*, Time, May 12, 2011. Copy supplied.

Charlie Savage, *F.B.I. Casts Wide Net Under Relaxed Rules for Terror Inquiries, Data Show*, N.Y. Times, March 27, 2011. Copy supplied.

Martin Kaste, All Things Considered, *Web Wiretaps Raise Security, Privacy Concerns*, NPR, February 22, 2011. Audio is available at http://www.npr.org/2011/02/22/133966151/web-wiretaps-raise-privacy-concerns.

Ken Dilanian, *Report Details FBI Violations in Gathering Intel*, Chicago Tribune, January 31, 2011. Copy supplied.

Ken Dilanian, *FBI Involved in Hundreds of Violations in National Security Investigations*, L.A. Times, January 30, 2011. Copy supplied.

Noam Cohen, *Twitter Shines a Spotlight on Secret F.B.I. Subpoenas*, N.Y. Times, January 9, 2011. Copy supplied.

Charlie Savage, *Officials Push to Bolster Law on Wiretapping*, N.Y. Times, October 18, 2010. Copy supplied.

Ellen Nakashima, *U.S. Seeks Ways to Wiretap the Internet*, Washington Post, September 28, 2010. Copy supplied.

Charlie Savage, *U.S. Tries to Make It Easier to Wiretap the Internet*, N.Y. Times, September 27, 2010. Copy supplied.

Lolita C. Baldor, *Report: U.S. Would Make Internet Wiretap Easier*, Washington Times, September 27, 2010. Copy supplied.

William K. Rashbaum, *One U.S. Prosecutor in Brooklyn Is Behind Many Terrorism Convictions*, N.Y. Times, July 6, 2010. Copy Supplied.

Carrie Johnson & John Solomon, *FBI Broke Law for Years in Phone Record Searches*, January 19, 2010. Copy supplied.

Charlie Savage, *Loosening of F.B.I. Rules Stirs Privacy Concerns*, N.Y. Times, October 29, 2009. Copy supplied.

Katheryn Hayes Tucker, *FBI Counsel Talks Security, Privacy*, Corporate Counsel, April 21, 2009. Copy supplied.

Inside the FBI, *The New Attorney General Guidelines*, January 16, 2009. Transcript of podcast supplied.

Dina Temple-Raston, *Legislator Aims To Regulate FBI Behavior*, NPR, September 3, 2008. Audio is available at http://www.npr.org/templates/story/story.php?storyID=94192965.

Dina Temple-Raston, *Some FBI Agents Pay High Price For Using Snitches*, NPR, September 2, 2008. Audio is available at http://www.npr.org/templates/story/story.php?storyID=94129293.

Dina Temple-Raston, *Bulger Case Changed FBI's Role With Informants*, NPR, September 1, 2008. Audio is available at http://www.npr.org/templates/story/story.php?storyID=94117338.

Ben Conery, *FBI Blames Phone Flap on Miscommunication*, Washington Times, August 26, 2008. Copy supplied.

Lara Jakes Jordan, *Justice Dept. Reviewing FBI Terror Cases*, USA Today, July 13, 2007. Copy supplied.

John Solomon, *FBI Finds It Frequently Overstepped in Collecting Data*, Washington Post, June 14, 2007. Copy supplied.

America at a Crossroads, *Security Versus Liberty: The Other War, The Library*, premiered April 2007. Video is available at http://www.pbs.org/weta/crossroads/about/show_security_vs_liberty.html.

Steve Inskeep, *FBI Rewrites Rules on National Security Letters*, April 26, 2007. Transcript supplied.

Adam Liptak, *Relying on the Notepad in the Electronic Age*, N.Y. Times, February 12, 2007. Copy supplied.

Barton Gellman, *The FBI's Secret Scrutiny: In Hunt for Terrorists, Bureau Examines Records of Ordinary Americans*, Washington Post, November 6, 2005. Copy supplied.

Noelle Crombie, *Mobster Says Creating His Family Broke It Apart*, The Sunday Oregonian, July 24, 2005. Copy supplied.

Robert Vosper, *The Chosen One*, Corporate Legal Times, October 2004. Copy supplied.

Brittany Cox, *New Position, New Mission*, The Georgia Advocate, Winter 2004. Copy supplied.

I appeared on either WTOP or WFED radio in late 2003 or early 2004, shortly after I became General Counsel of the FBI. I do not have notes, transcript or recording.

Patrick Higgins, *George Washington U. Alum Figures Prominently in Enron Investigation*, The GW Hatchet, February 4, 2002. Copy supplied

Howard Mintz, *S.F. Prosecutor Well-Prepared for Enron Probe: Attorney Led Major Fraud Cases*, San Jose Mercury News, January 27, 2002. Copy supplied.

Edward Iwata, *Lead Investigator Called Relentless*, USA Today, January 24, 2002. Copy supplied.

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Robin Topping, *12 Arrested in Phone Bribery Scheme*, Newsday, January 18, 1989. Copy supplied.

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Leonard Buder, *2 Officers Charged in Ft. Wadsworth Assault*, N.Y. Times, August 27, 1988. 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:

    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 never been 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.

    I have not held any 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 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;

Upon graduation from law school, I clerked for Judge Phyllis Kravitch, U.S. Court of Appeals for the 11th Circuit, from June 1979 through August 1980.

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.

1980 – 1985
Cravath, Swaine & Moore
825 Eighth Avenue
New York, New York 10019
Litigation Associate

1985 – 1989
Office of the United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Assistant United States Attorney, Criminal Division

1989 – 1992
New York State Urban Development Corp. (now Empire State Development)
633 Third Avenue
New York, New York 10017
General Counsel and Senior Vice President – Legal

Note: by virtue of being General Counsel of UDC, I also served as General Counsel of various subsidiaries of UDC, including Hudson River Park Conservancy, 42nd Street Redevelopment Corp. and Queens West Development Corp. There may have been other subsidiaries as well, but those listed above were the primary operating subsidiaries with which I was affiliated.

1992 – 1998
Office of the United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201
Chief, Criminal Division (1994 – 1998)
Chief, Organized Crime & Racketeering Unit (1993 – 1994)
Chief, Special Prosecutions Unit (1993)
Assistant United States Attorney, Criminal Division (1992)

1998 – 2001
Securities and Exchange Commission
Pacific Regional Office
5670 Wilshire Boulevard
Los Angeles, California 90036
Regional Director

2001 – 2003
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
Counsel

2003 – 2011
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535
General Counsel

2011 – Present
Northrop Grumman Corporation
2980 Fairview Park Drive
M/S 12161A
Falls Church, Virginia 22042
Vice President and Deputy General Counsel

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.

The general character of my law practice has changed significantly over the years.

At Cravath, Swaine & Moore, where I practiced from 1980 through 1985, I was a civil litigator. My practice involved almost entirely defense work on behalf of large national and multi-national companies. Although I had no particular area of specialization, I worked on a number of libel, antitrust and securities matters.

When I became an AUSA in 1985, my practice shifted from being entirely civil and largely defensive to being entirely criminal. I had no particular area of specialization, although I prosecuted a number of narcotics cases.

The character of my law practice changed again when I went "in house" as the General Counsel of the Urban Development Corp. (UDC) in 1989. UDC (now Empire State Development) is a New York state special benefit corporation and was at the time responsible for many economic development activities in New York State. The character of my law practice thus shifted from criminal law back to civil law issues. I had no particular area of specialization, but my practice included administrative law, banking and bankruptcy law, environmental and land use, real estate and products liability. My primary responsibility was to provide legal advice to the executives and directors of the corporation.

When I returned to the United States Attorney's Office in 1992, the character of my law practice shifted back to criminal law. During this stint I became part of the administration of the office, ultimately serving as Chief of the Criminal Division where I supervised the work of approximately 100 prosecutors. I again had no particular area of specialization, although the cases I personally handled were largely civil rights and racketeering matters.

In 1998, I became the Regional Director of the SEC's Pacific Regional Office, and the character of my legal practice changed again. At the SEC, my practice was devoted entirely to enforcement of federal securities laws, both from an enforcement and regulatory perspective.

My return to private practice at Simpson Thacher & Bartlett in 2001 brought another shift in the character of my practice. While at Simpson, my focus was on white collar criminal defense.

The character of my law practice changed again in 2003 when I returned to an "in house" practice when I became General Counsel of the Federal Bureau of Investigation (FBI). I had no particular area of specialization, but my practice included employment law, civil litigation (tort claims, constitutional litigation and Freedom of Information Act litigation).

administrative law, procurement law, national security law, criminal procedure, science and technology law, asset forfeiture, Privacy Act and constitutional law. In this position, my primary responsibility (in addition to leading a division of approximately 300 employees) was to provide legal advice and counsel to executive management.

The final shift in the character of my legal practice came with my move from the FBI to Northrop Grumman Corp. (Northrop) in 2011. At Northrop I am responsible for supervision of all litigation and internal investigations. My area of specialization is civil litigation and investigations (both internal and responding to government inquiries). My practice involves setting strategy and tactics in cases and investigations that affect Northrop and ensuring that the company's outside counsel execute those plans appropriately.

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

At Cravath, Swaine & Moore, my typical clients were large national and multi-national companies. I had no particular area of specialization beyond being a litigator.

When I became an AUSA in 1985, my only client was the U.S. government. At this time I had no particular area of specialization, although I prosecuted a number of narcotics cases, including narcotics cases involving members and associates of Italian organized crime.

When I became the General Counsel of the Urban Development Corp. (UDC) in 1988 my only client was UDC. At UDC, my areas of practice included administrative law, banking and bankruptcy law, environmental law, real estate, securities, eminent domain and products liability. I supervised an in-house staff of approximately 20 lawyers as well as many outside law firms.

When I returned to the United States Attorney's Office in 1992, my only client was again the U.S. government, and I again specialized in federal criminal prosecution.

In 1998, when I joined the Securities and Exchange Commission, my client was the Commission. At the SEC, my practice was devoted entirely to enforcement of federal securities laws.

My clients at Simpson Thacher & Bartlett, which I joined in 2001, were large national and multinational corporations and some individuals. I specialized in white collar defense.

As General Counsel of the Federal Bureau of Investigation (FBI), which I joined in 2003, my only client was the FBI, a component of the Department of Justice that operates inside and outside the United States with approximately 35,000 employees and a budget in excess of $7 billion. My practice areas included employment law, civil litigation (almost exclusively as the defendant in tort or employment actions), procurement law, administrative law, Freedom of Information Act litigation, national security law, criminal procedure, science and technology law, asset forfeiture, Privacy Act and constitutional law.

I became Deputy General Counsel of Northrop Grumman Corp. (Northrop) in 2011, and my only client is Northrop. Significant practice areas include government contracts, bid protests, employment law, products liability, False Claims Act, environmental and intellectual property.

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.

Through my entire career I have been involved in litigation, either directly or supervising others. When I was an Assistant U.S. Attorney (1985-1989, 1992-1998), I appeared in court frequently. When I was an associate at Cravath, Swaine & Moore (1980-1985), I appeared in court occasionally. In all other positions (1989-1992, 1998-present), I have not appeared in court at all.

Please note that the percentages reported below treat national security matters, including matters handled by the Foreign Intelligence Surveillance Court (FISC), as criminal matters.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 8%
   3. other courts: 0%
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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

I have tried 15 to 20 cases to verdict. In most, I was sole counsel. In three or four, I was chief counsel. In two cases, I tried the case with another individual, and we shared equal responsibility for the case. In addition to those trials, I "second seated" (*i.e.*, I supervised trial preparation and trial by the assigned AUSA, who was lead counsel) approximately 10-15 cases, all of which proceeded to verdict.

i. What percentage of these trials were:
   1. jury: 99%
   2. non-jury: 1%

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

My only practice before the Supreme Court came when I was counsel for a number of *amici curiae* in *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983). A copy of the brief is supplied.

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

a. the date of representation;

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

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

1. *United States v. Nelson and Price*, 94 CR 823 (DGT) (EDNY), 68 F.3d 583 (2d Cir. 1995); 921 F. Supp. 105 (E.D.N.Y. 1996); 90 F.3d 636 (2d Cir. 1996); 277 F.3d 164 (2d Cir. 2002).

This was a federal criminal civil rights prosecution against two defendants growing out of the slaying of Yankel Rosenbaum, an orthodox Jew, in Crown Heights, Brooklyn. Nelson stabbed Rosenbaum several times, apparently in response to the exhortation of Price to "get the Jew." Price incited the riot that led to the stabbing of Rosenbaum and numerous other acts of violence.

I represented the United States as co-counsel with Alan Vinegrad from approximately 1993, when we commenced the federal investigation following the acquittal of Nelson in state court, through the appeal of the convictions in 2002 (I participated as a Special Assistant U.S. Attorney as I was no longer an AUSA at that point). I was involved in all aspects of the original federal investigation and first trial, including two interlocutory appeals, and the direct appeal of the convictions. The convictions from the first federal trial were reversed on appeal based on errors in jury selection. The defendants were retried and convicted: I did not participate in the retrial.

The case was tried in the Eastern District of New York before Hon. David G. Trager.

Co-counsel: Alan Vinegrad
Covington and Burling
620 Eighth Avenue
New York, NY 10018
212-841-1022

Opposing counsel: Darrell Paster (for defendant Price)
321 West 89th Street
New York, NY 10024
646-337-7700

Anthony Ricco (for defendant Price)
20 Vesey Street, Suite 400
New York, NY 10007
212-791-3919

Trevor Headley (for defendant Nelson)
26 Court Street, Suite 3500
Brooklyn, NY 11242
212-596-7340

Christine Yaris (for defendant Nelson)
Deceased

2. *United States v. Malpeso, Gallagher and Amato*, 93 CR 1365(S-2) (RJD) (EDNY), 115 F.3d 155 (2d Cir. 1997).

This was one of a series of racketeering prosecutions brought against members and associates of the Colombo Organized Crime Family, who participated in an internecine war that was fought on the streets of New York in 1991 and 1992 for control of the family. This particular case was against members of the "Orena faction" (*i.e.*, the faction aligned with Victor Orena) and focused primarily on two events in which teenagers who were not involved in the war were shot. In one incident (known as the "Bagel Store shooting"), the victim was killed: in the second incident (known as the "Avenue P shooting"), an unintended victim was seriously wounded. The defendants at trial

included a soldier in the family (who sent the gunman to the bagel store and provided one of the guns used in the Avenue P shooting), an acting captain (who was an accessory after the fact to the Bagel Store shooting), and an associate (who was one of the Avenue P gunmen). All of the defendants were convicted at trial, although there was a hung jury on certain counts against defendant Malpeso. The convictions were affirmed on appeal.

I was lead counsel for the investigation, trial and appeal. I represented the United States in this matter from the beginning of the investigation through the appeal to the Second Circuit.

The case was tried in the Eastern District of New York before Hon. Raymond J. Dearie.

Co-counsel: Sung-Hee Suh
Shulte, Roth & Zabel
919 Third Avenue
New York, NY 10022
212-756-2418

Opposing counsel: Margaret Alverson (for defendant Malpeso at trial)
260 Madison Avenue
New York, NY 10016
212-213-0511

Judd Burstein (for defendant Malpeso on appeal)
1790 Broadway, Suite 1501
New York, NY 10019
212-974-2400

Gerald Shargel (for defendant Gallagher at trial)
1790 Broadway, Suite 1501
New York, NY 10022
212-446-2323

John Pollok (for defendant Gallagher on appeal)
Hoffman & Pollok
260 Madison Avenue
New York, NY 10016
212-697-2900

James LaRossa (for defendant Amato at trial)
1790 Broadway, Suite 1501
New York, NY 10019
212-397-7900

Alan Futerfas (for defendant Amato on appeal)
565 Fifth Avenue, 7th Floor

New York, NY 10017
212-684-8400

3. *United States v. Orena and Amato*, 92 CR 351 (JBW) (EDNY), 956 F. Supp. 1071 (E.D.N.Y. 1997).

This case was among the first in a series of cases that arose out of the Colombo Family War, described in the discussion of the *Malpeso* case, *supra*, to be tried. After Orena and Amato were convicted at trial, they moved for a new trial arguing that the government had violated its obligations under *Brady* by not disclosing to the defendants that Gregory Scarpa, Sr., one of the belligerents on the other side of the war, was a long time informant for the Federal Bureau of Investigation (FBI). That allegation, which spawned other allegations (including that an FBI agent was a co-conspirator who actively fomented the war for his own career enhancement), was at the core of a number of motions for new trial, including from these two defendants. In this litigation there was a full evidentiary hearing at which the defendants were allowed to pursue fully their allegations against the government. To facilitate a complete airing of the issue, the government immunized Scarpa's "handling agent," who had previously invoked his Fifth Amendment right not to testify, so that the defendants could cross-examine him. The court denied the motions for new trial, holding that the government had not violated the defendants' rights under *Brady*.

I was involved only in the post-trial litigation in this matter, beginning in approximately 1994 and continuing through the resolution of the post-trial motions in 1997. In the post-trial litigation, responsibilities were jointly shared among three AUSAs.

The case was tried in the Eastern District of New York before Hon. Jack B. Weinstein.

Co-counsel: Andrew Weissmann
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535
202-324-6829

George Stamboulidis
Baker & Hostetler
45 Rockefeller Plaza, 11th Floor
New York, NY 10111
212-589-4211

Opposing counsel: Gerald Shargel (for defendant Orena)
1790 Broadway, Suite 1501
New York, NY 10019
212-446-2323

Benjamin Brafman (for defendant Amato)
Brafman & Associates
767 Third Avenue
New York, NY 10017
212-750-7800

4. *United States v. Persico et al.*, 92 CR 351 (CPS) (EDNY), 1997 WL 867788 (E.D.N.Y. 1997); 145 F.3d 551 (2d Cir. 1998).

This is another in the series of cases that arose out of the Colombo Family War. As with the *Orena* case discussed above, following their conviction at trial, the defendants moved for new trials based on allegations, *inter alia*, that the government violated *Brady* and its progeny by not disclosing that Gregory Scarpa, Sr., one of the defendants' co-conspirators, had been a long time informant for the FBI. As was true in the *Orena* post-trial litigation, the defendants' allegations were far reaching and included allegations that Scarpa's handler was complicit in the murders Scarpa committed during the war. No evidentiary hearing was held in this case, but there was extensive briefing of the issues. The district court held that as to three defendants the government had violated *Brady*, and the court ordered a new trial as to those defendants. The government appealed that decision, and it was reversed by the Second Circuit Court of Appeals.

I was the first line supervisor of the trial. A number of AUSAs were involved in the post-trial litigation. My involvement is best described as lead counsel for the post-trial litigation (excluding sentencing and direct appeal of the criminal convictions but including the successful appeal from the order granting a new trial to three defendants).

The case was tried in the Eastern District of New York before Hon. Charles P. Sifton.

Co-counsel:

Andrew Weissmann (district court only)
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535
202-324-6829

George Stamboulidis (district court only)
Baker & Hostetler
45 Rockefeller Plaza, 11th Floor
New York, NY 10111
212-589-4211

Ellen Corcella (district court only)
Corcella Law
155 East Market Street, Suite 800
Indianapolis, IN 46204
317-634-0700

Opposing counsel: Alan Futerfas (for defendant A. Russo)
565 Fifth Avenue, 7th Floor
New York, NY 10017
212-684-8400

Salvatore Marinello (for defendant J. Russo)
1140 Franklin Avenue, Suite 200
Garden City, NY 11530
516-877-2270

Marion Seltzer (for defendant Monteleone in district court)
1725 York Avenue, Apt. 16A
New York, NY 10128
212-289-8798

Joshua Dratel (for defendant Monteleone on appeal)
2 Wall Street, 3rd Floor
New York, NY 10005
212-732-0707

Michael Washor (for defendant Persico in district court)
233 Broadway, Suite 1800
New York, NY 10279
212-697-5900

5. *United States v. Brady et al.*, 92 CR 792 (ILG) (EDNY), 817 F. Supp. 321 (E.D.N.Y. 1993); 26 F.3d 282 (2d Cir. 1994).

This is another in the series of cases arising from the Colombo Family War. In this case, ten members of the Persico faction (*i.e.*, the faction loyal to the imprisoned boss of the family, Carmine Persico) were indicted on racketeering charges for their involvement in the war. Of the ten defendants, five pled guilty prior to trial; five were convicted after trial. The convictions were affirmed on appeal, and post-conviction litigation seeking new trials as a result of the so-called "Scarpa issue" (discussed in the description of the *Orena* and *Persico* cases, *supra*) was resolved in the government's favor.

I became co-counsel on this case shortly before trial in late 1992. My co-counsel and I tried the case. He argued the direct appeal from the convictions, and I handled all post-conviction litigation other than the direct appeal.

The case was tried in the Eastern District of New York before Hon. I. Leo Glasser.

Co-counsel: Michael Considine
Seward & Kissell LLP
One Battery Park Plaza

New York, NY 10004
212-574-1334

Opposing counsel: David Breitbart (for defendant Pate)
470 Park Avenue South, #10N
New York, NY 10016
212-608-1313

Louis Diamond (for defendant Montano at trial)
358 Saint Mark's Place, 3rd Floor
Staten Island, NY 10301
718-448-4800

Joel S. Cohen (for defendant Montano post-conviction)
11 East Broadway
New York, NY 10038
212-571-8899

Paul Greenfield (for defendant Matteo)
260 Madison Avenue, Suite 1800
New York, NY 10016
646-456-3806

Martin Geduldig (for defendant Brady)
600 Old Country Road, #320
Garden City, NY 11530
516-794-1219

Stuart Rubin (for defendant Pontillo)
26 Court Street, Suite 2506
Brooklyn, NY 11242
718-802-0778

6. *United States v. Scarpa et al.*, 87 CR 760 (ILG) (EDNY), 701 F. Supp. 379 (E.D.N.Y. 1988); 691 F. Supp. 635 (E.D.N.Y. 1988); 848 F. Supp. 354 (E.D.N.Y. 1994); 913 F.2d 993 (2d Cir. 1990); and 897 F.2d 63 (2d Cir. 1990).

This was a racketeering prosecution against Gregory Scarpa, Jr., and nine members of his crew. Scarpa was a member of the Colombo Organized Crime Family and, with his crew, operated an extremely lucrative and violent drug organization. The crew sold hundreds of thousands of dollars worth of marijuana, primarily at the College of Staten Island, sold cocaine and heroin at locations in Brooklyn, attempted to bribe police officers to protect their Staten Island operation, and extorted a "street tax" from other drug dealers in Brooklyn. At the time of the indictment, Scarpa fled and remained a fugitive until after his co-defendants had been tried and convicted. Thereafter, Scarpa was found, tried and convicted.

I was responsible for the investigation of this matter beginning in 1986. I remained responsible through the trials, which I conducted with another AUSA as lead counsel. My co-counsel handled the direct appeal of the convictions, and I handled certain post-conviction litigation that occurred in the mid-1990s.

The case was tried in the Eastern District of New York before Hon. I. Leo Glasser.

Co-counsel: Jerome C. Roth
Munger, Tolles & Olson
33 Montgomery Street
San Francisco, CA 94101
415-512-4010

Opposing counsel: Stanley Meyer (for defendant Granato)
Deceased

Richard Rehbock (for defendant Catanzano)
1 Maple Run Drive
Jericho, NY 11753
516-827-9583

Edward M. Rappaport (for defendant Savarese)
16 Court Street, Suite 3301
Brooklyn, NY 11241
718-237-1900

Susan Kellman (for defendant N. DeCarlo)
25 Eighth Avenue
Brooklyn, NY 11217
718-783-8200

Alan Brenner (for defendant L. DeCarlo)
Last known address
46 East Park Avenue, Floor 2
Long Beach, NY 11561
516-897-6145

Joseph Benfante (for defendant Scarpa)
255 Broadway, Suite 2700
New York, NY 10007
212-227-4700

Ivan Fisher (for defendant M. Parlagreco)
251 East 61st Street

New York, NY 10021
212-517-5000

David Wikstrom (for defendant J. Parlagreco)
233 Broadway, Suite 2208
New York, NY 10279
212-248-5511

Larry Bronson (for defendant Meli)
Current contact information unknown

7. *United States v. Casso*, 90 CR 446 (FB) (EDNY), 9 F. Supp. 2d 199 (E.D.N.Y. 1998).

Casso was a member of the administration of the Luchese Organized Crime Family. He pled guilty to racketeering and murder charges and entered into a cooperation agreement with the United States. Casso continued to commit crimes in prison and was not truthful about his conduct when confronted. Ultimately, the government determined that it would not make a motion for a downward departure for him at sentencing, based on his substantial breaches of the cooperation agreement.

I was the first line supervisor of the underlying criminal case at the time Casso pled guilty in 1993 or 1994. I continued to play an active role in dealing with Casso's cooperation, up through and including the decision not to make a motion for a downward departure in connection with his sentencing. I was co-counsel with another AUSA at Casso's sentencing, at which time we litigated the government's right to decline to make a motion for a downward departure.

The matter was litigated in the Eastern District of New York before Hon. Fred Block.

Co-counsel: George Stamboulidis
Baker & Hostetler
45 Rockefeller Plaza, 11th Floor
New York, NY 1011
212-589-4211

Opposing counsel: Matthew Brief
Brief Carmen & Kleiman
805 Third Avenue, 11th Floor
New York, NY 10022
212-832-5570

8. *Broadway 41st Street Realty Corp. v. UDC, et al.*, 89 Civ. 3213 (PKL) (SDNY), 733 F. Supp. 735 (S.D.N.Y. 1990)

This was one of many lawsuits brought in connection with the planned redevelopment of Times Square while I was General Counsel of UDC. In this case, project opponents, who owned land within the project area against which UDC had filed a condemnation petition, sued UDC, New York City and the designated developer in federal court to enjoin the pending condemnation on the grounds, *inter alia*, that it no longer served the public interest to proceed with the project and, therefore, the use of the power of eminent domain was inappropriate. The defendants successfully moved to dismiss the case on abstention grounds.

As General Counsel of UDC, I participated in all strategic decisions in the litigation and reviewed, edited and approved all briefs filed in the action. I was involved in the case from the time it was filed in 1989 until it was dismissed in 1990.

Co-counsel:

Eric Lobenfeld (outside counsel for UDC)
Hogan & Lovell
875 Third Avenue
New York, NY 10022
212-918-8202

Saul Morgenstern (outside counsel for UDC)
Kaye Scholer
425 Park Avenue
New York, NY 10022
212-836-7210

Stephen Kass (outside counsel for UDC)
Carter, Ledyard & Milburn
2 Wall Street
New York, NY 10005
212-238-8801

Joseph Petillo (staff attorney at UDC)
Empire State Development Corp.
633 Third Avenue, 34th Floor
New York, NY 10017
212-803-3100

Robert Pfeffer (for New York City)
Last known address
Office of the Corporation Counsel
100 Church Street
New York, NY 10007
212-788-0680

Jo Davis (for the developer)
Formerly employed by Kaye Scholer
Current contact information unknown

Opposing counsel: Jonathan Polonsky
Kirkpatrick Townsend & Stockton
1114 Avenue of the Americas
New York, NY 10019
212-775-8703

9. *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983).

I represented a group of organizations as *amicus curiae* when this case was appealed from the D.C. Circuit to the Supreme Court. I was involved in the litigation only in the Supreme Court.

The case revolved around the constitutionality of a federal statute, 39 U.S.C. § 3001(e)(2), which defined as nonmailable any nonsolicited advertisements for contraceptives. An earlier unconnected case had declared the statute to be unconstitutional on First Amendment grounds as it applied to mailings from entities with no commercial interest in the materials. The Postal Service accepted that ruling, but continued to enforce the law as it applied to mailings in which the mailer had a commercial interest.

My clients argued that the statute was unconstitutional as applied to commercial speech regarding contraception. That position was upheld by the Supreme Court.

I was the primary drafter of the brief.

Co-counsel: Robert Joffe
(now deceased)
Cravath, Swaine & Moore
825 Eighth Avenue
New York, NY 10019
212-474-1000

Paula Schaap
(last known address)
100 Centre Street
New York, NY
Phone number unknown

Opposing counsel: David Strauss (then an Assistant Solicitor General)
University of Chicago
School of Law

1111 East 60th Street, Room 422
Chicago, IL 60637
773-702-9494

10. *Securities and Exchange Commission v. Jakob*, EDCV-00-687 VAP(Mcx) (CDCA).

This was a civil action brought against the perpetrator of an internet hoax that led to a dramatic drop in the share price of Emulex, a Southern California company. Jakob had created a short position in Emulex because he believed the price would fall. Instead, the price rose. In order to cover his short position, Jakob created a phony press release that purported to be from Emulex. The phony press release announced that Emulex was under investigation by the Securities and Exchange Commission for accounting irregularities, the Chief Executive Officer had resigned, and the company would be restating its earnings. Jakob emailed the phony press release to a press release distribution company, which released it to the public. Upon release of the phony press release, the share price of Emulex dropped about $61 per share in the approximately 15 minutes before trading was halted. During that time, Jakob covered his short position and purchased additional Emulex shares, which he sold several days later at a profit. After the hoax was revealed and trading recommenced, the stock price largely recovered. During the period of the hoax, Emulex lost almost $2.2 billion in market value; Jakob profited by approximately $241,000. Less than a week after the hoax, the SEC filed suit against Jakob, and, in a parallel criminal proceeding, Jakob was arrested and charged criminally. Jakob eventually consented to the entry of a permanent injunction prohibiting him from violating the security laws and was ordered to disgorge all unlawful gains and losses avoided and to pay a civil penalty. He pled guilty to the parallel criminal charges.

The case was brought in the Central District of California before Hon. Virginia Phillips.

My role was to supervise the investigation and litigation of the matter. My involvement began the day of the hoax in 2000 and ended with his consent to entry of judgment against him in 2001.

Co-counsel:

Kelly Bowers
Securities and Exchange Commission
5670 Wilshire Boulevard
Los Angeles, CA 90036
323-965-3924

Cliff Hyatt
Current contact information unknown
Last known address:
Foley & Lardner LLP
555 South Flower Street, Suite 3500
Los Angeles, CA 90071
213-972-4500

Opposing Counsel: Joel Levine
695 Town Center Drive, Suite 875
Costa Mesa, CA 92626
714-662-4462

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 never engaged in lobbying activities.

At the FBI, among the most significant legal activities in which I engaged that did not involve litigation was the negotiation and successful implementation of new Attorney General Guidelines for Domestic FBI Operations. In order to respond to the calls from Congress and others, including the 9/11 and Weapons of Mass Destruction Commissions, for the FBI to become a "domestic intelligence agency," the FBI needed new investigative guidelines. I led the work from the FBI's side, and I also played a lead role in briefing the new guidelines to Congress and others.

At UDC, I was substantially involved in the negotiations for the Commodities Exchange Project. At the time, the commodities exchanges were collectively housed in inadequate space in the World Trade Center. In response to their threat to relocate to New Jersey to obtain adequate space, which would have cost New York State thousands of jobs and millions of dollars in annual tax revenue, the State of New York and the City of New York pledged $100 million and use of UDC's extraordinary powers to assist them in obtaining a suitable new facility. During the course of the negotiations, one of the most significant issues was whether the public money would flow to the project even if there was litigation pending. (The participants in this project were all aware that the 42nd Street Redevelopment Project had been delayed for years by serial litigation brought by project opponents.) Although the particular project with which I was involved was never built (the four exchanges could ultimately not agree among themselves), I provided substantial advice and counsel to my client in order that it could decide whether to agree to take the aggressive stance of agreeing to fund the project in the face of litigation (the financial risk of which would have fallen almost entirely on the public partners).

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 never 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 do not have any plans 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. (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 only parties that might present a conflict of interest would be the FBI and Northrop Grumman. To the extent a case involving either were assigned to me, I would examine whether the litigation arises from facts with which I have had personal or supervisory involvement. If I had personal or supervisory involvement, I would not participate in such matters as a judge.

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

       If confirmed, I would follow the Code of Conduct for United States Judges, as well as any other applicable ethics 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.

I provided *pro bono* representation to an indigent prisoner who had filed (as I recall) more than 10 cases against various police officers in New York City. Judge Eugene Nickerson (now deceased), Eastern District of New York, appointed Cravath, Swaine & Moore as counsel for him, and the matter was assigned to me. With a colleague, we reviewed all of the matters and persuaded the prisoner to drop many of the actions; we agreed to pursue two that had facial validity. Both cases proceeded to bench trial; both were resolved against the plaintiff.

I provided *pro bono* representation to several organizations in connection with an amicus in the Supreme Court in connection with *Bolger v. Youngs Drugs*. I was the primary drafter of the brief that was filed in the Supreme Court.

I was part of a team of attorneys from Cravath, Swaine & Moore who provided *pro bono* representation to Dignity New York, a gay rights group, in connection with litigation over the proposal of the City of New York to prevent any group from occupying the area directly in front of St. Patrick's Cathedral during the annual Gay Pride Parade in New York City. The district court's injunction against the City's plan for the parade was reversed by the Second Circuit Court of Appeals. Subsequent litigation (after I was no longer involved in the matter) resulted in a trial and a ruling against the City. That decision was affirmed by the Second Circuit.

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 made contact with Senator Gillibrand's office through a mutual friend in early 2011. In Spring 2012, the White House Counsel, who was aware of my desire to serve as a district court judge, inquired whether I remained interested. At around the same time, staff from Senator Gillibrand's office inquired whether I remained interested in serving as a judge, and on June 8, 2012, I met with Senator Gillibrand. A couple of weeks later, I was informed by Senator Gillibrand's staff

that she would be sending my name along with others to the White House for vetting. 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 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)	2. Court or Organization	3. Date of Report
CAPRONI, VALERIE E.	SOUTHERN DISTRICT OF NEW YORK	11-14-2012
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5a. Report Type (check appropriate type)	6. Reporting Period
U.S. DISTRICT COURT JUDGE	☑ Nomination Date 11-14-2012 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2011 to 10/31/2012
7. Chambers or Office Address		
2980 FAIRVIEW PARK DRIVE MS 12161A FALLS CHURCH, VA 22042		

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 AND DEPUTY GENERAL COUNSEL	NORTHROP GRUMMAN CORP.
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 8	Name of Person Reporting CAPRONI, VALERIE E.	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 (yours, not spouse's)
1.	2012	NORTHROP GRUMMAN SALARY AND BONUS	$411,629.00
2.	2011	NORTHROP GRUMMAN SALARY AND BONUS	$421918.00
3.	2010	NO REPORTABLE INCOME	
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 8	Name of Person Reporting CAPRONI, VALERIE E.	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	EXEMPT		
2			
3			
4			
5			

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

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1			
2			
3			
4			
5			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
CAPRONI, VALERIE E.	11/14/2012

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				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(3) 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)
1. BROKERAGE ACCOUNT #1					Exempt				
2. AES COMMON STOCK		None	J	T					
3. --CISCO SYSTEMS COMMON STOCK	A	Dividend	J	T					
4. --WALT DISNEY CO. COMMON STOCK	A	Dividend	K	T					
5. --DUKE ENERGY CORP. COMMON STOCK	A	Dividend	J	T					
6. --EXPRESS SCRIPTS HOLDING CO COMMON STOCK		None	K	T					
7. --GAP INC. COMMON STOCK	A	Dividend	K	T					
8. --INTEL CORP. COMMON STOCK	B	Dividend	K	T					
9. --JP MORGAN CHASE & CO. COMMON STOCK	A	Dividend	J	T					
10. --KEYCORP COMMON STOCK	A	Dividend	J	T					
11. --LSI CORP., COMMON STOCK		None	J	T					
12. --MERCK & CO. COMMON STOCK	C	Dividend	K	T					
13. --PFIZER INC. COMMON STOCK	A	Dividend	J	T					
14. --FORD MOTOR CO. COMMON STOCK		None	J	T					
15. --SYNOVUS FINANCIAL CORP. COMMON STOCK		None	J	T					
16. --PIMCO TOTAL RETURN FUND	A	Dividend	J	T					
17. --SCHWAB TAX FREE BOND FUND	C	Dividend	K	T					

1 Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2 Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

3 Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting CAPRONI, VALERIE E.	Date of Report 03-14-2012

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				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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 CENTURY EQUITY INCOME FUND	B	Dividend	K	T					
19. --GABELLI SMALL CAP GROWTH FUND	A	Dividend	J	T					
20. --LAUDUS INTERNATIONAL MARKETMASTERS FUND	A	Dividend	L	T					
21. --SCHWAB 1000 INDEX FUND	C	Dividend	L	T					
22. --SCHWAB BANK CASH DEPOSIT ACCOUNT	A	Interest	K	T					
23. IRA #1	D	Dividend	N	T					
24. --AMERICAN CENTURY INVESTMENTS ZERO COUPON 2015 FUND									
25. --AMERICAN CENTURY INVESTMENTS ZERO COUPON 2025 FUND									
26. --LAUDUS MONDRIAN INTERNATIONAL FIXED INCOME FUND									
27. --PIMCO TOTAL RETURN FUND									
28. --VANGUARD GNMA FUND									
29. JP MORGAN CHASE CASH ACCOUNTS	A	Interest	L	T					
30. WELLS FARGO CASH ACCOUNTS	A	Interest	M	T					
31. JUSTICE FEDERAL CREDIT UNION CASH ACCOUNT	A	Interest							
32. 401K #1		Note	L	U					
33. -- NORTHROP GRUMMAN US FIXED INCOME FUND									

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
CAPRONI, VALERIE E.	11/14/2012

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				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
34. -- NORTHROP GRUMMAN LARGE US EQUITY FUND									
35. -- NORTHROP GRUMMAN INTERNATIONAL EQUITY FUND									
36. -- NORTHROP GRUMMAN SMALL US EQUITY FUND									
37. -- NORTHROP GRUMMAN EMERGING MARKETS EQUITY FUND									
38. 401K #2	B	Dividend	M	V					
39. -- FIRST MANHATTAN FUND									
40. --RUANE CUNNIFF & GOLDFARB FUND									
41. --TWEEDY BROWNE GLOBAL FUND									
42. -- PIMCO TOTAL RETURN FUND									
43. NATIONAL LIFE INSURANCE WHOLE LIFE POLICIES		None	K	T					
44. US SAVINGS BONDS		None	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	F =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C3)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting CAPRONI, VALERIE E.	Date of Report 11/14/2012

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

PART VII, 401K #2: VALUE METHOD FOR ALL FUNDS IN THAT ACCOUNT ARE BASED ON CASH MARKET EXCEPT FOR RUANE CUNNIFF & GOLDFARB FUND, WHICH IS NOT PUBLICLY AVAILABLE. ITS VALUE IS REPORTED AT BOOK VALUE.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting CAPRONI, VALERIE E.	Date of Report 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/ VALERIE E. CAPRONI

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		233	756	Notes payable to banks-secured			
U.S. Government securities – see schedule		42	000	Notes payable to banks-unsecured			
Listed securities – see schedule		856	831	Notes payable to relatives			
Unlisted securities – see schedule		119	613	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		413	000
Real estate owned – personal residence		950	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		6	000	Credit cards are paid off each month			
Cash value-life insurance		17	698				
Other assets itemize:							
Thrift Savings Plan		551	372				
				Total liabilities		413	000
				Net Worth	2	364	270
Total Assets	2	777	270	Total liabilities and net worth	2	777	270
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Savings Bonds	$ 40,000
Series I Savings Bonds	2,000
Total U.S. Government Securities	$ 42,000
Listed Securities	
AES Corp. stock	$ 5270
Cisco Systems stock	12,637
Walt Disney Co. stock	24,638
Duke Energy Corp. stock	5,486
Express Scripts Holding Co. stock	16,062
Ford Motor Co. stock	3,375
Gap Inc. stock	26,450
Intel Corp. stock	19,070
JP Morgan Chase & Co. stock	8,662
Keycorp Inc. stock	1,727
LSI Corp. stock	1,148
Merck & Co. stock	46,773
Pfizer Inc. stock	13,946
Synovus Financial Corp. stock	2,490
American Century Equity Income Fund	31,095
American Century Zero Coupon 2015 Fund	78,176
American Century Zero Coupon 2025 Fund	35,018
First Manhattan Fund	49,185
Gabelli Small Cap Growth Fund	85,737
Laudus International MarketMakers Fund	115,955
Laudus Mondrian International Fixed Income Fund	7,780
PIMCO Total Return Fund	72,567
Schwab 1000 Index Fund	55,209
Schwab Tax-Free Bond Fund	40,821
Tweedy, Browne Global Value Fund	32,233
Vanguard GNMA Fund	65,321
Total Listed Securities	$ 856,831
Unlisted Securities	
Northrop Grumman U.S. Fixed Income Fund	$ 24,037
Northrop Grumman Large U.S. Equity Fund	3,807
Northrop Grumman International Equity Fund	25,740
Northrop Grumman Small U.S. Equity Fund	2,488
Northrop Grumman Emerging Markets Equity Fund	13,521
Farmer's State Bank stock	0
MetLife Policyholder Trust Shares	673
Ruane Cunniff & Goldfarb Fund	49,347
Total Unlisted Securities	$ 119,613

AFFIDAVIT

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

11/14/12
(DATE)

Valerie Capreni
(NAME)

(NOTARY)

MICHELLE D. JACKSON
Notary Public
Commonwealth of Virginia
363660
My Commission Expires Feb 28, 2013

3040 Rodman Street, NW
Washington, DC 20008
January 3, 2013

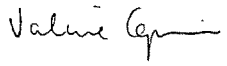
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on November 14, 2012, to be a United States District Court Judge for the Southern District of New York. 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.

Very truly yours,



Valerie Caproni

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)	2. Court or Organization	3. Date of Report
CAPRONI, VALERIE E.	SOUTHERN DISTRICT OF NEW YORK	01/03/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. DISTRICT COURT JUDGE	☑ Nomination Date 01/03/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 12/15/2012
7. Chambers or Office Address		
2980 FAIRVIEW PARK DRIVE M/S 12161A FALLS CHURCH, VA 22042		

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 AND DEPUTY GENERAL COUNSEL	NORTHROP GRUMMAN CORP.
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 8	Name of Person Reporting CAPRONI, VALERIE E.	Date of Report 01/03/2013

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 (yours, not spouse's)
1. 2012	NORTHROP GRUMMAN SALARY AND BONUS	$450,860.00
2. 2011	NORTHROP GRUMMAN SALARY AND BONUS	$121,918.00
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.)*

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 8	Name of Person Reporting CAPRONI, VALERIE E.	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.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 8	Name of Person Reporting CAPRONI, VALERIE E.	Date of Report 01/03/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. BROKERAGE ACCOUNT #1					Exempt				
2. --AES COMMON STOCK		None	J	T					
3. --CISCO SYSTEMS COMMON STOCK	A	Dividend	J	T					
4. --WALT DISNEY CO. COMMON STOCK	A	Dividend	K	T					
5. --DUKE ENERGY CORP. COMMON STOCK	A	Dividend	J	T					
6. --EXPRESS SCRIPTS HOLDING CO. COMMON STOCK		None	J	T					
7. --FORD MOTOR CO. COMMON STOCK		None	J	T					
8. --GAP INC. COMMON STOCK	A	Dividend	K	T					
9. --INTEL CORP. COMMON STOCK	A	Dividend	K	T					
10. --JP MORGAN CHASE & CO. COMMON STOCK	A	Dividend	J	T					
11. --KEYCORP. COMMON STOCK	A	Dividend	J	T					
12. --LSI CORP.. COMMON STOCK		None	J	T					
13. --MERCK & CO. COMMON STOCK	B	Dividend	K	T					
14. --PFIZER INC. COMMON STOCK	A	Dividend	J	T					
15. --SYNOVUS FINANCIAL CORP. COMMON STOCK		None	J	T					
16. --PIMCO TOTAL RETURN FUND	A	Dividend	J	T					
17. --SCHWAB TAX FREE BOND FUND	B	Dividend	K	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
CAPRONI, VALERIE E.	01/03/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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 CENTURY EQUITY INCOME FUND	A	Dividend	K	T					
19. --GABELLI SMALL CAP GROWTH FUND	A	Dividend	K	T					
20. --LAUDUS INTERNATIONAL MARKETMASTERS FUND	A	Dividend	L	T					
21. --SCHWAB 1000 INDEX FUND	C	Dividend	L	T					
22. --SCHWAB BANK CASH DEPOSIT ACCOUNT	A	Interest	K	T					
23. IRA #1	C	Dividend	N	T					
24. --AMERICAN CENTURY INVESTMENTS ZERO COUPON 2015 FUND									
25. --AMERICAN CENTURY INVESTMENTS ZERO COUPON 2025 FUND									
26. --LAUDUS MONDRIAN INTERNATIONAL FIXED INCOME FUND									
27. --PIMCO TOTAL RETURN FUND									
28. --VANGUARD GNMA FUND									
29. JP MORGAN CHASE CASH ACCOUNTS	A	Interest	L	T					
30. WELLS FARGO CASH ACCOUNTS	A	Interest	L	T					
31. 401K #1		None	L	U					
32. -- NORTHROP GRUMMAN US FIXED INCOME FUND									
33. -- NORTHROP GRUMMAN LARGE US EQUITY FUND									

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
CAPRONI, VALERIE E.	01/03/2013

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.)*

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34. -- NORTHROP GRUMMAN INTERNATIONAL EQUITY FUND									
35. -- NORTHROP GRUMMAN SMALL US EQUITY FUND									
36. -- NORTHROP GRUMMAN EMERGING MARKETS EQUITY FUND									
37. 401K #2	C	Dividend	M	V					
38. -- FIRST MANHATTAN FUND									
39. --RUANE CUNNIFF & GOLDFARB FUND									
40. --TWEEDY BROWNE GLOBAL FUND									
41. -- PIMCO TOTAL RETURN FUND									
42. NATIONAL LIFE INSURANCE WHOLE LIFE POLICIES		None	K	T					
43. US SAVINGS BONDS		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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	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	
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Name of Person Reporting	Date of Report
CAPRONI, VALERIE E.	01/03/2013

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

PART VII, 401K #2: VALUE METHOD FOR ALL FUNDS IN THAT ACCOUNT ARE BASED ON CASH MARKET EXCEPT FOR RUANE CUNNIFF & GOLDFARB FUND, WHICH IS NOT PUBLICLY AVAILABLE. ITS VALUE IS REPORTED AT BOOK VALUE.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting CAPRONI, VALERIE E.	Date of Report 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/ VALERIE E. CAPRONI

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		227	327	Notes payable to banks-secured			
U.S. Government securities – see schedule		42	000	Notes payable to banks-unsecured			
Listed securities – see schedule		871	030	Notes payable to relatives			
Unlisted securities – see schedule		123	690	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		410	000
Real estate owned – personal residence		950	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		6	000	Credit cards are paid off each month			
Cash value-life insurance		17	698				
Other assets itemize:							
Thrift Savings Plan		566	281				
				Total liabilities		410	000
				Net Worth	2	394	026
Total Assets	2	804	026	Total liabilities and net worth	2	804	026
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Savings Bonds	$ 40,000
Series I Savings Bonds	2,000
Total U.S. Government Securities	$ 42,000
Listed Securities	
AES Corp. stock	$ 5,532
Cisco Systems stock	14,612
Walt Disney Co. stock	25,207
Duke Energy Corp. stock	5,528
Express Scripts Holding Co. stock	14,043
Ford Motor Co. stock	3,541
Gap Inc. stock	23,557
Intel Corp. stock	18,219
JP Morgan Chase & Co. stock	9,068
Keycorp Inc. stock	1,750
LSI Corp. stock	1,153
Merck & Co. stock	42,924
Pfizer Inc. stock	14,572
Synovus Financial Corp. stock	2,520
American Century Equity Income Fund	31,828
American Century Zero Coupon 2015 Fund	78,224
American Century Zero Coupon 2025 Fund	34,924
First Manhattan Fund	50,512
Gabelli Small Cap Growth Fund	89, 832
Laudus International MarketMakers Fund	124,126
Laudus Mondrian International Fixed Income Fund	7,726
PIMCO Total Return Fund	73,214
Schwab 1000 Index Fund	57,452
Schwab Tax-Free Bond Fund	41,732
Tweedy, Browne Global Value Fund	33,965
Vanguard GNMA Fund	65,269
Total Listed Securities	$ 871,030
Unlisted Securities	
Northrop Grumman U.S. Fixed Income Fund	$ 23,990
Northrop Grumman Large U.S. Equity Fund	3,845
Northrop Grumman International Equity Fund	27,158
Northrop Grumman Small U.S. Equity Fund	2,554
Northrop Grumman Emerging Markets Equity Fund	14,102
Farmer's State Bank stock	0
MetLife Policyholder Trust Shares	673
Ruane Cunniff & Goldfarb Fund	51,368
Total Unlisted Securities	$ 123,690

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Vernon Speede Broderick

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.

   Weil, Gotshal & Manges LLC
   767 Fifth Avenue
   New York, New York 10153

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

   1963; 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 – 1988, Harvard Law School; J.D., 1988

   1981 – 1985, Yale University; B.A., 1985

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

   2002 – present
   Weil, Gotshal & Manges LLP
   767 Fifth Avenue
   New York, New York 10153

Partner (2005 – present)
Counsel (2002 – 2004)

1994 – 2002
United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10004
Assistant United States Attorney

Summer 1987, 1988 – 1993
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Associate (1988 – 1993)
Summer Associate (Summer 1987)

Fall 1987 – Spring 1988
Board of Student Advisors
Harvard Law School
1585 Massachusetts Avenue
Cambridge, Massachusetts 02138
Member

Summer 1986
Law Office of Henry Putzel, III
565 Fifth Avenue
New York, New York 10017
Summer Associate/Intern

Other Affiliations (uncompensated):

2003 – present
Commission to Combat Police Corruption
17 Battery Place, Suite 327
New York, New York 10004
Commissioner

2005 – present
LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund)
99 Hudson Street, 14th Floor
New York, New York 10013
Board Member

2006 – present
Justice Resource Center

122 Amsterdam Avenue, Room 504A
New York, New York 10023
Chair of Board (2011 – present)
Board Member (2006 – present)

2007 – present
Fund for Modern Courts
351 West 54th Street
New York, New York 10019
Board Member

2012 – present
City Bar Fund
City Bar Justice Center
42 West 44th Street
New York, New York 10036
Board Member

January – August 2011
New York State Commission on Public Integrity
(now the Joint Commission on Public Ethics)
540 Broadway
Albany, New York 12207
Commissioner

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 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.

   The Best Lawyers in America: "Best Lawyer" in the specialty of Criminal Defense: White Collar (2010, 2011, 2012 and 2013)

   Weil, Gotshal & Manges LLP, Pro Bono Service Award (2006, 2007, 2008, 2009, 2010, 2011 and 2012)

   Legal Aid Society, recognition for Outstanding Pro Bono Service (2006, 2007)

   United States Department of Justice, Director's Award for Superior Performance as an Assistant United States Attorney (1997, 1998)

Yale University, Calhoun College, Cogswell Award (1985)

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 (1989 – present)

Association of the Bar of the City of New York (1989 – present)
White Collar Crime Committee (2010 – present)
Criminal Law Committee (2005 – 2008)
Committee on the Judiciary (2000 – 2003)

Federal Bar Council (2008 – present)

Judicial Improvements Committee of the Southern District of New York
Advisory Committee (2011 – present)

National Association of Criminal Defense Lawyers (2004 – 2009, 2010 – present)

National Bar Association (2007 – 2008)

New York Council of Defense Lawyers (2005 – present)

New York County Lawyers' Association (2005 – present)
Task Force on the Housing Court (2006-2007)

10. **Bar and Court Admission**:

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

New York, 1989
Connecticut, 1989 (inactive)

There has not been a lapse in my membership.

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

United States Court of Appeals for the Second Circuit, 1996
United States District Court for the Eastern District of New York, 1991
United States District Court for the Southern District of New York, 1991

New York State, Appellate Division, First Department, 1989

There have been no lapses in membership.

11. **Memberships**:

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

City Bar Fund
Board Member (2012 – present)

Commission to Combat Police Corruption
Commissioner (2003 – present)

Fund for Modern Courts
Board Member (2007 – present)

Justice Resource Center
Chair of Board (2011 – present)
Board Member (2006 – present)

LatinoJustice PRLDEF
Board Member (2005 – present)

New York State Commission on Public Integrity
Commissioner (January – August 2011)

Yale Club of New York City (2002 – present)

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

The Yale Club of New York City did not allow women members until 1969, many years prior to my membership. To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated

on the basis of race, sex, religion, or national origin, either through formal membership 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.

Client Alert, Weil Alerts at Weil, Gotshal & Manges LLP, SEC Follows DOJ in Limiting the Use of Waiver of Attorney-Client and Work Product Privileges as a Requirement of Cooperation (Nov. 7, 2008). Copy supplied.

Client Alert, Weil Alerts at Weil, Gotshal & Manges LLP, White Collar Alert (July 11, 2008). 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 been a member of the White Collar Crime Committee of the Association of the Bar of the City of New York since December 2010. During that time, the Committee participated in the preparation of several amicus briefs. I have not had direct involvement in the preparation of these briefs. However, as a member of the Committee I voted to approve the drafting of a brief in *United States v. Mandell*, 2012 WL 4485141. The Committee also voted to approve the drafting of the brief in *Gabelli v. Securities and Exchange Commission*, 2012 WL 5862844, but I abstained from that vote because I was still undergoing the nomination process.

I have been a member of the City of New York Commission to Combat Police Corruption since 2003. During that time, the Commission issued a number of reports. Although I did not personally prepare these reports, I did generally review and approve such reports as a member of the Commission:

Annual Report of the Commission, 2004 – 2012. Copies supplied.

Monitoring Study: A Review of Investigations Conducted by the NYPD's Borough and Bureau Investigative Units, January 2009. Copy supplied.

A Follow-Up Review of The New York City Police Department's Performance Monitoring Unit, April 2006. Copy supplied.

Review of the Background Screening Process of Civilian Employees, August 2005. Copy supplied.

Review of the Background Screening Process of New Recruits, 2005. Copy supplied.

Internal Affairs Bureau Recruitment and Retention, 2005. Copy supplied.

I have been a member of the Advisory Group to the Judicial Improvements Committee of the Southern District of New York since 2011. During that time, the Committee issued the following report: Pilot Project Regarding Case Management Techniques for Complex Civil Cases, October 2011. Copy supplied.

I was a member of the New York State Commission on Public Integrity from January to August 2011. During that time, the Commission issued the following materials:

Three Advisory Opinions dated June 28, 2011 and February 15, 2011. Copies supplied.

Four Decisions and Notices of Civil Assessment, February 15, 2011. Copies supplied.

2010 Annual Report, May 2011. Copy supplied.

Since 2005, I have been a member of the New York County Lawyers' Association. During that time, I participated in a Task Force and Working Group related to the Housing Court. The Association issued the following materials related to the Housing Court :

Report on Resources in the Housing Court, February 5, 2007. Copy supplied.

Protocols for Judges in the Settlement and Trial of Cases Involving Unrepresented Litigants in Housing Court, December 4, 2006. Copy supplied.

Report on Right to Counsel in Housing Court, December 4, 2006. Copy supplied.

The New York City Housing Court in the 21st Century: Can It Better Address The Problems Before It?, October 2005. I participated in "Working Group VI: Social Services and Volunteer Programs in the Court." Copy supplied.

From approximately September 2005 through June 2008, I was a member of the Criminal Law Committee of the Association of the Bar of the City of New York. The Committee met once every month or every other month to discuss various issues related to criminal law. During this time, my area of practice mainly related to federal white collar criminal investigations, federal regulatory matters and civil litigation, while other members represented other areas of practice. Although the Committee issued various reports, briefs, and letters, either itself or in conjunction with other committees, when these materials did not concern my area of practice, I would not have weighed in on them. I did not play a role in the preparation of these documents, and I do not recall the process by which reports were drafted or approved by the Committee. From reviewing my records, it appears that at times, draft materials may have been emailed or discussed at meetings, and although I am not certain I read those materials or attended those meetings, in the interest of complete disclosure, I have listed and provided the following reports, briefs, and letters: Report on Legislation by the Committee on Criminal Law concerning a bill to amend Criminal Procedure Law and the Executive Law to permit conditional sealing of certain drug offenses (November 2008); Letter to Senators Patrick J. Leahy and Arlen Specter concerning proposed Attorney-Client Privileged Protection Act of 2007 (May 25, 2007); Statement on Civil Commitment of Sex Offenders: Comments on the newly adopted Sex Offender Management and Treatment Act (Senate Bill S3318 and Assembly Bill A6162) (March 17, 2007); Letter to Governor Eliot Spitzer concerning Governor's Program Bill #29 (approximately May 2007); *Padilla v. Hanft*, No. 05-553, brief for the Brennan Center for Justice at NYU School of Law and the Bar of the City of New York as *amici curiae* supporting petitioner (approximately October 2005); Statement on Civil Commitment of Sex Offenders: Senate Bill S6325 and Assembly Bill A09282 (January 19, 2006); *Padilla v. Hanft*, No. 05-6396, brief for the Bar of the City Of New York as *amicus curiae* supporting petitioner (4th Circuit, December 21, 2005); *Hamdan v. Rumsfeld*, No. 05-184, brief for the Bar of the City of New York as *amicus curiae* supporting petitioner (September 2005); Letter to Representatives F. James Sensenbrenner, Jr. and John Conyers, Jr. concerning Section Twelve of H.R. 1528 (April 19, 2005).

From approximately July 2000 to June 2003, I was a member of the New York City Bar Association's Judiciary Committee. As a member of the Committee, I assisted in preparing reports on judicial candidates. These reports were confidential and to my knowledge were not published.

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.

Presentation of Juan Cartagena, President and General Counsel, LatinoJustice PLRDEF to Commission on Judicial Nomination, New York City Bar Association (June 19, 2012). Although, as a Board Member, my name appeared

on the LatinoJustice PRLDEF letterhead, I had no role in drafting or approving the statement. I only list it here in an effort to construe this question as broadly as possible. Copy supplied.

Minutes of the Commission Meeting Public Session, Public Integrity Commission (Apr. 14, 2011). Copy supplied.

Minutes of the Commission Meeting Public Session, Public Integrity Commission (Feb. 15, 2011). Copy supplied.

Letter from Cesar A. Perales, President and General Counsel to LatinoJustice PRLDEF, to Governor Luis G. Fortuno concerning the "Law Prohibiting Public and Private Entities From Retaining, Storing, or Holding Certified Copies of Birth Certificates" (Mar. 11, 2010). Although, as a Board Member, my name appeared on the LatinoJustice PRLDEF letterhead, I had no role in drafting or approving the letter. I only list it here in an effort to construe this question as broadly as possible. Copy supplied.

Letter from Cesar A. Perales, President and General Counsel to LatinoJustice PRLDEF, to Shanetta Y. Cutlar, Chief, Special Litigation Section, Department of Justice, Civil Rights Division concerning opening an investigation into the Suffolk County Police Department (May 21, 2009). Although, as a Board Member, my name appeared on the LatinoJustice PRLDEF letterhead, I had no role in drafting or approving the letter. I only list it here in an effort to construe this question as broadly as possible. Copy supplied.

Letter from Foster Maer et al., to Mayor Louis Barletta, City of Hazleton, Pennsylvania concerning the "Illegal Immigration Relief Act" (July 11, 2006). Although, as a Board Member, my name appeared on the LatinoJustice PRLDEF letterhead, I had no role in drafting or approving the letter. I only list it here in an effort to construe this question as broadly as possible. Copy supplied.

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

The following list reflects my best efforts to identify the speeches or talks that I have delivered. To answer this question, I have searched my files and papers and conducted an internet search for responsive materials and information. I have tried to compile as complete a list as possible, but there may be other speeches or

talks that I have been unable to recall or identify, and I have spoken occasionally on panels at conferences and generally did not retain records of those events. It has not been my general practice to write out my comments verbatim in advance or to maintain notes of my remarks I may have prepared in advance of events.

March 27, 2013: Panelist, Harvard Association For Law And Business: Public-to-Private Sector Transition, New York, New York. The panel discussion provided law students with insight into transitioning between working in the private and public sector. I have no notes, transcript, or recording. Harvard Association For Law And Business, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 18, 2013: Participant, Federal Bar Council presentation: "10(b) or Not 10(b) – That is the Question," Curacao, Dutch Caribbean. The presentation consisted of various vignettes related to recent securities cases. At the conclusion of each vignette the audience was asked a series of questions and voted on what answer was the correct answer. I have no notes, transcript, or recording. Federal Bar Council, 123 Main Street, Suite L100, White Plains, New York 10601.

May 31, 2012: Speaker, Annual Not-For-Profit Board Governance Symposium for Partners and Clients, New York, New York. Video supplied.

May 22, 2012: Panelist, Federal Bar Council panel discussion: "Diversity: How to Become an Equity Partner at a Law Firm," New York, New York. The program included a discussion of paths to becoming a partner, the skill set needed to become a partner, the business of law, discrimination and micro-inequities and the formation and maintenance of business relationships. I have no notes, transcript, or recording. Federal Bar Council, 123 Main Street, Suite L100, White Plains, New York 10601.

November 2011: Co-moderator, National Association of Corporate Directors – Peer Exchange: "Compliance Risk in an Era of Heightened FCPA Enforcement & SEC Whistleblower Bounties," New York, New York. Roundtable discussion concerning the current regulatory environment related to the enforcement of the FCPA by the Department of Justice and the SEC and the impact of whistleblower bounties on corporate compliance programs. I co-moderated the discussion with Thomas Frongillo, Esq. I have no notes, transcript, or recording. National Association of Corporate Directors, 2001 Pennsylvania Avenue, N.W., Suite 500, Washington, DC 20006.

May 17, 2011: Panelist, Not-for-Profit Board Membership Symposium 2011: "Governing Not-For-Profits in Challenging Times," and "Not-For-Profit Entities Confronting Today's Challenges: Navigating Through Financial Difficulties," New York, New York. Video supplied.

April 14, 2011: Panelist, ABA Section of Litigation & Criminal Justice Section CLE Conference: "Post-Skilling: The Perils to Industry of Vague Criminal Statutes," Miami, Florida. The panel discussed recent criminal cases where the government sought to enforce statutes that were either vague on their face or through use of a novel legal theory. I have no notes, transcript, or recording. ABA Chicago Headquarters, 321 North Clark Street, Chicago, Illinois 60654.

October 2, 2010: Associate Justice in Moot Court, Office of the Appellate Defender: "First Monday in October," New York, New York. Video supplied.

May 28, 2009: Panelist, Not-for-Profit Board Membership Symposium 2009: "Governing Not-For-Profits in Challenging Times" and "Counseling Not-For-Profit Entities in the Current Economic Climate: 'Just Tell Me What I Need To Do,'" New York, New York. Video supplied.

September 23, 2008: Panelist, Harvard Business School Club of New York Social Enterprise Summit: "New Directions in Non-Profit Leadership - Board Oversight and Fiduciary Responsibility," New York, New York. The panel concerned a discussion of governance of not-for-profit organizations, including Board fiscal and fiduciary responsibilities, employee management, employee malfeasance and current issues impacting not-for-profit organizations. I have no notes, transcript, or recording. Harvard Business School Club of New York, 305 Fifth Avenue, New York, New York 10118.

May 7, 2008: Panelist, Not-for-Profit Board Membership Symposium 2008: "How to Be an Effective Not-for-Profit Board Member, Good Governance in the Not-for-Profit, Foundation and Charitable Communities" and "Best Practices in Not-for-Profit Governance – Setting the Stage for Success," New York, New York. The panel concerned a discussion of governance of not-for-profit organizations, including Board fiscal and fiduciary responsibilities, employee management, employee malfeasance and current issues impacting not-for-profit organizations. I have no notes, transcript, or recording. Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153.

February 22, 2008: Panelist, National Bar Association seminar: "Avoiding and Responding to Government Initiated Investigations," New Orleans, Louisiana. CLE seminar at the National Bar Association – Commercial Law Section 2008 Corporate Counsel Conference. The panel discussed counseling clients so as to assist them in avoiding being investigated by government authorities and providing advice about responding to government investigations. I have no notes, transcript, or recording. National Bar Association, 1225 11th Street, N.W., Washington, DC 20001.

June 11, 2007: Panelist, Practicing Attorneys for Law Students Program, Inc. ("PALS"): "Thriving As A Summer Associate Panel Discussion," New York, New York. The panel discussion provided summer associates with career

development tips to help them maximize their summer associate experience. Among other things the panel discussed the best practices for doing excellent work, handling summer evaluations, proper methods of obtaining feedback and developing relationships and contacts that will last beyond the summer. I have no notes, transcript, or recording. PALS, 42 West 44th Street, New York, New York 10036.

May 15, 2007: Panelist, Not-for-Profit Board Membership Symposium 2007: "How to Be an Effective Not-for-Profit Board Member" and "How do things go wrong? What to watch out for? What to do as problems emerge?," New York, New York. The panel concerned a discussion of governance of not-for-profit organizations, including Board fiscal and fiduciary responsibilities, employee management, employee malfeasance and current issues impacting not-for-profit organizations. I have no notes, transcript, or recording. Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153.

July 28, 2006: Lecturer, Sponsors for Educational Opportunity Career Program, New York, New York. I gave a presentation to future law students about the practice of white collar law at law firms. I have no notes, transcript, or recording. Sponsors for Educational Opportunity, 55 Exchange Place, New York, New York 10005.

June 1, 2006: Panelist, Not-for-Profit Board Membership Symposium 2006: "How to Be an Effective Not-for-Profit Board Member" and "How do things go wrong? What to watch out for? What to do as problems emerge?," New York, New York. The panel concerned a discussion of governance of not-for-profit organizations, including Board fiscal and fiduciary responsibilities, employee management, employee malfeasance and current issues impacting not-for-profit organizations. I have no notes, transcript, or recording. Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153.

August 2, 2003: Lecturer, Asian Bar Association presentations: "Basic Trial Skills," New York, New York. I was one of several lecturers and lectured on how to conduct a cross examination. I have no notes, transcript, or recording. Asian Bar Association Grand Central Station, PO Box 3656, New York, New York 10163.

October 24, 2001: Panelist, Federal Bar Council panel discussion: "Effective Use of Demonstrative Evidence at Trial," New York, New York. Draft outline/notes supplied.

Sometime between January 1999 and July 2002: Lecturer, Yale Club of New York lecture on RICO/violent gang prosecutions, New York, New York. Outline supplied.

March 29, 2001: Speaker, Association of the Bar of the City of New York: CLE Seminar on Demonstrative Evidence, New York, New York. I discussed how to use demonstrative exhibits during jury trials. I have no notes, transcript, or recording. Association of the Bar of the City of New York, 42 West 44th Street, New York, New York 10036.

February 7, 2001: Panelist, Columbia University School of Law: Panel on Criminal Law for Externship: Federal Court Clerk seminar, New York, New York. I was part of a panel that discussed the practice of criminal law. I have no notes, transcript, or recording. Columbia University School of Law, 435 West 116th Street, New York, New York 10027.

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.

News Release, *International Moot Court in The Hague A World First*, City of the Hague, February 12, 2009. Copy supplied.

One Firm, Many Faces, 2009 Weil, Gotshal & Manges LLP Diversity brochure. Copy supplied.

The Abrams Report, MSNBC, December 4, 2003. Transcript supplied.

David Glenn, *Former Teacher Quits School for Better-Paying Job*, Westchester County Business Journal, July 28, 2003. 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 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 to be a Commissioner on the Commission to Combat Police Corruption by Mayor Michael Bloomberg on September 2, 2003, and I continue to serve in that capacity.

I was appointed to be a Commissioner on the New York State Commission on Public Integrity by Governor Andrew Cuomo in January 2011. My commission ended in August 2011.

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 committees.

Volunteer, Richard J. Davis campaign for New York County District Attorney (2008). I served as the alternate signer of checks when the campaign's Treasurer was unavailable. Mr. Davis dropped out of the race for District Attorney in 2008 before the election.

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 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.

1988 – 1993 & 2002 – present
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Partner (2005 – present)
Counsel (2002 – 2004)
Associate (1988 – 1993)

1994 – 2002
United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza
New York, New York 10004
Chief, Violent Gangs Unit (1999 – 2002)
Assistant United States Attorney (1994 – 2002)

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.

Upon graduation from law school until December 1993, I worked as an associate at Weil in New York City. During this time I was involved in all aspects of large commercial disputes involving, among other substantive areas, breach of contract, products liability, patent and bankruptcy. Specifically, my responsibilities included, among other tasks, research, drafting of pleadings, legal memoranda and discovery demands, document review, conducting depositions and supervising junior associates and paralegals. Although the majority of the work I did during my time as an associate at Weil involved civil litigation, I participated in at least two criminal matters as an associate.

From January 1994 until July 2002, I worked as an Assistant United States Attorney in the Southern District of New York. During that time, my work consisted entirely of federal criminal prosecution work. I worked as an AUSA in the General Crimes Unit for approximately a year, during which time I handled matters that were relatively smaller in scale and dollar amount if a fraud was committed. For a period of several months while I was in General Crimes I was assigned to the White Plains office. The nature/character of my work remained the same during this time period. When I returned to the Manhattan office, I became a member of the Narcotics Unit, where I handled federal drug cases, including cases involving the use of wiretaps and search warrants. I remained in the Narcotics Unit for more than a year before becoming a member of the Violent Gangs Unit. As a member of the Violent Gangs Unit, I used various federal statutes, including RICO and federal narcotics statutes, to prosecute street gangs that operated in Manhattan and the Bronx. I was a member of the Violent Gangs Unit for several years and was Chief of the Unit from January 1999 until my departure from the U.S. Attorney's Office in July of 2002.

In July 2002, I returned to private practice as Counsel at Weil. During my time as Counsel and then as a partner at Weil, I concentrated my practice on white collar criminal investigations and prosecutions, regulatory investigations and proceedings, and business litigation. I have been a member of the White Collar Defense & Investigations Group, Securities Litigation Group and the Complex Commercial Litigation Group. I have represented corporations and individuals in white collar criminal matters involving alleged environmental law violations, securities fraud, RICO, money laundering, bribery, and mail and wire fraud. I have also conducted internal investigations for corporations. My practice has also included representing clients in civil business litigation, some of which have been parallel or related proceedings filed in connection with criminal and regulatory matters. I have handled civil cases involving, among other issues, breach of fiduciary duty, bankruptcy and securities fraud.

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

As a litigation associate at Weil, most of my clients were corporations and other large business entities in a variety of fields, including finance, banking and manufacturing. However, during this time I worked on at least two white collar criminal matters representing individuals.

As an Assistant United States Attorney in the Southern District of New York, my client was the United States.

As Counsel and partner at Weil, my typical clients include corporations in civil litigation, regulatory matters or criminal investigations. My clients have also included current or former corporate executives/employees who are witnesses, subjects or targets of criminal investigations or the subject of regulatory investigations.

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 have spent my entire legal career as a litigator and prosecutor. During my time as an associate, Counsel and partner at Weil, I was typically part of a larger team of attorneys and paralegals working on matters pending in state and federal courts. As an associate, I appeared in court occasionally. As a prosecutor, I was in court frequently handling all facets of federal criminal prosecutions. As Counsel and partner at Weil, I appear in court on a more frequent basis than when I was an associate but not as much as when I was a prosecutor.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 8%
   3. other courts: 1%
   4. administrative agencies: 1%.

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%.
   2. criminal proceedings: 50%.

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

I have tried approximately 11 jury cases to verdict.

As a prosecutor, I tried six cases where I was either lead or co-counsel and three or four cases where I was a second seat to a more junior prosecutor.

In private practice, I have had one criminal jury trial where I was part of a team of three attorneys. In private practice, I was a second seat in a Section 1983 prisoner's rights case. Weil handled the case on a pro bono basis and I supervised the associates who worked on the case, including during the jury 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.

Keith v. State of Ohio, No. 09-1052. Brief for the Innocence Network as *amicus curiae* supporting petitioner, available at 2010 WL 2771702.

Eschenbach v. United States, No. 07-1287. Petition for a writ of certiorari and reply brief for the individual petitioners, available at 2008 WL 1780098, 2008 WL 2305778.

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. West*, 94 Cr. 373 (LLS), U.S. District Court, Southern District of New York, Judge Louis L. Stanton

The indictment charged West with attempted armed bank robbery and using and carrying a firearm during and in relation to the attempted bank robbery. The proof at trial demonstrated that West actively participated in the attempted bank robbery by forcing his way into the bank with an accomplice. Both West and his accomplice were armed. While his accomplice remained at the entrance of the bank, West demanded money and access to the locked tellers' area. When bank employees did not comply quickly enough, West fired the hand gun he was carrying into the ceiling. West and his accomplice then fled the bank to a getaway car that was waiting for them near the bank.

Trial commenced on November 9, 1994, and ended on November 14, 1994, when the jury convicted West on both counts. I prosecuted the case on behalf of the government and handled the case from intake through appeal. I handled all of the witnesses during the trial. Former AUSA Michael Sommer served as my second

seat during the trial. On March 13, 1995, Judge Stanton sentenced West to a term of 108-months incarceration.

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Counsel for Defendant:	Barry Turner, Esq. 780 Third Avenue New York, New York 10017 (212) 679-1000

2. *United States v. Cortez and Azucar*, 95 Cr. 275 (RPP), U.S. District Court, Southern District of New York, Judge Robert P. Patterson, Jr.

The defendants went to trial on the charge that they conspired to distribute and possess with intent to distribute cocaine. The evidence at trial established that Azucar and Cortez conspired to transport fifteen kilograms of cocaine from California to New York. The evidence showed that on March 12, 1995, Azucar and Cortez boarded an Amtrak train in Los Angeles, bound for Pennsylvania Station in New York City with a stop in Chicago to change trains. Azucar and Cortez checked three black bags, which contained approximately fifteen kilograms of cocaine. While en route, law enforcement authorities discovered the cocaine laden bags, and seized the cocaine and sent it to a DEA laboratory. The bags were flown to New York to meet the arriving train, the real cocaine was replaced with sham packages with a similar appearance, and the bags were placed in the baggage claim area at Penn Station with the other arriving baggage. Azucar and Cortez claimed the bags, and were arrested as they left the station.

Trial commenced on August 3, 1995. At trial, both Azucar and Cortez claimed that they did not know that there was cocaine in the bags. However, the government presented compelling evidence that established that Azucar and Cortez conspired to transport the bags with knowledge of their contents. On August 10, 1995, the jury convicted Azucar and Cortez of conspiring to distribute and possess with intent to distribute cocaine. I prosecuted the case on behalf of the government. I handled all of the witnesses during the trial. Former AUSA Hector Gonzalez served as my second seat during the trial.

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3. *United States v. Brown and Johnson*, 95 Cr. 427 (BDP), U.S. District Court, Southern District of New York, Judge Barrington D. Parker, Jr.

The indictment charged Johnson and Brown with conspiracy to commit an armed robbery of a post office, aiding and abetting the attempted robbery of a post office and aiding and abetting the use and carrying of a firearm during and in relation to the attempted robbery of a post office. Brown pled guilty prior to trial.

The evidence at trial established that Johnson, together with others, planned and participated in an attempted armed robbery of the Yonkers Main Post Office on September 5, 1994. Johnson and Brown, both of whom were former employees of the Post Office, formulated the plans for the robbery. On the night of the robbery, they drove two accomplices to the Post Office and waited in the getaway car while the accomplices entered the Post Office. The accomplices were armed with a gun and a knife. Unbeknownst to the accomplices, a postal employee escaped and alerted the Yonkers Police Department to the robbery. The accomplices were arrested as they attempted to flee the Post Office with currency and checks. Johnson and Brown, who had remained outside the Post Office, eluded apprehension that night, but were subsequently arrested.

The trial against Johnson began on February 6, 1996 and ended on February 15, 1996. The accomplices each pled guilty and testified as cooperators during the trial. The jury convicted Johnson on all three counts. I prosecuted the case on behalf of the government and handled the case from intake through appeal. I was lead counsel on the case and former AUSA John Hillebrecht tried the case with me.

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4. *United States v. Ocasio, et al.*, 95 Cr. 942 (DAB), U.S. District Court, Southern District of New York, Judge Deborah A. Batts

The indictment charged Ocasio and 21 co-defendants with various racketeering crimes in connection with a racketeering enterprise referred to in the Indictment as the "Bryant Boys." Ocasio's co-defendants all pled guilty prior to trial, with the exception of his brother who was a fugitive at the time of the trial.

The evidence at trial proved that from the mid1980s through the mid-1990s, Ocasio was one of the leaders of the Bryant Boys. The Bryant Boys engaged in murder and other acts of violence, as well as narcotics trafficking. Ocasio's racketeering activity included five murders, three attempted murders, four murder conspiracies, and conspiracy to distribute and possess with intent to distribute massive amounts of crack and heroin.

Trial commenced on January 28, 1997, and ended on April 7, 1997, when Ocasio was convicted on all thirteen counts. I prosecuted the case on behalf of the government along with AUSA David R. Lewis and former AUSA Robin Baker. I gave the government's opening statement and handled many of the witnesses, including many police witnesses and a cooperator. We were each recruited to try the case because the prosecutor who had indicted the case was engaged in another trial and could not handle Ocasio's trial. Ocasio was sentenced to life imprisonment.

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5. *United States v. Velasquez, et al.*, S9 96 Cr. 942 (JFK), U.S. District Court, Southern District of New York, Judge John F. Keenan

The indictment charged Rosario and 19 co-defendants with various racketeering crimes in connection with their membership in and association with a racketeering enterprise, the Velasquez Organization. Rosario was charged with murder, attempted murder, conspiracy to commit murder and using and carrying a firearm during and in relation to a murder.

The evidence at trial demonstrated that between the late-1980s and early-1990s, Rosario was a member of the Velasquez Organization. The Velasquez Organization engaged in acts of violence, including murder and narcotics trafficking. Rosario acted as an enforcer for the Velasquez Organization, collecting debts owed to members of the Organization and arranging, with the help of his own associates, to carry out murders on behalf of the Organization. Rosario continued to engage in racketeering activity after he was incarcerated on New York State charges in September 1990, from a prison cell at the correctional facility on Rikers Island and, subsequently, at various prisons located in upstate New York. Rosario's racketeering activity included one murder and three murder conspiracies.

Trial commenced on December 2, 1997 and ended on January 15, 1998, when Rosario was convicted on all five counts. I prosecuted the case on behalf of the government and was involved in various pretrial matters. I gave the government's closing argument and handled the examination of numerous witnesses. I tried the case with former AUSA Hector Gonzalez and ADA Thomas Kapp. Rosario was sentenced to life imprisonment.

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6. *United States v. Restrepo, et al.*, S1 01 Cr. 1113 (SAS), U.S. District Court, Southern District of New York, Judge Shira A. Scheindlin

The indictment charged Restrepo with various crimes, including the distribution of narcotics, armed robbery, attempted murder, murder and felony murder. The Government's proof at trial established that from at least 1995 until August 1999, Restrepo was a member of a violent robbery crew (the "Organization") that routinely stalked and robbed jewelers and other legitimate businesses, as well as drug dealers at gunpoint in New York, New Jersey, and elsewhere. The crew members also regularly committed home invasions, often of suspected drug dealers. Throughout the entire period of the Organization's existence, Restrepo was one of the leaders of the Organization: he determined who to rob and directed the actions of the other members during the robberies. In addition to numerous robberies, Restrepo murdered a retired New York City Police Detective, who was killed during the course of a robbery of a meat company in the Bronx after he attempted to thwart the robbery, killing one of the robbers in the process. After this murder, Restrepo and numerous co-conspirators fled from the United States. Restrepo and others were later arrested in Colombia and extradited to the United States. After most of his co-defendants pleaded guilty, Restrepo proceeded to trial in February 2002.

Trial commenced against Restrepo on February 19, 2002 and ended on March 25, 2002, when he was convicted on all four counts for which he was extradited and tried. I prosecuted the case on behalf of the government. I handled the examination of most of the police witnesses, and I gave the government's rebuttal summation. I tried the case with former AUSAs Ronnie Abrams and Helen Cantwell. Restrepo was sentenced to life imprisonment.

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7. *United States v. Isernio, et al.*, S2 01 Cr. 1168 (JS), U.S. District Court, Eastern District of New York, Judge Joanna Seybert

The indictment charged Isernio and six co-defendants with conspiracy to defraud Nassau County, mail fraud and money laundering conspiracy. At the time of the indictment, Isernio was the Chief Executive Officer of Benefit Plan Administrators ("BPA"), a third party administrator of health care plans. The indictment charged Isernio with, among other things, depriving the County of the honest services of McDonald, the former Chief Deputy County Executive, who had been in charge of the committee that recommended the awarding of two health benefits contracts to BPA by secretly initiating a series of bribes to McDonald.

I tried the case with my former partner John R. Wing and Martin Geagan, an associate. Mr. Wing was lead counsel during the trial. The trial commenced against our client in January 2003 and ended in April 2003. After deliberating for approximately 8 days, the jury was unable to reach a verdict and Judge Seybert declared a mistrial.

In a separate case, Isernio was convicted on January 21, 2004 of filing false tax returns and structuring currency transactions. I did not participate in this trial. On January 27, 2004, Isernio pled guilty to conspiring to bribe McDonald and money laundering. He was sentenced on both convictions to 87-months imprisonment.

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8. *United States v. W.R. Grace, et al.*, CR 05-07-M-DWM, U.S. District Court, District of Montana, Judge Donald W. Molloy

On February 7, 2005, a federal grand jury returned an indictment charging W.R. Grace and seven of its executives with, among other things, conspiracy to violate the Clean Air Act, knowing endangerment under the Clean Air Act and conspiracy to defraud the United States. Weil represented Bettacchi, a former senior vice president of W.R. Grace and president of its Construction Products Division. I participated in all of the pretrial proceedings but did not attend the trial.

During the trial, Weil played a key role in the coordinated defense effort, including discrediting several of the government's major witnesses through cross-examination and demonstrating that the prosecution had failed to disclose essential information regarding a key government witness. I participated in the drafting of the motion to dismiss the indictment on the ground of prosecutorial misconduct. The court conducted a hearing outside the presence of the jury on the government misconduct pertaining to this witness. After the hearing, the court

determined that the prosecution had violated the constitutional rights of the defendants, violated the Federal Rules of Criminal Procedure, and violated previous orders of the court. As a result, the court issued an instruction to the jury striking the witness's testimony against Bettacchi in its entirety. Additionally, the court instructed the jury that it should consider any of the witness's remaining testimony with skepticism and prevented the prosecution from conducting a redirect examination of the witness.

On May 8, 2009, after hearing testimony that spanned eleven weeks, the jury acquitted Bettacchi and all of the other defendants on all counts.

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9. *In re Adelphia Communications Corp., et al.*, Chapter 11, Case No.: 02-41729 (REG), U.S. Bankruptcy Court, Southern District of New York, Judge Robert E. Gerber

Weil represented holders and/or investment advisors to certain holders of notes and debentures issued by Adelphia Communications Corporation in connection with Adelphia's chapter 11 bankruptcy. Our clients opposed the plan of reorganization. I participated in the discovery prior to the confirmation hearing and in the confirmation hearing itself. With regard to the discovery, I took the deposition of several witnesses, helped prepare witnesses for their depositions and assisted with document discovery from our clients.

The confirmation hearing lasted nine trial days and concluded on December 19, 2006. The Bankruptcy Court required the parties to simultaneously exchange direct testimony by declaration. I assisted in the preparation of various declarations, prepared certain witnesses for cross examination and cross examined one of the experts. In early January 2007, the Bankruptcy Court confirmed the bankruptcy plan. I assisted in the appeal to the District Court and the Second Circuit. On April 2, 2007, the District Court dismissed our clients' appeal as equitably moot due to the substantial consummation of the bankruptcy plan.

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10. *Thomas H. Lee Equity Fund V, L.P., et al. v. Mayer, Brown, Rowe & Maw LLP*, 07 Civ. 6767 (JSR), U.S. District Court, Southern District of New York, Judge Jed S. Rakoff

The complaint filed against Mayer Brown by private equity firm Thomas H. Lee ("THL") stems from a fraud perpetrated by Bennett, the CEO of Refco Group Ltd. ("Refco"), and others, including Collins, a former Mayer Brown partner. Refco suffered significant losses in the late 1990s. Rather than deal with the losses in an appropriate and legal manner, Refco routinely transferred the losses off of its balance sheet to an unconsolidated but related-party, Refco Group Holdings, Inc., which was owned by Bennett and former Refco president Grant. In 2004, when Bennett and others decided to sell a majority interest in Refco to THL, Collins and Mayer Brown were Refco's counsel in the leveraged buyout to THL. Weil represented THL in connection with the leveraged buyout.

Bennett, Refco's former CFO Trosten, and the former President and CEO of Refco Securities Maggio, each pleaded guilty to criminal charges for their role in the fraud, including their deception of THL. Maggio and Trosten cooperated with the government. Collins, Refco's long-time outside counsel at Mayer Brown, was convicted in 2009. His conviction was overturned by the Second Circuit in January 2012. After a retrial, Collins was convicted in November 2012.

As a result of the fraud numerous civil law suits were filed, including THL's lawsuit against Mayer Brown. These lawsuits, including THL's lawsuit against Mayer Brown, were consolidated initially before Judge Lynch and then Judge Rakoff. I was one of the partners at Weil responsible for managing THL's lawsuit against Mayer Brown. I participated in discovery and motion practice. The litigation settled in March 2010. I was also one of the attorneys who represented various Weil and THL witnesses who were called to testify by the government during the criminal trials of Grant and Collins.

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(202) 434-5000

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

    I have not performed any lobbying activities.

    Weil represents Lehman Brothers Holdings Inc. and other Lehman entities in bankruptcy. I represented Lehman in a variety of matters, including in connection with investigations conducted by the U.S. Attorney's Offices for the Southern District of New York, Eastern District of New York and District of New Jersey, the New York Attorney General's Office, the SEC and the New York County District Attorney's Office. In connection with these investigations, I participated in the production of documents, interfaced with prosecutors, agents and investigators, and participated in witness interviews. I performed similar tasks related to the court appointed bankruptcy examiner's investigation.

    I currently represent an individual in connection with the criminal investigation being conducted by the U.S. Attorney's Office for the Southern District of New York. The investigation relates to alleged incidents of unintended acceleration of Toyota vehicles. I also represent this individual in connection with a parallel civil investigation being conducted by the SEC.

    In addition to the Lehman and Adelphia bankruptcies discussed above, I have also worked on bankruptcy litigation matters related to the Global Crossing and Lennox bankruptcies.

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

    I have not taught any courses.

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

    I do not expect to receive any deferred income, stock, options or other benefits 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.

    If confirmed, 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.

       If confirmed, I would recuse myself from any matter being handled by Weil, Gotshal & Manges. I would continue to recuse myself from such matters until there were no longer any potential conflicts-of-interest. Even after that time, however, I would advise the parties that I had been a partner at Weil when Weil appears before me. In addition, cases involving former clients could present potential conflicts-of-interest. In the event of such a potential conflict-of-interest, I would advise the parties of the potential conflict and seek their input, and refer

to the Code of Conduct for United States Judges and other relevant Canons and/or statutory provisions. Lastly, I would evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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

In the event of such a potential conflict-of-interest, I would advise the parties in the matter before me of the potential conflict and seek their input, and refer to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges and other relevant Canons and/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.

I have worked on numerous pro bono matters since returning to Weil in July 2002. In addition to handling pro bono matters myself, I have supervised associates representing pro bono clients. Below are representative examples of the pro bono matters in which I have participated.

Mercado v. Woodward, et al., 06-CV-5820 (PKC), U.S. District Court, Southern District of New York, Judge P. Kevin Castel

I supervised a team of five associates who worked on the Mercado case from the filing of the complaint through the trial and eventual settlement. Mercado was an inmate at the Fishkill Correctional Facility in upstate New York when he was beaten by five corrections officers in March 2004. Weil undertook representation of Mercado in early 2006, and continued to represent him throughout all phases of the litigation and trial. I reviewed most of the written work prepared by the associates, including memoranda of law, jury addresses, and witness examinations. I was present during the trial to provide guidance and advice.

People v. Seeber, Indictment M-083-2000V, Saratoga County Court, Judge Jerry J. Scarano

Weil represented Seeber along with co-counsel Ben Ostrer and the Saratoga County Public Defender John Ciulla. Seeber pled guilty to felony murder after she and her boyfriend were accused of robbing and killing her step-grandmother. She was in high school at the time and had just turned 18. She consistently maintained (in a pre-arrest confession, in a police confession, and in testimony at the trial of the boyfriend) that she was outside of the home when her boyfriend duct taped the mouth of the grandmother

and strangled her. However, forensic fiber evidence contradicted her version of events. As a result, the Public Defender advised her to plead guilty to felony murder with the understanding that she would cooperate and testify against her boyfriend. She testified at the boyfriend's trial and was cross examined concerning the fiber evidence. The boyfriend was acquitted. Seeber received a sentence of 20 years to life.

Almost a decade after her guilty plea, a NY Inspector General probe of the state forensics lab discovered that the scientist who had performed the tests on the fiber evidence that caused Seeber to plead guilty was incompetent and routinely fabricated reports regarding fiber evidence. Weil, along with co-counsel, filed a motion to vacate Seeber's plea and sentence. I handled the hearing on the motion to vacate with Mr. Ostrer. After the hearing that motion was granted.

The DA appealed the decision to the Appellate Division and I argued the case in the Third Department. On April 26, 2012, the Third Department issued a Memorandum and Order affirming the decision of the County Court. Seeber subsequently pled guilty and received a sentence that resulted in her release from prison in July 2012.

Innocence Project/Morton:

I have participated in various projects for the Innocence Project, including supervising, along with one of my partners, several associates who worked on various research projects for the Innocence Project in connection with its representation of Morton. I participated in meetings to discuss research projects and other work and reviewed the work product of the associates prior to it being sent to the Innocence Project.

With regard to the Morton matter, Weil assisted lawyers from the Innocence Project in filing a 140-page Report requesting that a former Williamson County (Texas) Assistant District Attorney be investigated for his role in concealing exculpatory evidence from Morton and his attorney. Morton was wrongfully convicted in 1987 of murdering his wife and served nearly 25 years in prison. After being exonerated, Morton requested that a Court of Inquiry be convened to determine whether the former ADA broke state laws or ethics rules. The judge presiding over Morton's exoneration proceedings recommended that a Court of Inquiry be convened, and appointed an attorney as special prosecutor/attorney pro tem.

Asylum representation/Sangay:

I supervised several associates in connection with Weil's representation of Sangay, a Tibetan Buddhist persecuted and imprisoned by the Chinese authorities for his religious and political beliefs, in obtaining political asylum in August of 2002. Although Sangay was granted asylum, his wife and children remained in China. Weil continued to represent Sangay in an effort to reunite him with his family. Although it took several years, Weil was ultimately successful, and Sangay's wife and three children were granted permanent visas and arrived in New York in July 2006.

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 early 2012, I was contacted by a member of Senator Charles Schumer's Screening Panel, who asked if I would be interested in applying for a position on the District Court in the Southern District of New York. In approximately March 2012, I spoke with a member of Senator Schumer's staff about my interest, and on May 7, 2012, I submitted my completed questionnaire to the Chairman of Senator Schumer's Screening Panel. I was interviewed by the Panel on May 30, 2012. On October 18, 2012, I was interviewed by Senator Schumer. On November 21, 2012, Senator Schumer recommended me to President Obama to serve on the District Court for the Southern District of New York. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On January 14, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 15, 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. 1/2013

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Broderick, Vernon S.	District Court, Southern District of New York	04/15/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Court, Southern District of New York	**5a. Report Type (check appropriate type)** ☑ Nomination Date 04/15/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2012 to 03/21/2013
7. Chambers or Office Address Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153		

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.***

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Weil, Gotshal & Manges LLP
2.	Member Board of Directors	LatinoJustice PRLDEF
3.	Member Board of Directors	Justice Resource Center
4.	Commissioner	Commission To Combat Police Corruption
5.	Member Board of Directors	Fund For Modern Courts
6.	Members Board of Directors	City Bar Fund

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	1/1/13	Weil, Gotshal & Manges LLP Partnership Agreement -- capital distributions upon leaving partnership
2.	1/1/13	Weil, Gotshal & Manges LLP Partnership Agreement -- pension plan provisions
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Broderick, Vernon S.	Date of Report 04/15/2013

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 (yours, not spouse's)
1. 2011	WGM Partnership distributions (taxable income)	$928,070.00
2. 2012	WGM Partnership distributions (approximate taxable income)	$928,070.00
3. 2013	WGM Partnership distributions (approximate taxable income)	$246,856.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

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

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Broderick, Vernon S.	Date of Report 04/15/2013

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	Date of Report
Broderick, Vernon S.	04/15/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. Citibank Cash Accounts		None	N	T	Exempt				
2. American Funds New Perspective Fund	B	Dividend	K	T					
3. American Funds Investment Company of America	A	Dividend	K	T					
4. Dodge & Cox Stock Fund	A	Dividend	K	T					
5. First Pacific Capital Fund	B	Dividend	K	T					
6. PIMCO Total Return Fund	C	Dividend	K	T					
7. RS Money Market Fund	A	Dividend	J	T					
8. SEI Instutional Managed Trust Core Fixed Income Fund	D	Dividend	N	T					
9. SEI International Managed Trust High Yield Bond Fund	C	Dividend	L	T					
10. SEI International Fixed Income Fund	C	Dividend	L	T					
11. SEI International Trust Emerging Markets Debt Fund	D	Dividend	L	T					
12. SEI Tax Exempt Trust Tax Free Portfolio	A	Dividend	L	T					
13. T. Rowe Personal Strategy Income Fund	B	Dividend	L	T					
14. T. Rowe Personal Strategy Balanced Fund	A	Dividend	K	T					
15. Vanguard Institutional Index Fund	A	Dividend	K	T					
16. Vanguard Money Market Fund	A	Dividend	L	T					
17. Wasatch Small Cap Growth Fund	B	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

3. Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Broderick, Vernon S.	04/15/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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. Guardian Whole Life	C	Dividend	M	T					
19. Northwestern Mutual Whole Life	B	Dividend	L	T					
20. Northwestern Mutual Variable Life - Select Bond	A	Dividend	J	T					
21. Northwestern Mutual Variable Life - International Equity	A	Dividend	J	T					
22. Northwestern Mutual Variable Life - Index 500 Stock	A	Dividend	K	T					
23. Northwestern Mutual Variable Life - Mid Cap Growth Stock	A	Dividend	J	T					
24. SMA Universal (fixed rate) Life Insurance	A	Dividend	K	T					
25. NY 529 - Aggressive Growth Portfolio	A	Dividend	J	T					
26. NY 529 - Bond Market Index Portfolio	A	Dividend	J	T					
27. NY 529 - Conservative Growth Portfolio	A	Dividend	J	T					
28. NY 529 - Growth Portfolio	A	Dividend	J	T					
29. NY 529 - Growth Stock Index Portfolio	A	Dividend	J	T					
30. NY 529 - Income Portfolio	A	Dividend	J	T					
31. NY 529 - Inflation-Protected Securities Portfolio	A	Dividend	J	T					
32. NY 529 - Interest Accumulation Portfolio	A	Dividend	J	T					
33. NY 529 - Moderate Growth Portfolio	A	Dividend	J	T					
34. NY 529 - Value Stock Index Porfolio	A	Dividend	J	T					

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

Name of Person Reporting	Date of Report
Broderick, Vernon S.	04/15/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Broderick, Vernon S.	Date of Report 04/15/2013

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/ Vernon S. Broderick

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		245	996	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	065	548	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		93	860	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	103	387
Real estate owned – see schedule	1	712	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		20	000				
Cash value-life insurance		386	338				
Other assets itemize:							
Weil, Gotshal & Manges capital accounts		486	561				
Weil, Gotshal & Manges pension plans		285	937				
Thrift Savings Plan		235	428	Total liabilities	1	103	387
				Net Worth	3	428	781
Total Assets	4	532	168	Total liabilities and net worth	4	532	168
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		100	000				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Investment Company of America	$ 36,438
American Funds New Perspective Fund	36,554
Dodge & Cox Stock Fund	33,613
First Pacific Capital Fund	18,133
PIMCO Total Return Fund	44,335
NY 529 Aggressive Growth Portfolio	920
NY 529 Bond Market Index Portfolio	13,310
NY 529 Conservative Growth Portfolio	326
NY 529 Growth Portfolio	789
NY 529 Growth Stock Index Portfolio	470
NY 529 Income Portfolio	3368
NY 529 Inflation-Protected Securities Portfolio	14,287
NY 529 Interest Accumulation Portfolio	2768
NY 529 Moderate Growth Portfolio	620
NY 529 Value Stock Index Portfolio	93
RS Money Market Fund	6,876
SEI Institutional Managed Trust Core Fixed Income Fund	330,278
SEI Institutional Managed Trust High Yield Bond Fund	77,867
SEI Institutional International Trust Fixed Income Fund	59,035
SEI Institutional International Trust Emerging Markets Debt Fund	76,815
SEI Tax Exempt Trust Tax Free Portfolio	93,801
T. Rowe Personal Strategy Income Fund	76,924
T. Rowe Personal Strategy Balanced Fund	22,551
Vanguard Institutional Index Fund	47,733
Vanguard Money Market Fund	50,773
Wasatch Small Cap Growth Fund	16,871
Total Listed Securities	$1,065,548

Real Estate Owned	
Personal residence	$ 1,212,500
Secondary residence	500,000
Total Real Estate Owned	$ 1,712,500

Real Estate Mortgages Payable	
Personal residence	$ 936,000
Secondary residence	167,387
Total Real Estate Mortgages Payable	$ 1,103,387

AFFIDAVIT

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

April 16, 2013
(DATE)

Vernon Broder
(NAME)

Lynda D. Henderson
(NOTARY)
LYNDA D. HENDERSON
Notary Public, State of New York
No. 03-4858945
Qualified in Bronx County
Commission Expires May 12, 2014

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary

On the Nominations of:

Derek Anthony West, to be Associate Attorney General

Valerie E. Caproni, to be United States District Judge for the Southern District of New York

Vernon S. Broderick, to be United States District Judge for the Southern District of New York

May 23, 2013

Mr. Chairman,

I join you in welcoming the nominees who are here today with their families and friends.

On today's agenda we have the nomination of Mr. West to be Associate Attorney General. Mr. West has appeared before this Committee in connection with his previous nomination as Assistant Attorney General in charge of the Civil Division of the United States Department of Justice. In addition, he has testified before this Committee on a number of occasions.

The Associate Attorney General is the third highest official at the Department. The Associate is in charge of a number of divisions and offices including Civil, Civil Rights, Antitrust, Tax, and Environment. So this is a very important position and I look forward to reviewing Mr. West's record and testimony.

We also have two judicial nominations for the Southern District of New York – Ms. Caproni and Mr. Broderick. I would note that Ms. Caproni has also appeared before this Committee as General Counsel of the FBI.

Again, I welcome the nominees, their families and guests. I look forward to the testimony and to the responses to my questions which I will ask today as well as those which I will submit in writing.

Senator Charles E. Schumer
Vernon Broderick Statement

Good morning Mr. Chairman, and welcome to our nominees and their guests who are here today.

I could not be more pleased to come before the committee today to introduce my 17th nominee to the federal district court bench in New York – Vernon Broderick.

Mr. Broderick is the very model of a federal judge in both qualification and temperament.

When considering prospective nominees for the federal bench, I use a three-part test, and Mr. Broderick has passed with flying colors.

My first criterion to become a federal judge is excellence. Mr. Broderick's exemplary qualifications clearly distinguish him as one of the very best of the bar.

Mr. Broderick first earned his B.A. from Yale University, and then moved on to Harvard Law School.

Upon graduation he became an associate at the prestigious law firm of Weil, Gotshal & Manges, specializing in white collar crime and internal investigations.

In 1994 he continued into public service at the U.S. Attorney's office in Manhattan, first as a member and then

chief of the Violent Gangs Unit, taking on some of New York City's toughest criminals.

Finally in 2002 he returned to Weil, Gotshal & Manges, having won admiration and accolades every step of the way.

My second criterion is moderation. Having argued cases on both sides of the courtroom, I know that Mr. Broderick will bring a fair, even-keeled mind to the bench. And the breadth of his experience reflects the depth of his understanding of the different perspectives that will come before him in the courtroom. He has represented commercial clients in private practice; he has prosecuted criminals as an Assistant United States Attorney; and he has spent his career giving back to the community though his service with several nonprofits, including the Justice Resource Center and LatinoJustice PRLDEF.

Lastly, all other things being equal, I look for diversity in the federal bench. I think it is important that the communities served by our federal judges see judges who are like them, and whose values and experiences are likely to reflect their own.

Mr. Broderick comes from a true melting pot family – a New York native, his father is of Jamaican heritage, and his mother of Puerto Rican and Dominican descent. Mr. Broderick reflects the broad spectrum of backgrounds for which New York is so well known.

Should he be confirmed, Mr. Broderick will become the first judge of Dominican heritage to serve on the bench in New York State.

I am pleased to have Mr. Broderick here today, and I look forward to what will hopefully be a speedy confirmation process.

Questions for the Record
For Vernon S. Broderick, to be United States District Judge for the Southern District of New York
Senator Ted Cruz
5-23-13 Nominations Hearing

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?

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?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

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).

Questions for the Record
For Valerie E. Caproni, to be United States District Judge for the Southern District of New York
Senator Ted Cruz
5-23-13 Nominations Hearing

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?

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).

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Senator Chuck Grassley
Questions for the Record
Vernon S. Broderick
Nominee, U.S. District Judge for the Southern District of New York

1. Do you believe that the Fair Housing Act authorizes disparate impact claims?

2. The New York County Lawyers' Association Task Force on the Housing Court issued a report (in 2006) on the protocol for judges in cases involving unrepresented litigants in housing court that advocated for a "more active role" for judges.

    a. What role, if any did you have in drafting the report or contributing to this particular issue.

    b. What do you believe is the appropriate role for a judge to take in proceedings before them? What would you characterize as a 'more active role'?

    c. If confirmed, what role do you intend to take in the cases that come before you?

3. The Criminal Law Committee of the Association of the Bar of the City of New York issued a report on a bill that proposed to amend criminal procedure and executive law to permit conditional sealing of some drug offenses.

    a. What role, if any, did you play in the drafting and issuance of this report?

    b. Are you supportive of or opposed to sealing of drug offenses?

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. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?

8. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.

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. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

11. 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.

12. What is your understanding of the workload in the Southern District of New York? 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. 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?

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
Valerie E. Caproni
Nominee, U.S. District Judge for the Southern District of New York

1. In your hearing I asked about any exigent letters issued by the FBI. You informed me that you had written many emails regarding exigent letters during your time at the FBI but you were unsure about why these emails had not been delivered to the Committee. Now that you have had time to review your records, let me ask the question again.

   In March 2007, I requested copies of unclassified emails related to the exigent letters issued by the FBI. Director Mueller told this Committee that he thought the emails were probably fairly substantial. After seven months, the FBI produced a small batch of heavily redacted emails and said it would provide additional documents as its review continued. Fourteen months later, in June 2008, I asked Director Mueller for the remainder of the documents and an explanation for the delay. At some point, on a visit to my office, while briefing my staff on another issue, you were asked about the delay. At that time you said the documents were on your desk awaiting your review. You left the FBI in 2011, without delivering those documents. In fact, I still haven't received them.

   Why did you tell my staff the documents were on your desk awaiting your review and why were the promised emails never delivered to me?

2. In your hearing, I asked you about inaccuracies reported in the National Security Letters. I asked you about the reported inaccuracies and you asked me if I was referring to the inaccurate numbers. I was. But this raises the question: Were there other inaccuracies regarding the NSL program, besides the numbers?

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. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?

7. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.

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. 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? Please explain.

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. What is your understanding of the workload in the Southern District of New York? 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. You have spent your entire legal career as an advocate or counselor 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?

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
Derek Anthony West
Nominee, Associate Attorney General of the United States

1. During your hearing, I asked you if you believed that you had vigorously protected Mr. Newell's interests. You responded that when you decide whether or not to defend a case, you look to various facts and numbers. But I specifically asked, and would like a direct response to my original question: did you vigorously protect Mr. Newell's interests?

2. During your transcribed interview, you agreed that it would be highly inappropriate for the Justice Department to provide information to a qui tam defendant like St. Paul for purposes of knocking out a relator. But our investigation uncovered the fact that Mr. Perez offered assistance to St. Paul by providing information that would hurt Mr. Newell's case and might even result in its dismissal.

    a. Do you still believe it would be inappropriate? Please explain your response.

    b. Did you at the time, or do you now disagree with Mr. Perez's decision to offer assistance to St. Paul in challenging Mr. Newell as the original source? Please explain your response.

3. You've stated that "the character of society is often reflected by how it treats those at the dawn and in the sunset of life." Could you please describe when you think the 'dawn of life' takes place?

4. Frequently an Administration may not agree with a particular statute, even though the language and intent of Congress are crystal clear. In addition, many times an individual who has been appointed to enforce the laws may not personally agree with a particular statute on the books. Yet, you will be called on to enforce and defend the laws as written by the legislative branch, regardless of your own personal and philosophical views.

    If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on a the statute or subject matter of the statute? Please explain your response.

5. The U.S. Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President-elect Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision. If confirmed, will you commit to protect an individual's right to possess a firearm? If so, how?

6. As you may know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about

the possibility of increased collusive and anti- competitive business practices in the agriculture sector. I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. The Justice Department must play a key role in limiting monopsonistic and monopolistic behavior in agriculture. I would like to get a commitment from you that the Antitrust Division will pay heightened attention to agribusiness transactions. Can you assure me that agriculture antitrust issues will be a priority for DOJ if you are confirmed? Please explain your response.

7. I have been concerned about the Department's lack of responsiveness to requests for information necessary for us to conduct oversight.

    a. If confirmed, will you pledge to be responsive to all Congressional requests for information in a timely manner? Including requests for documents and witnesses for interviews?

    b. Will you work to ensure that responses are not held up due to lengthy "clearance" processes at subordinate agencies such as the FBI?

    c. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

    d. Will you pledge to work with Ranking Minority Members of Committees on any oversight request?

8. Please explain how, if confirmed, what efforts you will take to enforce the False Claims Act?

9. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistle blowers?

10. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be if from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?

11. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

Responses of Vernon S. Broderick
Nominee to be United States District Judge for the Southern District of New York
To the Written Questions of Senator Ted Cruz

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: Were I to be confirmed as a district court judge, my judicial philosophy would be characterized by a commitment to an impartial adherence to the rule of law and to treating all litigants fairly and with respect. This means that I would exercise judicial restraint in all matters by deciding only the issues in controversy before me and applying prevailing applicable precedent. I do not consider myself to be a student of the judicial philosophies of Supreme Court Justices and therefore do not have a view which Justice's judicial philosophy would be most analogous with my philosophy.

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. Therefore, if I am confirmed as a district court judge I would apply the United States Supreme Court and Second Circuit Court of Appeals decisions to interpret the Constitution. One example of a binding decision where the Supreme Court has interpreted the Constitution using originalism is *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 district court judge, I would be required to apply precedential authority issued by the Supreme Court and the Second Circuit Court of Appeals. Therefore, I would not overrule precedent as a district court judge.

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: *Garcia v. San Antonio Metro Transit Authority* is binding precedent. Therefore, if confirmed as a district court judge, I would apply the precedent articulated by the Supreme Court in Garcia.

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 as a district court judge and presented with a case involving the scope of Congress's Commerce Clause power, I would follow the binding precedent of the United States Supreme Court, including *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), as well as any other relevant precedent.

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 take executive actions is limited by the Constitution and federal statutes. If the President issues an executive order or acts in a way that violates the Constitution or a statute properly enacted by Congress and a challenge to that action is properly brought before a court, then a federal judge can invalidate the action as exceeding the President's authority. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court discussed the "established method of substantive-due process analysis" in *Washington v. Glucksberg*, observing 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). For a district court judge sitting in the Southern District of New York, a right is fundamental when it has previously been so characterized by either the United States Supreme Court or the Second Circuit Court of Appeals. If confirmed, I would apply the relevant precedent by these two courts.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it differentiates 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, I would abide by *Grutter* and all other Supreme Court precedents regardless of my personal views and expectations.

Responses of Vernon S. Broderick
Nominee to be United States District Court Judge for the Southern District of New York
To the Written Questions of Senator Chuck Grassley

1. **Do you believe that the Fair Housing Act authorizes disparate impact claims?**

   Response: If confirmed as a district court judge and were I to have a case come before me presenting the issue of whether the Fair Housing Act authorizes disparate impact claims, I would apply the relevant precedent of the Supreme Court and the Second Circuit Court of Appeals. I am not an expert and have not studied the Fair Housing Act or the relevant Supreme Court or Second Circuit precedents so as to have formed a belief concerning whether the Fair Housing Act authorizes disparate impact claims.

2. **The New York County Lawyers' Association Task Force on the Housing Court issued a report (in 2006) on the protocol for judges in cases involving unrepresented litigants in housing court that advocated for a "more active role" for judges.**

   a. **What role, if any did you have in drafting the report or contributing to this particular issue.**

      Response: I did not have any role in drafting the report or contributing to this particular issue. At most, I may have attended meetings where this issue was discussed, along with other issues, but I have no specific recollection of such a meeting.

   b. **What do you believe is the appropriate role for a judge to take in proceedings before them? What would you characterize as a 'more active role'?**

      Response: A judge should fairly and impartially find facts (where appropriate) and then faithfully apply the law to those facts. In doing so, a judge should respect the rule of law and should not favor any particular party or outcome. In other words, a judge should apply laws equally, predictably, transparently and in the same fashion to all regardless of the identity of the litigants. I do not know what it means for judges to have a "more active role." However, a district judge has an obligation to ensure equal justice for all litigants. If I am confirmed, I would consult with materials and other resources provided to judges for handling cases where one or more parties are appearing pro se.

   c. **If confirmed, what role do you intend to take in the cases that come before you?**

      Response: Please see my response to question 2b above.

3. **The Criminal Law Committee of the Association of the Bar of the City of New York issued a report on a bill that proposed to amend criminal procedure and executive law to permit conditional sealing of some drug offenses.**

a. **What role, if any, did you play in the drafting and issuance of this report?**

Response: I do not recall playing any role in the preparation, drafting, or issuance of this report.

b. **Are you supportive of or opposed to sealing of drug offenses?**

Response: If confirmed, I would apply the applicable laws and regulations related to sealing of records without regard to my personal views, if any.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: A judge should apply laws equally, predictably, transparently and in the same fashion to all regardless of the identity of the litigants. In applying the law a judge should only address those issues presented. It is also important that a judge be fair, respectful, courteous, patient, humble, open-minded, evenhanded and decisive. I believe I possess these attributes.

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: An appropriate judicial temperament is critical to a judge's ability to administer justice faithfully and to instill confidence in litigants and the general public in the judicial system. It is particularly important that a judge be fair, respectful, courteous, patient, humble, open-minded, evenhanded and decisive. If confirmed, I will conduct myself so as to 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?**

Yes.

7. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?**

I have been a criminal and civil litigator for over 20 years. During that time, I have represented the Government of the United States in criminal matters, represented individuals and corporations as a criminal defense attorney on a retained and pro bono basis and represented corporations in civil matters, including litigations. Throughout my career, I have represented all parties equally without regard to my personal beliefs and regardless of their economic status, political beliefs, or social status. I have also endeavored to treat everyone fairly and with dignity and respect. If confirmed as a district judge, I would be faithful to the

judicial oath and continue my practice of treating everyone fairly and with dignity and respect.

8. **Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

   The Supreme Court has held that the death penalty is constitutional and if confirmed I would apply the relevant Supreme Court and Second Circuit Court of Appeals precedents to any case where death is a potential punishment.

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: If confirmed as a district court judge and faced with a case of first impression involving the interpretation of a statute or provision, I would start with the text of the statute or provision at issue. If the plain language and structure of the text did not yield a clear answer, I would look to precedents of the Supreme Court and the Court of Appeals for the Second Circuit interpreting analogous provisions, as well as precedent from other federal courts, for guidance.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: Federal statutes are presumed to be constitutional. However, it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional if it violates a provision clearly set out in the Constitution, or if Congress has exceeded its constitutional authority. In considering a constitutional challenge to a statute, a district judge must apply any applicable precedent of the Supreme Court and the relevant Circuit Court of Appeals. In addition, a district judge must be mindful of the relevant canons of construction, such as the presumption of constitutionality and the doctrine of constitutional avoidance.

11. **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.**

    No, foreign law or the views of the "world community" should not play a role in determining the meaning of the Constitution. The interpretation of the Constitution by the Supreme Court and other federal courts should be used to determine the meaning of the Constitution.

12. **What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?**

    My understanding is that the district judges in the Southern District of New York have a heavy workload. If confirmed, I would establish rules for litigants to provide clear guidance

about my expectations. Among other things, I would set and adhere to firm deadlines for pretrial discovery, motions and trial. I would also monitor my docket closely using chambers or courthouse staff where appropriate, encourage mediation or settlement when possible, make productive use of the magistrate judges where appropriate and strive to decide all matters promptly.

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: It is critically important to the administration of justice that matters are resolved fairly, promptly and efficiently. Judges play a pivotal role in accomplishing that goal by controlling the pace and conduct of litigation. If confirmed as a district judge, I would take the steps described in my response to Question 12 to control and manage each case on my docket.

14. 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 as a district court judge, I would endeavor to apply laws equally, predictably, transparently and in the same fashion to all regardless of the identity of the litigants. I would respect the rule of law and would not favor any particular party or outcome. In addition, I would strive to address only those issues specifically presented by the particular case before me.

15. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on Thursday, May 30, 2013. Over the course of several days, I drafted responses to the questions. I discussed my responses with a representative of the Department of Justice and authorized the Department of Justice to transmit them to the Committee on Monday, June 3, 2013.

16. Do these answers reflect your true and personal views?

Yes.

Questions for the Record
For Valerie E. Caproni, to be United States District Judge for the Southern District of New York
Senator Ted Cruz
5-23-13 Nominations Hearing

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 would be to apply the law fairly and impartially to the facts and to treat all who appear before me, whether as a party or an attorney, with respect and patience. The role of a judge in our constitutional system is to interpret the law and apply it to the cases that come before the judge. I am not sufficiently knowledgeable of the judicial philosophies of the Justices who served on the Warren, Burger and Rehnquist Courts to know to whose philosophy mine would be most analogous, but I would note that as a district court judge, my job would be to apply precedent from the Supreme Court.

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 do not believe that the Constitution is an evolving document whose meaning constantly changes. I believe the original intent of the drafters is important in interpreting the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576-603 (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 district court judge, I would be bound by controlling precedent. I would have no authority to overrule decisions of the Supreme Court or the United States Court of Appeals for the Second Circuit.

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 decision by the Supreme Court is binding on lower courts. Regardless of my personal opinions, if any, I would abide by controlling 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 long held that Congress has the power under the Commerce Clause to regulate the following: the channels of interstate commerce; the instrumentalities of interstate commerce; and activities that "substantially affect" interstate commerce. *See, e.g., Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005); *United States v. Morrison*, 529 U.S. 598, 608-09

(2000); *United States v. Lopez*, 514 U.S. 549, 558 (1995). Justice Scalia noted in a concurring opinion in *Gonzalez v. Raich* that "Congress may regulate even non-economic activity if that regulation is a necessary part of more general regulation of interstate commerce," *Gonzales v. Raich*, 545 U.S. at 37 (Scalia, J., concurring). If I were faced with a case that presented a challenge to the constitutionality of a statute that extended to non-economic activity, I would need to research carefully the issue to ensure that my decision was consistent with controlling precedent.

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 invalidated President Truman's action in seizing steel mills during the Korean War, writing: "The 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. Justice Jackson's concurring opinion in *Youngstown Sheet & Tube Co.*, set forth the analytic framework that continues to be used by the Court to measure the judicially-enforceable limits of the President's power. *Id.* at 634-55 (Jackson, J., concurring). If confirmed, I would apply that framework and follow controlling precedent to determine the limits of presidential power.

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, 720-21 (1997), the Supreme Court explained the two primary features of its substantive due process analysis. First, the Due Process Clause protects fundamental rights and liberties that are "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.* at 720-21 (citations and internal quotations marks omitted). Second, the Court requires "a careful description of the asserted fundamental liberty interest." *Id.* (citations and internal quotation marks omitted). As a district court judge, I would apply that framework and follow controlling precedent in deciding substantive due process cases.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that classifications based on race, gender or other suspect classification are subject to heightened scrutiny, as are classifications that burden a fundamental right, such as the right to vote or travel.

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 one way or the other. I understand that *Fisher v. University of Texas*, currently pending before the Supreme Court, presents the issue of the constitutionality of certain steps University of Texas has taken to enroll a diverse student body. If I am confirmed as

a district court judge, I will follow controlling precedent on this issue, regardless of my personal opinion, if any.

Senator Chuck Grassley
Questions for the Record
Valerie E. Caproni
Nominee, U.S. District Judge for the Southern District of New York

1. **In your hearing I asked about any exigent letters issued by the FBI. You informed me that you had written many emails regarding exigent letters during your time at the FBI but you were unsure about why these emails had not been delivered to the Committee. Now that you have had time to review your records, let me ask the question again.**

   In March 2007, I requested copies of unclassified emails related to the exigent letters issued by the FBI. Director Mueller told this Committee that he thought the emails were probably fairly substantial. After seven months, the FBI produced a small batch of heavily redacted emails and said it would provide additional documents as its review continued. Fourteen months later, in June 2008, I asked Director Mueller for the remainder of the documents and an explanation for the delay. At some point, on a visit to my office, while briefing my staff on another issue, you were asked about the delay. At that time you said the documents were on your desk awaiting your review. You left the FBI in 2011, without delivering those documents. In fact, I still haven't received them.

   Why did you tell my staff the documents were on your desk awaiting your review and why were the promised emails never delivered to me?

   Response: I have no specific recollection of your March 2007 request or the ensuing production and no recollection why the production took so long. I also do not recall reporting to your staff that documents were on my desk awaiting review. My practice at the FBI was to give requests from Members of Congress high priority, so I am confident that the extended time this production took was not a function of documents needing to be reviewed by me.

   I understand that on December 2, 2010, the FBI provided a CD of documents to Senator Leahy and you that responded to your request from March 19, 2007, for documents related to exigent letters. While there may have been some documents authored by me that were produced at that time, most of my involvement with the exigent letter situation post-dated your March 2007 request.

2. **In your hearing, I asked you about inaccuracies reported in the National Security Letters. I asked you about the reported inaccuracies and you asked me if I was referring to the inaccurate numbers. I was. But this raises the question: Were there other inaccuracies regarding the NSL program, besides the numbers?**

   Response: Not to my knowledge.

3. **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 the ability to be impartial and fair, regardless of the issue presented to him or her. I believe I possess that attribute, as demonstrated by a long career in which I have developed a reputation for just such fairness.

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 district court judge needs to be patient and respectful of parties and attorneys while still maintaining control of the courtroom and of his or her docket. A judge needs to be decisive and capable of remaining focused on the critical issue presented by the particular case. I believe I possess all of those abilities.

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. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?**

   Response: If I am fortunate enough to be confirmed, I can assure the Committee that I will decide issues presented to me based on the facts and the law and not on my personal opinions, potential biases or influences, and without regard to any political, economic or philosophical influence. I am confident I can do so because during the course of my legal career, I have represented a wide variety of clients and positions, not all of which matched my personal policy preferences.

7. **Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

   Response: Under controlling United States law, certain crimes carry a potential penalty of death. The Supreme Court has upheld the constitutionality of the death penalty as a sentence, except in certain circumstances. As a district court judge, if I were to preside over a death penalty case, I would apply the law and the facts fairly and in accordance with controlling precedent.

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: In matters of statutory construction I would begin with the words of the statute. If the meaning is clear, then the inquiry stops at that point. If the language is ambiguous, then I would look to controlling precedent and the applicable rules of statutory construction to resolve the ambiguity. If there were no controlling precedent from the Supreme Court or the Second Circuit Court of Appeals, I would look for persuasive precedent from those and other federal courts.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Established precedent requires a court to attempt to decide the case without reaching a constitutional question. If that is not possible, a court should endeavor to uphold the constitutionality of a duly enacted statute, if possible. A statute should only be declared unconstitutional if it clearly violates the Constitution or if Congress clearly acted beyond its constitutional authority.

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? Please explain.**

    Response: No.

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: If I am fortunate enough to be confirmed I can assure the Committee and future litigants that I will decide issues presented to me based on the facts and the law and not on my personal opinions. During the course of my legal career, I have represented a wide variety of clients and positions, not all of which matched my personal policy preferences.

12. **What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?**

    Response: My understanding is that the workload in the Southern District of New York is among the country's heaviest. I would manage my workload to ensure that all cases are resolved in a timely fashion. Management techniques would include making judicious use of Magistrate Judges to manage discovery in civil matters and setting and maintaining reasonable schedules in all matters.

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: I believe judges have an important role in controlling the pace and conduct of litigation. I would make effective use of initial conferences in civil cases and initial appearances in criminal cases to set the schedule for the case, consistent with its complexity.

14. You have spent your entire legal career as an advocate or counselor 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?

In a number of my jobs as an attorney, I have been required to ascertain facts and then apply the law to those facts in order to decide, for example, whether to indict a person or to seek authority to bring an enforcement action. While the role of the judge is obviously different, the basic process of fairly determining the facts and applying the law to those facts is a similar undertaking. I suspect the most difficult part of the transition will be moving from being a colleague of the attorneys in the courtroom to being a neutral judge who must decide who prevails in the case presented.

15. Please describe with particularity the process by which these questions were answered.

I received these questions on May 30, 2013, and I obtained the date of the production of documents to you from the Office of Congressional Affairs of the FBI on May 31, 2013. I drafted the answers to these questions on May 30 and May 31, and I reviewed them with personnel from the Department of Justice before they were submitted to Congress.

16. Do these answers reflect your true and personal views?

Yes.

Senator Chuck Grassley
Questions for the Record
Derek Anthony West
Nominee, Associate Attorney General of the United States

1. **During your hearing, I asked you if you believed that you had vigorously protected Mr. Newell's interests. You responded that when you decide whether or not to defend a case, you look to various facts and numbers. But I specifically asked, and would like a direct response to my original question: did you vigorously protect Mr. Newell's interests?**

   Response:

   As a general matter, my duty as the Assistant Attorney General of the Civil Division – consistent with my oath of office – was to protect the best interests of the United States, as distinct from the individual interests of any particular individual, particularly if that individual was represented by his or her own attorney. Indeed, it would be not be consistent with my Department responsibilities nor my understanding of the False Claims Act for me to subjugate the interests of the United States to any particular relator, which is why the Civil Division is required to conduct an independent inquiry into any allegations of fraud leveled by a relator. Of course, a decision by the Department not to intervene in a *qui tam* action does not end the case, because the relator is permitted to proceed with the litigation.

   I am confident that my approach has served the interests of the United States well. During my four years as head of the Civil Division and Acting Associate Attorney General, the Department has enjoyed a strong partnership with *qui tam* relators in fighting fraud, waste, and abuse. Since January 2009, payments to relators in False Claims Act actions exceed $1.7 billion (including more than $1.3 billion during the three years that I was the head of the Civil Division). In the last four years, there has been a 50% increase in the number of *qui tam* lawsuits filed (from 433 in FY 2009 to 652 in FY 2012).

   In a letter sent to the Committee in support of my nomination, Neil Getnick, a leading False Claims Act attorney and the Chairman of Taxpayers Against Fraud (a non-profit organization that champions False Claims Act and whistleblower laws), noted that I have "played a central role in protecting the American people and the federal government from fraud and abuse." If confirmed, I will maintain my commitment to working with *qui tam* relators and their counsel to aggressively enforce the False Claims Act.

2. **During your transcribed interview, you agreed that it would be highly inappropriate for the Justice Department to provide information to a qui tam defendant like St. Paul for purposes of knocking out a relator. But our investigation uncovered the fact that Mr. Perez offered assistance to St. Paul by providing information that would hurt Mr. Newell's case and might even result in its dismissal.**

   a. **Do you still believe it would be inappropriate? Please explain your response.**

Response:

I believe the appropriate manner for a party seeking information from the Justice Department – whether that party is a *qui tam* defendant or anyone else – is to use one or more of the various statutory options available to that party. Depending on the circumstances, a party seeking information from the United States in a declined *qui tam* action may seek discovery from the United States, which is a non-party in declined cases, by serving a subpoena and submitting what is known as a *Touhy* request. In appropriate circumstances, a party may file a request pursuant to the Freedom of Information Act. My previous answer, which I reiterate here, was that if the City of St. Paul was interested in acquiring information from the United States for use in the *Newell* litigation, seeking discovery through the submission of a *Touhy* request would seemingly be the most appropriate procedure, and that the Department would typically expect an appropriate request before providing such information.

b. **Did you at the time, or do you now disagree with Mr. Perez's decision to offer assistance to St. Paul in challenging Mr. Newell as the original source? Please explain your response.**

Response:

To my knowledge, Assistant Attorney General Perez did not offer to provide the City of St. Paul assistance in challenging Mr. Newell as an original source. In fact, when the City proposed a settlement of the *Newell* case on terms that would have required the Department to give the City information to support a motion to dismiss on public disclosure grounds, the Civil Division unequivocally rejected the City's proposal. It is my understanding that the Department has not provided the City any assistance with its original source argument against Mr. Newell.

3. **You've stated that "the character of society is often reflected by how it treats those at the dawn and in the sunset of life." Could you please describe when you think the 'dawn of life' takes place?**

Response:

The quotation to which the question refers is a paraphrase of Hubert H. Humphrey, who, in the last speech of his life, said that "the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life; the sick, the needy and the handicapped." By "dawn of life," I was referring, like Humphrey, to children.

Under the leadership of Attorney General Holder, the Department has made it a priority to promote the safety of the most vulnerable members of our society. This commitment includes our efforts to protect children from experiencing and witnessing violence through initiatives like the National Forum on Youth Violence Prevention and the Defending Childhood Initiative. It also includes our efforts to protect seniors from abuse, neglect, and exploitation through

initiatives like the interagency Elder Justice Coordinating Council and the Department's Elder Justice Initiative. I have taken an active role in these programs, and if confirmed, I will maintain my commitment to protect the most vulnerable among us by fostering and supporting healthy families and safe communities.

4. **Frequently an Administration may not agree with a particular statute, even though the language and intent of Congress are crystal clear. In addition, many times an individual who has been appointed to enforce the laws may not personally agree with a particular statute on the books. Yet, you will be called on to enforce and defend the laws as written by the legislative branch, regardless of your own personal and philosophical views.**

   If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on a the statute or subject matter of the statute? Please explain your response.

   Response:

   Yes. Consistent with the rule of law, the Department has long followed the practice of defending federal statutes so long as reasonable arguments can be made in support of their constitutionality, even if the Department disagrees with a particular statute as a policy matter. This longstanding bipartisan tradition accords the respect appropriately due to Congress and ensures that subsequent Administrations will faithfully defend laws with which they may disagree on policy or grounds. If confirmed, I will continue to discharge my responsibility to defend federal statutes in a manner that is consistent with the Department's established practice.

5. **The U.S. Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President-elect Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision. If confirmed, will you commit to protect an individual's right to possess a firearm? If so, how?**

   Response:

   Yes. *Heller* is a binding, Supreme Court determination on the scope of the Second Amendment. Since *Heller* was decided, various court filings – including briefs filed by the Civil Division during my tenure as Assistant Attorney General – have made clear that the Department looks to that decision as supplying the relevant framework for evaluating Second Amendment issues. In *Heller*, the Supreme Court stated that while the rights guaranteed by the Second Amendment are not unlimited, there is a constitutional right to bear arms in one's home for self-defense purposes. Like all other officials in the Department, I have a duty to uphold the rights protected by the Constitution, which includes those rights reflected in the Second Amendment.

6. **As you may know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti- competitive business practices in the agriculture sector. I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. The Justice Department must play a key role in limiting monopsonistic and monopolistic behavior in agriculture. I would like to get a commitment from you that the Antitrust Division will pay heightened attention to agribusiness transactions. Can you assure me that agriculture antitrust issues will be a priority for DOJ if you are confirmed? Please explain your response.**

Response:

I understand that agriculture is an important part of the nation's economy, and I take seriously the concerns that agricultural producers have expressed about competitive problems in those markets. Working with my colleagues in the Antitrust Division, I am committed to the Department's active involvement in the agricultural sector and to protecting competition in that sector through aggressive antitrust enforcement, where warranted.

In 2010, the Department held a series of workshops focused on competition in the agricultural sector. The workshops helped us improve our understanding and knowledge of agricultural markets, fostered a closer working relationship with the Department of Agriculture on issues relating to competition, and improved our relationships with farm organizations and state Attorneys General on issues of antitrust concern in the agricultural sector.

The Antitrust Division plays a leading role in protecting our agricultural markets from the harm of anticompetitive mergers and conduct. The Division has attorneys and economists who focus on agricultural matters, including mergers and conduct aimed at acquiring or exercising market power. In addition, the Division has a dedicated Special Counsel for Agriculture, who is engaged with the agricultural community to identify and uncover potentially anticompetitive activity, and who works with the litigating sections to evaluate and investigate complaints.

If confirmed, I will continue to work with the Antitrust Division and others in the Department to police anticompetitive mergers and conduct in agricultural markets. We will not hesitate to take appropriate enforcement action to maintain open, competitive markets.

7. **I have been concerned about the Department's lack of responsiveness to requests for information necessary for us to conduct oversight.**

   a. **If confirmed, will you pledge to be responsive to all Congressional requests for information in a timely manner? Including requests for documents and witnesses for interviews?**

Response:

If confirmed, I will work with the Department's Office of Legislative Affairs (OLA) in matters relating to my areas of responsibility, to provide appropriate information to Congress in a timely manner.

   b. **Will you work to ensure that responses are not held up due to lengthy "clearance" processes at subordinate agencies such as the FBI?**

Response:

I agree that the Department's internal clearance process should proceed as expeditiously as possible, while ensuring that the Department's responses to congressional requests are accurate and reviewed by those with the relevant knowledge and expertise. If confirmed, I will work with OLA to make the process by which the Department responds to congressional oversight requests as efficient as possible.

   c. **Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?**

Response:

I believe that the Department should strive to provide Congress with accurate information in a timely manner. At the same time, I understand that the Department's disclosures of information may be constrained by the law and long-standing policies pertaining to individual privacy and other institutional interests.

   d. **Will you pledge to work with Ranking Minority Members of Committees on any oversight request?**

Response:

If confirmed, where it is appropriate for me to participate in the Department's response to oversight matters, I will work with OLA and Committees of Congress, including Ranking Minority Members, to be responsive to such matters.

8. **Please explain how, if confirmed, what efforts you will take to enforce the False Claims Act?**

Response:

Thanks in large part to the leadership of Chairman Leahy and Ranking Member Grassley, the False Claims Act (FCA) is one of the federal government's most powerful tools in rooting out fraud, waste, and abuse. During my tenure in the Department over the last four years, we have made unprecedented strides in protecting taxpayer dollars and the integrity of government programs through vigorous enforcement of the FCA. Since January 2009, the Department's total recoveries under the FCA exceed $14 billion. This is the largest four-year total in the Department's history and is more than a third of the total recoveries since the FCA was significantly amended in 1986. In FY 2012, the Department secured nearly $5 billion in settlements and judgments in cases involving fraud against the government, eclipsing the previous annual record by more than $1.7 billion. If confirmed, I will continue to prioritize aggressive enforcement of the FCA and will work closely with my federal and state partners and with *qui tam* relators to use the tools available to us to protect taxpayer dollars and government programs from fraud.

9. **Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?**

Response:

As required by the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), the Department annually reports to Congress the number, status, and disposition of pending or resolved federal court cases arising under the whistleblower protection laws. This report includes the number of individuals in the Department who are disciplined and the types of discipline administered for violations of the whistleblower protection laws.

10. **I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be if from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?**

Response:

Though the FBI does not fall within the Associate Attorney General's reporting chain, I recognize the importance of whistleblowers in improving the effectiveness and efficiency of the Department's operations. This critical role is acknowledged through training provided to Department employees, including FBI employees, at least every two years, as required by the No FEAR Act. The training explains the rights and remedies available to Department employees and makes clear that retaliation for protected disclosures will not be tolerated.

The Director of the Department's Office of Attorney Recruitment and Management (OARM) has the authority to adjudicate claims of whistleblower reprisal brought pursuant to the FBI whistleblower regulations. The Director of OARM is responsible for (1) ensuring that current and former FBI employees are protected from reprisal for reporting allegations of wrongdoing and (2) ordering appropriate corrective relief in cases in which OARM determines that an unlawful reprisal has occurred.

In addition, the Department created a Whistleblower Ombudsperson position in the Office of the Inspector General (OIG) last year. The OIG Whistleblower Ombudsperson focuses on training and educating Department employees about the role and importance of whistleblowers, as well as their legal rights and protections against retaliation. The Ombudsperson is also responsible for alerting Department officials and managers to the possible repercussions of retaliation against those who make protected disclosures and ensuring that OIG reviews and addresses whistleblower complaints in a prompt and thorough manner.

11. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

Response:

The Department appreciates those who make protected disclosures and recognizes the importance of ensuring that our employees do not face retaliation as a result of making such disclosures. If confirmed, I look forward to working with others in the Department, as needed, for that purpose.

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May 14, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

For more than thirty years, the National Crime Prevention Council (NCPC) has been helping people keep themselves, their families, and their communities safe from crime. NCPC provides practical information on proven and cost-effective crime prevention practices to local law enforcement, community leaders, and citizens. On behalf of the NCPC Board of Directors, its staff and the thousands of crime prevention practitioners across the country whom we represent, we write to express our overwhelming support for the nomination of Tony West to become the Associate Attorney General of the United States.

NCPC has been successful in our mission because we believe in working collaboratively with government officials, locally focused partners and stakeholders to integrate and synchronize crime prevention campaigns, initiatives, and programs, to achieve maximum national impact against crime. We have worked closely with Mr. West and know him to be a profoundly capable advocate whose passion for protecting Americans from crime is rivaled only by his leadership and ability to develop innovative and effective crime prevention strategies.

Most recently, we have been honored to work with Mr. West to ensure that fewer consumers become victims of intellectual property (IP) theft and crime. As Assistant Attorney General for the Civil Division, Mr. West formed and led a team of attorneys in the Consumer Protection Branch dedicated to handling counterfeit pharmaceutical cases; those trafficked over the Internet in particular.

As Acting Associate Attorney General, he was instrumental to the development of the resources and tools for the IP campaign, which raises awareness among adults ages 18-30 about the real consequences of counterfeit and pirated products. To further support the IP campaign effort, Mr. West penned an op-ed that was run as a guest blog on WebMD about the dangers of counterfeit pharmaceuticals.

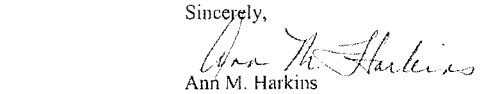
More broadly, NCPC believes that comprehensive crime prevention action plans are vital to long-term community success against crime prevention. That is why we value Tony West's experience and reputation for facilitating cooperation among federal and state partners, as well as across sectors, to develop prevention strategies that meet ever-changing community needs. For example, we applaud Mr.

West's initiative, as co-chair of the Financial Fraud Enforcement Task Force Mortgage Fraud Working Group, in convening banking and real estate organizations, state and local housing groups, and community and legal services groups, to work together to address mortgage fraud prevention. NCPC was pleased to present its mortgage fraud prevention efforts in front of the Mortgage Fraud Working Group and to enlist the group's assistance in the first-ever virtual conference on mortgage fraud, which occurred on April 10, 2013.

Similarly, we appreciate the collaboration, awareness-raising, and cross-sector planning among local partners that has been furthered under Mr. West's leadership through the expansion of the National Forum on Youth Violence Prevention.

Advocates for prevention need committed allies at the Department of Justice like Acting Associate Attorney General Tony West who can bring communities together to implement innovative and adaptable approaches for preventing crime. We hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General for the United States.

Sincerely,



Ann M. Harkins
President and CEO

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May 14, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to express my strong support for the nomination of Tony West to the position of Associate Attorney General of the United States. Based on my experience of over 40 years of service as a peace officer, I believe that Mr. West is especially well qualified for this important position and that he has demonstrated an abiding commitment to public safety and excellence in law enforcement throughout his career.

Having served as the Police Commissioner for the cities of New York and Boston, respectively, and the Chief of Police for the City of Los Angeles, I know from personal experience the importance of having a strong partnership with the federal law enforcement community. I believe that Mr. West—based on his experience as a state and federal prosecutor—understands this important role and that he will be a committed advocate for law enforcement and public safety across the country as Associate Attorney General of the United States. Indeed, throughout his career, Mr. West has taken every opportunity to provide leadership on significant public safety challenges.

As a federal prosecutor, Mr. West worked with local police officers and federal agents, prosecuting drug traffickers and violent criminals. He also served as a Special Assistant Attorney General in California, assisting the state Attorney General in setting crime and law enforcement policy across California. In addition, during his tenure in the United States Department of Justice, he has continued his focus on public safety. Mr. West has worked to protect the safety and wellness of our nation's sworn peace officers through the National Officer Safety and Wellness Group. He has pursued companies for knowingly selling defective

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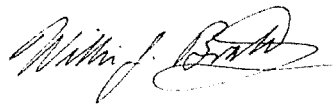
bulletproof vests that put the lives of our men and women in law enforcement at risk. And, as Acting Associate Attorney General, he has overseen the COPS Hiring Program and the distribution of over $100 million to law enforcement agencies to hire or rehire career officers to increase community policing capacity and crime prevention efforts. Finally, as a federal Board Member of the First Responder Network Authority, he is working with state and local law enforcement leaders and communication innovators to establish a single nationwide, interoperable public safety broadband network.

In sum, Mr. West has the experience, talent and legal skill to ably serve our country in this critical position, and he has demonstrated that the values of excellence and commitment to public safety are fundamental to his character as a professional. He is a leader and a truly fine public servant, and it is my hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

All the best,



William J. Bratton
President & CEO

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Formerly Family Violence Prevention Fund

May 14, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

For more than thirty years, Futures Without Violence, formerly Family Violence Prevention Fund, has worked to prevent and end violence against women and children in the United States and around the world. We have found a stalwart ally in Acting Associate Attorney General Tony West and strongly support the nomination of Tony West to become the Associate Attorney General of the United States.

Throughout his career, Mr. West has demonstrated his commitment to protecting the most vulnerable by crafting collaborative solutions to meet the needs of victims and working to *prevent* violence against women and children. Early on in his career, as Assistant U.S. Attorney in the Northern District of California, Mr. West worked closely with the victim advocate community to prosecute child sexual exploitation cases. More recently, as Acting Associate Attorney General, Mr. West has prioritized the expansion of the National Forum on Youth Violence Prevention, a successful model of violence prevention that currently operates in ten cities across the country to build local capacity to address youth violence. In our work with Mr. West on the Defending Childhood Initiative, we have seen first-hand his skill, commitment and passion to reducing crime and violence and helping children who have witnessed or been abused as a core strategy in that effort.

Under Mr. West's leadership over the last year, the Department of Justice has instituted programmatic reforms to strengthen its response to domestic violence, dating violence, stalking, and sexual assault, including programs such as the Domestic Violence Homicide Prevention Demonstration Initiative. This initiative supports the coordinated efforts of law enforcement, prosecutors, health professionals and victim service advocates to reduce domestic violence homicides through improved identification of, and services for, high risk victims and improved monitoring of high-risk offenders. The updated National Protocol for Sexual Assault Medical Forensic Examinations ("SAFE Protocol"), also released during Mr. West's service as Acting Associate Attorney General, helps to standardize the quality of care for sexual assault victims.

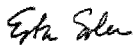
The SAFE Protocol provides critical guidelines for criminal justice and health care practitioners to respond to the immediate needs of sexual assault victims, emphasizing coordinated community response, victim-centered care, and use of high quality medical forensic practices to better hold offenders accountable and minimize victim trauma.

We look forward to Mr. West's continued leadership overseeing the creation of the Attorney General's Task Force on American Indian/Alaska Native Children Exposed to Violence, which will have the important responsibility of working closely with tribal governments and the Department of Interior to address the epidemic of children's exposure to violence in tribal communities.

The role of Associate Attorney General is of vital importance to those who advocate for a future without violence against women and children. The position oversees the Justice Department's grant-making programs including those administered through the Office on Violence Against Women, the Office of Justice Programs and the Office of Community Oriented Policing, which is why it is essential that Mr. West has demonstrated a deep understanding of the complexities of violence prevention and response, and has demonstrated success in crafting multi-disciplinary and collaborative approaches to addressing violence against women and children.

We hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General for the United States.

Sincerely,



Esta Soler
President and Founder
Futures Without Violence

BALTIMORE POLICE DEPARTMENT

STEPHANIE RAWLINGS-BLAKE
Mayor

ANTHONY W. BATTS
Police Commissioner

May 15, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to express my strong support for the nomination of Tony West to the position of Associate Attorney General of the United States.

I serve as the Police Commissioner for the City of Baltimore and previously served as Chief of Police for the City of Long Beach and Oakland, California and I regard having a committed advocate for public safety in the Justice Department as critical to effectively serving my community and protecting public safety. I strongly believe that Mr. West is and has been such a leader for law enforcement and public safety across the country as Associate Attorney General of the United States. Indeed, Mr. West has demonstrated an abiding commitment to public safety and excellence in law enforcement throughout his career.

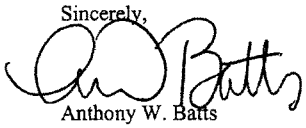
As a federal prosecutor, Mr. West worked with local police officers and federal agents, prosecuting drug traffickers and violent criminals. He also served as a Special Assistant Attorney General in California, assisting the state Attorney General in setting crime and law enforcement policy across California. In addition, during his tenure in the United States Department of Justice, Mr. West has continued his focus on public safety and law enforcement. He has worked to protect the safety and wellness of our nation's sworn peace officers through the National Officer Safety and Wellness Group. He has pursued companies for knowingly selling defective bulletproof vests that put the lives of our men and women in law enforcement at risk. As a federal Board Member of the First Responder Network Authority, he is working with state and local law enforcement leaders and communication innovators to establish a single nationwide, interoperable public safety broadband network—a key innovation needed to protect public safety and the safety of our officers and first responders.

c/o 242 W. 29th Street • Baltimore, Maryland 21211

Moreover, Mr. West has always made himself available to me and my staff for meetings and/or advice. He is kind, caring and insightful. When a high ranking governmental official rearranges his schedule to meet with a Chief of Police it speaks volumes. Mr. West clearly leads from the front in his actions and his words.

In sum, Mr. West shares the values of excellence and commitment to public safety that are fundamental to the profession of law enforcement. I have no doubt that, given his unquestioned skill as a prosecutor and his integrity as a leader, Mr. West will serve his country with distinction in this new position. It is my earnest hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



Anthony W. Batts
Police Commissioner

AWB/dlr

LOS ANGELES POLICE DEPARTMENT

CHARLIE BECK
Chief of Police

ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone: (213) 486-0150
TDD: (877) 275-5273
Ref #: 1.1

May 15, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to express my strong support for the nomination of Tony West to the position of Associate Attorney General of the United States. From my standpoint as Chief of Police for the City of Los Angeles, Mr. West is particularly well qualified for this important position because of his longstanding commitment to public safety and excellence in law enforcement.

As a career peace officer, I believe it is an imperative to have a strong partner of the law enforcement community in such a critical position in the Justice Department. The Los Angeles Police Department is responsible for protecting public safety in the nation's second largest city. We regularly call upon our strong relationship with our federal law enforcement partners, including the Justice Department, to fulfill our mission. Based on his experience as a front-line prosecutor, Mr. West is a passionate advocate for law enforcement and is committed to protecting public safety. As a federal prosecutor, he served in the trenches with local police officers and federal agents, prosecuting drug traffickers and violent criminals. Before entering the courtroom, he served as a Special Assistant Attorney General here in California, advising the state's "top cop" on crime policy and law enforcement issues.

Mr. West has continued his focus on public safety and law enforcement issues during his tenure in the Justice Department. He held companies accountable for knowingly manufacturing and selling defective bulletproof vests that put the lives of our men and women in law enforcement at risk, and as Acting Associate Attorney General, he worked to improve the safety and wellness of our nation's sworn peace officers through the National Officer Safety and Wellness Group. In short, his career has been defined in no small measure by a longstanding, deep commitment to public safety.

Given his experience and proven legal acumen, I believe Mr. West to be very well-qualified to serve as the Associate Attorney General and look forward to working with him on the law enforcement and public safety challenges facing our great City and this country. It is my hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States. Should you have any questions, please feel free to contact me at (213) 486-0150.

Very truly yours,

CHARLIE BECK
Chief of Police

May 15, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Tony West*

Dear Senator Leahy:

I write you in support of the nomination of Tony West to be Associate Attorney General of the United States Department of Justice. I came to know Mr. West as a worthy adversary in the prosecution and conviction of John Walker Lindh, and I hold him in the highest regard.[1]

Mr. Lindh came into the custody of the United States in Afghanistan shortly after the attacks of September 11th, and was brought to the Eastern District of Virginia for prosecution. In January 2002, in my capacity as Senior Litigation Counsel and Assistant United States Attorney for the Eastern District of Virginia, I was appointed along with David N. Kelley of the Southern District of New York to lead the prosecution of Mr. Lindh. Tony West and two colleagues from the law firm of Morrison & Foerster were retained to represent Mr. Lindh. From the very first hearing, the case was as intensely and hotly contested as any in which I have been involved during my seventeen years as a federal prosecutor.

From January 2002 until Mr. Lindh was sentenced in October 2002, I had almost daily contact with Mr. West and observed him in virtually every litigation context. What impressed me most about Mr. West was his extraordinary professionalism throughout this difficult case. I have no doubt that the skills and talent I witnessed firsthand will serve him well if he is confirmed as Associate Attorney General.

First, in the highest traditions of the Bar, he took on the representation of a client who was the subject of massive negative publicity. He understood his categorical obligation to provide zealous representation and I never saw him flinch from that duty even for an instant. Second, Mr. West's word was his bond. Although I had never met Mr. West prior to his representation of John Walker Lindh, I came to accept his representations without qualification. Third, he demonstrated time and again that he is simply a brilliant litigator, a judgment I base not just on the exceptional quality of his pleadings but on his entire approach to the litigation. Finally, Mr. West remained at all

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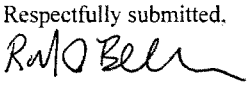
[1] In October 2002, shortly after the prosecution of Mr. Lindh was completed, I left the Department of Justice to become a Circuit Court Judge in Fairfax County, Virginia. In accordance with Virginia Judicial Ethics Advisory Opinion 06-1, I would note that this letter is personal and does not constitute official court business.

times unflappable, affable and courteous – despite the concentrated and pressurized pace of this litigation and the need by both sides to leave no stone unturned.

In summary, for ten months in 2002, and from the vantage point of an adversary, I had the privilege of seeing in action one of the finest attorneys I have ever known. I recommend Tony West's nomination to you without reservation.

Respectfully submitted,



Randy I. Bellows

EDWIN M. LEE
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603

GREGORY P. SUHR
CHIEF OF POLICE

May 15, 2013

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 Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Grassley:

I am writing to express my support for the appointment of Tony West to the position of Associate Attorney General for the United States. Mr. West currently is serving in this position in an acting capacity since March 2012.

I have known Mr. West personally and professionally for many years. His knowledge and experience, as well as his deep, personal commitment to public safety and excellence in law enforcement, make him an excellent candidate for this position.

As the Chief of Police for the City and County of San Francisco, I am responsible for the safety of those who live, work, and visit our great city. Throughout my career, I know that partnerships with other local, state, and federal agencies, including the Justice Department, are an integral part of protecting our community. From his time as a front-line prosecutor in the San Francisco Bay Area, Mr. West fully understands the importance of this teamwork approach by working with law enforcement officers and federal agents to successfully prosecute those who choose to commit violent crimes

During his tenure in the Justice Department, Mr. West continued his focus on public safety and law enforcement issues. He held companies accountable for knowingly manufacturing and selling defective bulletproof vests used by law enforcement, an act which compromised the safety of those who risk their lives daily to protect others. As Acting Associate Attorney General, he worked to improve the safety and wellness of our nation's sworn peace officers through the National Officer Safety and Wellness Group. In short, his career has been defined by a longstanding and genuine commitment to not only public safety, but to those peace officers who are tasked with providing this essential service to our communities.

Mr. West has a list of achievements rivaled by few which were well earned. I can personally vouch for his character and the perspective he brought to the table on the many complicated issues we faced here in San Francisco. I have every confidence in Tony West and know he is

well-qualified to serve as the Associate Attorney General. He would be an asset to our national security in this position.

Thank you for your time in considering this request. Please feel free to contact me for any additional information you may want. I can be reached at (415) 553-1551 or my cell at (415) 601-4483.

Sincerely,

GREGORY P. SUHR
Chief of Police

gs/cf

ADVISORS

Robert Wolf
Chief Executive Officer
32 Advisors, LLC
590 Madison Avenue
34th Floor
New York, NY 10022
rwolf@32advisors.com

May 15, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

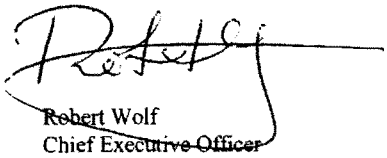
As someone who spent 28 years on Wall Street, including 18 years holding several senior positions at UBS, and who served on the President's Council on Jobs and the President's Economic Recovery Advisory Board, I write to express my strong support for the nomination of Tony West to become the Associate Attorney General of the United States.

While I know Mr. West by reputation and observation of his performance in office, his distinguished record motivates my support for his nomination. Throughout his career, and in the role of Acting Associate Attorney General, Mr. West has demonstrated integrity, judgment, strong managerial skills, and a commitment to championing economic competitiveness and fair play, making him a valued partner to the business community.

During his tenure in the Civil Division, Mr. West served in various leadership positions on the Financial Fraud Enforcement Task Force and aggressively combatted the permutations of financial fraud that impair the investor climate and our nation's economic stability. For example, Mr. West led the investigation and filing of a civil lawsuit against a leading credit rating agency to hold them accountable for possible misconduct during the financial crisis. Moreover, as Acting Associate Attorney General, Mr. West has prioritized the promotion of economic competition through enforcement of antitrust laws and the brokering of settlements that protect consumers while preventing anti-competitive effects on the market.

Mr. West's record of achievements, particularly his proven success leading programs within the Department to eliminate fraud and anti-competitive conduct, make him a strong candidate for Associate Attorney General. His career reflects his sound judgment, personal integrity, and the effective management skills required of this important position. For these reasons I hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



Robert Wolf
Chief Executive Officer
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New York, NY 10022

WILMERHALE

Jamie S. Gorelick

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+1 202 663 6363 (f)
jamie.gorelick@wilmerhale.com

May 16, 2013

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

The Honorable Charles E. Grassley, Ranking Minority Member
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I am writing to endorse the nomination of Tony West to serve as Associate Attorney General of the United States. I got to know Tony West when he served in the Deputy Attorney General's office during my tenure as Deputy. Because he has also been a line prosecutor, a thoughtful and skilled private practitioner and the leader of the Civil Division. Mr. West has all of the skills and background one would want in an Associate Attorney General.

When Mr. West was an Assistant United States Attorney, he prosecuted a wide variety of cases, including sexual exploitation offenses against children, high-tech crimes, bank robberies, financial fraud schemes, economic espionage, firearms violations, tax offenses and government malfeasance. One of his most significant prosecutions involved the Orchid Club, an international, online child pornography and molestation ring involving sixteen defendants in four different countries. Tony also wrote and successfully argued the government's appellate brief in United States v. Laney, 189 F.3d 954 (9th Cir. 1999), a case of first impression in the Ninth Circuit that established new case law ensuring that victims of child sexual exploitation are able to recover restitution for future counseling and psychological treatment stemming from their abuse (the case also established that a defendant who trades child pornography not for money but for other pornographic images engages in distribution for "pecuniary gain" under the U.S. Sentencing Guidelines).

Adding to this background is Mr. West's service in the Deputy's office, as a private practitioner and, more recently, at Justice. In the Deputy's office, he worked on the Omnibus Crime Bill and he addressed the wide variety of issues that present themselves at the senior levels of the Department, from civil and criminal cases, to policy development, to relationships with other agencies of government. As a distinguished lawyer at Morrison & Foerster, Mr. West handled a wide range of cases with skill and the highest standards of professionalism. He is very well-regarded in the San Francisco bar and around the country.

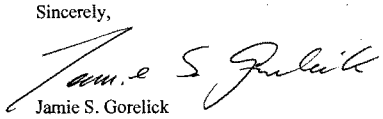
WILMERHALE

The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
May 16, 2013
Page 2

As Assistant Attorney General for the Civil Division, Mr. West made a priority out of fighting fraud and protecting consumers. During his tenure, the Division also led the successful defense of the Affordable Care Act. More recently, as Acting Associate Attorney General, Mr. West has added to his portfolio the effort to promote comprehensive immigration reform, effective hate-crimes prosecutions and principled antitrust enforcement efforts. All of these experiences will serve him well if he is confirmed as Associate Attorney General.

In the next several years, the person in the Associate's job will have to protect the interests of the United States and its citizens in a highly challenged environment. I have every confidence that, if confirmed, Tony West will acquit that responsibility fully and admirably.

Sincerely,



Jamie S. Gorelick

NATIONAL SHERIFFS' ASSOCIATION

AARON D. KENNARD
Sheriff (Retired)
Executive Director

1450 Duke St.
Alexandria, VA 22314
703.836.7827 phone
703.778.5970 fax
exec@sheriffs.org

May 16, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

For over 70 years, the National Sheriffs' Association has represented thousands of sheriffs, deputies and other law enforcement, public safety professionals and concerned citizens nationwide. We write to express our overwhelming support for the nomination of Tony West to the position of Associate Attorney General of the United States.

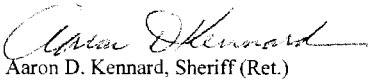
As an association representing law enforcement personnel across the country, we recognize the importance of having a strong partnership between the federal and local law enforcement communities. Mr. West's extensive experience as a state and federal prosecutor prove that he will be a committed advocate for law enforcement and public safety. Mr. West has developed partnerships with all levels of law enforcement through his work as an assistant U.S. Attorney, a special assistant attorney general for the state of California, and a senior official in the Justice Department. As a federal prosecutor, Mr. West worked with local police officers and federal agents, prosecuting drug traffickers and violent criminals. He also served as a Special Assistant Attorney General in California, assisting the state Attorney General in setting crime and law enforcement policy across California.

As Acting Associate Attorney General, Mr. West oversees the administration of grants that are essential to law enforcement officials across the country. Mr. West has overseen the Community Oriented Policing Services, which distributes grants to law enforcement agencies to hire or rehire career officers to increase community policing capacity and crime prevention efforts. He also coordinated with the Office of Violence Against Women to procure federal funding for critical violence against women projects and help secure passage of tribal provisions in the Violence Against Women Reauthorization Act of 2013, which enhanced law enforcement practices to address the alarmingly high rate of violence against women in tribal communities.

Finally, Mr. West has promoted innovation with state and local law enforcement agencies by improving the safety and wellness of our nation's law enforcement personnel through research and initiatives such as the National Officer Safety and Wellness Group and through the development of the Collaborative Reform Project, which provide much-needed responses and technical assistance on critical law enforcement issues. Moreover, as a federal board member of the First Responder Network Authority, Mr. West is working with state and local law enforcement leaders and communication innovators to establish a single nationwide, interoperable public safety broadband network.

Mr. West is especially well-qualified for this important position, and he has demonstrated an unwavering commitment to public safety and excellence in law enforcement throughout his career. His leadership role in coordinating among various law enforcement organizations further demonstrate his outstanding capabilities as an effective manager. For those reasons, we hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



Aaron D. Kennard, Sheriff (Ret.)
Executive Director

Providence Equity LLC
9 West 57th Street
Suite 4700
New York, NY 10019
212 588 6711
212 588 6701 Fax
r.parsons@provequity.com

PROVIDENCEEQUITY

May 16, 2013

Richard D. Parsons
Senior Advisor

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

As the former chairman of Citigroup, former CEO of Time Warner and current member of the Board of Directors for the Commission on Presidential Debates, I write to express my strong support for the nomination of Tony West to become the Associate Attorney General of the United States.

I know Mr. West both personally and by reputation and observation of his performance at the Department of Justice. I believe it important to have an Associate Attorney General who has his distinguished record of advocating for economic competitiveness and fair play.

Throughout his career, and in the role of Acting Associate Attorney General, Mr. West has championed economic competitiveness by combating the permutations of financial fraud that impair the investor climate and our nation's economic stability. During his tenure in the Civil Division, Mr. West collaborated with U.S. Attorneys' offices across the country to use the False Claims Act to combat health care fraud, mortgage fraud, procurement fraud, and grant fraud. This resulted in more recoveries than in any comparable period in the Department's history.

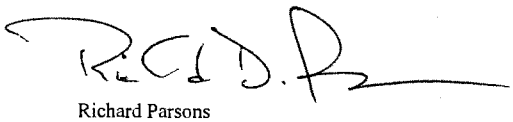
As Acting Associate Attorney General, Mr. West has prioritized the promotion of competition through enforcement of antitrust laws and the brokering of settlements that protect consumers while preventing anti-competitive effects on the market. Such as in *U.S. v. Anheuser-Busch InBev SA/NV and Grupo Modelo*, where the Department reached a settlement that protected consumers by ensuring that the proposed $20.1 billion acquisition would not have an anti-competitive effect on the market.

Mr. West's efforts to eliminate fraud and anti-competitive conduct make him a valued partner to the business community and an excellent candidate for Associate Attorney General. His work at the Department reflects his sound judgment, effective management, and commitment to principles that protect the integrity of our market economy.

Lastly, I know Mr. West to be a man of personal integrity, balance and compassion. In addition to being a highly competent attorney and administrator, he is also a good guy; the kind of person we need in public service.

For all of these reasons, therefore, I hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



Richard Parsons

California POLICE CHIEFS Association Inc.

P.O. Box 255745 Sacramento, California 95865-5745 Telephone (916) 481-8000 FAX (916) 481-8008
E-mail: lmcgill@californiapolicechiefs.org • Website: californiapolicechiefs.org

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Associate Member
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Citrus Heights
Associate Member
KEITH FOSTER, Deputy Chief
Fresno
Associate Member
RUSSELL REINHART, Captain
Huntington Beach
LESLIE MCGILL, CAE
Executive Director
Ex-Officio Member

May 16, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The California Police Chiefs Association writes to express its strong support for the nomination of Tony West to the position of Associate Attorney General of the United States.

Our association is comprised of 1,500 active and retired municipal California Police Chiefs, as well as our associate members who serve in the position of "Seconds in Command." In California, municipal police chiefs are responsible for leading 330 police departments statewide and for providing front line law enforcement services to nearly 29 million residents. It is a responsibility we take great pride in every day.

We believe that Mr. West will be a committed advocate for public safety as Associate Attorney General of the United States. As a federal prosecutor, he tried serious criminal cases working hand-in-hand with local police officers and federal agents. He also served as a Special Assistant Attorney General in California, advising the state Attorney General on crime policy and working with many of our members on police training and law enforcement issues. As California's police chiefs, we maintain strong relationships with our federal law enforcement partners, including the Justice Department, and we believe that his confirmation will serve to further those important partnerships at the federal, state and local level.

We also note that our association urged Mr. West's confirmation as Assistant Attorney General for the Civil Division, a position in which he has served with distinction. As Civil Division chief, he prioritized fraud prosecutions and held companies accountable for knowingly manufacturing and selling defective bulletproof vests. In addition, in his current position as Acting Associate Attorney General, he continues to prioritize issues impacting public safety and law enforcement, including his work to increase the safety and well-being of our nation's sworn peace officers.

Mr. West is many things—an excellent attorney, a gifted manager and a committed career prosecutor. He has an impeccable reputation for integrity and has earned respect from all those who work with him. We believe that he will continue to serve his country with distinction in this new position. Accordingly, we respectfully request the Senate to confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,

Kim J. Raney
President

Los Gatos
Monte Sereno
POLICE DEPARTMENT

May 16, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to express my strong support for the nomination of Tony West to the position of Associate Attorney General of the United States. I currently serve as the Chief of Police of the Los Gatos/Monte Sereno Police Department, a position I have held since 2002, and am the Immediate Past President of the California Police Chiefs Association, which represents 1,400 current and former municipal chiefs in California. Before my current post, I served as Captain in the San Jose Police Department from 1975 to 2002, where I first came to know and work with Tony, when he served as a federal prosecutor in the Northern District of California.

Through our work together, I came to know Tony as a person of the highest integrity, an excellent trial attorney, and someone who earned the trust and respect of all that he worked with. He is truly committed to justice and is unafraid to do what is right. He is simply one of the finest public servants I have had the privilege of working with.

His record at the Justice Department is further evidence of his commitment to public safety. As Assistant Attorney General for the Civil Division, he cracked down on fraud against the government, holding companies accountable for knowingly manufacturing and selling defective bulletproof vests. He has led significant nationwde enforcement efforts against white collar crimes, and, as Acting Associate Attorney General, he has worked to improve the safety and wellness of our nation's sworn peace officers. I am particularly grateful to Tony for his role in assisting with the D Block frequency acquisition, which is going to dramatically improve public safety communications throughout the nation. Tony currently serves on the FirstNet Board and supports the interest of public safety in that role.

Phone (408) 354-5257 ◆ Fax (408) 354-0578 ◆ Civic Center ◆ 110 East Main Street ◆ Los Gatos, CA 95030

In short, Tony's career has been defined in no small measure by a longstanding, deep commitment to justice. I believe Mr. West to be very well-qualified to serve as the Associate Attorney General, and it is my hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,

Scott R. Seaman
Chief of Police

SRS:jc

CHRISTINE A. VARNEY
WORLDWIDE PLAZA
825 EIGHTH AVENUE
NEW YORK, N.Y. 10019-7475
(212) 474-1140

May 16, 2013

Dear Chairman Leahy and Ranking Member Grassley:

As a former U.S. Assistant Attorney General for the Antitrust Division of the Department of Justice, I had the privilege of working closely with Mr. Tony West. I write to express my strong support of the nomination of Tony West to become the Associate Attorney General of the United States.

I know Mr. West to be an experienced lawyer, an extremely effective manager, and a person of integrity who has successfully championed the rights of the American public and the principles of fair play.

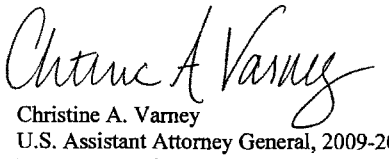
As Assistant Attorney General of the Civil Division, Tony West worked diligently to protect taxpayers and consumers and fought fraud in the health care and mortgage industries. Since January 2009, the Civil Division has used the False Claims Act to recover over $8.8 billion in taxpayer money, which was lost to financial fraud and abuse, the largest three-year total in the Department's history. Mr. West also led the Department's investigation and filing of a civil lawsuit against the credit rating agency Standard & Poor's for allegedly engaging in a scheme to mislead the public and defraud investors in structured financial products. The investigation and lawsuit involved extensive collaboration with the offices of several state Attorneys General.

Under Acting Associate Attorney General West's leadership, the Department has prioritized economic competition through enforcement and guidance on antitrust laws and principles. In *U.S. v. Anheuser-Busch InBev SA/NV and Grupo Modelo S.A.B. de C.V.*, the Department reached a settlement that protected consumers by ensuring that the proposed $20.1 billion acquisition would not have an anti-competitive effect on the market. The Department has also reached a settlement with five book publishers and is litigating against Apple Inc. for conspiring to substantially increase the prices that consumers pay for e-books by ending e-book retailers' freedom to compete on price. The Department also charged a company called AU Optronics for conspiring to fix prices on LCD panels – in *U.S. v. AU Optronics Corp* the Department secured a criminal fine of $1.39 billion.

Furthermore, Mr. West's outstanding experience as a lawyer in private practice, as an assistant U.S. Attorney, and special assistant attorney general for the state of California, where he worked on matters including identity theft, high-tech crime, and anti-trust litigation render him well qualified to perform the important duties of this position.

Mr. West's extensive legal experience, effective management of complex litigation, and vigorous advocacy for consumers and the integrity of the market place has been essential in the Department's efforts to protect the American people and the federal government from fraud, financial abuse, and anti-competitive conduct. For the above reasons, I hope that the Senate will promptly confirm Mr. West to serve as the Associate Attorney General for the United States.

Sincerely,



Christine A. Varney
U.S. Assistant Attorney General, 2009-2011
Partner, Cravath, Swaine & Moore LLP

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

**OFFICE OF THE FORMER GOVERNOR
OF PUERTO RICO**

HON. LUIS G. FORTUÑO
PO BOX 2010
CAROLINA, PUERTO RICO 00984-2010

May 17, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

After twelve years of public service to Puerto Rico culminating in becoming the first Republican to be elected Governor of Puerto Rico in four decades, I am a voice to the nearly four million American citizens who call Puerto Rico home. I write to express my strong support of the nomination of Tony West to become the Associate Attorney General of the United States.

I came to know Mr. West well in his capacity as a Co-Chair of the President's Task Force on Puerto Rico and Co-Chair of the Task Force's Public Safety Working Group. During my tenure as governor, he was a consistent and effective advocate for ensuring a more comprehensive federal response to the violence perpetrated by drug trafficking networks operating in Puerto Rico, including initiatives to protect our shores more effectively. Mr. West is leading the Administration's efforts to implement the recommendations set forth in the Task Force's Report by engaging key stakeholders in Puerto Rico and across the federal government to address the issue of drug related violent crime on the island.

Furthermore, Mr. West has been a vocal member of the Task Force regarding Puerto Rico's political status. Mr. West showed me his commitment to the principle that political status is a topic of self-determination for the American citizens residing in Puerto Rico. Mr. West has been

PO BOX 2010 • CAROLINA PR, 00984-2010
TEL: (787)-257-7373 x2019 • 787-300-0242

a leader in the Task Force, as well as in relations with Congress and the leaders at the state level, in creating a permanent solution to Puerto Rico's political status.

Mr. West has combined his legal experience, knowledge of the region, and effective leadership style to successfully champion the Department's efforts to strengthen the Administration's response to the needs of the American citizens living in Puerto Rico. For the above reasons, I hope that the Senate will promptly confirm Mr. West to serve as the Associate Attorney General for the United States.

Sincerely,

Luis G. Fortuño

PO Box 2010 • Carolina PR, 00984-2010
Tel: (787)-257-7373 x2019 • 787-300-0242

COMMONWEALTH OF
PUERTO RICO
GOVERNOR

May 17, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

As Governor of the Commonwealth of Puerto Rico, I write to express my strong support of the nomination of Mr. Tony West to become the Associate Attorney General of the United States.

I have come to know Mr. West through the President's Task Force on Puerto Rico. As Co-Chair of the Task Force and Co-Chair of the Task Force Public Safety Working Group, Mr. West spearheads the President's effort to address the devastating incidence of drug-related violent crime on the island. He has demonstrated profound skill, legal expertise and an inclusive approach galvanizing key stakeholders in Puerto Rico and across the federal government toward common solutions. Furthermore, Mr. West has been a leader in relations among Congress and the people and leaders of Puerto Rico.

Mr. West's experienced leadership, capacity to engage others and ability to respond effectively to the circumstances confronting the residents of Puerto Rico has helped to solidify the foundation of our successful working relationship with the Administration. It is my hope the Senate will promptly confirm Mr. West to serve as the Associate Attorney General for the United States.

Cordially,

Alejandro J. García-Padilla

La Fortaleza, San Juan, PR 00926
PO Box 9020082, San Juan, PR 00902-0082
governor@fortaleza.pr.gov
787.721.7000

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.noblenational.org

May 17, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The National Organization of Black Law Enforcement Executives (NOBLE) writes to express our support for the nomination of Tony West to the position of Associate Attorney General of the United States. NOBLE has worked closely with Acting Associate Attorney General Tony West, and we know him to be a critical ally to the law enforcement community.

In serving as an Assistant U.S. Attorney, as a Special Assistant Attorney General for the state of California, and as a senior official in the Justice Department, Mr. West has developed strong partnerships at all levels of law enforcement.

As a line federal prosecutor, Mr. West worked closely with local police officers and federal agents to prosecute drug traffickers, child pornographers, and violent criminals. Before entering the courtroom, he served as a Special Assistant in the Justice Department, where he worked on the 1994 Omnibus Crime Bill. As a Special Assistant Attorney General, he advised the California Attorney General's office on statewide crime policy and law enforcement issues, including police training and civil rights.

As Assistant Attorney General of the Civil Division and in his current capacity as Acting Associate Attorney General, Mr. West has continued to demonstrate his commitment to public safety through partnerships with law enforcement. Under his leadership, the Department has emphasized providing technical assistance to state and local law enforcement agencies through programs like the Collaborative Reform Model, a resource designed to evaluate critical responses, in an effort to promote effective policing procedures and enhance community trust.

As Acting Associate Attorney General, Mr. West is responsible the administration of grants that are vital to the work of front-line law enforcement. For example, he is overseeing the administration of $10 million in grants under the Community Policing Development Program, which will fund innovative community policing strategies to meet emerging issues in the field, such as homicide reduction training and a training curriculum for school resource officers.

His work in recognizing the efforts of law enforcement officials, prosecutors and citizens involved in the investigation and subsequent prosecution of missing and exploited children's cases should not go unnoticed. His leadership insures that the necessary resources are available to alert the public and to elicit their support in bringing these lost children home.

We welcome Mr. West's ongoing leadership as a Board Member of the First Responder Network Authority ("FirstNet"), where he continues to build bridges among state and local law enforcement officers to advance the work of our nation's first-responders through the development of FirstNet—a single nationwide, interoperable public safety network.

Throughout Mr. West's career, he has proven to be an effective partner to law enforcement. With this experience, we believe him to be well-qualified to serve as Associate Attorney General and look forward to working with him on a broad range of law enforcement and public safety issues. It is our hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,

Interim Executive Director

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1516 P Street, N.W.
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202.466.7767
202.466.7797 fax
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NATIONAL CONGRESS OF AMERICAN INDIANS

May 20, 2013

Senator Patrick Leahy, Chairman
Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking
Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Re: Support for Tony West as Associate Attorney General

Dear Chairman and Ranking Member:

The President has nominated Tony West to be the Associate Attorney General for the United States. On behalf of the National Congress of American Indians I write to express our strong support and to urge that the Senate take action to confirm his nomination as soon as possible.

Mr. West is extraordinarily qualified to serve in this role. A long-time Department of Justice attorney, he is serving as Acting Associate Attorney General and previously served as the head of the Civil Division, the Department's largest litigating division. You will find him to be both an excellent attorney and a superior manager.

Mr. West has been particularly supportive on issues of importance to Indian tribes. We have particularly appreciated his work on the Violence Against Women Act, his focus on ensuring greater outreach to Native people under the Radiation Exposure Compensation Act, his work to resolve the long-running Cobell litigation on Indian trust funds, and the Keepseagle litigation on discrimination against Native American farmers. He has been to several NCAI meetings and has been very well-received by the tribal leadership.

We are reminded of Mr. West's serious efforts towards justice for Native Americans. We are confident that he will bring this same unwavering commitment to justice for all Americans to his work as Associate Attorney General. Thank you for considering this request. We greatly appreciate your leadership on matters affecting Indian tribes and your service to the United States.

Sincerely,

Jefferson Keel

May 20, 2013

United States Senate
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Grassley, and Members of the Senate Committee on the Judiciary:

I write in strong support of the nomination of Tony West to be Associate Attorney General.

I met Tony in 2009, when I was Assistant Attorney General for National Security and he was Assistant Attorney General for the Civil Division at the Department of Justice. Over the next two years, we worked and spent time together at DOJ. Since I left government in 2011 and Tony assumed his current role as Acting Associate Attorney General, Tony and I have stayed in touch.

Tony has had a distinguished career in government and the private sector, having worked as an Assistant U.S. Attorney, a private law firm partner, Assistant Attorney General for the Civil Division, and most recently in an acting capacity in the position for which he has been nominated. He is a very capable and experienced lawyer, a highly effective manager, and a strongly bipartisan leader. He has the utmost integrity, and the greatest respect for the rule of law.

Tony has earned my trust, confidence and respect. I have the utmost confidence that he will continue to serve with great distinction.

I urge the Senate to confirm Tony West to serve as Associate Attorney General.

Sincerely,

David S. Kris

THE CITY OF SAN DIEGO

IN REPLYING
PLEASE GIVE
OUR REF. NO.
1914000001

May 20, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I would like to express my strong support for the nomination of Tony West to the position of Associate Attorney General of the United States.

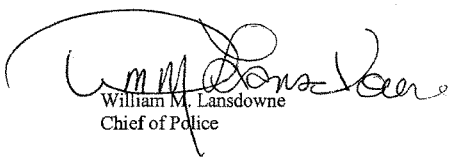
I believe that Mr. West will be a committed advocate for public safety as Associate Attorney General of the United States. As a federal prosecutor, he tried serious criminal cases working hand-in-hand with local police officers and federal agents. He also served as a Special Assistant Attorney General in California, advising the state Attorney General on crime policy and working with many of our members on police training and law enforcement issues. As California's police chiefs, we maintain strong relationships with our federal law enforcement partners, including the Justice Department, and we believe that his confirmation will serve to further those important partnerships at the federal, state and local level.

I strongly support Mr. West's confirmation as Assistant Attorney General for the Civil Division, a position in which he has served with distinction. As Civil Division chief, he prioritized fraud prosecutions and held companies accountable for knowingly manufacturing and selling defective bulletproof vests. In addition, in his current position as Acting Associate Attorney General, he continues to prioritize issues impacting public safety and law enforcement, including his work to increase the safety and well-being of our nation's sworn peace officers.

Office of the Chief of Police
1401 Broadway • San Diego, CA 92101-5729
Tel (619) 531-2000

Mr. West is many things—an excellent attorney, a gifted manager and a committed career prosecutor. He has an impeccable reputation for integrity and has earned respect from all those who work with him. We believe that he will continue to serve his country with distinction in this new position. Accordingly, we respectfully request the Senate to confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



William M. Lansdowne
Chief of Police

LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.
ATTORNEYS AT LAW
476 9TH STREET
OAKLAND, CALIFORNIA 94607-4048

PHONE: (510) 839-6824 • FAX: (510) 839-7839
SENDER'S E-MAIL: BLEE@LEWISFEINBERG.COM

May 20, 2013

By U.S. Mail & Facsimile

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Chuck Grassley
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Tony West's Nomination for Associate Attorney General

Dear Chairman Leahy and Ranking Member Grassley:

I write to support the nomination of Tony West as Associate Attorney General.

Tony is an outstanding lawyer eminently qualified to lead the Associate's Office on a permanent basis. As Acting Associate Attorney General, the head of the Civil Division, a former Justice Department lawyer and former Special Assistant to the California Attorney General, Tony has breadth of government prosecutorial experience. As a litigator in one of the Bay Area's preeminent law firms, he also has breadth of litigation experience in the private sector. He has dealt with difficult cases in a variety of settings with skill and integrity, ranging from fair lending actions against Wells Fargo and countrywide, the Standard and Poor's credit agency litigation to the Deepwater Horizon Oil Spill litigation. Tony is rightly regarded as one of the most able members of the Department of Justice's leadership as well as the Bay Area legal community.

As Assistant Attorney General for the Civil Rights Division in the Clinton Administration, I worked with Tony on important policy matters, including issues of diversity and inclusion. His devotion to the practical enforcement of our nation's civil rights laws and his ability to build consensus will be a tremendous asset to the Associate's Office. The American people will be well-served by a leader like Tony who will be dedicated to its independence and non-partisanship of the Department and committed to assuring its integrity. I believe that the Office will benefit from his ethics, strength, and sensitivity as a manager and leader.

The President has made an excellent decision in choosing Tony West as Associate Attorney General. I enthusiastically recommend Tony's confirmation. I urge that he be confirmed without delay in light of the many challenges facing the Associate's Office at this time.

If I can be of any further assistance, please feel free to contact me.

Sincerely,

Bill Lann Lee

AMERICA'S
CONGRESSIONAL BLACK CAUCUS

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May 20, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley,

For over 40 years, the Congressional Black Caucus has worked to positively influence the course of events pertinent to African Americans. We write to express our strong support of the nomination of Tony West to become the Associate Attorney General of the United States.

We agree that Mr. West's outstanding experience as a lawyer in private practice, as an assistant U.S. Attorney and special assistant attorney general for the state of California, and as a senior official in the Department of Justice since 2009 – including distinguished service working on issues that have deeply impacted the African-American Community – render him well qualified to perform the important duties of this position.

Under Acting Associate Attorney General West's leadership, the Department has achieved unprecedented success in upholding the civil and constitutional rights of all Americans, particularly in the areas of disability and voting rights, education, fair lending, human trafficking, constitutional policing, and hate-crimes. In the last two fiscal years alone, the Department has convicted the most defendants on hate-crime charges in more than a decade.

1433 Longworth House Office Building • Washington, DC 20515
WWW.THECONGRESSIONALBLACKCAUCUS.COM

As Assistant Attorney General for the Civil Division, the largest litigating division of the U.S. Department of Justice, Mr. West effectively managed a robust civil enforcement docket and played a central role in protecting the American people from fraud and abuse. Mr. West led the Department's groundbreaking fair lending actions against Wells Fargo and Countrywide, which were the first cases ever brought by the Department in which a lender was held responsible for steering borrowers to risky subprime loans because of race or national origin. Working with U.S. Attorneys' offices across the country, the Civil Division has resolved a record number of False Claims Act cases under Mr. West's leadership.

Moreover, Mr. West has provided essential leadership to the Department's efforts to stem the flow of vulnerable students into the school-to-prison pipeline. As Acting Associate Attorney General, Mr. West responded adeptly to the growing use of suspensions, expulsions, and school arrests which have diverted students from the path to a diploma and long-term success.

Mr. West's exemplary legal experience, sound judgment, proven track record as a capable and efficient manager, and unwavering commitment to the civil and constitutional rights of all Americans make him an outstanding nominee. For the above reasons, we hope that the Senate will promptly confirm Mr. West to serve as the Associate Attorney General of the United States.

Sincerely,

Marcia L. Fudge

Marcia L. Fudge
Chair, Congressional Black Caucus

Barbara Lee

Barbara Lee
Member of Congress

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

May 20, 2013

The Honorable Patrick 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

RE: NAACP STRONG SUPPORT FOR TONY WEST'S NOMINATION AS ASSOCIATE ATTORNEY GENERAL

Dear Chairman Leahy and Senator Grassley:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, I strongly urge you to support the nomination of Tony West to serve as Associate Attorney General of the United States and work towards his swift confirmation. As Acting Associate Attorney General, Tony West has proven himself to be knowledgeable, capable, and extremely effective as he has served the office of the Attorney General, the Deputy Attorney General, and our nation with integrity and skill.

As you know, during Mr. West's tenure with the U.S. Department of Justice, first as Assistant Attorney General in the Civil Division and then as Acting Associate Attorney General he has demonstrated a strong commitment to advancing opportunity for all Americans. Under his leadership, the Department of Justice has achieved unprecedented success in upholding the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. Specifically, Mr. West played an integral role in pursuing the reauthorization of the Violence Against Women Act and helped the Department strengthen its response to domestic violence, dating violence, stalking, and sexual assault. Moreover, under Mr. West's leadership as Acting Associate Attorney General, the Department has made great strides and stepped up enforcement in the areas of disability and voting rights, education, fair lending, human trafficking, and constitutional policing.

Thank you in advance for your attention to this important NAACP position. There is no doubt that Tony West is an extremely qualified candidate, who will serve with distinction and whose service will do much to protect the civil and human rights of all Americans. I again urge you to support Mr. West's swift confirmation. Should you have any questions or comments, please do not hesitate to contact me at (202) 463-2940.

Sincerely,

Hilary O. Shelton
Director, NAACP Washington Bureau &
Senior Vice President for Advocacy and Policy

cc: Members, Senate Committee on the Judiciary

KENNETH L. SALAZAR

May 20, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

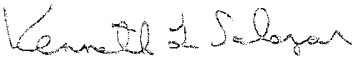
As the former Secretary of the Interior, I had the privilege of working with Mr. West on several policy issues of national significance. In my experience, Mr. West is an extremely capable, diligent, and effective leader. I wholeheartedly endorse Mr. West's confirmation as Associate Attorney General for the United States.

As Assistant Attorney General of the Civil Division, Mr. West was committed to strengthening the Justice Department's relationship with tribal communities and worked closely with the Department of the Interior to improve the relationship between the Native American community and the federal government. In December 2009, a $3.4 billion settlement was negotiated in *Cobell v. Salazar*, a long-standing class-action lawsuit in which members of the Native American community argued for an accounting on individual Indian money accounts and restitution for breaches of trust responsibilities. Furthermore, the Civil Division made it a priority to resolve *Keepseagle v. Vilsack*, where Native American farmers alleged discrimination in the USDA's farm loan program. Under Assistant Attorney General West's leadership, the Civil Division concluded the litigation in *Keepseagle*, as well as four other cases involving minority farmers who believed they suffered discrimination, by crafting historic resolutions that were responsible, fair, and consistent with the rule of law.

Under Acting Associate Attorney General West's leadership, the Department coordinated with six federal agencies, including the Department of the Interior, and five states in ongoing civil litigation arising out of the Deepwater Horizon Oil Spill in the Gulf of Mexico. The Department of Justice conducted the government's civil investigation into the explosion, fire, and oil spill and then filed and litigated a civil enforcement action against BP and other defendants in multi-district litigation. Mr. West's efforts ensured that those responsible for the disaster, and not the American people, would pay for the recovery and restoration of the Gulf Region.

Mr. West is a tremendous public servant with the profound ability to lead, coordinate, and resolve complex matters of national significance with compassion and cultural sensitivity. He demonstrates the qualities that are essential to the position and I hope that the Senate will promptly confirm Mr. West to serve as the Associate Attorney General for the United States.

Sincerely,



Kenneth L. Salazar

KLS/crh

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May 21, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The National Center for Victims of Crime is the nation's leading resource and advocacy organization for victims of all types of crime. On behalf of the countless victims of crime and those professionals who advocate for victim's rights, we write to express our support of the nomination of Tony West to become the Associate Attorney General of the United States.

In his distinguished career, Mr West has shown a true commitment to protecting some of the most vulnerable and underserved groups in our community, including young people, the elderly and member of Tribal nations who have been victims of crime. As Assistant U.S. Attorney in the Northern District of California, Mr. West made it a priority to enlist the assistance of children who were victim-witnesses in his efforts to prosecute several sexual exploitation cases.

More recently, as Acting Associate Attorney General, Mr. West worked to expand the National Forum on Youth Violence Prevention, prioritizing a comprehensive effort to prevent violence in ten cities across the country. This Forum built local capacity to more effectively address youth violence. In his current role as the Attorney General's representative to the Elder Justice Coordinating Council, Mr. West is strengthening federal interagency collaboration to combat elder abuse through awareness, prevention, and prosecution.

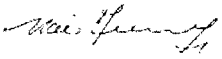
Under Acting Associate Attorney General West's leadership, the Department of Justice has instituted programmatic reforms to strengthen its response to victims of domestic

2000 M Street, NW • Suite 480 • Washington, DC 20036 • Tel. 202/467-8700 • Fax 202/467-8701 • www.ncvc.org

violence, dating violence, stalking, and sexual assault. The Department recently released the framework for "Vision 21" which is a comprehensive and transformative plan to improve our nation's response to victims of crime. During the last year, the Department created the Domestic Violence Homicide Prevention Demonstration Initiative, which supports the coordinated efforts of law enforcement, prosecutors and health professionals to reduce domestic violence. Mr. West also helped to secure passage of tribal provisions of the Violence Against Women Reauthorization Act of 2013, which allows Tribal nations, for the first time in decades, to prosecute non-Indian perpetrators of domestic violence in Indian Country.

Mr. West's strong leadership, extensive legal experience, and unwavering commitment to developing programs and practice to meet the comprehensive needs of victims and survivors make him an ideal candidate for Associate Attorney General. Therefore, we urge the Senate to promptly confirm Mr. West to serve as the Associate Attorney General for the United States.

Sincerely,



Mai Fernandez
Executive Director
National Center for Victims of Crime
Washington DC

May 21, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

After more than three decades in law enforcement, including nearly four years as the director of the Justice Department's Office of Community Policing Services, or COPS Office, I have served alongside Tony West, in service of law enforcement officials across the United States. Today I write to express my strong support for the nomination of Tony West to the position of Associate Attorney General of the United States.

During my tenure as the Police Chief of Pasadena, I saw Mr. West work with local police officers and federal agents to prosecute drug traffickers and violent criminals. I also witnessed his success in assisting the state Attorney General with developing and implementing criminal justice and law enforcement policy across California – West helped make California safer. Through his work as an assistant U.S. Attorney, a special assistant U.S. Attorney for the State of California, and a senior official in the Justice Department, Mr. West's anti-crime efforts have earned him strong partnerships at all levels of law enforcement. Mr. West's demonstrated commitment to public safety as well as his effective collaboration with, and support for, front-line law enforcement has garnered him the endorsement of the California Police Chiefs' Association, an association of over 400 active and retired municipal California Police Chiefs, where I previously served as President.

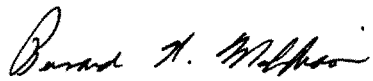
As the Director of the U.S. Department of Justice COPS Office, I had the pleasure of working directly with Acting Associate Attorney General West and observing his commitment to effective community policing through community partnership with law enforcement. Under Mr. West's leadership, the COPS Office made enormous progress in efforts to combat crime by providing technical assistance, training, and equipping law enforcement with the innovative strategies, applied research, and tools to resolve community problems, ensure fairness, inspire public confidence, and contribute to mutual trust and respect between police and citizens. For example, Acting Associate Attorney General West prioritized development of the Collaborative Reform Project, a groundbreaking piece of work intended to help the Las Vegas Metropolitan Police

Department to reduce the number of officer-involved shootings and to improve the quality of the investigations. This work provides an entirely new method by which the Justice Department can assist local law enforcement.

Mr. West encouraged the COPS Office to pursue strategies to enhance the safety of neighborhoods across the country while enabling officers to navigate complex challenges of the communities that employ them. As Acting Associate Attorney General, Mr. West has effectively overseen the administration of grants that are essential to the funding of critical work on emerging topics in the field, such as homicide reduction training, cybercrimes, and school resource officer training, as well as the distribution of more than $100 million through the COPS Hiring Program to law enforcement agencies to hire or rehire career officers to increase community policing capacity and crime prevention.

Mr. West's extensive legal and leadership experience coordinating with various law enforcement organizations – both inside and outside the Department – are essential for this vital position. For those reasons, I hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



Bernard K. Melekian

The Leadership Conference
on Civil and Human Rights

1629 K Street, NW
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Washington, DC
20006

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202.466.3435 fax
www.civilrights.org

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Compliance/Enforcement Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

May 22nd, 2013

Confirm Tony West as Associate Attorney General of the U.S. Department of Justice

Dear Senator,

On behalf of the undersigned 39 organizations, we write to express our strong support for the nomination of Derek Anthony West to the position of Associate Attorney General of the United States and urge swift confirmation. Mr. West has demonstrated a strong commitment to advancing opportunity for all Americans and has a wealth of experience in both public service and private practice working to advance civil rights causes.

The Leadership Conference believes Mr. West is well qualified to serve as Associate Attorney General, a position that will require him to assist the Attorney General and the Deputy Attorney General in formulating and implementing departmental policies and programs pertaining to a broad range of civil justice, federal and local law enforcement, and public safety matters. Mr. West has served in the Justice Department since 2009 as Assistant Attorney General in the Civil Division and has been Acting Associate Attorney General since 2012. As Acting Associate Attorney General, Mr. West has already proven that he will serve in this position with integrity and he has the ability to manage and oversee complex situations.

Under Acting Associate Attorney General West's leadership, the Department has achieved unprecedented success in upholding the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. Mr. West played an integral role in pursuing the reauthorization of the Violence Against Women Act and helped the Department strengthen its response to domestic violence, dating violence, stalking, and sexual assault through various initiatives. He also led the Department's implementation of the decision by the President and the Attorney General to cease defending the Defense of Marriage Act (DOMA), while continuing to uphold the Department's legal duty to continue to enforce DOMA. Moreover, under Mr. West's direction as Associate Attorney General, the Department has made great strides and stepped up enforcement in the areas of disability and voting rights, education, fair lending, human trafficking, and constitutional policing.

Mr. West's broad and diverse experience serving the Justice Department has distinguished him as an exceptional leader with a deep understanding and respect for the rule of law. Prior to his nomination, Mr. West served as Assistant Attorney General of the Civil Division. In that post, he successfully litigated preemption lawsuits challenging harmful immigration laws passed in Arizona, Alabama, South Carolina, and Utah. He is also a tireless champion for taxpayers, ensuring that fraud, waste and abuse, remains a top priority. Mr. West's exemplary service assuredly makes him an excellent selection to continue to serve our nation at the Department of Justice as Associate Attorney General.

Tony West's outstanding career in public service makes him eminently qualified to be confirmed as Associate Attorney General so that he can continue to ensure that all people in the United States are treated fairly and that our laws will be fully enforced. For these reasons,

we urge you to confirm the nomination of Tony West as Associate Attorney General of the United States. For further information, please contact Sakira Cook at (202) 263-2894 or email cook@civilrights.org.

Sincerely,

AFL-CIO
African American Ministers in Action
Alaska Federation of Natives
Alliance for Justice
American-Arab Anti-Discrimination Committee
American Federation of Teachers
Asian American Justice Center
Asian Pacific American Labor Alliance/Institute for Asian Pacific American Leadership & Advancement
Compassion& Choices
DC Vote
DEMOS
Equal Justice Society
Feminist Majority
Iota Phi Lambda Sorority, Inc.
Japanese American Citizens League
The Leadership Conference on Civil and Human Rights
Mental Health America
NAACP
NAACP Legal Defense& Education Fund, Inc.
National Abortion Federation
National Association for Equal Opportunity in Higher Education
National Association of Human Rights Workers
National Association of Social Workers
National Bar Association
National Black Justice Coalition
National Capital Area Union Retirees
National Center for Lesbian Rights
National Council on Independent Living
National Council of La Raza
National Disability Rights Network
National Fair Housing Alliance
National Gay and Lesbian Task Force
National Legal Aid and Defender Association
National Women's Law Center
National Network for Arab American Communities
National Organization for Women
National Partnership for Women and Families
Progressive National Baptist Convention Inc.
Public Advocates Inc.

THE UNITED STATES CONFERENCE OF MAYORS

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TDD (202) 293-9445
URL: www.usmayors.org/uscm

May 22, 2013

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 E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

As the Mayor of Philadelphia and the President of the U.S. Conference of Mayors, I serve as a voice for the people of Philadelphia and for Mayors representing over a thousand cities across the United States. President Barack Obama has made an excellent decision in choosing Tony West for the position of Associate Attorney General for the United States, and I write to express my strong support for his nomination.

America's cities need partners in the U.S. Department of Justice who are not only committed to public safety and crime prevention, but who value working closely with local leaders and law enforcement to advance solutions to the evolving nature of crime and violence that threatens our communities. As a senior official at the Department, Mr. West has been a galvanizing force behind critical programs to address one of the most pressing issues confronting, not just the City of Philadelphia but communities across the country—youth violence. For example, Mr. West prioritized the expansion of the National Forum on Youth Violence Prevention, a successful model to increase awareness and build the capacity of local leaders to join forces in working together to more effectively address youth violence through comprehensive planning and collaborative action. The National Forum on Youth Violence is successfully working in Philadelphia and nine other major metropolitan areas.

As Acting Associate Attorney General, Mr. West has continued to invest well in programs to support local law enforcement in their efforts to carry out the heroic duties of keeping our cities, neighborhoods, and citizens safe. Mr. West has overseen the Community Oriented Policing Services, which distributes grants to law enforcement agencies to hire or rehire career officers to increase community policing capacity and

crime prevention efforts. Mr. West has promoted innovation with state and local law enforcement agencies by improving the safety and wellness of our nation's law enforcement personnel through research and initiatives such as the National Officer Safety and Wellness Group. Moreover, as a Federal Board Member of the First Responder Network Authority, Mr. West is working with state and local law enforcement leaders and communication innovators to establish a single nationwide, interoperable public safety broadband network, which will enhance the capacity of our front-line officers to respond and recover in the event of emergency.

Mr. West has demonstrated a strong commitment to bridging the invisible, but at-times daunting gap, between the federal programs and the realities of local communities. He has demonstrated leadership, a commitment to public safety through partnership with local communities, and impeccable skill at furthering programs to meet the needs of our times. For those reasons, I hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,

Michael A. Nutter
Mayor of Philadelphia
President of the U.S. Conference of Mayors

WIFLE FOUNDATION, INC.
Suite 102, PMB-204 2200 Wilson Blvd. Arlington, VA 22201
Phone: (301) 805-2180 | Web: www.WIFLE.org | Email: WIFLE@comcast.net

May 22, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Since 1999, Women in Federal Law Enforcement (WIFLE) has worked to promote the recruitment, retention and promotion of women in federal law enforcement occupations as a means to enhance the efficacy of law enforcement operations. Today we write to express our support for the nomination of Tony West to the position of Associate Attorney General of the United States. WIFLE has worked with Acting Associate Attorney General Tony West, and we know him to be a strong and effective partner of the law enforcement community.

Mr. West is a passionate advocate for law enforcement and is committed to protecting public safety. As you know, he served as a line federal prosecutor in the trenches with local police officers and federal agents, prosecuting drug traffickers and violent criminals as well as the notorious online child pornography ring known as "The Orchid Club." Before entering the courtroom, he served as a Special Assistant in the Justice Department where he worked on the 1994 Omnibus Crime Bill. As a Special Assistant Attorney General, he advised the California Attorney General's office on statewide crime policy and law enforcement issues, including police training and civil rights.

It is this same experience that anchors his commitment to public safety and his focus on rank-and-file law enforcement priorities. As Assistant Attorney General for the Civil Division, for example, Mr. West held several corporations accountable for knowingly manufacturing and selling defective bulletproof vests that put the lives of our men and women in law enforcement at risk, and he had unprecedented success in cracking down on fraud and abuse against public agencies. During his tenure as Acting Associate Attorney General, Mr. West has prioritized the safety of law enforcement personnel by supporting the Department's Body Armor Safety Initiative, which tests the effectiveness of body armor and advances research to improve the safety of body armor used in the field. He has also worked to improve the safety and wellness of our nation's sworn peace officers through the National Officer Safety and Wellness Group,

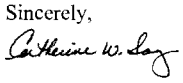
which works on issues such as improving officer training and education and access to mental health care.

Importantly, Mr. West has taken an active role in improving the Department's administration of the Public Safety Officers Benefits Program, which provides death and education benefits to survivors of fallen law enforcement officers, firefighters, and other first responders, and disability benefits to officers catastrophically injured in the line of duty.

Mr. West played an integral role in the Department's efforts to reauthorize the Violence Against Women Act which, since its enactment nearly 20 years ago, has made a significant difference in the lives of countless women and children by providing federal grants that have helped law enforcement, prosecutors, and victim-services providers. He has prioritized vigorous enforcement of human trafficking laws, securing several life sentences against a number of labor and sex trafficking perpetrators who victimized women and children. Furthermore, as chair of the Attorney General's Diversity Management Advisory Council, Mr. West shares WIFLE's commitment to promoting gender equity and diversity in law enforcement through leadership and training.

Mr. West's career, in short, has been defined in no small measure by a longstanding, deep commitment to public safety and his colleagues in front-line law enforcement. With this experience, we believe him to be well qualified to serve as the Associate Attorney General and look forward to working with him on a broad range of law enforcement and public safety issues. It is our hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,



Catherine W. Sanz
President
WIFLE Foundation, Inc.

May 22, 2013

Mark L Shurtleff
Troutman Sanders LLP
401 9th Street NW, Suite 1000
Washington, DC 20004

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

As the former Utah Attorney General for 12 years, I write to express my enthusiastic and unqualified support for the nomination of Tony West to become the Associate Attorney General of the U.S. Department of Justice (DOJ). Based upon my long professional association with Mr. West, I can attest that he possesses outstanding qualifications for this position. He has substantial experience at both state and federal levels; and he has always demonstrated the highest integrity, sound judgment, and a firm foundation and understanding of the management and function of the Department of Justice.

Although Mr. West and I are from opposite sides of the political spectrum, and at times have faced each other on legal issues, I can confidently say that Tony West is committed to justice and the rule of law and is able to work across political and philosophical lines to achieve just results.

I first met Mr. West when he served as special assistant to then California Attorney General Bill Lockyer. He worked efficiently and professionally with me and my colleagues around the nation on complex legal issues from technology to consumer protection multistate litigation. He distinguished himself quickly by his outstanding legal and people skills, and exhibited a unique talent of bringing people together to move toward a fair and equitable resolution.

Our paths crossed again when Mr. West became the Assistant Attorney General of the Civil Division at DOJ, and later as the Acting Associate Attorney General, where we

interacted on tobacco, mortgage foreclosures and immigration matters. Mr. West was, and is, a strong partner with the states. In light of state-federal shared responsibilities and increasingly tight resources, Mr. West's commitment to cooperation and collaboration are valued and critically important.

Based on my personal experience and professional assessment of Mr. West, he has been, and will continue to be, a highly productive and skilled leader whose management and legal expertise will benefit the Department of Justice and the public that it serves. While I did not always agree with him on every legal issue, I always found Tony West to be approachable, open to hearing different perspectives, non-partisan in his actions, and committed to effective enforcement of the nation's laws.

I am very familiar with the challenges that come with running a large department. As I look at Mr. West's record, I am impressed by his leadership and solid accomplishments. I believe that Mr. West will make decisions that he believes will best serve the public, and I have great respect for him.

I urge the Senate Judiciary Committee to approve his nomination as soon as possible, and hope that the full Senate will confirm him shortly thereafter.

Respectfully yours,

Mark L. Shurtleff

Mark L. Shurtleff

Partner

Troutman Sanders, LLP

Former Utah Attorney General

Cc: Members, Senate Judiciary Committee

State Attorneys General

A Communication from the Chief Legal Officers of the Following States and Territories:

Arizona * Arkansas * California * Colorado * Connecticut * Delaware District of Columbia * Guam * Hawaii * Illinois * Indiana * Iowa * Kentucky Louisiana * Maine * Maryland * Massachusetts * Mississippi * Missouri Nevada * New Hampshire * New Mexico * New York * North Carolina Oregon * Pennsylvania * Puerto Rico * Rhode Island Tennessee * Vermont * Virgin Islands * Wyoming

May 22, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Via fax

Dear Chairman Leahy and Ranking Member Grassley:

We write this letter to express our support for the nomination of Tony West to become the Associate Attorney General of the United States. Mr. West is especially qualified to serve in this capacity by his rich experience at both the state and federal levels. His experience is consistently guided by personal integrity and sound judgment.

As State Attorneys General, we are particularly aware of the importance of the fair, effective and efficient administration of justice for our citizens. While working for California Attorney General Bill Lockyer, Mr. West very quickly distinguished himself both as a good lawyer and a strong leader within the office. He was assigned the most difficult cases, ranging from technically demanding cases within the state to helping lead complex national multistate initiatives. Always able to identify and engage the right people in his own office and across the nation, he understood how to utilize the resources effectively and efficiently to reach the right resolution for the people of his state and the nation.

In today's world, the questions and challenges posed to obtain a full and fair administration of justice increasingly require cooperation within and among other departments of government, including both state and federal. In today's world, law enforcement challenges are great and resources modest. Consequently, Mr. West's vision of and commitment to collaboration to achieve a full and fair administration of justice is necessarily an essential feature of the coming law enforcement landscape. For the past four years, Tony has forged an increasingly strong and effective partnership with the states, first as Assistant Attorney General for the Civil Division of the Department of Justice and, most recently, he has served as Acting Associate Attorney General. This partnership has manifested itself across the wide variety of legal arenas in which the states and federal government share jurisdiction, ranging from securities enforcement to False Claims Act cases, from mortgage servicing to consumer fraud actions. In short, he will be an effective and valued partner of State Attorneys General in this position.

Throughout this period, Mr. West has revealed a constant commitment to genuine nonpartisan cooperation. Comity with the states is a model that he is helping pioneer. His approach has consistently been characterized by true integrity, an enduring respect for differing points of view, and that most valuable of characteristics, good common sense. In every instance, he demonstrated his understanding of the law and the role of state and federal law enforcement in an increasingly challenging legal environment and our shared dedication to finding and implementing reasonable and effective resolutions to the problems we face.

We are confident that Mr. West's broad experience and sound judgment will serve him, and the American public well. His exceptional legal skills, combined with his commitment to collaborative, reasonable and effective enforcement of the nation's laws, are the bedrock that will make him a successful leader as the Associate Attorney General. We look forward to a continuing partnership with him and the Department of Justice as we jointly confront the law enforcement challenges of the future. For all of these reasons, we respectfully urge the Senate to confirm Mr. West as the Associate Attorney General of the United States.

Sincerely,

John W. Suthers
Colorado Attorney General

Tom Miller
Iowa Attorney General

Tom Horne
Arizona Attorney General

Dustin McDaniel
Arkansas Attorney General

Kamala Harris
California Attorney General

Joseph R. "Beau" Biden III
Delaware Attorney General

Lenny Rapadas
Guam Attorney General

Lisa Madigan
Illinois Attorney General

Jack Conway
Kentucky Attorney General

Janet Mills
Maine Attorney General

Martha Coakley
Massachusetts Attorney General

Chris Koster
Missouri Attorney General

Joseph Foster
New Hampshire Attorney General

George Jepsen
Connecticut Attorney General

Irvin Nathan
Washington DC Attorney General

David Louie
Hawaii Attorney General

Greg Zoeller
Indiana Attorney General

James "Buddy" Caldwell
Louisiana Attorney General

Douglas F. Gansler
Maryland Attorney General

Jim Hood
Mississippi Attorney General

Catherine Cortez Masto
Nevada Attorney General

Gary King
New Mexico Attorney General

Eric Schneiderman
New York Attorney General

Roy Cooper
North Carolina Attorney General

Ellen F. Rosenblum
Oregon Attorney General

Kathleen Kane
Pennsylvania Attorney General

Luis Sánchez Betances
Puerto Rico Attorney General

Peter Kilmartin
Rhode Island Attorney General

Robert E. Cooper, Jr.
Tennessee Attorney General

William H. Sorrell
Vermont Attorney General

Vincent Frazer
Virgin Islands Attorney General

Gregory A. Phillips
Wyoming Attorney General

International Association of Chiefs of Police

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Web: www.theiacp.org

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Craig T. Steckler
Chief of Police
Fremont Police Department
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Chief of Police
Quincy Police Department
Quincy, Florida

First Vice President
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Director
Woodway Public Safety Department
Woodway, TX

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Orlando, FL

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Superintendent of Police
New Orleans Police Department
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Fourth Vice President
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Wellesley Police Department
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Kent Barker
Chief of Police
Tualatin Police Department
Tualatin, OR

Vice President at Large
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Chief of Police
Greenbelt Police Department
Greenbelt, MD

International Vice President
Nelson Werlang Garcia
Chief, Community Policing & Human Rights Center
Policia Militar do Distrito Federal
Brasilia, Brazil

Vice President-Treasurer
Dwight Henninger
Chief of Police
Vail Police Department
Vail, CO

General Chair Division of State Associations of Chiefs of Police
Peter Carnes
Chief of Police
Stonehill College Police & Safety
Easton, MA

General Chair Division of State and Provincial Police
Colonel Michael D. Edmonson
Deputy Secretary, Public Safety Services
Superintendent, Louisiana State Police
Baton Rouge, LA

Parliamentarian
Ellen Hanson (retired)
Chief of Police
Lenexa Police Department
Lenexa, KS

Executive Director
Bart R. Johnson
Alexandria, VA

Deputy Executive Director
Chief of Staff
James W. McMahon
Alexandria, VA

May 22, 2013

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

On behalf of the International Association of Chiefs of Police (IACP), and our 21,000 members worldwide, I am writing to acknowledge Acting Associate Attorney General Tony West for his unyielding support of IACP and the law enforcement community.

I recently had the opportunity to meet Mr. West at a mid-size agency chiefs meeting that was held in Alexandria, Virginia, last month where he gave a presentation to the chiefs. Mr. West gave a very thorough overview of the activities of your office and responded to the many questions asked in a forthright manner. In my and Executive Director Bart R. Johnson's personal engagement with him after the meeting—and our executive director's follow-up with him after the meeting—we have been impressed with his genuine, forthright approach and his relentless follow-up on important issues. Mr. West's programmatic and policy support for efforts, such as D-Block; information sharing; and, most recently, the changes that were made to the Public Safety Officers' Benefits (PSOB), is greatly appreciated and has positively impacted law enforcement throughout the country.

Mr. West is a committed advocate for public safety, as evidenced by his professional tenure as a federal prosecutor and Special Assistant Attorney General in California. His prior, distinguished service in the Justice Department reflects the same core values that our association shares. In addition, in his current position as Acting Associate Attorney General, he continues to prioritize issues impacting public safety, including his work to increase the safety of our nation's sworn peace officers.

Without Tony West's contributions to the justice community, I doubt that we—as a country—would have made the progress we have made in the protection of our nation's citizens. We are grateful to him, and we look forward to working with you and Mr. West in the future.

Sincerely,

Craig T. Steckler
President

Serving the Leaders of Today, Developing the Leaders of Tomorrow

National Association
of Attorneys General

PRESIDENT
Douglas F. Gansler
Maryland Attorney General

PRESIDENT-ELECT
J.B. Van Hollen
Wisconsin Attorney General

VICE PRESIDENT
Jim Hood
Mississippi Attorney General

PAST PRESIDENT
Roy Cooper
North Carolina Attorney General

EXECUTIVE DIRECTOR
James McPherson

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Washington, DC 20036
Phone: (202) 326-6000
http://www.naag.org/

May 23, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Via fax and email

Dear Chairman Leahy and Ranking Member Grassley:

We write this letter to express our support for the nomination of Tony West to become the Associate Attorney General of the United States. Mr. West is especially qualified to serve in this capacity by his rich experience at both the state and federal levels. His experience is consistently guided by personal integrity and sound judgment.

As State Attorneys General, we are particularly aware of the importance of the fair, effective and efficient administration of justice for our citizens. While working for California Attorney General Bill Lockyer, Mr. West very quickly distinguished himself both as a good lawyer and a strong leader within the office. He was assigned the most difficult cases, ranging from technically demanding cases within the state to helping lead complex national multistate initiatives. Always able to identify and engage the right people in his own office and across the nation, he understood how to utilize the resources effectively and efficiently to reach the right resolution for the people of his state and the nation.

In today's world, the questions and challenges posed to obtain a full and fair administration of justice increasingly require cooperation within and among other departments of government, including both state and federal. In today's world, law enforcement challenges are great and resources modest. Consequently, Mr. West's vision of and commitment to collaboration to achieve a full and fair administration of justice is necessarily an essential feature of the coming law enforcement landscape. For the past four years, Tony has forged an increasingly strong and effective partnership with the states, first as Assistant Attorney General for the Civil Division of the Department of Justice and, most recently, he has served as Acting Associate Attorney General. This partnership has manifested itself across the wide

variety of legal arenas in which the states and federal government share jurisdiction, ranging from securities enforcement to False Claims Act cases, from mortgage servicing to consumer fraud actions. In short, he will be an effective and valued partner of State Attorneys General in this position.

Throughout this period, Mr. West has revealed a constant commitment to genuine nonpartisan cooperation. Comity with the states is a model that he is helping pioneer. His approach has consistently been characterized by true integrity, an enduring respect for differing points of view, and that most valuable of characteristics, good common sense. In every instance, he demonstrated his understanding of the law and the role of state and federal law enforcement in an increasingly challenging legal environment and our shared dedication to finding and implementing reasonable and effective resolutions to the problems we face.

We are confident that Mr. West's broad experience and sound judgment will serve him, and the American public well. His exceptional legal skills, combined with his commitment to collaborative, reasonable and effective enforcement of the nation's laws, are the bedrock that will make him a successful leader as the Associate Attorney General. We look forward to a continuing partnership with him and the Department of Justice as we jointly confront the law enforcement challenges of the future. For all of these reasons, we respectfully urge the Senate to confirm Mr. West as the Associate Attorney General of the United States.

Sincerely,

John W. Suthers
Colorado Attorney General

Tom Miller
Iowa Attorney General

Tom Horne
Arizona Attorney General

Dustin McDaniel
Arkansas Attorney General

Kamala Harris
California Attorney General

George Jepsen
Connecticut Attorney General

Joseph R. "Beau" Biden III
Delaware Attorney General

Irvin Nathan
Washington DC Attorney General

Lenny Rapadas
Guam Attorney General

Lisa Madigan
Illinois Attorney General

Jack Conway
Kentucky Attorney General

Janet Mills
Maine Attorney General

Martha Coakley
Massachusetts Attorney General

Chris Koster
Missouri Attorney General

Joseph Foster
New Hampshire Attorney General

Eric Schneiderman
New York Attorney General

Wayne Stenehjem
North Dakota Attorney General

David Louie
Hawaii Attorney General

Greg Zoeller
Indiana Attorney General

James "Buddy" Caldwell
Louisiana Attorney General

Douglas F. Gansler
Maryland Attorney General

Jim Hood
Mississippi Attorney General

Catherine Cortez Masto
Nevada Attorney General

Gary King
New Mexico Attorney General

Roy Cooper
North Carolina Attorney General

Joey Patrick San Nicolas
Northern Mariana Islands

Ellen F. Rosenblum
Oregon Attorney General

Luis Sánchez Betances
Puerto Rico Attorney General

Robert E. Cooper, Jr.
Tennessee Attorney General

William H. Sorrell
Vermont Attorney General

Robert W. Ferguson
Washington Attorney General

Kathleen Kane
Pennsylvania Attorney General

Peter F. Kilmartin
Rhode Island Attorney General

John E. Swallow
Utah Attorney General

Vincent Frazer
Virgin Islands Attorney General

Gregory A. Phillips
Wyoming Attorney General

NCLR
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May 24, 2013

Dear Senator:

On behalf of the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States — I am writing to express our strong support for the nomination of Tony West as Associate Attorney General of the U.S. Department of Justice.

We believe that Mr. West is eminently qualified to serve in this position. Mr. West joined the Department of Justice as Assistant Attorney General in the Civil Rights Division in 2009. In 2012, he was named Acting Associate Attorney General by President Obama and he has distinguished himself in that role. During his tenure at DOJ, Mr. West has played a crucial role in the successful implementation and enforcement of important civil rights statutes that protect the rights of women, children, minorities, the disabled, taxpayers and homeowners.

In particular, Mr. West has been instrumental to the Department of Justice's fair lending actions on behalf of American families, which has had an enormously positive impact on Hispanic homeowners. These actions against two national lenders who steered borrowers to risky subprime loans because of race or national origin led to two of the largest residential fair-lending settlements in history. The historic $335 million settlement with Countrywide in December of 2011 and $234 million settlement with Wells Fargo in July 2012, which were negotiated under Mr. West's leadership, are just two examples of his initiative and dedication to enforcing our nation's civil rights laws. This type of diligent enforcement of our nation's fair lending practices and civil rights laws more broadly provides a great benefit to the quality of life of Hispanic families and all Americans.

NCLR believes that Tony West's exemplary professional qualifications, leadership skills and dedication to service demonstrate the qualities necessary to serve as an outstanding Associate Attorney General at the Department of Justice. We are certain that his commitment to upholding our nation's civil rights framework will be well applied, and we strongly urge his immediate confirmation.

Sincerely,

Janet Murguía

Janet Murguía
President and CEO

May 28, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

For more than a century, the Sierra Club has been one of the largest and most influential grassroots environmental organizations in the United States, working to promote the responsible use of the earth's ecosystems and resources. We write to express our strong support for the nomination of Tony West to the position of Associate Attorney General of the United States.

We believe it important to have someone in the position of the Associate Attorney General who has the capacity to execute the immense responsibilities of protecting our natural resources and who is committed to holding parties accountable for environmental atrocities. Through his various roles within the U.S. Department of Justice, Acting Associate Attorney General West has skillfully worked across six federal agencies and five states to lead the Department's ongoing civil litigation arising out of the Deepwater Horizon Oil Spill. The litigation was joined by the Sierra Club, which filed a motion to intervene in the Department's civil enforcement action against BP. In championing the federal government's response to one of the largest man-made environmental disasters in our nation's history, Mr. West has demonstrated professional excellence, a commitment to justice and accountability, as well as the exceptional leadership capacity to manage sprawling, multijurisdictional litigation of profound consequence to our nation.

As Assistant Attorney General of the Civil Division, Mr. West first collaborated with the Environment and Natural Resources Division to conduct the government's civil investigation into the explosion, fire, and oil spill on the Deepwater Horizon oil rig. The investigation and the subsequent litigation are

85 Second Street, Second Floor San Francisco, CA 94105-3441 TEL: (415) 977-5500 FAX: (415) 977-5792 www.sierraclub.org

intended to ensure that those responsible for the disaster pay for the recovery and restoration of the Gulf Region. Moreover, Mr. West enhanced the Civil Division's Radiation Exposure Compensation Act Program, a non-adversarial program that provides compensation to those who contracted certain cancers and other diseases after being exposed to radiation through nuclear waste or in the uranium mining industry decades ago.

Mr. West is especially well qualified for this important position. He has demonstrated an abiding commitment to protecting our natural resources and the communities impacted by environmental disaster. He has extensive legal and leadership experience coordinating with various government agencies and states to resolve complex environmental litigation. For those reasons, we hope that the Senate will confirm Mr. West promptly to serve as the Associate Attorney General of the United States.

Sincerely,

Michael Brune
Executive Director
Sierra Club

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May 28, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Last year, I had the honor to be one of the invited speakers to the United States Department of Justice twenty-fifth anniversary celebration of the Federal False Claims Act, serving on the panel session at that event which was presided over by then Assistant Attorney General of the Civil Division Tony West. I remember quite well your remarks Senator Leahy at that event, and while you were unable to attend Senator Grassley, your presence was very much felt and acknowledged by all who spoke that day.

I consider myself privileged to have been able to work on behalf of government and taxpayers throughout my career both as a public prosecutor and in private practice, from heading up an appointed integrity monitoring team for the World Trade Center post-9/11 disaster clean-up, to serving as lead or co-lead counsel in a series of ground breaking False Claims Act cases. As chairman of Taxpayers Against Fraud (a Washington, D.C. based non-profit organization championing False Claims Acts and whistleblower laws), as an adjunct professor who launched a whistleblower law course together with the dean of the Cornell Law School this spring, and as the managing partner at Getnick & Getnick, where I have led the development of the law firm's dedicated anti-fraud litigation and business integrity practice, I have come to have a deep appreciation of the Federal False Claims Act and the U.S. Department of Justice which helps breathe life into that law.

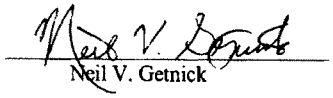
I write to you today in my personal capacity to express my strong support of the nomination of Tony West to become the Associate Attorney General of the United States. As

Assistant Attorney General of the Civil Division, Tony West worked diligently to protect taxpayers and consumers and fought fraud in the health care and mortgage industries. Since January 2009, the Civil Division has used the False Claims Act to help recover over $8.8 billion in taxpayer money, which was lost to financial fraud and abuse – the largest three-year total in the Department's history. The Division also helped resolve a number of significant civil and criminal health care fraud cases, including a $2.3 billion settlement with Pfizer for allegations of misbranding and off-label promotion of pharmaceuticals and a $1.5 billion settlement with Abbott Laboratories for allegations of off-label promotion of drugs used to treat seizures, bipolar disorder, and migraines. Another of those cases was one of our own, the first successful pharmaceutical manufacturing violations False Claims Act case, which gave rise to a $750 million civil and criminal global resolution with GlaxoSmithKline. Moreover, Mr. West reorganized the Civil Division to create the Consumer Protection Branch, which was empowered to protect consumers from fraud and abuse, helping to recover nearly $4 billion through aggressive civil and criminal enforcement.

Acting Associate Attorney General West has played a central role in protecting the American people and the federal government from fraud and abuse. Mr. West led the Department's investigation and filing of a civil lawsuit against the credit rating agency Standard & Poor's for allegedly engaging in a scheme to mislead the public and defraud investors in structured financial products. The investigation and lawsuit involved extensive collaboration with the offices of several state Attorneys General. The Department also helped reach a $3 billion civil and criminal settlement with GlaxoSmithKline, representing the largest healthcare fraud resolution in U.S. history, including a guilty plea to a three-count criminal information for misbranding drugs and failing to report safety data to the FDA and a five-year corporate integrity agreement.

Mr. West's extensive experience, innovative legal techniques, capabilities as a manager, and unyielding efforts to combat fraud and financial abuse are a testament to his embodiment of the core values which are essential for this important position. For the above reasons, I hope that the Senate will promptly confirm Mr. West to serve as the Associate Attorney General for the United States.

Yours truly,



Neil V. Getnick

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Standing Committee on
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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 Valerie E. Caproni
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 Valerie E. Caproni 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 Ms. Caproni is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Ms. Caproni.

Sincerely,

Judy Perry Martinez
Chair

cc: Valerie E. Caproni
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)

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.

April 19, 2013

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

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

Re: Judicial Nomination of Valerie Caproni

Dear Chairman Leahy and Senator Grassley:

We are writing to convey our support for the nomination of Valerie Caproni to be a Judge of the United States District Court for the Southern District of New York.

Each of us served in the Administration of President George W. Bush and came to know Valerie through her work as General Counsel of the FBI. That position, as you know, is both challenging and highly important, and requires an individual of the utmost integrity, professionalism, and capabilities as a lawyer.

Valerie embodied each of those virtues in her service as General Counsel. She is a talented lawyer and a straight-shooter who has devoted much of her professional career to public service and has always acted in a non-partisan way. We have watched her deal with important and difficult issues with great skill, judgment, and honesty. And from her experiences at the FBI and before that as a federal prosecutor in New York, she has a deep understanding and appreciation for the work and needs of law enforcement, including the importance within the law enforcement community of careful adherence to the law. We believe those qualities in particular make Valerie an excellent choice for the federal bench. We strongly support her nomination, and recommend her confirmation without reservation.

Thank you for this opportunity to express our views.

Sincerely,

Brian A. Benczkowski
Chief of Staff, Office of the Attorney General (2008-2009)

Steven G. Bradbury
Acting Assistant Attorney General and Principal Deputy, Office of Legal Counsel, U.S. Department of Justice (2004-2009)

Gus P. Coldebella
General Counsel (acting), Department of Homeland Security (2007-2009)

Elisebeth C. Cook
Assistant Attorney General for Legal Policy (2008-2009)

John A. Eisenberg
Associate Deputy Attorney General (2008-2009) and Deputy Assistant Attorney General, Office of Legal Counsel (2006-2008)

Mark Filip
Deputy Attorney General (2008-2009) and United States District Judge, Northern District of Illinois (2004-2008)

Alice S. Fisher
Assistant Attorney General, Criminal Division (2005-2008)

Jack L. Goldsmith
Assistant Attorney General, Office of Legal Counsel (2003-2004)

Peter D. Keisler
Acting Attorney General (2007) and Assistant Attorney General, Civil Division (2003-2007)

Robert D. McCallum
Assistant Attorney General, Civil Division (2001-2003), Associate Attorney General (2003-2006) and United States Ambassador to Australia (2006-2009)

Paul J. McNulty
Deputy Attorney General (2005-2007) and United States Attorney, Eastern District of Virginia (2001-2005)

Scott W. Muller
General Counsel, Central Intelligence Agency (2003-2004)

Carl J. Nichols
Deputy Assistant Attorney General Civil Division (2005-2008) and Principal Deputy Associate Attorney General (2008-2009)

Patrick F. Philbin
Associate Deputy Attorney General (2003-2005) and Deputy Assistant Attorney General, Office of Legal Counsel (2001-2003)

Benjamin A. Powell
General Counsel, Office of the Director of National Intelligence (2006-2009)

J. Patrick Rowan
Assistant Attorney General for National Security (2008-2009)

Jeffrey A. Taylor
United States Attorney, District of Columbia (2006-2009)

Kenneth L. Wainstein
Homeland Security Advisor to President Bush (2008-09), Assistant Attorney General for National Security (2006-08), United States Attorney (2004-06) and FBI General Counsel and Chief of Staff (2002-04)

cc: Senator Blumenthal
Senator Coons
Senator Cornyn
Senator Cruz
Senator Durbin
Senator Feinstein
Senator Flake
Senator Franken
Senator Gillibrand
Senator Graham
Senator Hatch
Senator Hirono
Senator Klobuchar
Senator Lee
Senator Schumer
Senator Sessions
Senator Whitehouse

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Please respond to:
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Email: judy.martinez@ngc.com

AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

April 16, 2013

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

Re: Nomination of Vernon S. Broderick
To the United States District Court for the Southern District of NY

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Vernon S. Broderick 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 for this position Mr. Broderick is Unanimously Well Qualified, one recusal recorded.

A copy of this letter has been provided to Mr. Broderick.

Sincerely,

Judy Perry Martinez
Chair

cc: Vernon S. Broderick, Esq. (via email)
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)

This letter was sent to The 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 April 16, 2013.

Remarks of Senator Gillibrand
Introduction of Valerie Caproni at Senate Judiciary Committee Hearing
Thursday, May 23, 2013
5.3 minutes

Remarks:

Thank you, Mr. Chairman and distinguished members of the committee. I am honored to be here today to introduce Valerie Caproni, and I am pleased to offer my strong support of her nomination to the United States District Court for the Southern District of New York. I also want to recognize her sister who is joining us today, Ms. Bitsy Dedwylder. I also want to thank President Obama for acting on my recommendation and nominating another superbly qualified female jurist to the federal bench.

I also congratulate and recognize the other outstanding nominees, Derek Anthony "Tony" West, who has been nominated to serve as Associate Attorney General of the United States. As Acting Associate Attorney General, Tony West has proven himself to be knowledgeable, capable, and extremely effective as he has served the office of the Attorney General. And fellow New Yorker, Vernon S. Broderick, who has also been nominated to serve as a United States District Judge for the Southern District of New York.

Ms. Caproni, is a woman with impeccable credentials, incredible intellect and the type of fair minded judiciousness, one needs for the federal bench. Throughout her distinguished legal career, she has proven herself as an exceptional attorney.

Ms. Caproni, currently serves as Vice President and General Counsel for Northrop Grumman Corporation where her responsibilities include supervising all aspects of Northrop Grumman litigation and internal investigations. In her role, she leads all aspects of litigation for the company.

Ms. Caproni joined Northrop Grumman from her former position as General Counsel for the Federal Bureau of Investigation. The current FBI director, Robert Mueller, a 2001 George W. Bush appointee, who was asked to continue his serve by President Obama, personally called and asked Ms. Caproni to join the FBI as General Counsel a few years after the horrific attacks of September 11th.

Ms. Caproni has remarked that although the FBI has been tasked with the complex mission, of dually protecting Americans from terrorism, espionage, cyber-attacks and crime, while at the same time defending the civil liberties and civil rights of all Americans, it is not always done perfectly, but "in her experience, they always strive to do the right thing, and to maintain as a loadstar fealty to the Constitution and the rule of law."

Ms. Caproni has also served as director of the Pacific Regional Office of the Security and Exchange Commission, where she was responsible for the enforcement of regulatory programs of the SEC in the nine states. Most notably, during her tenure, she and her staff were able to enhance cooperation between the SEC and relevant U.S. Attorney's Offices, particularly with respect to offerings and financial fraud. Her career also includes time as Chief of the Criminal Division in the U.S. Attorney's Office for the Eastern District of New York and in private practice at Simpson Thatcher & Bartlett and at Cravath Swaine & Moore.

Her experience at Northrop Grumman , the Federal Bureau of Investigation, the Securities and Exchange Commission and the U.S. Attorney's Office, along with her private sector practice, will serve her well on the bench. Ms. Caproni's breadth and depth of experience speaks for itself.

She has received a rating of unanimously well qualified by the American Bar Association and has bipartisan support from across the ideological spectrum.

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.

While it's true that women have come a long way in filling the ranks of the legal world, we still have a long way to go to equality.

I have no doubt that having Ms. Caproni serving in the federal judiciary will bring us closer to that goal.

I was honored to recommend her for this position, and I urge the swift approval of her nomination.

Thank you.

SENATOR BARBARA BOXER STATEMENT
ON TONY WEST, NOMINEE FOR ASSOCIATE ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE
May 23, 2013

Mr. Chairman, members of the Senate Committee on the Judiciary, I am pleased to offer my support for Tony West, nominee for Associate Attorney General at the Department of Justice.

Mr. West, a native Californian, has had a distinguished academic and professional career. After attending Harvard University, Mr. West returned to California to attend Stanford Law School, where he was President of the Law Review.

Mr. West's service in the public sector has included working as a Special Assistant to the Deputy Attorney General in the Department of Justice, five years as an Assistant United States Attorney in the Northern District of California, and Special Assistant Attorney General to the California Attorney General.

He has also worked as a partner at the San Francisco law firm of Morrison and Foerster.

In 2009 Mr. West was confirmed by the Senate as Assistant Attorney General for the Justice Department's Civil Division where he focused the Civil Division's efforts on prosecuting health care fraud and mortgage fraud. Mr. West also emphasized protecting consumers while serving on various intergovernmental consumer protection task forces.

Mr. West has served as Acting Associate Attorney General since March 2012, which has given him great experience in the job he is nominated for. I am confident that Mr. West will continue to serve the people of this country well, and I support his nomination and urge quick confirmation.

NOMINATIONS OF B. TODD JONES, NOMINEE TO BE DIRECTOR OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES; AND STUART F. DELERY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL OF THE CIVIL DIVISION

TUESDAY, JUNE 11, 2013

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

The Committee met, pursuant to notice, at 9:33 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Amy Klobuchar, presiding.

Present: Senators Klobuchar, Schumer, Durbin, Franken, Coons, Blumenthal, Hirono, Grassley, Lee, Cruz, and Flake.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. I would like to call the hearing to order. Thank you for coming today. We have a packed house. Today we are considering two nominees: Stuart Delery, to be the Assistant Attorney General for the Civil Division of the Justice Department; and B. Todd Jones, to be the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

First I will start with Mr. Delery. He is currently the Acting Assistant Attorney General for the Civil Division, the largest litigating component within the Department of Justice. He graduated Phi Beta Kappa from the University of Virginia and earned his J.D. from Yale Law School in 1993. After graduating from Yale, he went on to clerk for Chief Judge Gerald Tjoflat of the Eleventh Circuit Court of Appeals and Justices Sandra Day O'Connor and Byron White on the United States Supreme Court.

Mr. Delery then went on to private practice at Wilmer, Cutler and Pickering, now known as WilmerHale, where he was a litigator for 14 years. His practice ranged across complex corporate and securities litigation and administrative law matters.

In 2009, he left private practice for the Department of Justice where he held a number of leadership roles, including chief of staff and counselor to the Deputy Attorney General, Associate Deputy Attorney General, and senior counsel to the Attorney General. In these positions, he advised the Department's leadership on a range

of matters, including civil litigation, appeals, national security litigation, and policy.

As Acting Assistant Attorney General for the Civil Division, he supervises approximately 1,000 attorneys representing the United States, the President, and Cabinet officers and agencies. He supervises much of the Federal Government's civil litigation, which includes the defense of legal challenges to congressional statutes, administration policies, and Federal agency actions.

At the Justice Department, he has devoted significant attention to the Civil Division's extensive docket of national security cases. He has also worked closely with the Office of the Solicitor General to which he regularly makes recommendations concerning Supreme Court cases.

Mr. Delery also has a strong track record of pro bono service. For example, from 2007 to 2008, he supervised a team of lawyers that conducted an investigation on behalf of the District of Columbia's Office of Tax and Revenue into the theft of over $48 million in District of Columbia funds by a long-time employee. The employee pled guilty to Federal charges in 2008.

The Judiciary Committee has received letters in support of Mr. Delery's nomination from a bipartisan group of current and former Government officials and a group of Assistant Attorneys General for the Civil Division in the administrations of Presidents Reagan, George H.W. Bush, Clinton, and George W. Bush.

Now I will turn to Todd Jones, whom I have known for a very long time. We worked closely together as members of the Minnesota law enforcement community when he was in his first stint as U.S. Attorney for Minnesota when Bill Clinton was President and I was the county attorney for Hennepin County. For the past 2 years, Todd Jones has been doing the impossible: filling two crucial Federal law enforcement positions as Acting Director of the ATF and U.S. Attorney for the State of Minnesota. I see his son Anthony back there, and I know it has not been easy. Todd also has his wife, Margaret, and he also is a father to not just Anthony but four other children, and a good one at that. We welcome Anthony here today representing the family.

Todd Jones has an impressive background that has him well prepared to lead the ATF. After law school at the University of Minnesota, he entered the U.S. Marine Corps where he served on active duty as a judge advocate and infantry officer from 1983 until 1989. Two years later, he was called back to active duty during the first Iraq War. In addition to his military career and having the rare distinction of serving as U.S. Attorney under two different Presidents, Jones also has a strong record as a line prosecutor in the Minnesota U.S. Attorney's Office and an outstanding career in private practice.

Today we are here to consider his nomination to be the permanent Director of the ATF, a nomination that is supported by the National Association of Former U.S. Attorneys, including those who served under both Bush and Clinton administrations, several former Assistant U.S. Attorneys, the administrator of the Minnesota Bureau of Criminal Apprehension, the Minnesota County Attorneys Association, the International Association of Chiefs of

Police, the Fraternal Order of Police, and the ATF Association, to name just a few.

Given the ATF's important role in investigating crimes and terrorist incidents like the Marathon bombing, this should be a top priority for the United States Senate to have a permanent Director of the ATF. It does not make sense for the Director to be serving in a temporary capacity, and yet there has never been a permanent Director in place since 2006 when it became a Senate-confirmed position. I think that is wrong.

Something is wrong when the Senate fails to confirm the head of an agency for 7 years. Something is wrong when we have ATF agents, over 2,000 of them, on the front lines of major investigations like the Boston Marathon bombing while victims lay dismembered in the hospital, the agents were on the front line figuring out who did it and what happened, and yet the Senate still will not confirm a permanent leader of this agency.

It seems that some Members of the Senate do not want ATF to have the benefit of a confirmed Director, so for all the concerns that have been raised about the ATF, some of them very legitimate, confirming a full-time permanent Director should be a critical step to making sure the ATF is doing its job and doing it well.

Todd Jones has never turned down a tough assignment. He has faced challenging situations throughout his career, and taking over the ATF in the summer of 2011 was yet another example of that.

As everyone knows, the agency was under a tremendous amount of scrutiny and understandable criticism for the failed Fast and Furious Operation, and Jones was brought in to get the ATF back on its feet.

Since then, he has worked to revamp the agency's practices and policies. He has begun making essential reforms that are critical to the more than 2,300 agents who perform under pressure, day in and day out, both on major investigations like Boston and West, Texas, but also on lesser known investigations like serial arsons in California, cigarette smuggling rings that fund terrorists, and drug- and gun-trafficking undercover operations in Miami.

Before taking over the ATF, Jones served as both the head of the U.S. Attorney's Office in Minnesota under two Presidents and before that as Assistant U.S. Attorney. As an assistant, he was the lead prosecutor in a number of cases involving criminal drug conspiracies, money laundering, financial fraud, and violent crime in the 1990s. In the private sector, he became a partner at two very well respected Minnesota law firms: Robins, Kaplan and Greene, Espel.

To highlight some of his accomplishments, during his tenure as U.S. Attorney in Minnesota, that office, with Todd Jones at the helm, prosecuted Operation Rhino, which involved the criminal prosecution of Omer Abdi Mohamed, who recruited young Somali Americans to fight for terrorist groups in Somalia. Mohamed was indicted in November 2009 and pled guilty in July 2011 to conspiracy to murder, kidnap, and maim abroad. To date, the investigation has resulted in charges filed against 22 other individuals.

Operation High Life, which was a major drug-trafficking investigation involving more than 100 local, State, and Federal law en-

forcement officers and resulted in 26 indictments, 25 guilty pleas, and sentences of up to 200 months in prison.

Operation Brother's Keeper was a successful investigation and prosecution of a RICO case involving a regional 200-member gang which took 22 dangerous criminals off the street.

Operation Malverde received national attention and was a prosecution of 27 defendants associated with a Mexican drug cartel, including the apprehension of the cartel's regional leader and sentences as high as 20 years in prison.

Jones' office was also active in other areas like complex white-collar crime, including the successful prosecution of a $3.65 billion Ponzi scheme. That is $3.65 billion, the second biggest Ponzi scheme in United States history after Bernie Madoff.

Those are just a few of the examples of the cases that Todd Jones oversaw as U.S. Attorney in Minnesota.

He is well qualified and has a range of experiences and accomplishments that leave him more than ready to lead the ATF on a full-time basis—not on a temporary basis, not on an interim basis. He is a talented, dedicated, and hard-working public servant who has served his country in both the military and in civilian agencies.

I look forward to hearing from both of our nominees today and having a discussion about their past experiences and their outlook on the positions to which they have been nominated.

Thank you, both of you, and I will turn it over to Senator Grassley, the Ranking Member.

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

Senator GRASSLEY. Thank you very much.

As the Chairwoman knows and as I told her yesterday, I objected to holding this hearing today and requested the hearing be postponed. As we sit here today, there remains an open investigation by the Office of Special Counsel regarding Mr. Jones' conduct as U.S. Attorney. Generally, when a nominee is subject to an open investigation, the Committee does not move forward until the issues are resolved. And, of course, this is the sensible thing to do.

When there is a pending investigation, the Committee obviously does not have the full information about the nominee. In this case there are allegations of gross mismanagement and abuse of authority in Mr. Jones' office, and there is a complaint that Mr. Jones retaliated against a whistleblower. These are serious charges and ones that are of particular concern to me as a known defender of whistleblowers.

The public interest demand resolution of these issues. Members of the Committee are entitled to know if these charges have any merit. One way for that to happen is for the Committee to undertake its own investigation. That has not happened.

Another is to follow the usual Committee practice and wait for any third-party investigating agency to complete its process and reach conclusion. That has not taken place either. So we are left today to take Mr. Jones' word. We have no way of independently verifying what he says to ascertain the truth of the matter.

In addition to the open complaint, there are numerous unresolved issues regarding Mr. Jones and his record while serving as

U.S. Attorney and Acting ATF Director. That is why I requested a postponement of the hearing. While the Chairman did postpone the hearing 1 week, that did not cure the procedural defects with the nomination. So it is unfortunate that we go ahead with this hearing before an open complaint is resolved.

In April, when the Chairman started talking about a hearing for Mr. Jones, I was concerned about moving forward. There were a number of outstanding requests that I had made to Mr. Jones, and I had previously received a copy of an anonymous letter to the Office of Special Counsel making vicious allegations against Mr. Jones. I sent a letter to OSC on April the 8th asking for an update on those allegations. On April the 12th, OSC responded that there were two pending matters involving the U.S. Attorney's Office, District of Minnesota, where Mr. Jones is U.S. Attorney. The first matter was a prohibited personnel practice complaint, and the second was a whistleblower disclosure alleging gross mismanagement and abuses of authority.

On May the 28th, the Chairman sent out a notice for a hearing for Mr. Jones to be held the following week. The next day, on May 29th, I sent a letter raising my concerns about proceeding with a nominee who had open complaints and asked that the hearing be postponed consistent with previous Committee practice.

On June the 3rd, the Chairman postponed the hearing 1 week. However, in doing so, the Chairman expressed disappointment that the April OSC letter had been publicly disclosed. A continuing justification for holding this hearing today is that, based on this disclosure, the nominee should have an opportunity to respond. But, of course, there was nothing confidential in the OSC letter. In fact, I am not about to hide this issue from the public. It is relevant to our inquiry as to the qualifications of the nominee. If others want to hide this information, that, of course, would be their decision.

Additionally, there were numerous allegations that Republicans were holding up the nominee for no good reason. The OSC letter clearly identified why Mr. Jones' hearing was not going forward at this time. That justification remains valid today. Again, this would be consistent with prior Committee practice.

Furthermore, everyone knows that Mr. Jones' appearance today is no substitute for a full investigation. We know the investigation is open, so even if we ask questions today, we cannot rely on the information we receive. The nomination hearing is nothing like the investigative process conducted by the Office of Special Counsel. In a full OSC inquiry, there would be interviews with complaining witnesses, a review of documents, and interviews with line attorneys and law enforcement officials in Minnesota. We have access to none of these at this point. We only have one witness, the nominee, who is able to offer up his side of the story. So where are the whistleblowers? Where are other Assistant U.S. Attorneys and staff members? Who is offering the other side of the story?

We did receive a token offer from the majority for one witness. That offer came Sunday night, a little more than 36 hours ago. And then late yesterday, we received from the majority an offer to conduct some interviews this coming Friday after today's hearing. Now, that is quite perplexing to me. We are going to begin the investigation after the hearing is concluded. When has the Com-

mittee ever conducted an investigation after the hearing for that nominee?

On June the 4th, I suggested to the Chairman that a mere one-week postponement of the hearing would not allow sufficient time for open matters to be resolved. We had no reason to believe that the OSC investigation would be closed. It seems to me that if the majority did not want to wait until the OSC completed its investigation, the Committee would be obligated to fully investigate the matter for itself. I, therefore, suggested that we begin the process by at least calling additional witnesses to testify at today's hearing.

On June the 5th, OSC provided the Committee with an update on two pending cases. It reported that while the whistleblower disclosure case had been closed, the prohibited personnel practice complaint was moving to mediation for the time being.

On June the 6th, the Chairman reported to me that he had been notified by OSC that it had reached a resolution on the retaliation allegations against Mr. Jones and that that investigation was now closed. This directly contradicted the information I had received. I again suggested that additional witnesses might be necessary. On Sunday night, 36 hours ago, my staff was notified by the majority staff that the Chairman agreed to one minority witness. Of course, by that time, there was no reasonable way that a witness could be contacted or arrange for travel on Monday for appearance on Tuesday morning.

Yesterday I contacted the Special Counsel inquiring to her availability to testify to at least explain more fully the status of the complaints. Ms. Lerner replied, "I am unavailable to testify tomorrow about this matter. Moreover, it would not be appropriate for me to provide any additional information about the pending case."

Ms. Lerner confirmed for the second time that the investigation remained open. She stated, "The reassignment of the case for mediation did not result in the matter being closed."

Based on all of this, I cannot help but conclude that the majority is intent on jamming this nomination through the Committee no matter what.

So here we are left with an open investigation of serious allegations of whistleblower retaliation, and these are not unsubstantiated charges. In fact, of all the complaints receive by OSC, only about 10 percent are chosen for further investigation. This case was one of them. Why did the career nonpartisan staff of OSC forward the case for investigation? Presumably because they thought it needed to be looked into. That says something about the likely merits of the case.

There are also indications of a larger pattern here, one known to OSC. First, Acting Director Jones in a video sent to all ATF agents stated, "If you do not respect the chain of command, if you do not find the appropriate way to raise your concerns to your leadership, there will be consequences."

Now, that throws a lot of cold water on anybody who might want to whistleblow under the law. This video was seen by several employees in the U.S. Attorney's Office of Minnesota, also headed by Mr. Jones in his other capacity. These employees anonymously wrote to the Office of Special Counsel asking for "a review of the patterns, practices, treatment, and abuse that they have suffered."

They reference the ATF video, stating that they had "felt for the employees of ATF as we, too, have had the same types of statements made to us."

They then said Mr. Jones "had instituted a climate of fear, had pushed employees out of the office, dismissed employees wrongly, violated the hiring practices of EEOC, and put in place an Orwellian style of management that continues to polarize the office."

Next, a former special agent in charge of FBI's Minnesota Division, Mr. Donald Oswald, wrote to this Committee voicing concerns about Mr. Jones. In that letter he wrote, "As a retired FBI senior executive, I am one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to the Federal law enforcement community without fear of retaliation or retribution from him."

Of course, those are chilling words. He cautioned, "Mr. Jones was and still remains a significant impediment for Federal law enforcement to effectively protect the citizens of Minnesota."

The concerns and allegations in Mr. Oswald's letter were corroborated by another Assistant U.S. Attorney in Mr. Jones' office, Mr. Jeffrey Paulson. Yesterday Mr. Paulson gave his consent that his whistleblower disclosure complaint be released to the Committee. It contains a detailed account of the mismanagement, abuse of authority, and other problems within the office. It also details Mr. Jones' negative attitude towards whistleblowers and retaliatory action he took against Mr. Paulson. We received this document late yesterday afternoon. We are still reviewing the document. OSC requested of the Chairman that the file be designated "Committee confidential."

Last evening, my staff informed the Chairman's staff that I would be asking questions based on this document. We asked the Chairman's staff to let us know if he intended to designate the document "Committee confidential." To my knowledge, the Chairman has not done so. I certainly do not think that it would be appropriate to hide this information. I see no reason, given Mr. Paulson's waiver, why this should not be available as part of the full record. In fact, I was told repeatedly that today's hearing, this very day, would be my one opportunity to ask Mr. Jones any questions that I wished, and I certainly intend to ask Mr. Jones questions about the allegations described in the complaint.

I have additional procedural problems with this nomination today, minor, but one which illustrates another basic breakdown of routine protocol and the normal Committee process was the delivery of certain routine nomination materials. When I received a routine file required of all nominees, I noted missing pages, two separate documents. I requested these from the White House on May the 28th. One of the requested documents was delivered to my office last night at 9:58 p.m. There was no explanation for the delay. I have yet to receive the other requested document.

Now, it is no secret that there have been a number of controversial events that Mr. Jones has been involved in to one degree or another. I have sent numerous letters to the Department requesting information from or about Mr. Jones. In many cases I have received no response or an incomplete response, and here is a sampling.

On Fast and Furious subpoenaed documents, on October 12, 2011, the House Oversight and Government Relations Committee requested records of the Attorney General's Advisory Committee related to Operation Fast and Furious during a period that Mr. Jones was committee chair. I reiterated that request on April the 10th this year.

Secondly, ATF accountability for Fast and Furious. On October 19, 2012, January 15, 2013, I requested information on which ATF employees would be disciplined for their roles in Fast and Furious.

Three, Fast and Furious interview requests. On October 7, 2011, through January 2012, I requested staff interviews with Mr. Jones regarding Fast and Furious. I reiterated the request to Mr. Jones April 10, 2013. The interview request on Reno, Utah, ATF, U.S. Attorney's Office breakdown. My April 10, 2013, letter also indicated that Mr. Jones' failure to act on Reno management issues was another area of question to be covered in the staff interview.

Five, interview request on Operation Fearless. An April 10, 2013, letter indicating that the botched Operation Fearless in Milwaukee was another area of questions to be covered in the staff interview.

Six, document request of Operation Fearless. On May 10, 2013, I sent Mr. Jones a letter requesting a copy of the Office of Professional Responsibility's Security Operations Report on the botched Milwaukee storefront operation.

Now, what has been the reply to all these requests? On June 4, 2013, nearly 2 months after my requests for many of these items, I received a letter from the Department of Justice stating in part, "Mr. Jones looks forward to answering your questions about these matters during this nomination hearing before the Senate Judiciary Committee." I regret that the Chairman has allowed the Department of Justice to dictate to us how our oversight investigation will be conducted. Furthermore, it is disappointing that the Department was allowed to hijack this nomination hearing to suit their purpose, not ours.

But since we have held zero hearings dedicated to Fast and Furious in this Committee, perhaps I should be happy that we now have an opportunity to ask questions at all. The same goes for other matters that I have mentioned.

On the St. Paul quid pro quo matter, I was able to have a staff interview with Mr. Jones. Just to remind my colleagues about this issue, I will give a brief summary.

February 3, 2012, the Department of Justice and the city of St. Paul struck a deal. The terms of the quid pro quo were as follows: The Department declined to intervene in two False Claims Act cases that were pending against St. Paul, and St. Paul withdrew its petition before the U.S. Supreme Court in *Magner*, a case that observers believed would invalidate the use of disparate impact theory under the Fair Housing Act.

But this was no ordinary settlement. Instead of furthering the ends of justice, this settlement prevented the courts from reviewing potentially meritorious claims and recovering hundreds of millions of dollars to the U.S. Treasury.

The U.S. Attorney in Minnesota at the time of the quid pro quo, Mr. Jones was serving both as U.S. Attorney and Acting Director of the Bureau of Alcohol, Tobacco, and Firearms. Mr. Jones was

interviewed by Committee staff as part of the investigation March 8, 2013. However, before agreeing to be interviewed, the Department demanded that staff not be permitted to ask Mr. Jones any questions other than those involving the quid pro quo. Questions remain about whether he was effectively managing both jobs as U.S. Attorney and the Acting Director.

A further example: When asked by Committee staff about his failure to attend the seminal meeting between the Department's Civil Division and representatives from the city of St. Paul, which occurred December 2011, he stated that he did not attend because he had an event at ATF that precluded his attendance. When pressed further, Mr. Jones indicated the important event an ATF was a holiday party called "Sweet Treats," and he felt it was more important that he attend the event than it was to attend the seminal meeting on two pending False Claims Act cases in his district.

So there are many issues to cover in this hearing today and beyond. For his part, in a June 10, 2013, article in the Minneapolis Star Tribune, Mr. Jones said, "I am looking forward to meeting with the Committee and answering all their questions."

Now, I hope that that is the case today, that I will finally get some answers. But even so, many questions remain for the nominee.

The first question is, given the open complaint and all the other concerns that I have addressed, why are we even here today? I do not think anyone can provide a good answer to that question. Proceeding today is premature. Frankly, it is unfair to the nominee—unfair to the nominee to force these questions today before the OSC process takes its course. But if the Chair wants to insist on proceeding, it would be unfair to the public if we failed to perform our due diligence and examine all of these issues very carefully.

Thank you.

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

Senator KLOBUCHAR. Thank you, Senator Grassley. And you will have that opportunity now after we hear the opening statements to ask the nominees questions. I will point out that the nominee wanted to go forward with this hearing. I think he believes that the ATF deserves better. When there are people on the front line investigating these crimes, they deserve better than not having a permanent Director for 7 years because the Senate will not confirm anyone. I just think that is wrong.

In response to some of the points you have made, I would prefer to have Director Jones answer these questions. But, first of all, to make clear, he came in after Fast and Furious—after Fast and Furious—and was asked to come in to clean it up. And I am sure we can hear from him about some of the things that he did.

Secondly, on the issue of the St. Paul case, which has, I know, been well discussed during the nomination of Mr. Perez, Mr. Jones agreed to be questioned for an entire day by your staff and Goodlatte's staff in the House.

Third, I would note that as far as the complaint that you have brought up within the office, I would first note that Mr. Jones supervises 2,300 people with the ATF, 125 with the U.S. Attorney's Office. As Mr. Delery will tell anyone here, it is not always easy

to supervise lawyers and cops, but he has done his best job. I think it is very important that that complaint be heard out, and that is what is happening now. But to clarify the timeline here, Todd Jones was nominated in January. By March, the Committee-required materials on his nomination had been received and made available to Senator Grassley and his staff. A planned April hearing over Mr. Jones' nomination was delayed after the Committee was notified of the complaint filed with the U.S. Office of Special Counsel. Chairman Leahy intended to wait until after OSC had finished its work, work that is meant to be confidential, before holding this hearing.

In late April, after these allegations were unnecessarily made public, the Chairman decided to proceed so that Todd Jones could publicly defend his reputation.

Today's hearing was originally noticed for a week ago, but at the Ranking Member's request, it was postponed until today.

Last week, OSC notified the Committee that the underlying complaint made against Mr. Jones of management failures was closed due to insufficient evidence, and that the second allegations made of retaliation for raising the underlying management issues with Todd Jones, as for that, as Senator Grassley points out, the parties agreed to mediation. That is the procedural status. Part of it was dismissed. The other part, the parties have willingly both agreed to mediation, as often happens in employee matters across the Government. Satisfied that the issues before the OSC were being resolved, Chairman Leahy determined that today's hearing should move forward, and he asked me to chair it.

This past Friday, Senator Grassley notified the Chairman that he intended to invoke a not very much used Senate rule—in fact, as far as I know, we have not seen witnesses to be called in hearings involving nominees that are not at the Cabinet level. He decided to invoke a Senate rule to have outside witnesses testify at today's hearing. Instead of saying no to that request, the Chairman agreed to that request. I personally called Senator Grassley on Sunday morning to let him know that we had agreed to that request, and we found our own witness. Then Senator Grassley said he did not have time to get the witness. Chairman Leahy sought to accommodate the Ranking Member by offering to invite outside witnesses to be cleared to come before the Committee today, and the witness was not ready. So that is what the procedural status is of that particular allegation.

The other thing I did want to note, I think we all know that crime rates are affected by many things—by work of police, by work of prosecutors, by many things. But I will note as we look at the bigger picture here of Mr. Jones as U.S. Attorney in Minnesota from 1998 to 2001—that would be his first term as U.S. Attorney under President Clinton—the violent crime rate decreased by 15 percent, and so far during his second tenure, which began in 2009, the FBI statistics show that the violent crime rate has already decreased by 9 percent. I do not hold him responsible for those numbers. I just want to note that because of the work that goes on between the local, State, and Federal law enforcement in Minnesota, they have had some major successes.

I would also note that Tom Heffelfinger, who was appointed U.S. Attorney by both Presidents George H.W. Bush and his son, George W. Bush, also serving two terms under Republican Presidents, specifically rebutted the allegations in the former FBI SAC's letter, and he said this: "One year in Minnesota is hardly long enough to learn how to shovel snow, much less long enough to learn what Mr. Jones' reputation is among local, State, and Federal law enforcement officials."

Ralph Boelter, the special agent in charge of the FBI Minneapolis office from 2007 to 2011, told the Associated Press that he had a good relationship with Jones. "We were in sync," he said. "Boelter said he did not experience anything like the behavior Oswald described. He said when he had an issue, Jones was 'attentive to it, he was sensitive to it and he responded to it.'"

I think anyone involved in law enforcement knows there are going to be disagreements, there are going to be issues. People have different interpretations of decisions. There are outside forces at work. In this case, Todd Jones was supervising two major offices at the same time for nearly 2 years, and it is my belief that the ATF deserves a permanent head, and I hope we can now go forward with this hearing and with the testimony.

So, with that, I am going to swear in the witnesses here, or the nominees. 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?

Mr. JONES. I do.

Mr. DELERY. I do.

Senator KLOBUCHAR. Thank you. We will start with Mr. Jones.

STATEMENT OF B. TODD JONES, NOMINEE TO BE DIRECTOR OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Mr. JONES. Good morning, Madam Chairwoman, Ranking Member Grassley, and Members of the Committee. Thank you for those generous introductions and the recitation of my entire professional career and for the chance to be here today to answer questions. I am honored to be considered as the President's nominee as the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Permit me a moment to thank my family for their incredible love and support. As you mentioned, Senator, my oldest son, Anthony, is here representing the family, but my wife, Margaret, is the tie that binds our family together. She shouldered much of the burdens and joys that come with raising five kids. She is in St. Paul with my youngest son, Lucas, who just finished his junior year of high school. My two daughters are there with her in St. Paul. My youngest daughter, Monica, recently graduated from the University of Minnesota and is moving to Seattle in the next week to start her career in her life. And my oldest daughter, Stephanie, is on home leave from teaching in Nicaragua. So the core group is there in Minnesota. My other son, Michael, is a graduate student in architecture in Seattle, and hopefully he will keep an eye on Monica when she gets out there. But as you mentioned, Senator, my oldest son, Anthony, is here. He lives here in DC. He works at the House of Representatives. We did not get to see much of each other the

first couple years of his life because I was deployed pretty regularly in the Marine Corps. But if you choose to approve this nomination, Anthony is probably going to find himself with a new roommate.

Over the years, my family has sacrificed a great deal to allow me to pursue a career in public service, and that career began in 1977, when I was fortunate enough to do constituency work for Senator Hubert Humphrey, who epitomized public service in the best Minnesota tradition, and he inspired me to follow that path.

And as was mentioned, after graduating from law school at the University of Minnesota, I joined the United States Marine Corps, and that was a decision that changed my life and made me the person that you see sitting before you today.

My formal leadership training began in the Marine Corps, and while I joined to be a trial lawyer, much to Margaret's chagrin, I was so energized by the experience, the challenges, the spirit, and camaraderie of basic training that I stayed an infantry officer for the first several years of my active-duty time.

During that time, I learned the importance of concepts like unit cohesion, readiness and training, and staying focused on the mission. The Marines taught me about leadership and leading people toward a common goal. And in the end, I learned it was not ever about me. It was about the team. It was about the unit. It was about the collective work together to attain that goal.

I have continued to employ those principles during the two times I have been U.S. Attorney in the District of Minnesota, a job that it has been an honor and a privilege to serve in, and as the Senator mentioned, my team in Minnesota has tackled a variety of complex cases from the largest Ponzi schemes to national security work we do investigating the terrorist organization Al-Shabaab. And I have continued to rely on those experiences in my current capacity as Acting Director of ATF.

And when I came to ATF in September 2011, I found an agency in distress. Poor morale undermined the efforts of the overwhelming majority of ATF. These hardworking, devoted public servants are committed, absolutely committed to the mission of professional law enforcement. I listened to them the first several months I was there. I learned a lot from them. And I took firm, immediate steps to address their concerns and the strategic needs of the Bureau.

I built a new leadership team, appointing 22 new special agents in charge, 23 headquarters executives, conducted a top-to-bottom review of all ATF policies and procedures, and we have overhauled nearly 50 orders and directives. And since my arrival, I have worked to refocus the Bureau on its mission to combat violent crime and to enhance public safety. And I am proud to say that the men and women at ATF have responded with professionalism and dedication.

Senator, you mentioned some of the recent events that ATF has been involved in from Newtown to Boston, from West, Texas, to Stockton, California. And we will continue to do our job, and should the Senate confirm my appointment, I look forward to leading these men and women permanently and to help them carry out this very important mission.

And I look forward to answering your questions. Thank you.

[The biographical information and the prepared statement of Mr. Jones appear as submissions for the record.]

Senator KLOBUCHAR. Thank you very much.

Mr. Delery, it looks like you have a happy family behind you there, so please start.

STATEMENT OF STUART F. DELERY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL OF THE CIVIL DIVISION

Mr. DELERY. Thank you, Madam Chairwoman, Ranking Member Grassley, and Members of the Committee. I am deeply honored to appear before you today as the nominee to be Assistant Attorney General for the Civil Division, and I thank you for your consideration. I would also at the outset like to thank the President for nominating me and the Attorney General for his support.

I do have a number of family members here today, and with the Chair's invitation, I would like to introduce them.

Senator KLOBUCHAR. Please do. I think I can tell who they are, though.

Mr. DELERY. First is my partner, Richard Gervase. I would not be here without the support that he has given me over the last 20 years, since we were classmates in law school. And in addition to being a great father, he is a terrific lawyer, and I have been improved by his intelligence, judgment, integrity, and sense of justice.

Our children, Michael and Sebastian, are the joys of my life, and they are here today to see a little bit about how their Government works, so I thank them for doing that.

And I owe a deep debt to my parents for the firm foundation that they gave me. My father, Gus Delery, was an engineer who worked his entire career for Louisiana Power and Light, and he passed away back in 1996, but set a striking example for me of hard work, dedication, and character, and I miss him. But my mother, Elizabeth Towe, is here along with her husband, Harry Towe, and Mom was the first women's athletics director at Tulane University, and I watched as she built a program from the ground up. And I have kept those lessons in mind as I have learned myself how to be a leader.

Both Mom and Harry are the children of people who were in public service. My grandfather, in addition to serving in the Army in both World War I and World War II, was a career lawyer in the Justice Department for more than 30 years, including in the Civil Division, and so I am honored to be following in his footsteps. And Harry's father was a Congressman from New Jersey, a Republican, in the 1940s and 1950s.

I also have my sister here, Janet Delery, who is a school teacher in Charlotte, North Carolina, and she made it here about 1:30 in the morning because of the storms. I am grateful that she persevered to be here.

And, finally, one of Harry's daughters, Margaret Kirtland, is here. She flew from her home in New Orleans to North Carolina to help Mom and Harry get here today, and so I am very grateful to her for doing that.

And then, finally, I have a number of other friends here. I am very touched that they are here, and in particular, my colleagues in the Justice Department.

Madam Chairwoman, it has been a real privilege to work with the talented and dedicated lawyers and staff of the Civil Division over the past year, and it is an honor to be nominated to lead them now.

The Division's greatest resource is its people who come to work every day with a single-minded dedication to protecting the interests of the country and its citizens, whether by defending Government programs and the national security or safeguarding taxpayer funds from fraud or protecting the health and safety of all Americans. If I am fortunate enough to be confirmed, I will bring to this job a commitment to zealous in court on behalf of our Nation, to giving candid advice, to hearing all sides of an issue with fairness and respect, and perhaps most importantly, to working tirelessly with our strong team of career professionals to defend and advance the interests of the United States.

And so, again, I thank you for your consideration, and I look forward to any questions that you may have.

[The biographical information and the prepared statement of Mr. Delery appear as submissions for the record.]

Senator KLOBUCHAR. Thank you very much, Mr. Delery.

I note that Senator Durbin was here earlier, and he is going to put some questions on the record because he has to go to a Defense hearing that is important. And I know Senator Coons is going to try to return, and others will be here.

[The questions of Senator Durbin appear as a submission for the record.]

Senator KLOBUCHAR. I guess I will start with a question for you. I will explain to your family, to your sons especially, if less of the questions are devoted to your Dad, that does not mean it is a bad thing. All right?

[Laughter.]

Senator KLOBUCHAR. Mr. Delery, can you—I think any of us can read the job description of Assistant Attorney General for the Civil Division, but having done this role on an interim basis, how do you see your role? What are your primary responsibilities? What direction do you want to take the Division?

Mr. DELERY. Well, Senator, thank you for giving me a chance to talk a little bit about what the Division does and the vision for it.

There are really two main roles. The Civil Division defends the Government when it is sued, whether that is in a constitutional challenge or a suit for money damages, for breach of contract or personal liability. But then we also bring affirmative cases to pursue money that is lost to the taxpayers because of fraud, waste, and abuse or to protect consumers and to protect the safety of the food that we eat and the medicines that we take. And so if I am fortunate enough to be confirmed, I will continue to pursue several priorities. One of them, and the most important for the Department and the Division, is protecting national security. We do play a role in a number of pieces of litigation related to those issues.

I will also continue to use the powerful tool of the False Claims Act as well as other tools to pursue fraud against the Government. Last fiscal year, we had a record recovery of more than—or just about $5 billion under the False Claims Act that I know Senator Grassley and other Members of this Committee have supported

over the years, and I will continue to make that a priority, if confirmed.

And then, finally, our work related to health and safety, to pursuing cases like the one that we brought a few months ago against executives of a peanut butter manufacturer because of a salmonella outbreak. We take very seriously our partnership on those issues with the FDA and will continue to work to protect the safety of the food we eat, medicines, the toys children play with, and the like.

Senator KLOBUCHAR. Very good. Thank you. Actually, as you probably know, three of the victims from that peanut butter outbreak were from Minnesota, including a grandmother who one day just ate a piece of toast, and they lost her. And she was an incredible woman, so I really thank you for going forward with that somewhat difficult case. Thank you for doing that.

Mr. DELERY. Thank you.

Senator KLOBUCHAR. Mr. Jones, as I noted, the ATF has not had a permanent Director since 2006 when the law was changed requiring the Director to be Senate-confirmed. I think Senator Durbin has either put in or is talking about putting in a bill to put the ATF under the FBI because of the fact that we just cannot continue like this. It is not fair to you. It is not fair to the agency. And I think it has to change, and one way we can show it has changed is by confirming you as Director.

There are many reasons why the heads of certain agencies are made confirmable by the Senate, and one of those is because we want the individual to be fully accountable to Congress, and also the men and women who work at that agency.

First, I would like to ask you, why is it so important for the ATF to have a confirmed full-time Director? What will a confirmed Director mean for the roughly 2,300 agents of the ATF?

Mr. JONES. Thank you for that question, Senator, and I have given it a lot of thought. While I have learned over the last almost 2 years that ATF is a very resilient organization and there are great public servants there, I think it is absolutely critical that they have a permanent Director. Having been twice confirmed by this body as United States Senator, I know that the imprimatur of this organization is one that is really important. It has impacted morale. It does send a message not only to the employees within ATF that they have been so long without a permanent Director after having several actors over the last 7 years, it does impact morale.

I think it is also a fundamental question of good government because, as you mentioned, being a confirmed appointee does carry a certain amount of gravitas so that you can be a more effective advocate for resources, so that you can be accountable to this body and to the organization that you work with, in this case the Department of Justice. Decisiveness is a critical quality for anyone who is in a leadership position, but decisiveness with credibility I think is also absolutely critical. And a series of actors, no matter how skilled, does diminish the credibility that you are going to have continuity of operations, that the vision is going to stay sure, and that the mission will be accomplished.

So at its core, it is good government to have a confirmed Director at all of the agencies in the executive branch that are subject to Senate confirmation.

Senator KLOBUCHAR. Thank you.

All of us on this Committee had concerns about what happened during the Fast and Furious Operation. You were named Acting Director shortly after the Fast and Furious whistleblowers came forward. The President named you because he felt you had the knowledge, experience, and leadership to put the ATF back on the right path.

Can you tell us the steps you have taken and the safeguards you have put in place to make sure operations like that cannot happen again and that any major operation is fully vetted up the chain of command? And after something like Fast and Furious comes to light, we all want to know what appropriate disciplinary action is being taken against the people who acted wrongly. Could you also talk about the steps you have taken to discipline or terminate people involved?

Mr. JONES. Well, with respect to your first question, Senator, I think that it is important to note that the Inspector General did do an extensive report and made recommendations and identified problems. When I arrived at ATF in September of 2011, as I mentioned, it was an agency very much in distress, and the first thing that I did was go to the Phoenix Field Division and visit sort of the ground zero for a lot of the controversy that evolved.

But one of the first things that I did was look at who was in positions of responsibility, who was in leadership positions, and there has been a number of changes. None of the individuals who were identified in leadership positions during the Fast and Furious incident are currently in place. We have, as I mentioned, 22 new special agents in charge. We have a number of assistant directors. Six out of the eight assistant directors who help me as a team lead ATF are new, and all of them have experience as former special agents in charge.

We are continuously in the process of implementing and following through and executing on many of their recommendations made in the IG's report, but we did not wait for the IG's report to come out. We knew that there was a failure in leadership and oversight.

One of the first things we did was issue and clarify our firearms transfer policy with the underpinnings being that public safety always trumps investigative needs.

We have reviewed our undercover order. We have reviewed our confidential informant order. We have instituted and continue to exercise a monitored case program. But these are just some of the internal fixes. More than anything else, I think it was important to keep the agency's eye on what its underlying mission is, which is public safety, because ATF plays such a critical role within the Department of Justice in the fight against violent crime, in the explosives arena, in the arson arena. And it is important that we do not have public safety suffer as a result of continuous critical examination.

Senator KLOBUCHAR. Okay. I am going to have one more question and then hope to keep my questions under 10 minutes. If Sen-

ator Grassley could do the same, I am sure we will have a second round, and then so we will give the other Senators a chance here to ask some questions.

There have been questions raised about decreasing numbers of Federal prosecutions in Minnesota with respect to violent crimes, including gang, drug, and gun offenses. When I was county attorney in Hennepin County, I worked closely with you and your predecessors, the other U.S. Attorneys, to make sure that we tackled the tough criminal cases. I also worked with your successors, including Tom Heffelfinger, to make sure we made the most effective and efficient use of Federal resources.

I still remember after 9/11 that the U.S. Attorney's Office was focused in Minnesota, having caught one of the terrorists in our State, on those terrorism type cases, and our office, the county attorney's office, started doing many more white-collar cases at many higher amounts than we had done before. And I did that when Bush was President, working with the U.S. Attorney's Office. We took on significant more white-collar criminal prosecutions. So I understand how there can be this ebb and flow, depending on resources and depending on the types of crimes.

Gang, drug, and gun cases were some of the areas that I was focused on as county attorney. I know they are important to you, so I am hoping you can address the concerns that have been raised and explain why some of the numbers out of the U.S. Attorney's Office may be down. Is it a trend? Is it an anomaly? Is it something else? Thank you.

Mr. JONES. Senator, I believe that the statistics that you cite only tell part of the story. Over the last several years, the Department of Justice in general, and in particular the District of Minnesota, which is somewhat unique in that we cover the entire State and we have the full range of Federal challenges. We have got Indian country. We have got a border with Canada. We have a major metropolitan center with all of the respective violent gun crime, gang, drug, and financial fraud issues. It really has been a challenge in this period of diminishing resources—and not that the lack of resources is any excuse—to look and be smart about how we utilize those resources.

As you well know, our partnership with our State counterparts, the 87 county attorneys in Minnesota, is absolutely critical for us collectively to do our jobs, and what we have essentially done is looked at what are uniquely Federal issues that the State cannot handle, what are DOJ priorities like national security and Indian country, and where we have concurrent jurisdiction, as in the gun and drug area, we are making smart choices so that the worst of the worst, so that organizations who deal in drugs, so that armed career criminals are appropriately handled in Federal court.

Over the last several years, as you mentioned earlier, we have had a string of very complex cases that have gone to trial: Tom Petters; there is a trial with Frank Vennes going on right now; mortgage fraud cases; and, of course, our national security cases, two of which of those actually went to trial.

So the folks in the District of Minnesota U.S. Attorney's Office, both in the criminal and civil division, have been working very hard with a very active caseload. And our bottom line is we are fo-

cused on impact cases. We are focused on cases that augment what State and local prosecutors do, and we are focused on cases that fit within the priorities of the Department of Justice. And as a result, our raw numbers have dropped. But we are making a difference.

Senator KLOBUCHAR. Thank you very much. I will turn it over to Senator Grassley.

Senator GRASSLEY. Madam Chairman, before I ask questions, there are a couple things I want to clear up in your rebuttal to my statement.

She is absolutely right that there has been 6 years without a confirmed head, but remember that it was 2 years after the President was elected before a nominee was even sent up here. So we cannot confirm anybody that is not sent up here.

And then when Mr. Traver was sent up here, the Committee asked for additional information, which was never provided; therefore, he never had a hearing. And, of course, if the Committee asks for additional information and that information is not given and you cannot have a hearing without it, that obviously is either the nominee's or the White House's fault. Then Mr. Traver's nomination was withdrawn at the end of the last Congress, and Mr. Jones was nominated January 24th, and we started talking about the hearing in April.

Then there is one other point that I would make, and that is in regard to what you said, and it is not inaccurate, what you said, but I want to point out that when this goes to OSC and it is in mediation, there is a big difference between being resolved and the President—or the Chairman in his letter to me saying it is resolved, because OSC, as I said in my statement, has made very clear that it is not resolved.

Thank you, Mr. Delery, for speaking about false claims, because I ask every Attorney General nominee, wherever they are in the Department, about it because I am the author of that legislation, and I am very glad to know that you are going to use it vigorously.

Mr. Jones, you would not expect me to not be concerned about whistleblowers. I am sure you know my reputation in that area. And not every whistleblower would necessarily be right, but every whistleblower is entitled to a hearing, either when they are personally affected and retaliated against or in the case of somebody bringing information forward, they ought to have that information considered. And I have come to the conclusion a long time ago that whistleblowers are about as respected in their organization as skunks are at a picnic. So I think they need a lot of consideration because they give us a lot of valuable information.

On March 6, 2013, an employee of yours filed a complaint with Special Counsel alleging you personally undertook "a prohibited personnel action" against him in retaliation for his raising concerns about gross mismanagement within the U.S. Attorney's Office. This employee has 30 years as a Federal employee, 24 of those years in the U.S. Attorney's Office in Minnesota. The employee alleges that after bringing serious concerns about mismanagement in the office to your attention, he was suspended for 5 days without pay and involuntarily transferred to a new section in the office.

The complaint also raises allegations about the appointment of an attorney to a supervisory position despite concerns about her performance by Federal and State law enforcement and judges on the Federal bench. The Special Counsel wrote to us yesterday stating that the complaint was referred for investigation April of this year and that the investigation remains open with the possibility of mediation. Because the majority scheduled your hearing despite the fact that this investigation is pending, that is why I bring this matter up.

You were quoted in the Star Tribune as saying, "I am looking forward to meeting with the Committee and answering all their questions." Based on that, I am going to assume that you will answer the questions I ask you today.

First question: Mr. Oswald, former special agent in charge, FBI Minneapolis, wrote a detailed letter this January alleging you mismanaged the office and had "an atrocious professional reputation with the Federal law enforcement community." A 24-year veteran Assistant U.S. Attorney filed a complaint with the Office of Special Counsel against you which corroborates the account. Have you been interviewed by the Office of Special Counsel? And if so, when?

Mr. JONES. Senator, to answer your last question first, I am aware that the OSC has requested information from our office in the District of Minnesota. Because those complaints are confidential as a matter of law, I have not seen the substance of the complaints, nor can I comment on them. I have learned more from your statement today than I knew before I came here this morning about the nature and substance of the complaint.

I can assure you that I have always taken very seriously the duty my office has to follow all the laws and regulations, not engage in a prohibited personnel practice, and to be very sensitive to the issues surrounding those that you have so vigorously advocated for over the years with respect to whistleblower protection.

Senator GRASSLEY. So you have not been interviewed then by Special Counsel?

Mr. JONES. I have not, Senator.

Senator GRASSLEY. Other than the FBI special agent in charge and the Assistant U.S. Attorney who filed the complaint with the Office of Special Counsel, are you aware of any other individuals in your office who raised similar concerns? And if so, who?

Mr. JONES. I am not aware of any other complaints, Your Honor—Your Honor? Senator. This is like a courtroom.

[Laughter.]

Senator GRASSLEY. Well, I feel——

Mr. JONES. I feel like a defendant.

[Laughter.]

Senator GRASSLEY. And as a farmer, I feel honored.

Have you taken any adverse personnel actions against anyone who complained about how you were managing the office?

Mr. JONES. You know, Senator, that is—thank you for the question. I have had the opportunity to be in a management position both in the public and private sector. I have always tried to approach that position of responsibility with respect for those that I work for in a collaborative nature, but always with expectations, and I have——

Senator GRASSLEY. So I think the answer to my question is you do not feel you have taken any adverse action against anyone who complained about how you were managing the office.

Are you aware of the anonymous complaint filed July 20, 2012, signed by "Employees of the U.S. Attorney's Office for the District of Minnesota"? Those employees wrote—well, are you aware—well, no. Let me go on. Those employees wrote, "Since he became U.S. Attorney here in Minnesota, he has instituted a climate of fear, has pushed employees out of the office, dismissed employees wrongly, violated the hiring practices of EEOC, and put in place an Orwellian style of management that continues to polarize the office."

Did you at any time learn who these individuals were? Did you take any adverse personnel action against them?

Mr. JONES. Senator, I recently saw a copy of that anonymous letter. Again, I have not taken adverse actions against anyone that I have worked with. I was quite surprised by the nature of the allegations, whether it is at ATF or at the U.S. Attorney's Office. In both situations I came into a less than perfect environment, and I quite frankly have been an agent of change, and change is hard sometimes for individuals to deal with. And I have always had a focus on doing the right thing for the right reasons, and sometimes folks are not happy about the direction overall.

Senator GRASSLEY. Okay. Now, I am including in that statement about adverse personnel action an unwanted retaliatory transfer. Does that change your answer?

Mr. JONES. Again, Senator, I am not familiar with the OSC complaint, and I am at somewhat of a disadvantage with the facts. I can say that Privacy Act considerations do fit into the picture. I have a certain awareness about disciplinary processes, but, again, it has never been my practice to engage in retaliatory employment practices.

Senator GRASSLEY. Will you answer the complaints about the Assistant U.S. Attorney when the—because that is why you are here today. How are we supposed to ask about these allegations if we cannot ask you?

Mr. JONES. Well, quite frankly, Senator, I am at a disadvantage with the facts. There is a process in place. I have not seen the OSC complaint. I do know that our office, working with the Executive Office of U.S. Attorneys, is in the process of responding to the issues that you have talked about this morning, but I have not had the opportunity to either be interviewed or have any greater knowledge about what the OSC complaint is.

Senator GRASSLEY. Well, you know, I am kind of uncomfortable asking these questions because we should not have been moving forward with this hearing, but the Chairman said this was the opportunity for us to have this interview with you and to get these questions answered. And, of course, you agreed to answer all the questions, so I would ask that you answer them. But if you do not answer, you know, that is the way it has to be.

Do we want to go to the Senator from Connecticut?

Senator KLOBUCHAR. That would be very helpful, thank you, because he has something else. I appreciate that, Senator Grassley.

I also wanted to put on the record the letters from law enforcement in support of Todd Jones, including the Fraternal Order of

Police, the International Association of Chiefs of Police, former U.S. Attorneys including Tom Heffelfinger, the Republican appointee under both President Bushes, Members of Congress, Minnesota County Attorneys Association, several Minnesota county attorneys from across our State, the National District Attorneys Association, several former Assistant U.S. Attorneys, and the former magistrate judge for the District of Minnesota.

I did want to read one of the letters into the record from Beth Hill to Todd Jones. Ms. Hill's son, Otahl Saunders, his wife, and her 15-year-old daughter were murdered by two men in a brutal home invasion in St. Paul, Minnesota, in 2007. Unfortunately, the case lingered for 2 years. When Mr. Jones returned to the U.S. Attorney's Office in 2009, Ms. Hill contacted him and asked him to review the case. Mr. Jones' office investigated the case and obtained convictions against the perpetrators. In 2011, both of the men were sentenced to life in prison on three counts of murder.

In her letter she says, "In my son's keepsake box, I have the handwritten note that you sent me in response to my plea to you for justice for Otahl, Maria, and Brittany. You did not promise me anything but a commitment to review my case when you came into the office. Your note gave me hope and the strength to continue to fight for justice for my children."

She wrote to wish him well and success in his new leadership role at ATF, writing, "When the job feels like you cannot go on and the odds seem stacked against you, think about mothers like me who will rely on you to help stop senseless violence and move this country forward." I thought those were pretty powerful words, and I will also include that letter on the record.

We also have letters of support, as I mentioned, for Mr. Delery from former Justice Department officials from previous administrations, both Republican and Democratic, that will also be entered into the record.

[The letters appear as submissions for the record.]

Senator KLOBUCHAR. With that, I turn it over to Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Madam Chairman, and thank you both for being here today. I thank each of you for your public service, particularly, Mr. Jones, your service in the Marine Corps as well as in the United States Attorney's Office in Minnesota and, Mr. Delery, for your service in the Department of Justice as well as in private litigation.

Mr. Jones, as you well know probably better than any of us here, there has been a lot of debate about the ways to promote more prosecutions under existing law that is designed to prevent gun violence, and even for some of us who strongly favor improvements to that law, the question is: What can we do to promote more rigorous and vigorous enforcement of existing laws that relate to either illegal purchases or illegal possession of firearms? And my own view is that inadequate resources are a major reason for the lack of sufficient prosecutions or the failure to increase the number. And I would like you to comment on what you view as the reasons—or the ways that we can improve that rate of prosecution.

Mr. JONES. Well, two things, Senator. One is you need a vibrant and healthy ATF. Part of the reason I am here for this process is

because they need a confirmed Director. They have never had one, and for all the reasons we previously mentioned, that is an impediment to give stability, direction, and guidance, not—

Senator BLUMENTHAL. And I heard your testimony, and I agree that a confirmed leader is absolutely essential to provide direction and vision and the kind of basic leadership. But in addition to that?

Mr. JONES. Well, the ATF is not completely healthy. Its biggest challenge is its human capital. It has been subject, as some Federal agencies, to the ebb and flow of hiring, but one of our biggest challenges is in the next 5 years the attrition among our special agent community. The special agents are at the core of our criminal investigative processes, and because of the mandatory retirement age for Federal law enforcement, we are going to have nearly a third of our special agent community become retirement eligible.

The resources and the opportunity to bring on new special agents, which does take time, has not been sufficient for one-to-one replacement, and so——

Senator BLUMENTHAL. What is the median age of your agents?

Mr. JONES. Our special agent community is one of the more senior in Federal law enforcement. I do not know the median age, but it is a very experienced workforce, and because of the nature of the work that ATF does in arsons and explosives and investigations, it takes time to develop that expertise. We call it the "brain drain," and we are aggressively, even in the current environment, looking at that knowledge transfer. But that human capital for continuity and maintaining our current status and abilities is probably one of the biggest challenges we face over the next several years.

Senator BLUMENTHAL. And would resources help you to attract more qualified potential agents, special agents at the ATF?

Mr. JONES. You know, that helps, but I think some of the other constraints that we have been operating under with a hiring freeze, with some of our abilities to be—Schedule B, for example, to bring on agents, there is a lot of talent out there, and there is a lot of talent inside the Bureau. But what we need to do is very quickly match that up so that we do not diminish our capacity.

Senator BLUMENTHAL. ATF, as you know, has a strong history of responding to high-profile incidents and investigations, as you did in Sandy Hook. And perhaps you can talk about the ATF's role under your leadership at Sandy Hook, which was particularly important to my State of Connecticut and to me, having spent a lot of time there with the community.

Mr. JONES. Well, the tragic school shooting in Newtown at Sandy Hook was a seminal event for us personally and for ATF. ATF, of course, is one of several Federal law enforcement components, and so our immediate response, in addition to bringing agents from around the region down there, was, of course, to ensure the safety of the school and the community but, more importantly, to work with other Federal and State—importantly, the State Police and the local police department, as is our practice, to focus in on the firearms issues. There is an examination of the Federal firearms licensee that Mrs. Lanza purchased the weapon from. There was initial forensic work done with the weapons, but always in partnership with the Connecticut State Police, with the local police depart-

ment, and with our brother agency at the Federal Bureau of Investigation.

Senator BLUMENTHAL. I want to thank your agency and the special agents who were there for not only the rigor but also the sensitivity that they demonstrated from the very first hours that they arrived there and began interviewing everyone involved for a potential firearms violation, including some of the licensed firearms dealers in the area and others who might have knowledge working very closely with our State Police who led the investigation. The investigation is ongoing, as you know, and, again, my thanks to the special agents who were there and to your agency.

Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator.

Senator Flake.

Senator FLAKE. Thank you.

Acting Director Jones, in answer to a previous question, you stated that none of the individuals in leadership during Fast and Furious are now in place. What does that mean? Were they removed? Are they just gone by virtue of attrition? What does that mean?

Mr. JONES. What it means, Senator, is that folks that—individuals who were primarily in the Executive Service have either retired or resigned or have left the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The personnel processes can be somewhat dicey. The Privacy Act issues sort of preclude me from giving you a more fulsome description, but from the former Acting Director down to the group supervisor in the Phoenix Field Division, they are no longer in positions of responsibility and leadership within ATF.

Senator FLAKE. Was anyone disciplined?

Mr. JONES. Yes.

Senator FLAKE. Are you at liberty to share who and when?

Mr. JONES. Not really because of the privacy—I am being very dicey. We can respond once I get some clearance. I am being very careful and very respectful of the privacy issues that are involved with making disclosures with some specificity. But there was discipline imposed throughout the chain of individuals involved.

Senator FLAKE. Well, when you are at liberty to share that, we would certainly need to know that.

Can you tell us what disciplinary action was taken without revealing names?

Mr. JONES. We have a range of options internally, ranging from termination from employment, which would then be subject to a different appeal process, to demotions from your grades, down to moving people into non-supervisory positions.

Senator FLAKE. And which of those were taken, which of those actions?

Mr. JONES. I think a combination of all of them.

Senator FLAKE. So termination?

Mr. JONES. I think the full range of our disciplinary tools were utilized in handling the issues that arose as a result of the IG report and our own internal affairs examination.

Senator FLAKE. So from termination to demotion or removal——

Mr. JONES. You know, one of the challenges, Senator, to be quite candid with you is because of the leadership positions, the super-

visory nature of the positions, there were individuals who were eligible for retirement, and so in some instances the disciplinary process was cut off by the fact that individuals did submit resignations.

Senator FLAKE. Does that describe all of those who were——

Mr. JONES. Not all of them, Senator.

Senator FLAKE. So some of them actually were demoted or terminated.

Mr. JONES. Some individuals were on the disciplinary process that opted to retire if they were eligible.

Senator FLAKE. It is important for us to have that information and for what can be shared to be shared, because I can tell you, particularly coming from Arizona, which was the scene for a lot of this, there is a lot of mistrust, and people do not think that anybody is held to account at any time. And it is difficult for any of us to say with any surety that they were without this kind of information. So we will be following up, but to the extent that information can be put out in terms of disciplinary action, honoring any privacy rules that we have, but I think it is important to do so.

Let me just bring up one case. During your tenure as Acting Director of ATF, there was a disagreement between the Reno ATF that was alluded to by Senator Grassley—a disagreement between the Reno ATF and the U.S. Attorney's office for the District of Nevada that resulted in the ATF not being able to submit cases for prosecution for a full year, 2011 to 2012. The Reno Gazette Journal asserted that ATF's lack of action on this issue constituted a public safety threat, yet when the issue was brought to your attention, ATF whistleblowers said that you had mentioned that you had bigger things to worry about, and it was not until there was a letter from Senator Grassley that this issue was addressed and action was taken. But then it was just, as I understand it, to transfer agents to other offices, which left the Reno office understaffed.

Was this issue handled appropriately, in your view?

Mr. JONES. Well, this was yet again one of those issues that was what I call my inheritances, and let me assure you that public safety was never at risk in the District of Nevada. And as a U.S. Attorney, I was very dismayed when I first heard of a disconnect between the Federal prosecution office and ATF.

One of our challenges has been making sure that we have accountable leadership and oversight so I can assure you and the public in Nevada that we have got new leadership in the San Francisco Field Division, we have very good communications with the special agent in charge, very good communications with the Reno office, which is a satellite in Nevada from the Las Vegas. We have shifted agents, as I mentioned earlier. One of our resources challenges is where we are putting our limited resources based on the needs in the violent crime front. We currently have two full-time and soon to be three agents in Reno. We have enhanced the working relationship, and we are on a good path in Reno to fix whatever concerns historically existed there.

Senator FLAKE. So you believe you have moved swiftly enough on that particular case?

Mr. JONES. Yes, I do.

Senator FLAKE. Thank you.

Senator KLOBUCHAR. Thank you.

Senator Franken.

Senator FRANKEN. Thank you, Senator Klobuchar, for chairing this and for this hearing. I apologize for getting here a little late. I have been in the HELP Committee where we are doing the markup of the Elementary and Secondary Education Act reauthorization, so I am going to also have to be leaving.

But first, Mr. Jones, I would like to thank you for your service to the State of Minnesota. I know Senator Klobuchar feels the same way. After taking the bar exam, you did not join a law firm. You joined the United States Marines. And you have been serving our country in various capacities for much of your career since then, so I just wanted to start out by thanking you for that.

I also want to take this opportunity to acknowledge the many brave ATF agents who responded courageously and professionally to the bombing at the Boston Marathon and to the recent Texas plant explosion. Mr. Jones, your nomination to be ATF's permanent Director arose out of the shooting at Sandy Hook, but these other recent events remind us that the ATF's role extends beyond gun issues.

Mr. Delery, thank you for meeting with me. I enjoyed our discussion a few weeks ago. Congratulations on your nomination as well. You have done some tremendous work at the Department on issues like marriage equality and holding credit rating agencies accountable for their role in the financial collapse, so thank you for being here to answer the Committee's questions.

I will go right to my questions now. Mr. Jones, since you were named ATF's Acting Director in August of 2011, you somehow managed to run that Bureau while also serving as U.S. Attorney in Minnesota. So you have basically been asked to do two full-time jobs at once. If you are confirmed, you will be able to devote your full attention to ATF. That is important. We have been without a permanent ATF Director for about 7 years. Can you explain what it would mean for ATF to finally have a permanent confirmed Director in place?

Mr. JONES. Thank you for the question, Senator, and I think it is absolutely critical. As I mentioned earlier, I think at its core it is a good government issue. Not only does it send a positive message to the men and women within the Bureau of Alcohol, Tobacco, Firearms, and Explosives, but it sends the right message to the industries that we regulate and to our State and local law enforcement partners that there is a permanent person that has been given the stamp of approval to lead the organization going forward.

That has not diminished really over the last 7 years with the men and women in ATF performing their job. But it has been a challenge to have the change in direction.

When I was in the service, I remember leaders that I had that were good and the lessons taken away from them. But just as importantly, I remember the leaders that were bad and the lessons that were taken away from them. But having that steady hand on the tiller that can share with the men and women at ATF the vision, the mission, the execution to help keep the American public safe in those areas where we have jurisdiction I think is absolutely critical.

Senator FRANKEN. Thank you.

Mr. Jones, ATF works closely with State and local law enforcement authorities to investigate arsons, bombings, gun crimes, and acts of terrorism. I have heard from some Minnesota law enforcement officials who are concerned about the budget cuts from the sequester and that they could hamper this type of collaborative work. What is sequestration's impact on ATF?

Mr. JONES. Well, specifically with ATF, because it has been somewhat underresourced, we as an organization are resilient, but it will hurt. The President's proposed 2014 budget, I think, I believe, gets us on the path of being healthy. With the anticipated worst-case scenario from the sequester, potential sequester cuts, you are cutting bone. You are cutting bone, and you are impeding, I believe, our ability to be as effective as we have been, as lean as we have been over the last 4 or 5 years.

Senator FRANKEN. Thank you. My time is just about up. Would it be okay if I asked one more question, Madam Chair?

Senator KLOBUCHAR. Sure.

Senator FRANKEN. Mr. Jones, I was disappointed that the Senate was unable to pass the Manchin-Toomey amendment. Under current law, someone who cannot pass a background check to buy a gun simply can go to a gun show or to classified ads and get a gun anyway. The Manchin-Toomey amendment would expand the background check system to cover commercial guns sales.

I have heard from a lot of Minnesotans who support the proposal regardless of their views on other aspects of the President's gun violence prevention initiative, and this Committee heard a lot of testimony from law enforcement leaders who said that the background check saved lives.

What are your thoughts on this?

Mr. JONES. I believe that the background check system, the NICS system that is currently in place which, since 1998, has kept legal firearms out of the hands of nearly 1.5 million bad guys, has been effective. Is there room for improvement? Yes. Can we deal with the current system? We have. I followed with some interest the debate and will defer to this body and Congress generally to do what you do with respect to expanding or not expanding background checks. I can tell you that the current system is very effective in working within the limits that it is currently working. But there is always room for improvement, including tightening up what could be characterized as the gray market in firearms, because, of course, the background check only applies to those who choose to go to licensed firearms dealers to purchase or obtain guns.

Senator FRANKEN. Thank you.

Thank you, Madam Chair.

Senator KLOBUCHAR. Thank you.

Senator Grassley is going to go for 5 more minutes, and then we will go to Senator Schumer and then Senator Cruz.

Senator GRASSLEY. Since you said you cannot offer any other answers to questions on the Office of Special Counsel complaint, I will go to something that you should have heard about—the letter from the FBI official, the letter to the Committee. Did you hear of complaints about your office by the former special agent in charge of the FBI office, Mr. Oswald?

Mr. JONES. The answer to your question, Senator, is no, and I was quite shocked when I saw the copy of that letter because my belief during the 1 year that Mr. Oswald was the special agent in charge of the Minneapolis Field Division, my perception was that we had a professional working relationship, so I was very surprised when that letter was submitted to the Senate.

Senator GRASSLEY. In 2009, after you were confirmed by the Senate, did you remove the chief of the Narcotics and Violent Crime Section of the U.S. Attorney's Office? And that was one of the allegations that Mr. Oswald made.

Mr. JONES. In 2009, when I became the U.S. Attorney for the second time, I spent the first month talking to every single Assistant United States Attorney in the office. I received several resignations from individuals who had been serving in supervisory roles, and as every new United States Attorney's prerogative is, I formed a leadership team that remains in place and has been very effective in helping move the district forward with the goals and objectives of both the district and the Department of Justice.

Senator GRASSLEY. So did you remove the chief of the Narcotics and Violent Crime Section of that office?

Mr. JONES. I made management changes when I came into office for the second time in August and September of 2009.

Senator GRASSLEY. Did you remove that person?

Mr. JONES. Did I remove that person?

Senator GRASSLEY. The chief of the Narcotics and Violent Crime Section of the U.S. Attorney's Office.

Mr. JONES. I received the resignations of most of the supervisory AUSAs, as is a common practice, when I became U.S. Attorney.

Senator GRASSLEY. You did appoint a new chief to the section?

Mr. JONES. I did.

Senator GRASSLEY. How did you know the individual you appointed as chief of the section?

Mr. JONES. How did I know them?

Senator GRASSLEY. Know that person to that section, the Narcotics and Violent Crime Section?

Mr. JONES. I knew many of the AUSAs I have known over 20 years in that office, so I know individuals by reputation and I know individuals personally.

Senator GRASSLEY. Did she have previous management experience?

Mr. JONES. In terms of—who are you speaking of in particular, Senator? I do not want to engage in guess work here. If the question is did an individual that remains as our Narcotics and Violent Crime chief, Assistant U.S. Attorney Carol Kayser, have previous management experience, I believe the answer to that is yes, she is a very experienced prosecutor from the Northern District of Georgia, where she was an AUSA doing asset forfeiture. Before that, she was a De Kalb County State prosecutor in Georgia and was brought into the U.S. Attorney's Office prior to my arrival under the previous administration. And so she was very experienced and had some management experience before making her the deputy chief for Narcotics and Violent Crime.

Senator GRASSLEY. Go to Mr. Cruz.

Senator KLOBUCHAR. I think it is Senator Schumer next, and then we will go to Senator Cruz. I just wanted to follow up on one question since Senator Grassley was asking about management of the office. Before you were U.S. Attorney, who was U.S. Attorney before that?

Mr. JONES. There was a 2-year period, nearly 2-year period where Frank McGill, now Judge McGill, was the interim U.S. Attorney. But the prior presidentially appointed, Senate-confirmed United States Attorney was Rachel Paulose.

Senator KLOBUCHAR. And what happened to Rachel Paulose?

Mr. JONES. There was a period of challenges for the office, and eventually Ms. Paulose resigned as U.S. Attorney.

Senator KLOBUCHAR. And she was appointed—was involved when, I think, Attorney General Gonzales was in, and then one of the first acts, just to clarify the record, when Attorney General Mukasey came in, was to actually call me—I just would like the record to reflect that—to get some names of people that could take over for an interim basis. So when you—and one of my suggestions was Mr. McGill, and so when you took over the office, it was only 2 years after this turmoil, as you have described it, which made the front page of many newspapers in the country. Is that correct?

Mr. JONES. That is correct, Senator.

Senator KLOBUCHAR. Okay. Thank you.

Senator Schumer.

Senator SCHUMER. Well, thank you.

First, I want to thank you, Director Jones, for your service both in the U.S. Attorney's Office and now as Acting Director of ATF. You have had a long, distinguished career. You were passed unanimously for U.S. Attorney by this Committee a few years ago, and now, of course, it has taken a long time to move your—to get your nomination made—approved by this Committee and by the Senate. And so I would like to first say that I think having a vacancy at this agency is a big mistake. Such an agency has to have leadership to provide direction to many employees who work here and keep Americans safe. So let me ask you this question.

What would happen to the FBI without a Director? Don't you think that that could be used by terrorists to say the United States is weak on terrorism, not doing all it could against terrorism, if we did not have—if we had for years an Acting Director of the FBI? I do. I just want to know your opinion.

Mr. JONES. Well, it is sort of comparing apples to oranges because the FBI has always been part of the Department of Justice. It has only been 10 years since ATF has been part of the Department of Justice. And it has only been since 2006 that the Director of ATF has been subject to Senate confirmation. So the analogs are not quite right.

But to your point, that continuity in leadership——

Senator SCHUMER. That is what I am——

Mr. JONES [continuing]. Has been absolutely essential. When I left Government service in 2001 and when I came back in 2009, knowing 9/11 happened in the interim, the Federal Bureau of Investigation was not the same organization that I knew when I left after serving as U.S. Attorney before. Much of that—and I have known Mr. Mueller for a long time. Much of that is because they

have continuous outstanding leadership over a long period of time, which has allowed things to structurally settle and for them to stay focused on those missions that are in their bailiwick.

Senator SCHUMER. Look, it is my view having lack of an ATF Director signals the same thing. We do not have the continuity. Gun trafficking, crime, the kinds of things ATF does is vitally important, and it is not good to have a vacancy for so long, and I would hope that your confirmation would be moved. I am not directing this at any particular person, but somehow it seems in agencies that people do not like what the agency does—NLRB, EPA, or D.C. Circuit. We somehow get vacancies there, and they are blocked for a very long period of time. And I would hope that would change. I would hope that would change. Your record is exemplary, and you were approved by this body unanimously as U.S. Attorney. And I would just hope we could move forward with you.

I have a few specific questions. I know my time is running out. The Undetectable Firearms Act, this deals with 3-D guns. It expires at the end of this year. First, I want to commend your agency, working with TSA and Secret Service, to keep us up to date on this.

Now, when the law was passed, there were very few guns that could be brought undetected through a metal detector. Now that has changed. Aren't there guns that fire at least one shot that can successfully be brought through a metal detector, the gun itself, these 3-D guns with plastic parts, by and large? From what I understand, the only metal they need is a little spring, and that is not detectable in our metal detectors. Is that fair to say?

Mr. JONES. Our Firearms Technology Branch, as you mentioned, Senator, worked with the Secret Service and with TSA and the FBI and other law enforcement organizations, is in the process of testing variations of the 3-D gun and some other components that are somewhat troublesome. But the fundamental material for that, that being various grades of polymer, does make it undetectable without metal components.

Senator SCHUMER. So in light of this, do you think we have to reauthorize the Undetectable Firearms Act? And would your agency be prepared to submit some recommendations if any changes are needed?

Mr. JONES. We are always available to provide technical guidance and advice, given our expertise, and I think that the evolving technology that underlies 3-D printing on a variety of fronts certainly generates a sense of urgency, particularly since the Undetectable Firearms Act sunsets at the end of this year for this body to examine this in the public safety context.

Senator SCHUMER. Well, once again—my time is expiring—I want to thank you for your service. I want to thank you for continuing under very difficult circumstances.

And I want to thank you for your very calm demeanor in this hearing as well.

Mr. JONES. Thank you.

Senator KLOBUCHAR. And we hope that continues.

Senator Cruz.

Senator CRUZ. Thank you, Madam Chairman.

Mr. Jones, thank you for being here. You are a currently sitting United States Attorney. You previously served as Chairman of the Attorney General's Advisory Committee. You are the Acting Director of ATF. You are perhaps uniquely situated to discuss the Obama administration's priorities and record concerning gun prosecution. So I would like to ask you a question.

Is it a priority for the Obama Justice Department to prosecute felons and fugitives who attempt to illegally purchase firearms?

Mr. JONES. Senator, thank you for that question, and one of the priorities of the Department of Justice has always been during my second tenure as U.S. Attorney protecting the American public from violent crime, including violent firearms crimes.

Senator CRUZ. Is that a yes?

Mr. JONES. That is a yes.

Senator CRUZ. Would you describe it as a high priority?

Mr. JONES. It is one of the major priorities.

Senator CRUZ. So a major priority.

Mr. JONES. Yes.

Senator CRUZ. I guess then I would ask you to reconcile that comment that it is a high priority with the data. And in particular, in 2010, out of 48,321 felons and fugitives who attempted to illegally purchase firearms, the Department of Justice prosecuted only 44 of them—44 out of over 48,000. And at least for me, I have difficulty reconciling those hard facts with the assertion you have made that it is a high priority of the Obama Justice Department to prosecute felons and fugitives who try to illegally purchase firearms.

Mr. JONES. During fiscal year 2012, Senator, the Department of Justice did approximately 85,000 Federal criminal cases involving defendants, and one out of seven involved firearms offenses. The NICS check does generate hits of people who are potentially prohibited, and you are correct in that the number of folks who are prosecuted federally for what has been coined "lying and trying" is a small number. But the number does not tell the story about what the Department has done with armed career criminals——

Senator CRUZ. With respect, sir, my question was not about armed career criminals. My question was whether it was a priority to prosecute felons and fugitives who try to illegally buy firearms.

Now, this data focuses exactly on that. That is why I wanted—you could have said no, it is not a priority, and I would suggest the data demonstrate it is not a priority of the Obama Justice Department to prosecute felons and fugitives. In my view, that is completely unacceptable. Do you disagree? Do you think prosecuting just 44 out of over 48,000 felons and fugitives who tried to illegally buy guns, do you think that is an acceptable allocation of prosecutorial resources?

Mr. JONES. Prosecutorial resources are thin, and there are a number of issues that U.S. Attorneys across the country deal with, ranging from national security, financial frauds, and we have tough decisions to make. The reality is, as a first-line prosecutor and someone who exercises their discretion on a regular basis, if given the choice between doing a "lying and trying" case, which we have not done in Minnesota, and doing a——

Senator CRUZ. So your office——

Mr. JONES. We have not done a "lying and trying" case.

Senator CRUZ. So your office has prosecuted zero felons and fugitives who tried to illegally purchase firearms?

Mr. JONES. We have not tried a—we have not prosecuted a——

Senator CRUZ. Is that a yes?

Mr. JONES [continuing]. A trying case. We have done over 150 felon in possession armed career criminal cases. We have done straw purchaser cases. On the spectrum of prosecutions that U.S. Attorneys can do, "lying and trying" cases, both because of the dedication of resources and the potential deterrent impact and the sentence that is going to be involved, are not commonly done, which is underlying that 44 figure that you cited earlier, Senator.

Senator CRUZ. Mr. Jones, I have to admit I find it remarkable that you testified to this Committee that is it a "major priority" of the Department of Justice to prosecute felons and fugitives who attempt to illegally purchase firearms, and that then you respond to this Committee that it is an acceptable allocation of prosecutorial resources to prosecute just 44 out of over 48,000. And even more astonishingly, you inform this Committee that you have prosecuted zero.

My question to you is: Are there other things you would describe as "major priorities" of the Department of Justice that at the same time you have chosen to prosecute zero cases, enforcing those so-called major priorities?

Mr. JONES. With all due respect, Senator, just so the record is clear, a major priority of this Department of Justice is protecting the American public from violent crime, including violent gun crime. I just want to make sure that that is clear so that what my testimony is is not twisted into something that it is not.

Your question, sir, was?

Senator CRUZ. Are there any other so-called major priorities on which you have prosecuted zero cases?

Mr. JONES. We have made hard decisions with our resources. Priority number one is national security. In Minnesota, we have made major efforts on that front with Al-Shabaab. We have made major efforts on protecting our community from violent crime, including gun crime. We have made major efforts protecting the safety of people's nest eggs in financial fraud. And so we have a veritable smorgasbord of decisions that we are making, and all of our work has been consistent with the priorities of this Department of Justice.

Senator CRUZ. Mr. Jones, I would note you chose not to answer my question. I just want to have one final question with the Chairman's indulgence, which is that the Grassley-Cruz legislation that was introduced on the floor of the Senate that received a majority of votes in the Senate, 52 Senators—including 9 Democrats. It was the most bipartisan of all of the comprehensive gun legislation introduced. It provided funding for prosecuting felons and fugitives who attempt to illegally purchase firearms because, in my judgment and in the judgment of a majority of the Senate, it is utterly unacceptable for this Justice Department to refuse to prosecute felons and fugitives who attempt to illegally purchase firearms.

In your role as Acting Director of the ATF or as U.S. Attorney, did you support the Grassley-Cruz legislation and do you support that legislation?

Mr. JONES. I am not familiar with the specifics of that legislation, and I am not in a position to answer the question because I am not familiar with the legislation.

Senator CRUZ. Very well. Thank you.

Senator KLOBUCHAR. Thank you, Senator Cruz.

I wanted to include a few things on the record. First of all, a discussion here just took place about prosecutions of cases, and I discussed earlier how crime rates are very important, and, in fact, we can attribute them to a lot of things. But I would note that the crime rate in the State of Texas, the violent crime rate, is twice the rate—Senator Cruz, the violent crime rate in the State of Texas is twice that of the State of Minnesota. Between the years 1991 to 2011, during many of those years you were the U.S. Attorney in the State. Mr. Jones, the data I have here is that the Minnesota violent crime rate in 2011 was a little over 200 per 100,000 inhabitants. These are FBI statistics. And the violent crime rate in Texas was about 400.

I also have the crime rates of every Member of the Committee that is here. I thought it was just interesting to look at, and I would note that the only two States that have lower crime rates per 100,000 inhabitants than Minnesota are the State of Utah—unfortunately, Senator Hatch is not here—and the State of Vermont. And while, again, there are many things that contribute to crime rates, I would point out that this idea that somehow during your term work is not being done just is not supported by these numbers, and I would put that on the record.

I also would put on the record the fact that we have many people here from law enforcement in this room in support of you, Mr. Jones: first of all, Jim Pasco, the executive director of the Fraternal Order of Police. We have the International Association of Chiefs of Police represented by Deputy Executive Direct James McMahon, and Director of State Association of Chiefs of Police Gene Voegtlin. We also have Prince Georges County Police Chief Mark A. Magaw representing the International Association of Chiefs of Police. We have Washington, DC, Metropolitan Police Department Command Staff Representative of Chief Cathy Lanier. We have Manassas Park Police Chief John Evans. We have Prince William County Police Chief Stephan Hudson. We have the Maryland State Police represented by Commander David Rule on behalf of Superintendent Marcus Brown.

With that, I will turn it over to Senator Coons.

Senator COONS. Well, thank you, Madam Chair, and I, too, am pleased to hear about the support for the nominee for the IACP, the FOP, and many other police and professional law enforcement organizations.

Mr. Delery, thank you for your presence here today. I look forward to your service. Forgive me, but my questions will also focus on Acting Director Jones. I suspect you have had a more comfortable confirmation hearing than perhaps you might have expected.

Senator KLOBUCHAR. I would note that Mr. Delery's young sons have been attentive throughout the entire questioning of Mr. Jones. It is much appreciated.

[Laughter.]

Senator COONS. Particularly impressive.

Acting Director, if I might just first, given the comment about the support your nomination has received from the law enforcement community fairly broadly, as someone who before coming to the Senate had a responsibility for a local law enforcement agency, just tell me about your perspective on the importance of collaboration and information sharing between Federal, State, and local law enforcement. And then, if you would, tell us something about your experience in the Miami undercover investigation and how that strengthens that experience for Minnesota and now in the ATF.

Mr. JONES. Well, Senator, thank you for the question, and I think that one of the strengths that I have discovered over the last 20 or so months as the Acting Director is the reinforcement of my belief that there are outstanding working relationships with ATF and State and local law enforcement. It is absolutely critical given the mission that ATF has on the arson front, which is oftentimes understated and under-known, but absolutely critical expertise, and that, of course, has us with close working relationships with State and locals.

And on the violent crime, particularly violent gang and gun crime front, we have nearly 600 task force officers that work with ATF special agents around the country that we could not do that work without that collaboration and that cooperation.

So our relationship with the State and locals is absolutely critical, and we have always valued that relationship because we cannot get it done without that level of work.

With respect to Miami, it was—it is still an ongoing prosecution now, but it was an excellent example of a number of operations, surges, undercover storefronts that we have engaged in as ATF that took nearly 95 violent, violent criminals off the streets in Miami Gardens. Some of them went State, some of them went Federal, and over 200 weapons, and it was a collaboration, again, not only with State and locals but with our sister agency, the DEA.

Senator COONS. Some concern has been raised about the *Magner* case. That has been of real interest to me as well. And as the U.S. Attorney for the District of Minnesota, who was your client? Who were you representing in that role?

Mr. JONES. Well, of course, the Department of Justice represents the United States in courts of law around the country, both in civil and criminal matters. So the client agency in that matter was HUD.

Senator COONS. And in making litigation decisions on behalf of the United States, in your view is it ethical and appropriate to take into account not only the judgment of an agency with enforcement responsibility but also the consequences of a litigation decision that might impact the broader ability of the Government to enforce civil rights statutes? Is that your view?

Mr. JONES. That is my view, and I have expressed that before in sessions with Senator Grassley's staff.

Senator COONS. Speak, if you would, about whistleblowers. The protection, the advancement of the concerns of whistleblowers, is something that was of real primacy for me in my local government service. Some characterizations of communications internally within the ATF have been made to suggest that you have attempted to suppress whistleblowers, and I wanted to give you an opportunity to speak to that, to answer a concern as to whether or not you have led the ATF as Acting Director in a way that suggested that you would welcome or support whistleblowers or the contrary.

Mr. JONES. You know, thank you for giving me an opportunity to again reinforce and sort of dismiss a misperception that I have engaged in conduct that suppresses whistleblower rights. Nothing could be further from the truth. I have represented whistleblowers in private practice. Some of my most satisfying experiences have been in the representations of those who put themselves in the position of being whistleblowers. And I know firsthand from my former clients how difficult that can be in terms of your perception internally and the challenges on you personally. And I have the utmost respect for both the underpinnings and the purpose of whistleblower protections. It is, again, a fundamental good government effort, and it is absolutely critical to us doing our job effectively as public servants with responsibility for public agencies.

Senator COONS. A lot of the challenges that existed at the ATF that you were responsible for addressing or cleaning up when you became Acting Director were in part a result of an ongoing operation that came to light because of whistleblowers. Do we have a commitment from you that, if confirmed, you will continue this view of welcoming and supporting whistleblowers within the agency as appropriate in order to ensure that this good government practice is a part of the ATF going forward?

Mr. JONES. Well, you definitely have my assurance. The Inspector General's report exemplifies the importance that whistleblowers play in the Fast and Furious issue. We have, since I have been there, enhanced our ombuds program internally. We have strengthened our relationship with the DOJ IG and their ombuds program, and any misperception that I do not believe in open channels of communication and respect for whistleblower protections I hope can—has been and will continue to be diminished.

Senator COONS. Thank you for your testimony and for your service as a Marine and for your service as the U.S. Attorney and for your service as Acting Director, and I appreciate your testimony here today. And, Mr. Delery, and your sons, congratulations and thank you for your testimony as well.

Senator KLOBUCHAR. Thank you very much, Senator.

Senator Grassley.

Senator GRASSLEY. A common complaint that I have heard within ATF is that U.S. Attorney's Offices are unwilling to pursue straw purchasing charges. According to one account, you reportedly said of gun and drug cases, "we could do that all day, but we have chosen not to because that is not the best use of our resources."

How would you expect to encourage agents in the ATF to pursue gun crime when you would not think it is a high priority for yourself as a U.S. Attorney?

Mr. JONES. Well, gun crime, Senator, is a high priority for me as the United States Attorney, and I think our record——

Senator GRASSLEY. The statement I read that you said, is that statement wrong?

Mr. JONES. Without knowing the context or the specifics of the statement, it is difficult.

Senator GRASSLEY. It was in the Minneapolis Star Tribune.

Mr. JONES. If what I recall you may be referring to, it is an overall—it was an article that addressed what we discussed earlier as to why the drop in terms of the overall numbers and criminal prosecutions, and, again, it really is driven by three things—our resources, our collaboration with State and locals, and what can we do that they cannot do—and focusing more on impact cases as compared to be solely driven by the numbers. I believe that was the context, because in particular, in the drug and gun area, in Minnesota there is a pretty vibrant—Senator Klobuchar knows—felon in possession statute. In each of the last 3 years, county attorneys in Minnesota have prosecuted in excess of 800 individual cases, and this is subject to a reporting requirement they have annually. And so working in collaboration with them, what we have done, sometimes formalizes what we call "Exile White" in Minneapolis, but generally throughout the State is make sure that those most egregious offenders do come into Federal court without impeding on the jurisdictional prerogatives of our county attorneys who do yeoman's work working with us to keep the streets safe.

Senator GRASSLEY. You were Chair of the Attorney General's Advisory Committee from 2009 to 2011. In that capacity, you were a member of the Southwest Border Strategy Group. In October 2009, that group decided to distribute a draft strategy for combating Mexican cartels. The draft stated, "Merely seizing firearms through interdiction will not stop firearms trafficking to Mexico."

The draft strategy goes on to emphasize identifying the members of armed trafficking networks. The implication is clear. The strategy places a higher value on gathering intelligence about trafficking networks than on arresting straw purchasers.

Now, were you there at the October 26, 2009, meeting of the Southwest Border Agency Group? Did you approve of the strategy to de-emphasize straw purchasing cases? And do you think it is a good strategy to go for big cases instead of putting a stop to straw purchasers whenever you can?

Mr. JONES. To answer your first question, Senator, I was not there. I was brought in as the Chair of the Attorney General's Advisory Committee in September, and we were ramping up with a revitalization of that and a transition. So I was not at that meeting. I was not an active participant on the Southwest Border Working Group. I was a participant on the Northern Border Working Group because that had more relevance to the District of Minnesota.

With respect to your last question about opinions about the firearms case, we have made it clear from the outset that public safety will never be sacrificed for prosecutive or investigative needs. Public safety is first and foremost in what we strive to achieve in our investigations.

Senator GRASSLEY. When you took over at ATF, you set out to clean up the shop. Rather than disciplining some of the ATF employees who were clearly responsible for Fast and Furious, you waited for an Inspector General's report. It took a year. After 18 months, after the Inspector General's report, ATF has not reported a single individual being disciplined for Fast and Furious. Nobody seems to be fired. Instead, several people were allowed to retire or terminate for other reasons.

I want to ask you about a series of individuals. They are all criticized by the Inspector General for that role. For each one, I would like you to tell me whether the ATF proposed any discipline to hold them accountable for Fast and Furious.

The Fast and Furious—how about the ATF group supervisor David Voth? What was the situation with him? How was he disciplined?

Mr. JONES. Special Agent Voth was subject to the internal disciplinary process, and there were repercussions. Again, I am very sensitive here in this context about the Privacy Act concerns. But he was subject to the disciplinary process.

Senator GRASSLEY. The Privacy Act does not apply to hearings in Congress, but let us move on. How about the Assistant Agent in Charge George Gillett?

Mr. JONES. Former ASAC George Gillett has retired from ATF.

Senator GRASSLEY. Assistant Special Agent in Charge James Needles?

Mr. JONES. Assistant Special Agent in Charge James Needles is in another capacity within ATF.

Senator GRASSLEY. So nothing has really happened to him.

Special Agent in Charge of Phoenix, Bill Newell?

Mr. JONES. There is still resolution pending that should be forthcoming.

Senator GRASSLEY. So after all these years, nothing has happened to him.

Deputy Director in Washington Bill McMahon?

Mr. JONES. Bill McMahon has retired from ATF.

Senator GRASSLEY. Okay, retired. Not disciplined. Some of these individuals are involved in other controversies in addition to Fast and Furious. For example, I understand that the ATF's Internal Affairs Division found fault with George Gillett and Bill Newell's involvement in the investigation of a fire at an ATF agent's home in 2008. In a separate matter, Gillett sold his personal firearm to a suspect 1 week after his office opened a gun-trafficking case on that person. This was one of multiple firearms transactions of Gillett that are currently under investigation by the Inspector General. Another is a gun that Gillett bought that was recovered at a murder scene of a Mexican beauty queen alongside a gun from Fast and Furious.

However, instead of Gillett being disciplined when you took control of ATF in the summer of 2011, he was allowed to wait it out and retire in 2012. Why did you allow Gillett to retire rather than hold him accountable?

Mr. JONES. Senator, with all due respect, there are processes in place, and these processes do take time. And, you know, you mentioned the Privacy Act. The specifics of each of these cases, I would

like to just make sure that you understand, that the American public understands that we did not stand idly by and not take corrective action, including disciplinary action, according to the rules of the road and the processes that are in play that sometimes are painfully slow. But all of the individuals you mentioned did get their due process. Many of them were ably represented by counsel.

Senator GRASSLEY. Well, can you even tell us what discipline was proposed against Newell as a result of the October 2012 report?

Mr. JONES. That is a matter that is quickly coming to resolution, and as soon as we can disclose it to you, we will.

Senator GRASSLEY. ATF Deputy Director William McMahon was the official in Washington, DC, primarily responsible for supervising Gillett and Newell. The Inspector General criticized him for his failure to do so and the result is Fast and Furious. Yet under your leadership, the ATF was going to allow McMahon to retire early at the age of 50. ATF allowed him to go on extended leave and continue to earn credit towards retirement while working a high-paying job for JPMorgan Chase in the Philippines at the same time. It was not until after I brought this unusual double-dipping arrangement to your attention that ATF attempted to correct the situation. ATF was not even aware that he was in the Philippines.

How was McMahon's status resolved? How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a Federal paycheck without ATF knowing it and working for a private company? And what does that say about how you are running the agency?

Mr. JONES. Senator, Mr. McMahon was one of the individuals terminated. He was not allowed to retire. He was terminated.

Senator GRASSLEY. Was he terminated?

Mr. JONES. He was terminated.

Senator GRASSLEY. He was able to——

Mr. JONES. He was terminated. At the end of the process he was terminated.

Senator GRASSLEY. Was that after I brought it to your attention?

Mr. JONES. The issue that you raised about his leave status and his prior employment status were all subject to a process. We very much appreciate the information enhancing our level of knowledge about things that were already in plan internally, but the end result was Mr. McMahon was terminated from ATF.

Senator GRASSLEY. You have stated that on November 3, 2011, you issued a memorandum saying that the ATF must take all reasonable steps to prevent criminal misuse of firearms. Will you provide a copy of that memorandum to the Committee?

Mr. JONES. I believe that that is an updated ATF order that we will provide.

Senator GRASSLEY. Okay. What guidance have you issued to ATF on the issue of questioning suspected straw purchasers?

Mr. JONES. I am not quite sure I understand the question, Senator.

Senator GRASSLEY. Well, you have issued some guidance to the ATF on the issue of questioning suspected straw purchasers. What does that guidance say? In other words, you have got people out there questioning straw purchasers. What guidance have you given to them for this questioning?

Mr. JONES. Well, as I sit here, other than the fact that we have special agents who are sometimes involved in the investigation of firearms trafficking that would lead them to question as any other potential suspect, I am not aware of any special guidance that would carve out straw purchasers.

Senator GRASSLEY. Well, what about guidance issued to ATF about cooperating Federal firearm licensees and their role that they should play in investigations?

Mr. JONES. With respect to that particular issue, I do know that after I arrived at ATF, one of the issues that we addressed were weaknesses and lack of clarity in our confidential informant order internally. We did a review of that, as we did with the undercover order, and we revised appropriately based in part on things that did not proceed as they should in the District of Arizona. So we have greater clarity on the use of FFLs as confidential informants currently in place.

Senator GRASSLEY. Despite the congressional prohibition against keeping a national gun registry, I know that ATF keeps a suspect gun database. Is there any legal standard that ATF agents are required to meet before adding information on a purchaser to a suspected gun database?

Mr. JONES. Well, if the Senator is talking about our E-trace or our tracing capability, then those are crime guns that are entered in with make, model, and serial number. As you and many other are well aware, the Firearms Owner Protection Act of 1986 precludes anything—a national gun registry, and it would be illegal to do that.

Senator GRASSLEY. I have also heard allegations from several States of ATF agents going to Federal firearm licensees and taking pictures of every Form 4473 in the store. Have you heard of this practice? And is this the kind of activity by ATF agents acceptable to you?

Mr. JONES. As I sit here, I am not familiar with the practice. I do know that our industry operations investigators, all 700-plus of them with the range of responsibilities they have with literally tens of thousands of FFLs, work very hard to do the appropriate inspections of FFLs. And that is difficult work.

Senator GRASSLEY. My staff says to me by note here that we are not talking about tracing. We are referring to the suspect gun database which was used extensively in Fast and Furious.

Mr. JONES. As I sit here, I will have to——

Senator GRASSLEY. Well, then, I will let you answer that question in writing.

Mr. JONES. Yes.

Senator GRASSLEY. Thank you.

[The information appears as a submission for the record.]

Senator GRASSLEY. On October 12, 2012, the House Committee on Oversight and Government Reform subpoenaed "all agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General's Advisory Committee that refer or relate to Operation Fast and Furious" during the time that you were Chair. The Justice Department has never produced any such documents or certified that none exist. Do any such minutes or notes exist? And if so, why haven't they been turned over pursuant to the subpoena?

Mr. JONES. Well, I do not have any knowledge beyond the fact that relevant documents have been collected internally at the Department and that that matter is probably a part of litigation. If anyone ever wants to ask Mr. Delery questions, I am sure——

[Laughter.]

Mr. JONES [continuing]. He can provide greater clarity about ongoing litigation involving production of documents pursuant to subpoenas.

Senator GRASSLEY. Well, let us just suppose—you said you did not know, and that is maybe legitimate. Let me ask you if you would respond to that question in writing.

Mr. JONES. To the extent I have those documents still, we will respond in writing, Senator. Yes, we will.

Senator GRASSLEY. Or if they are available anyplace that you can put your hands on them.

[The information appears as a submission for the record.]

Senator GRASSLEY. On April 12, 2013, I sent you personally a letter requesting that you provide any personal notes from the Advisory Committee that you may have taken regarding Fast and Furious. You have not provided any such notes or certified to me that you do not have any such notes. And so why have you not responded?

Mr. JONES. Well, I do not have, as I sit here, any recollection of a letter that has got that specific request, but as I said before, all of my—all of the documentation related to my tenure at the Attorney General's Advisory Committee is at the Department, and I am sure that review and production processes have taken place.

Senator GRASSLEY. U.S. Attorney for the District of Arizona Dennis Burke was also on the Attorney General's Advisory Committee during the time you were Chair. Have you ever discussed Operation Fast and Furious, whether by name or otherwise, with Burke? If so, when?

Mr. JONES. Senator, I did serve with Dennis Burke when I was Chair of the AGAC, and, in fact, Dennis Burke was Chair of the Subcommittee for the Southwest Border, and our conversations were always at a higher level than the specific cases that were ongoing in the District of Arizona. So I have no recollection of discussing that case specifically with Dennis during my time as Chair.

Senator GRASSLEY. Burke testified that as a result of Fast and Furious you raised the issue of Title III wiretap approval with the Advisory Committee. What do you recall about those discussions?

Mr. JONES. My general recollection was the pace with which and the volume of Title III requests that the Office of Enforcement Operations, in an effort through the U.S. Attorney community, to try and enhance their capability to review Title III applications generally.

Senator GRASSLEY. We recently learned from a follow-up Inspector General's report that Deputy Attorney General Cole reprimanded Dennis Burke for his role in leaking documents related to Fast and Furious to the press. The leak was part of an attempt to undermine the credibility of the primary whistleblower, ATF Special Agent John Dodson, which is a perfect example of what I tell you about so often, or not just your agency but every agency

in town: A whistleblower is about as welcome as a skunk at a picnic.

What was your opinion of Burke's unauthorized release of information about ATF's agents' participation in an undercover operation?

Mr. JONES. I think the circumstance with Dennis Burke is unfortunate. I know what the rules of the road are with respect to appropriate communications in the U.S. Attorney Manual, and I do not have an opinion one way or the other about the facts and circumstances because, quite frankly, I know as much as you know on the public record about interactions between former U.S. Attorney Burke and the Deputy Attorney General.

Senator GRASSLEY. So then is that your answer to my next question: When and how did you learn that Burke was responsible for the leak?

Mr. JONES. That is the answer. I know as much as you know when you knew it and when it became part of the public record.

Senator GRASSLEY. Can you tell me, did you ever discuss the document that Dennis Burke leaked with Mr. Burke? If so, please describe those discussions?

Mr. JONES. I do not have any recollection of having those kind of discussions with Mr. Burke.

Senator GRASSLEY. Madam Chairman, I have some documents that I want to put in the record, if I can.

Senator KLOBUCHAR. All right.

Senator GRASSLEY. The first one deals with a letter dated June 10, 2013, from Carolyn Lerner at the Office of Special Council explaining that the investigation of Mr. Jones is in mediation but is not a closed matter.

Senator KLOBUCHAR. It is in the record.

[The letter appears as a submission for the record.]

Senator GRASSLEY. The second one is a letter from Oswald that I have referred to, the former FBI special agent in charge, that I have referred to several times that should be made a matter of the record.

[The letter appears as a submission for the record.]

Senator GRASSLEY. And then I have a whistleblower letter from the White House. The letter is addressed to Senator McCaskill and cc'd to me, describing the administration's views of whistleblowing protection. I would like to quote: "We wish to encourage such individuals to expose waste, fraud, and other improper behavior. The administration has been steadfast in its commitment to that very principle and to ensuring that individuals who make lawful disclosures receive legal protections they deserve. This administration"—and this is highlighted. "This administration has also repeatedly made clear that it will not tolerate retaliation against lawful whistleblowers."

[The letter appears as a submission for the record.]

An editorial comment on that. I believe every President—at least since Reagan, I have talked to every President about protecting whistleblowers. And you know what one President said when I suggested that you ought to have a Rose Garden ceremony honoring some whistleblowers? And you would send from the top of the administration down to the lowest level of public employment a clear

picture that being a whistleblower is a patriotic thing to do if you happen to be right what you are whistleblowing about. And, you know, one President told me, he said, "Well, if we did that we would have 3,000 whistleblowers coming out of the woodwork."

Now, isn't that a nice thing for a President to tell me? And it was not this President that told me that.

And so, you know, I believe what the President said here, but it is not getting down to the lowest levels. And I hope if you are confirmed, Mr. Jones, that you will do what the President has said his administration wants to do, and do that.

The only thing I would say in conclusion, Mr. Jones, if you had agreed to a staff interview, these things that we are discussing here could have been discussed in a private forum, and I would like to ask you why you did not give the staff interview we asked.

Mr. JONES. Senator, I look forward, if I am confirmed, to having regular communications in an oversight capacity with you and your staff and Members of this august body.

Senator GRASSLEY. That does not really answer my question why you did not respond to our request that you give us a staff interview.

Mr. JONES. I did have an interview with respect to a particular matter, but—

Senator GRASSLEY. Well, what about the other matters that we asked you to have a staff interview with? I mean, is it embarrassing for you to tell us why you would not come?

Mr. JONES. I am a member of the Department of Justice, and——

Senator GRASSLEY. They told you not to?

Mr. JONES. You know, under some circumstances, Senator, I do not have the freedom of action as I did as an individual citizen.

Senator GRASSLEY. Okay. Thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much, Senator Grassley.

I just wanted to end here by just going through summarizing some of the discussion today. I appreciate Senator Grassley's focus on whistleblowers. I think it is very important, and he has done a great service to our country in calling attention to this.

And I also appreciate his willingness to question people, and I think that is what we are supposed to be here to do. So thank you, Senator Grassley, as well as the other Senators who have taken part in this hearing.

Senator Grassley, with that, you have another question?

Senator GRASSLEY. No, not another question.

[Laughter.]

Senator KLOBUCHAR. Okay.

Senator GRASSLEY. But I would request of you that the record stay open a little longer than the normal 1 week, because I think there are a lot of things that can come up yet.

Senator KLOBUCHAR. Okay. We will keep it open for 2 weeks. Is that all right? No? What would you like?

Senator GRASSLEY. Until we get done with this whole——

Senator Klobuchar. I think we will keep it open for 2 weeks, and if you and the Chairman want to have another discussion about it, that is up to you. But for now I will keep it open for 2 weeks.

Senator GRASSLEY. Thank you.

Senator KLOBUCHAR. I wanted to clarify a few things. First of all——

Senator GRASSLEY. Is it okay with you if I leave?

Because I have got the prospective Secretary of Commerce coming to my office.

Senator KLOBUCHAR. I think that is very important, and she is a good nominee, as are these nominees, so we hope you have a good meeting with her.

I just wanted to conclude by going through just what we have heard today. There are a lot of attacks that have been made against Mr. Jones, and I know, coming from law enforcement, having experienced some of this myself, it is not easy to manage lawyers, it is not easy to manage police. There are judgment calls that are made all the time. Some are good, some are bad. Mistakes are made. You learn from them, you move forward. And I think that is important to keep in mind here.

One of the most overriding things that I think we should learn from all this is that these 2,300 agents deserve someone who is permanently in charge of them. No matter what the title of the agency is, no matter if people have political disagreements with work that is being done, I think that the fact that we have an agency of the United States Government that we currently do not have a permanent chair of, that we have left dormant for 7 years, no matter why, no matter if no one would face a hearing, I think it is just wrong. And I want to say that having Mr. Jones being willing to come forward to this hearing, knowing exactly what he was going to be subjected to, and with many of these things coming out just recently since he has been nominated, I think that is courage right there.

First of all, we have been talking about the criminal work in Minnesota, and I think he has explained his decisionmaking. Others may disagree on that. But I would note, again, emphasizing that a lot of things go into this—police work, FBI work, local, State prosecution efforts, Federal prosecutor efforts—that if you look at it as a whole, Minnesota has a pretty good track record with the violent crime rate having gone down 15 percent during Mr. Jones' first tenure as U.S. Attorney from 1998 to 2001, a 9-percent decrease with the latest stats we have from 2009 to 2011. And I would also note that overall Minnesota is doing a good job compared to many States, including most of the States represented by Senators on this Committee.

Secondly, the support from law enforcement I have mentioned that is in the room, people who have worked with Mr. Jones over a period of time, I think that is important.

Some of the issues that were raised, I think it was Senator Coons who asked some questions about the St. Paul case, I think that is important to have on the record, and we have those on the record.

Of Fast and Furious, obviously Senator Grassley and Senator Cruz and Senator Flake all asked about this, and I would say that if you were in the private sector and something went greatly wrong, one of the things you looked at was are the people still in place that were in charge when this happened. And as Mr. Jones has pointed out, I think he changed nearly two-thirds of the people in charge at the agency when he came in after Fast and Furious,

that there have been disciplinary proceedings that are underway and have been concluded. I understand why he cannot attach a discipline to every single name of a person, and I know he will work with the Senators who were concerned about that. But I do think it is really important to note that he was brought in after Fast and Furious, after clear mistakes had been made in the agency to make some changes.

I do not think that we should forget the good work that has been done by ATF in just the last few months with Sandy Hook, with the investigation after Boston, and how quickly those terrorists were apprehended, and then also what happened in West, Texas, which was a horrible tragedy, a horrible explosion, and ATF was right there on the front line figuring out what went wrong. And as I also pointed out, day in and day out there are cases that you do not read about in the news where solutions are found, where investigations are conducted.

The last part, of course, would be the whistleblower case in Minnesota. I know that person. I have respect for him. I know there can be disagreements. I am glad this is going into mediation. I think that is very important. But when you look at this whole—everything together, I think anyone in law enforcement would be able to find a series of problems within agencies. And I think what you have to look at is what has Mr. Jones done since he took over ATF. Is that worthy of merit? Is it worthy for other future nominees decades from now to show that if someone comes in and is willing to take that responsibility instead of just keeping their job, keeping happy with their families, staying in the state they are in, and they are willing to take on a really hard job and do above average, as we like to say in Minnesota, in terms of trying to clean things up, is that to be rewarded or is that to be criticized?

And so I will just end with a quote that I gave my daughter in the car. It is kind of one of those cliche quotes, but I thought it was so fitting when I was trying to get her to do something the other day. And so I took out that old Roosevelt quote, where he said, "It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood, who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming, but who does actually strive to do the deeds, who knows the great enthusiasms, the great devotions, who spend themselves in a worthy cause; who at best knows in the end of the triumph of high achievement; and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

Now, when I tried that quote on my daughter, she said, "That is just about men. They only use the word 'man.'" I think I have tried to get beyond that to say that Mr. Jones was willing to take on a very tough assignment. Again, I think we owe these agents to have a permanent Director. I think we should get him confirmed. And I hope despite all of the work of Senator Grassley in bringing out these important questions, which we must do when we

have a nominee before us, that we are able to move forward and get through this and do this in a timely manner.

I also thank you, Mr. Delery, for your fine credentials and the work you have already done with the Justice Department, and your most amazing family seated behind you who continue, I can tell—if you can manage the Civil Division of the Justice Department as you clearly manage your kids, you are going to do a really good job.

[Laughter.]

Senator KLOBUCHAR. So I want to—that was positive to the boys. That was a very good thing.

I want to thank both the nominees, their families, Anthony out there, everyone who has been willing to sit through this hearing, as well as the Senators who were willing to attend. I hope we can move forward with this nomination. I also want to thank Caroline Holland of my staff who headed up the work on this, as well as Senator Leahy's and Senator Grassley's staff.

Thank you. As noted, the hearing record will be open for 2 weeks unless the Chairman decides to change that, and we will move forward, I hope, to a vote on this nominee. Thank you and the hearing—and the other nominee. The hearing is adjourned.

[Whereupon, at 12:03 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Nominations"

Tuesday, June 11, 2013
Dirksen Senate Office Building, Room 226
9:30 a.m.

B. Todd Jones, to be Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives

Stuart F. Delery, to be the Assistant Attorney General for the Civil Division

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Byron Todd Jones

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

   Director, Bureau of Alcohol, Tobacco, Firearms and Explosives
   Department of Justice

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

   Office Address:
   600 U.S. Courthouse
   300 South Fourth Street
   Minneapolis, Minnesota 55415

   Bureau of Alcohol, Tobacco, Firearms and Explosives
   Department of Justice
   99 New York NE
   Room 5S.100
   Washington, D.C. 20226

   Residence:
   Saint Paul, Minnesota

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

   1957; Cincinnati, Ohio

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 Minnesota Law School - Minneapolis, Minnesota
   1980-1983
   J.D. awarded, May, 1983

   Macalester College - St. Paul, Minnesota
   1975-1979
   B.A. in Political Science awarded in 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.

Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
Department of Justice
99 New York NE
Room 5S.100
Washington, D.C. 20226
September, 2011 - present

United States Attorney
District of Minnesota
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
August, 2009 – Present

Partner
Robins, Kaplan, Miller & Ciresi L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015
June, 2001 – August, 2009

Board Trustee
University of Minnesota Foundation
McNamara Alumni Center
200 Oak Street SE, Suite 500
Minneapolis, Minnesota 55455
2005 - 2009

Advisory Board Member
Institute for Law and Politics
University of Minnesota Law School
229 - 19th Avenue South
Minneapolis, Minnesota 55455
2007 – 2009

Board Trustee
Jeremiah Program
1510 Laurel Avenue, Suite 100
Minneapolis, Minnesota 55403
2007

Board of Governors

University of St. Thomas School of Law
1000 LaSalle Avenue
Minneapolis, Minnesota 55403-2015
2000 – 2006

Adjunct Professor
William Mitchell College of Law
875 Summit Avenue
Saint Paul, Minnesota 55105-3076
2002

Board of Directors
Twin Cities RISE!
800 Washington Avenue North, Suite 203
Minneapolis, Minnesota 55401
2001 - 2003

Board of Directors
Minnesota Independent School Forum
445 Minnesota Street, Suite 505
Saint Paul, Minnesota 55101-5000
2001 – 2002

Partner
Greene Espel P.L.L.P.
200 South Sixth Street, Suite 1200
Minneapolis, Minnesota, 55402
January, 2001 –May, 2001

United States Attorney
District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota, 55415
May, 1998 – January, 2001

Board of Trustees
Saint Thomas Academy
949 Mendota Heights Road
Mendota Heights, Minnesota 55120
1998 -1999

First Assistant United States Attorney
District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota, 55415
April, 1997 – May, 1998

Partner

Greene Espel P.L.L.P.
333 South Seventh Street
Suite 1700
Minneapolis, Minnesota, 55402
March, 1994 – March, 1997

Board of Directors
Catholic Charities of St. Paul & Minneapolis
1200 Second Avenue South
Minneapolis, Minnesota 55403
1990 – 1996

Board of Directors
NAACP, St. Paul Chapter
1060 West Central Avenue
Saint Paul, Minnesota 55104
1994 - 1995

Assistant United States Attorney
District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota, 55415
February, 1992 – March, 1994

Board of Directors
St. Paul Red Cross Regional Blood Services
176 South Robert Street
St. Paul, Minnesota 55107
1990 – 1992

Co-Chair
St. Paul YMCA Black Achievers Mentor Program
194 East Sixth Street
Saint Paul, Minnesota 55101
1990 - 1993

Senior Litigation Associate
Oppenheimer Wolff & Donnelly LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402-1609
May, 1989 – January, 1992

[Active duty with the United States Marine Corps between 1983 – 1989; See Question 7]

Officer Candidate
United States Marine Corps, OCS
Quantico, Virginia
May, 1982 – August, 1982

Law Clerk
Hennepin County Attorney's Office
Civil Division
C-2000 Government Center
300 South Sixth Street
Minneapolis, Minnesota 55487
May, 1981 – August, 1981

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 was commissioned as a Second Lieutenant (O-1) in the United States Marine Corps on August 20, 1982, and placed on inactive duty during 1982 -1983 to complete law school.

I subsequently served on active duty as both an Infantry Officer (MOS 0302) with 1st Battalion, 7th Marine Regiment (Okinawa, Japan and Camp Pendleton, California), and as a Judge Advocate (MOS 4402) with the 1st Force Service Support Group, 1st Marine Division (Camp Pendleton, California), from 1983 until 1989, attaining the rank of Captain (0-3).

I remained in the United States Marine Corps Reserve and was recalled to active duty in January, 1991, for service during Operation Desert Storm. Following release from active duty in June, 1991, I remained in the Marine Corps Reserve, attaining the rank of Major (0-4) and ultimately serving as the commanding officer of 4th Marine Division Military Police Company (1993-1995) until my honorable discharge in 1998.

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.

National Black Prosecutors Association President's Award of Excellence - 2011

Edmund J. Randolph Award Recipient, Department of Justice – 2011

Macalester College Alumni Citation - The Catharine Lealtad '15 Service to Society Award - 2010

American College of Trial Lawyers - inducted as a Fellow in 2001

Minnesota Law & Politics, named a "Super Lawyer," - 2002 through 2008

Minnesota Law & Politics, named a "Top 40 Criminal Defense Lawyer" - 2007 and 2008

City of St. Paul, Certificate of Recognition for service as the Co-Chair of the St. Paul Police Chief Examination (Selection) Committee - May 5, 2004

Navy Achievement Medals for service while on active and reserve duty in the United States Marine Corps in 1989 and 1995

Patricia Harris Fellowship (law school scholarship) 1980-1983

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.

United States Federal Magistrate Selection Committee, District of Minnesota
Member: 2008

United States Federal Magistrate Selection Committee, District of Minnesota
Member: 2010

United States Sentencing Commission – *Ad Hoc* Advisory Group on the Organizational Sentencing Guidelines
Chair: 2002 - 2004

Council on Crime and Justice Racial Disparity Initiative Advisory Committee
Member: 2001

American Bar Association
Member: 1989 - 2009
Criminal Justice Section, ABA/DOJ Liaison Subcommittee, 2008 –2009 Federal Bar Association, Minnesota Chapter
Member: 1990 - 2009
Board of Directors: 1994 - 2002 and 2007 - 2009

Minnesota State Bar Association
Member: 1989 – 2009

New York State Bar Association
Member: 2007 – 2009

District of Columbia Bar Association
Member: 2007 – present

National Association of Former United States Attorneys (NAFUSA)
Member: 2001 – Present
Board of Directors: 2003 - 2005

Minnesota Association of Black Lawyers
Member: 1996 - 2009

Twin Cities Diversity in Practice
Co-Chair: 2005 - 2009

Minnesota Minority Lawyers Association
Member: 1989 - 1996

Twin Cities Committee on Minorities in Large Law Firms
Charter Member: 1989 - 1992

National Black Prosecutors Association
Member: 1997 - 2000

10. **Bar and Court Admission**:

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

The Minnesota State Bar: October 21, 1983 - present

The District of Columbia Bar: April 10, 2007 – present

The New York State Bar: March 21, 2007 – present (inactive)

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.

The United States Court of Military Appeals
Admitted in 1986

The United States District Court for the District of Minnesota
Admitted in 1989

The United States Court of Appeals for the Eighth Circuit
Admitted in 1989

The United States Supreme Court
Admitted on October 15, 2002

The United States District Court for the Northern District of Florida
Admitted in 2006

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.

University of Minnesota Foundation
Board of Trustees: 2005 - 2009

Institute for Law and Politics
University of Minnesota Law School
Advisory Board Member: 2007 – 2009

Jeremiah Program, Minneapolis, Minnesota
Board of Trustees: 2007

City of St. Paul Fire Chief Examination (Selection) Committee
Member: 2006

City of St. Paul Police Chief Examination (Selection) Committee
Co-Chair: 2004

St. Thomas University Law School, St. Paul, Minnesota
Board of Governors: 2000 - 2006

Governor's Citizen Advisory Commission on Redistricting
State of Minnesota
Member: 2001
(Appointed as one of eleven citizens by Governor Jesse Ventura)

Twin Cities RISE!
Board of Directors: 2001 - 2003

Minnesota Independent School Forum
Board of Directors: 2001 - 2002

St. Thomas Academy
Board of Trustees: 1998 -1999

Catholic Charities of Minneapolis and St. Paul
Board of Directors: 1990 - 1996

NAACP, St. Paul Chapter
Board of Directors: 1994 - 1995

St. Paul Red Cross Regional Blood Services
Board of Directors: 1990 – 1992

St. Paul YMCA Black Achievers Mentor Program
Co-Chair: 1990 - 1993

Marine Corps Association
Member: 1983 -1997

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 through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

The Police Chief Magazine No. 79, "From the Acting Director: ATF Combating Violent Crime," September 2012. Copy supplied.

"Countering Violent Extremism through Community-Based Approaches," Op-Ed on the District of Minnesota Website and published in the Grand Rapids Herald, July 25, 2012. Copy Supplied.

"Corporate Citizenship and Corporate Criminal Rights", *Emergency Envelopes*, Volume 1, Issue 2 (Law firm publication), March, 2006. Copy Supplied.

"The Fifth Amendment, Vicarious Liability, and the Attorney Client Privilege: How Cooperation and Waiver Can Leave Your Corporation Exposed", *Emergency Envelopes*, Volume 1, Issue 1 (Law firm publication), November, 2005. Copy Supplied.

"When Civil Matters Become Criminal: The Interplay Between Civil and Criminal Litigation", *American Bar Association Section on Litigation, Committee on Criminal Litigation*, Volume 4, No. 2, Winter 2005. Copy Supplied.

"When Hindsight Is 20/20; Five Key Questions to Ask at the Start of an Internal Investigation", *Journal of Investment Compliance*, Fall 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 done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my 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:

Prosecutorial Decision-Making and Racial/Ethnic Disparities in the Federal Criminal Justice System: Principles and Guidelines, a project of the Brennan Center for Justice at the New York University Law School and the National Institute for Law and Equity (released in 2007). Copy Supplied.
Report of The Ad Hoc Advisory Group on the Organizational Sentencing Guidelines, prepared for the United States Sentencing Commission, Washington, D.C. (released on October 7, 2003). 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.

"Oversight of the Financial Fraud Enforcement Task Force" Testimony before the Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, June 30, 2011. Copy Supplied.

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

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including a thorough review of my 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. Where I have not noted "Copy Supplied," I have been unable to locate or obtain prepared remarks, a transcript, or notes.

National Law Enforcement Museum, "Witness to History: The ATF Raid at Waco," "Brief Comments from ATF Acting Director Jones," Pew Charitable Trusts Building 901 E St NW, Washington, DC 20004 February 7, 2013.

United States Attorney's Office for the District of Utah, Project Safe Neighborhood 10th Anniversary Event, "Comments from ATF Acting Director Jones" Utah Cultural Celebration Center, 1355 W 3100 S
West Valley City, Utah February 12, 2013.

Bureau of Alcohol, Tobacco, Firearms and Explosives, Industry Operations Investigator Basic Training Graduation, Federal Law Enforcement Training Center (Building 69-Memorial Chapel), 1131 Chapel Crossing Road
Brunswick, GA. November 16, 2012. Copy supplied.

International Association of Chiefs of Police Executive Committee Meeting, "ATF Update from the Acting Director," San Diego Marriott Marquis & Marina,

333 West Harbor Drive, San Diego, CA. October 2, 2012.

100th Graduation at ATF National Canine Training and Operations Center (Thai National Police), "ATF Acting Director's Address," 122 Calvary Drive Front Royal, VA. September 12, 2012. Copy supplied.

Minnesota CLE Criminal Justice Institute, "Annual USAO Summary", River Centre, St. Paul, MN, August 27, 2012.

Bureau of Alcohol, Tobacco, Firearms and Explosives, 16th Annual Awards Ceremony, ATF Headquarters, 99 New York NE, Washington, D.C., August 23, 2012. Copy supplied.

California Gang Investigators Association Conference, "ATF Acting Director's Comments," Anaheim Marriott, 700 West Convention Way, Anaheim, CA. July 10, 2012. Copy supplied.

Cristo Rey High School Class of 2012 Commencement Address, Minneapolis, MN, June 9, 2012. Copy supplied.

Waco Wreath-laying/National Police Week Close out Ceremony, ATF Headquarters, 99 New York NE, Washington, D.C. May 17, 2012. Copy supplied.

Bureau of Alcohol, Tobacco, Firearms and Explosives, 16th Annual Memorial Service for Fallen Agents, "Acting Director's Address," ATF Headquarters, 99 New York NE, Washington, D.C. May 16, 2012. Copy supplied.

"16th Annual ATF Memorial Observance at the ATF Waco Memorial," Acting Director's Address, ATF Headquarters, 99 New York NE, Washington, D.C. May 16, 2012. Copy supplied.

Commemoration Ceremony for Deputy Collector William Henderson Foote, ATF Headquarters, 99 New York NE, Washington, D.C. 20226, May 14, 2012. Copy supplied.

National Law Enforcement Officers Memorial Fund Chairman's Dinner, "ATF Acting Director's Comments," Ronald Reagan International Trade Center 1300 Pennsylvania Avenue, NW Washington, D.C. May 12, 2012. Copy supplied.

Federal Magistrate Judge Steven P. Logan Investiture Address, Phoenix, AZ, April 27, 2012. Copy supplied.

Police Executive Research Forum ("PERF") Annual Meeting, "Acting Director's Comments," Renaissance Washington Hotel, 1143 New Hampshire, Washington, DC. April 25, 2012.

Minnesota Treasury Management Association's Annual Conference, "Federal Financial Fraud Enforcement Presentation", River Centre, St. Paul, MN, April 19, 2012.

Funeral of ATF Special Agent John Capano, "ATF Acting Director's Funeral Address," Saint William the Abbot Roman Catholic Church, 2000 Jackson Avenue, Seaford, NY. January 6, 2012. Copy supplied.

Ethics & Values Conference, Keynote Address. University of St. Thomas, Minneapolis, MN. November 3, 2011. Copy supplied.

National Congress of American Indians, Welcoming Remarks. Shakopee, MN, September 27, 2011.

National Native American Law Enforcement Association Conference, "ATF Acting Director's Comments," Tropicana Las Vegas Hotel, 3801 Las Vegas Blvd South, Las Vegas, NV. September 20, 2011. Copy supplied.

Minnesota CLE Criminal Justice Institute, "Annual USAO Summary", River Centre, St. Paul, MN, August 23, 2011.

Great Lakes Native American Conference, Welcoming Remarks. Duluth, MN, August 2, 2011.

National Black Prosecutors Association Annual Conference, Keynote Address. Marriott City Center Hotel, Minneapolis, MN, July 29, 2011.

Leonard, Street & Dienard Annual Scholars Dinner for Minority Law Students, Keynote Speaker. Minneapolis, MN, April 13, 2011.

William Mitchell College of Law Event, "Roundtable on the Importance of Military Service", William Mitchell College of Law, St. Paul, MN, February 17, 2011.

Minnesota Justice Foundation Annual Awards Celebration, Keynote Speaker. International Market Square, Minneapolis, MN, November 10, 2010.

NAFUSA Annual Conference, "Update on the Work of the AGAC", New York, NY, October 9, 2010.

Hennepin County Chiefs of Police Association Monthly Luncheon, "Question and Answer Session", Golden Valley, MN, October 7, 2010.

Native American Law Enforcement Conference (NALES), Welcoming Remarks. Carlton, MN, September 21, 2010.

National Hispanic Bar Association Annual Convention, Welcoming Remarks. Hilton Hotel, Minneapolis, MN, September 10, 2010.

Federal Firearms Licensee Seminar hosted by ATF, "Overview of the Department of Justice's Project Safe Neighborhood", Radisson Hotel, Roseville, MN, September 8, 2010.

Minnesota CLE Criminal Justice Institute, "Annual USAO Summary", River Centre, St. Paul, MN, August 24, 2010.

National Black Prosecutors Association Annual Conference, Chief Prosecutor Panelist Member, San Francisco, CA, July 20, 2010.

BJA Funded Advance Gang Investigators Training, Welcoming Remarks, Minneapolis Police Department, Minneapolis, MN, May 24, 2010.

William Mitchell Law School Class of 2010 Commencement, Keynote Speaker, River Centre, St. Paul, MN, May 23, 2010. Copy supplied.

International Conference on Asian Organized Crime & Terrorism Opening Ceremony, Welcoming Remarks, Crown Plaza Hotel, St. Paul, MN, May 17, 2010.

Annual Police Memorial Service, Keynote Speaker, St. Paul, MN, May 12, 2010. Copy supplied.

Tribal Police Department Roundtable Discussion, "Improving Public Safety in Indian Country," U.S. Attorney's Office, Minneapolis, MN, April 20, 2010. Copy supplied.

American Association of University Women Program Roundtable Discussion on the work of the U.S. Attorney's Office, 990 Summit Avenue, St. Paul, MN, March 18, 2010.

Macalester Alumni of Color Panel, Panelist Member Macalester College, St. Paul, MN, February 25, 2010.

Human Trafficking Policy Meeting, Welcoming Remarks, Crown Plaza Hotel, Bloomington, MN, February 18, 2010.

U.S. Department of Justice's Tribal Nations Listening Session on Public Safety and Law Enforcement, Welcoming Remarks, River Centre, St. Paul, MN, October 27, 2009.

Association of MN Health Plans Luncheon, "Health Care Fraud Enforcement Overview" Hamline University West, St. Louis Park, MN, October 23, 2009.

Equal Justice Forum-Panel Presentation, "National Sentencing Policy", University of St. Thomas Law School, Minneapolis, MN, October 12, 2009.

Formal Investiture Ceremony for United States Attorney B. Todd Jones, Remarks, U.S. Courthouse, Minneapolis, MN, September 18, 2009. Copy supplied.

Federal Bar Association, Minnesota Chapter Monthly Luncheon, "Overview of the U.S. Attorney's Office for the District of Minnesota", Minneapolis Club, Minneapolis, MN, September 16, 2009. Copy supplied.

2009 Hennepin County Bar Association Memorial, Minneapolis, MN, March 30, 2009. Copy supplied.

Minority Corporate Counsel Association, "Diversity Dialogue, A Discussion of Best Practices" Panelist, Chicago, IL, March 26, 2008.

Center for Ethical Business Cultures, Conducting Internal Investigations: Ethical and Legal Issues, A CEBC "Members Only" Roundtable – Lessons Learned from the Hewlett Packard Scandal. Minneapolis, MN, May 3, 2007.

Ethics & Compliance Officer Association, Sponsoring Partner Forum: "The Ethics of Internal Investigations." Weston, FL, April 18, 2007.

National Association of Corporate Directors, Minnesota Chapter: "Board Investigations – Getting it Right." Minneapolis, MN, January 9, 2007.

Securities and Exchange Commission, Accounting and Enforcement Update Conference: "SEC Enforcement Update." Minneapolis, MN, May 23, 2006.

American Conference Institute, 3rd National Forum on Law Firm Diversity – Real Situations, Real Solutions: "Overcoming Adversity within Diversity – Success Stories." Chicago, IL, January 29, 2006.

Minnesota CLE Conference Center, The New Lawyer Experience Seminar (Litigation Orientation for New Attorneys). Minneapolis, MN, January 9, 2006.

American Bar Association: "Board Investigations: How Far is Far Enough?" Washington, D.C., November 16, 2005.

Practicing Law Institute, 37th Annual Institute on Securities Regulation: "Criminal Enforcement of the Securities Laws." New York, NY, November 3, 2005.

Minnesota CLE Conference Center, White Collar Criminal Law 2005 Summit: "How to Represent Your White-Collar Clients in Compliance Matters, Governmental Investigations, Negotiations and Trials." Minneapolis, MN, October 31, 2005.

Center for Ethical Business Cultures, Roundtable Discussion: "Managing High Performance Individuals Who Violate a Firm's Values But Not the Law." Minneapolis, MN, October 12, 2005.

Minnesota State Bar Association CLE, Fraud, Misrepresentation and Deceptive Trade Practices: "When Civil Matters Become Criminal." Minneapolis, MN, March 11, 2005.

American Bar Association, 19th Annual National Institute on White Collar Crime 2005: "Sentencing Guidelines – What Next?" Las Vegas, NV, March 3, 2005.

American Society of Corporate Secretaries, Twin Cities Chapter: "Understanding the Corporate Sentencing Guidelines." Minneapolis, MN, December 7, 2004.

The State Bar of California, "Diversifying the Workplace in a Competitive Legal Market." Monterey, CA, October 9, 2004.

University of St. Thomas Minnesota, Center for Ethical Business Culture: Corporate Responsibility Compliance, Prevention and Best Practices, "Organizational Sentencing Guidelines." Minneapolis, MN, April 20, 2004.

American Bar Association, 18th Annual National Institute on White Collar Crime 2004: "Parallel Proceedings – A Real and Present Danger." Miami Beach, FL, March 3, 2004.

American Health Lawyers, Teleconference: "Changes to the Federal Sentencing Guidelines and DOJ Policy on Federal Prosecutions: What Every Healthcare Lawyer Needs to Know." Teleconference – Minneapolis, MN, November 12, 2003.

Minnesota CLE: "Criminal Ramifications of The Sarbanes-Oxley Act." Minneapolis, MN, October, 2002.

Minnesota CLE: "When Civil Matters Become Criminal." Minneapolis, MN, August, 2002.

Minnesota CLE: "Using Technology in Litigation." Minneapolis, MN, March, 2001.

Wisconsin Association of Minority Attorneys Annual Banquet – Keynote Speech "Race and the Criminal Justice System." Milwaukee, Wisconsin, April 27, 2000.

Martin Luther King Day Celebration – "The Dream Lives", Northfield, Minnesota, January 18, 2000.

U.S. Department of Justice – Hate Crimes Conference/United States Attorney Working Group Best Practices Panel, Washington, DC, October 28, 1999.

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 through a review of my 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:

Star Tribune, Dan Browning, "Drugs and thugs slide down priority scale," December 31, 2012. Copy Supplied.

Star Tribune, Dan Browning, "Jones' office turns to 1934 law aimed at gangsters," December 30, 2012. Copy supplied.

Star Tribune, Dan Browning, "On the beat," December 13, 2012. Copy Supplied.

Associated Press, Amy Forliti, "Minn. man convicted of aiding Somalia terror group," October 19, 2012. Copy Supplied.

Minnesota Public Radio, Laura Yuen, "Muhamud Said Omar guilty in first trial of sweeping investigation," October 18, 2012. Copy supplied.

St. Paul Pioneer Press, David Hanners, "Omar convicted of aiding Somali terrorists, faces life in prison," October 17, 2012. Copy Supplied

The Frontrunner, "Justice IG's House Testimony Sparks Partisan Clash Over Fast and Furious," September 21, 2012. Copy Supplied.

The Commercial Dispatch, Pete Yost, "'Fast & Furious' guns still on street," September 20, 2012. Copy Supplied.

USA Today, Kevin Johnson, "Gun probe finds 'serious failures,'" September 20, 2012. Copy supplied.

Washington Post, Sari Horwitz, "Inspector General's report on 'Fast and Furious' criticizes Justice Dept., ATF," September 19, 2012. Copy supplied.

The Hill, Jordy Yager, "Justice Department Report clears Holder, but faults DOJ, ATF officials," September 19, 2012. Copy supplied.

Associated Press, Pete Yost, "Justice Dept faulted in gun-trafficking operation," September 19, 2012. Copy supplied.

CNN, Terry Frieden, "Official to testify on 'fast and furious' report, which slaps 14 at Justice, ATF," September 19, 2012. Copy supplied.

Wall Street Journal, Evan Perez and Devlin Barrett, "Gun report spurs exits," September 19, 2012. Copy supplied.

Reuters, David Ingram, "Inspector faults federal agents in gun probe, clears Holder," September 19, 2012. Copy supplied.

Wall Street Journal, WSJ Staff, "ATF keeps its name, buts adds a new one," September 19, 2012. Copy supplied.

Star Tribune, Dan Browning, "White Earth teaming up with federal prosecutors," September 4, 2012. Copy Supplied.

Wall Street Journal, Evan Perez, "Firearms Bureau Struggles to Define its Role," August 13, 2012. Copy supplied.

National Public Radio, Carrie Johnson, "Head of embattled ATF says running bureau 'Testing all of my skill sets,'" August 2, 2012 (with audio file link). Copy supplied.

The Associated Press, Terry Collins, "3 charged in Oakland shooting that killed infant," July 20, 2012. Copy Supplied.

KUSA-TV 9, Jace Larson, "ATF head, Todd Jones, ready to move beyond Fast and Furious scandal," July 12, 2012 (with video file link). Copy supplied.

Denver Post, Tom McGhee, "ATF could fight Denver street violence if problem becomes more serious," July 12, 2012. Copy supplied.

Star Tribune, Kevin Diaz, "Gun sting had '96 precedent in Minnesota," June 28, 2012. Copy Supplied.

Star Tribune, Dan Browning, "3 found guilty in huge Ponzi case," June 13, 2012. Copy Supplied.

Associated Press, Eric Tucker, "US honors black federal law officer killed in 1883," May 14, 2012. Copy supplied.

Minnesota Public Radio, Jon Collins, "US Attorney: US citizens in Al-Shabab could lose rights to trial,'" March 9, 2012 (with audio link). Copy supplied.

The Associated Press, Amy Forliti, "Somalis scramble for way to send relatives money," December 31, 2011. Copy Supplied.

The Baltimore Sun, Richard A. Serrano, "Finger-pointing in gun probe; Former ATF director claims top aides kept him in dark about Fast and Furious," December 27, 2011. Copy Supplied.

Los Angeles Times, Richard Serrano, "Angry former ATF chief blames subordinates for Fast and Furious," December 24, 2011. Copy supplied.

WTOP, J.J. Green, "Restoring the reputation of ATF," December 6, 2011 (with audio file links). Copy supplied.

WTOP, J.J. Green, "Interim ATF director: Recovering from 'Fast and Furious,'" December 5, 2011 (with audio file links). Copy supplied.

Star Tribune, Dan Browning, "3 life terms for 3 lives taken," November 15, 2011. Copy Supplied.

Chicago Sun Times, Frank Main, "ATF boss unfazed by firearm probe," October 26, 2011. Copy supplied.

Chicago Sun Times, Frank Main, "ATF Boss: Crackdown will continue on guns to Mexico," October 25, 2011. Copy Supplied.

Star Tribune, Dan Browning, "U.S. Attorney honors 3 white-collar sleuths," October 12, 2011. Copy Supplied.

Associated Press, Pete Yost, "ATF's new director shakes up agency," October 6, 2011. Copy supplied.

Iol News, Jeremy Pelofsky, "US trying to fix ties with Mexico," October 6, 2011. Copy supplied.

CNN, Terry Frieden, "New boss at ATF announces major shake-up at the troubled agency," October 6, 2011. Copy supplied.

Houston Chronicle, Puneet Kollipara, "New ATF chief reassigns top officials after Fast and Furious," October 5, 2011. Copy supplied.

The Washington Times, Jerry Seper, "Acting ATF chief 'refocusing' on 'core mission' of bureau: Staff shakeup aims to ally fallout of 'Fast and Furious,'" October 5, 2011. Copy supplied.

Washington Post, Sari Horwitz, "New ATF chief B. Todd Jones joins an agency shaken by gun scandal," September 1, 2011. Copy supplied.

Pioneer Press, Ruben Rosario, "Washington called. US Attorney B. Todd Jones answered." August 31, 2011. Copy supplied.

WCCO Minnesota, Adam Carter, "Minn. US Attorney Jones Named Acting ATF Director," August 30, 2011. Copy supplied.

Minnesota Public Radio, Steven John and Sasha Asanian, "New acting director of ATF B. Todd Jones will tackle 'lack of stability,'" August 30, 2011.

Star Tribune, James Walsh, "U.S. attorney to get ATF 'squared away," August 30, 2011. Copy supplied.

Star Tribune, "Using outreach to combat terrorism," August 29, 2011. Copy Supplied.

Associated Press, Tara Bannow, "Attorney General's Minn. visit marred by protests," May 27, 2011. Copy Supplied.

Pioneer Press, Ruben Rosario, "Ruben Rosario: On day one of King's circus, three Minnesotans take center stage," March 10, 2011. Copy Supplied.

Wall Street Journal, Evan Perez, "Long Arm of Law Reaches Out to Woo Muslims," March 9, 2011. Copy supplied.

Star Tribune, Randy Furst and Paul Walsh, "Tax cheats defended at home" February 19, 2011. Copy Supplied.

Star Tribune, James Walsh, "In Indian country, higher crime rates but low prosecution; Federal officials hope new efforts can help counter the bloodshed," February 7, 2011. Copy Supplied.

Pioneer Press, Ruben Rosario, "Ruben Rosario: Federal cases by the numbers: Data do not tell the entire picture," February 5, 2011. Copy Supplied.

National Journal, James Kitfield, "Preventing Attacks Without Alienating Muslims," January 28, 2011. Copy Supplied.

Star Tribune, James Walsh and David Chanen, "Unlikely pair pursue sex-ring case Aggressive prosecutor and passionate cop kept sex case alive," January 1, 2011. Copy Supplied.

Star Tribune, Matt McKinney, "Targeting criminals is paying off," December 2, 2010. Copy Supplied.

Minnesota Monthly, Frank Bures, "How B. Todd Jones became the man to put the U.S. attorney's house back in order," December 2010. Copy supplied.

MPR News, Laura Yuen, "Tennessee court handling Minn.-connected sex ring cases," November 24, 2010. Copy Supplied.

Star Tribune, David Chanen and James Walsh, "A Huge Web of Gang Crime," November 10, 2010. Copy Supplied.

Main Justice, Andrew Ramonas, "Top U.S. Attorney Hints at DOJ Priorities Next Year," October 9, 2010. Copy supplied.

Pioneer Press, John Welbes, "Homeowners are just hanging on," September 18, 2010. Copy Supplied.

Star Tribune, James Walsh and Bob Von Sternberg, "A front line on terrorism is here," September 11, 2010. Copy Supplied.

The Associated Press, n/a, "Fallen Minn. Car dealer pleads guilty to fraud," September 8, 2010. Copy Supplied.

National Public Radio, Dina Temple-Raston, "AL-Shabab Becomes Magnet for Would-Be Jihadists," August 6, 2010. Copy Supplied.

Star Tribune, Abby Simons, "New Push to Get Guns Off Streets," July 23, 2010. Copy Supplied.

The Minnesota Lawyer, "Honestly, lawyers are relieved about honest services decision," July 2, 2010. Copy Supplied.

Pioneer Press, Mara H. Gottfried, "U.S. Justice Department to lead investigation of Metro Gang Strike Force," October 30, 2009. Copy Supplied.

The Washington Post, "Attorney general prepares to fill advisory panel," October 26, 2009. Copy Supplied.

The Minnesota Lawyer, Barbara L. Jones, "Minnesota's B. Todd Jones: U.S. attorney's office is recalibrating and moving on," September 28, 2009. Copy Supplied.

Star Tribune, James Walsh, "Familiar name is back as prosecutor; Former U.S. Attorney B. Todd Jones was confirmed for another term in the federal office in Minneapolis," August 8, 2009. Copy Supplied.

Minnesota Public Radio News, Elizabeth Stawicki, "Senate confirms Jones as U.S. attorney for Minn.," August 7, 2009. Copy supplied.

Pioneer Press, Ruben Rosario, "Ruben Rosario: B. Todd Jones is back in town," August 7, 2009. Copy Supplied.

KARE 11, AP, n/a, "Obama picks Jones as US attorney for Minnesota," June 4, 2009. Copy supplied.

Star Tribune, James Walsh, "Ex-U.S. attorney is tapped to take the job again," March 6, 2009. Copy Supplied.

MINNPOST, Jay Weiner, "B. Todd Jones, Amy Klobuchar and Kirby Puckett: When they collided," March 5, 2009. Copy Supplied.

AP, n/a, "Klobuchar recommends Jones for US Attorney post," March 5, 2009. Copy Supplied.

Inside Counsel, Steven Andersen, "Looking Backward; General counsel acquitted of backdating as next wave of fraud looms," December 8, 2008. Copy Supplied.

Finance and Commerce, Barbara L. Jones, "What will an Obama presidency mean for Minnesota lawyers?" November 15, 2008. Copy Supplied.

Minnesota Public Radio, Elizabeth Stawicki, "Former U.S. Attorneys predict future of Dept. Of Justice," November 14, 2008. Copy Supplied.

ABA Journal, Mark Hansen, "Memo to Prosecutors: Time to Back Off," November, 2008. Copy Supplied.

Star Tribune, David Phelps, "Court Oks seizure of Petters' assets," October 7, 2008. Copy Supplied.

Inside Counsel, Steven Andersen, "Push Back: Recent history of white-collar crime teaches corporate America a lesson," September 2008. Copy Supplied.

Star Tribune, David Phelps, "Greed or economic stress?" August 24, 2008. Copy Supplied.

Star Tribune, Steve Brandt, "Real estate company charged in fraud scheme," April 12, 2008. Copy Supplied.

New York Times, Philip Shenon, "Justice Dept. Chief Faces a Test in Minnesota," November 13, 2007. Copy Supplied.

Corporate Crime Reporter, n/a, "Corporate Crime Reporter Names Top Fifteen Black White-Collar Criminal Defense Attorneys," July 29, 2007. Copy Supplied.

Los Angeles Times, Richard B. Schmitt, "Attorney firings echo in courts," June 18, 2007. Copy Supplied.

The Legal Ledger, Michelle Lore, "Ex-Minnesota U.S. attorneys weigh in on recent firings," March 12, 2007. Copy Supplied.

The Minnesota Lawyer, Michelle Lore, "When the feds come a knockin'," February 5, 2007. Copy Supplied.

Star Tribune, David Chanen, "Felder death to be audit case study," January 18, 2007. Copy Supplied.

Corporate Secretary, Karen Dean, "Tough Consequences," December 2006. Copy Supplied.

St. Paul Pioneer Press, Shannon Prather, "For these lawyers, diversity has its limits," November 23, 2006. Copy Supplied.

The Minnesota Lawyer, Barbara L. Jones, "Maslon application rejected by Twin Cities diversity group," November 13, 2006. Copy Supplied.

Employment Law 360, Erin Marie Daly, "Scandals Catapult Lawyers To Corner Offices," October 31, 2006. Copy Supplied.

Star Tribune, Richard Meryhew, "after the game," October 30, 2006. Copy Supplied.

The Minnesota Lawyer, Barbara L. Jones, "Judge Leung resigns from board of Twin Cities diversity group," October 23, 2006. Copy Supplied.

Star Tribune, Rochelle Olson, "fifth district congressional race," October 13, 2006. Copy Supplied.

MSNBC, Dan Abrams, "The Abrams Report," May 31, 2006. Copy Supplied.

Star Tribune, Dee DePass, "Legal pros heartened by Enron verdicts," May 26, 2006. Copy Supplied.

Securities Law 360, Bailey Somers, "Thorny Road Ahead For Convicted Enron Duo," May 25, 2006. Copy Supplied.

Securities Law 360, n/a, "Enron Verdict A Much-Needed Victory For Government," May 25, 2006. Copy Supplied.

The Minnesota Lawyer, Barbara L. Jones, "Targeting the Lawyer," February 20, 2006. Copy Supplied.

Saint Paul Pioneer Press, David Hawley, "Interim federal prosecutor is named," February 18, 2006. Copy Supplied.

AP, Amy Forliti, "U.S. Attorney Heffelfinger, after Red lake probe, to resign," Februaru 15, 2006. Copy Supplied.

Star Tribune, Heron marques Estrada, "Trial in St. Paul's only unsolved cop killing to start," February 6, 2006. Copy Supplied.

Star Tribune, Rochelle Olson, "Tapes are at heart of the Zimmermann bribery case," January 27, 2006. Copy Supplied.

The Minnesota Lawyer, Barbara L. Jones, "Fledgling Twin Cities diversity group is poised to spring into action in 2006," January 9, 2006. Copy Supplied.

Saint Paul Pioneer Press, Ellen Tomson, "Shut out of trial, families frustrated," November 13, 2005. Copy Supplied.

ABA Journal eReport, Steve Seidenberg, "Using Cell-Phone Location to Track Suspects Needs proof of Cause, N.Y. Court Says," September 16, 2005. Copy Supplied.

Star Tribune, Pam Louwagie, "Request to collect DNA is dropped," June 4, 2005. Copy Supplied.

Star Tribune, Richard Meryhew, "Lawyer question DNA tactic," April 26, 2005. Copy Supplied.

Times-Picayune, James Gill, "From Minnesota, clueless insults," April 24, 2005. Copy Supplied.

Times-Picayune, Michelle Krupa, "Judge's attorney to study race's role," April 21, 2005. Copy Supplied.

AP, n/a, "Questions of race to figure in judge's defense," April 21, 2005. Copy Supplied.

Saint Paul Pioneer Press, Rick Linsk, "State Sues Vang Pao Foundation," April 20, 2005. Copy Supplied.

Star Tribune, Terry Collins, "Striking back at rumors, leaks," April 19, 2005. Copy Supplied.

Corporate Legal Times, n/a, "In Brief: Sentencing Turmoil," March 2005. Copy Supplied.

Star Tribune, David Chanen, "Red Lake School Shooting," March 30, 2005. Copy Supplied.

The Minnesota Lawyer, Barbara L. Jones, "Federal prosecutors, defenders divided on sentencing cases," January 31, 2005. Copy Supplied.

Bloomberg, n/a, "U.S. Sentencing Guidelines Made Advisory by Court," January 12, 2005. Copy Supplied.

Saint Paul Pioneer Press, Marie McCain, "Sjodin Capital Case Ok'd," October 29, 2004. Copy Supplied.

Star Tribune, Paul McEnroe, "Affair muddied probe of drug suspect," September 26, 2004. Copy Supplied.

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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 have never been a candidate for public office.

In August 2011, I was appointed by the President of the United States as the Acting Director of the Bureau of Alcohol, Tobacco and Firearms and subsequently nominated for that same position in January 2013.

In 2009, I was nominated to serve as United States Attorney for the District of Minnesota by President Barack Obama and subsequently confirmed by the United States Senate in August 2009.

On May 22, 1998, I was appointed interim United States Attorney for the District of Minnesota by Attorney General Janet Reno. On September 18, 1998, upon the expiration of that interim appointment, the United States District Court for the District of Minnesota named me as the judicially appointed interim United States Attorney. On October 7, 1998, President William J. Clinton nominated me to be the permanent U.S. Attorney. On October 8, 1998, I was confirmed by the United States Senate. I resigned from this position in January 2001.

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.

During 2007 and 2008, I served a member of the Minnesota State Finance Committee for the Obama for America campaign. In addition, I was a participant in "Obama University" held at national campaign headquarters in Chicago, Illinois during November, 2007.

In 2006, I served as an uncompensated advisor to Congressman Keith Ellison, who represents Minnesota's 5th Congressional District, during his first campaign for that office.

Prior to these activities, I was a member of the Minnesota Democratic Leadership Council (DLC) between 1991 and 1995. I also worked on the campaign of U.S. Senate candidate Bob Short (Democrat) in 1978 and served as an intern in the office of U.S. Senator Hubert H. Humphrey during 1977-78. During 1976 I served as a college campus organizer for the Minnesota "Carter for President" campaign.

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 did not have the opportunity to clerk for a judge given my commitment to military service immediately following graduation from law school.

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

I have never been a solo practitioner.

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.

Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
Department of Justice

99 New York NE
Room 5S.100
Washington, D.C. 20226
August, 2011 - present

United States Attorney
Department of Justice
District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota, 55415
September, 2009 – present

Partner
Robins, Kaplan, Miller & Ciresi L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015
June, 2001 – August, 2009

United States Attorney / Assistant United States Attorney
Department of Justice
District of Minnesota
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota, 55415
May, 1998 – January, 2001;
April, 1997 – May, 1998 (First Assistant);
February, 1992 – March, 1994.

Partner
Greene Espel P.L.L.P.
333 South Seventh Street
Suite 1700
Minneapolis, Minnesota, 55402
March, 1994 – March, 1997
January, 2001 – May, 2001

Senior Litigation Associate
Oppenheimer, Wolff & Donnelly
First Bank Building, Suite 1700
St. Paul, Minnesota 55101
May, 1989 – January, 1992

Judge Advocate
United States Marine Corps
First Marine Division
1st Force Service Support Group
Camp Pendleton, California
August, 1986 – May, 1989

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

The only matter that I attempted to mediate involved a limited attempt to resolve a board governance dispute between a Minnesota based health insurance organization and the Minnesota Attorney General's office in 2005. The matter was not resolved after a single day of meetings and the case proceeded in the courts. Other than this matter, 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.

The character of my law practice over the years has consistently had litigation and trial work at its core, with shifts occurring between public sector and private sector platforms.

2009 – Present: During my current tenure as the United States Attorney for the District of Minnesota, I have been privileged to serve both as one of the nation's principal litigators, operating under the direction of the Attorney General, and as the chief federal law enforcement officer for the District of Minnesota. Between September 2009 and August 2011, I also chaired the Attorney General's Advisory Committee (AGAC) of U.S. Attorneys. Since September 2011, I have also served as the Acting Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. In this capacity, I assumed responsibility for the leadership and oversight of one of four major Federal law enforcement components within the Department of Justice.

2001 – 2009: As a partner with the national law firm of Robins, Kaplan, Miller & Ciresi LLP, I maintained an active trial practice focused on complex business litigation as both plaintiff and defense counsel. I represented a number of organizations and individuals in criminal and civil cases and regulatory matters and served as special counsel to various boards of directors of public and privately held companies. In the latter capacity, I led internal investigations and provided guidance on compliance and governance issues. During my time at the law firm, I had the opportunity to serve multiple terms on the firm's Executive Board (management committee), Recruiting (hiring) Committee and chaired the Diversity Committee from 2003 until 2008.

1997 – 2001: During my first tenure as the United States Attorney, I had the privilege to serve both as one of the nation's principal litigators, operating under the direction of the Attorney General, and as the chief federal law enforcement officer of the United States within the District of Minnesota. Prior to assuming that position, as the First Assistant United States Attorney, my primary responsibilities included overall management of the internal operations of the office, in areas ranging from personnel to budget. In this capacity, I worked

closely with both the Criminal and Civil Division Chiefs in a variety of policy implementation matters and Department of Justice initiatives.

1994 – 1997: My practice as a partner at Greene Espel involved all aspects of representation of individuals, private entities, and governmental units in litigation (defense) of employment related disputes, civil rights claims and discrimination suits, primarily in Federal court. I was also involved in conducting confidential investigations in support of, or to avert, litigation for corporations and public bodies, including matters relating to regulatory and criminal proceedings. Internally, I served as the managing partner during my last two years at the firm (1996 – 1997).

1992 – 1994: During my service as an Assistant U.S. Attorney, my sole focus was representing the United States in criminal cases venued in Federal court. In this capacity, I conducted grand jury investigations and was the lead trial lawyer in a number of federal prosecutions and before the Courts of Appeal in matters involving criminal drug conspiracies, money laundering, financial fraud and violent crime.

1989 – 1992: While at Oppenheimer, Wolff & Donnelly I developed a general civil litigation practice encompassing a wide variety of legal matters ranging from products liability defense and insurance coverage disputes to labor and employment controversies in both a private and public sector setting. Given my position as a senior associate I had primary responsibility for daily case management, handling pretrial discovery, formulation and drafting of both non-dispositive and dispositive motions, and any subsequent appeal briefs.

1986 – 1989: As a Judge Advocate in the United States Marine Corps I served as both a trial defense counsel and prosecutor in numerous courts-martial proceedings (trials) and administrative discharge hearings. While serving as a trial defense counsel I defended military personnel in a number of special and general courts-marital. I also advocated for members pending their administrative involuntary separation from the military. As a prosecutor I handled a number of courts-martial proceedings, many of which were contested. In addition to directing investigations of the Naval Investigative Service and the criminal investigations division of the military police, I also regularly advised regimental and battalion command on all criminal justice matters, international law of war issues and civil affairs functions.

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

During the course of my legal career, I have represented a variety of clients in both criminal and civil litigation. These clients have included individuals charged with violations of Federal or state criminal law, and members of the military charged under the Uniform Code of Military Justice. I have also had the opportunity to represent both public and private companies engaged in a wide variety of business endeavors ranging from consumer retail and health care to medical devices and public utilities. I have represented state and local units of government in both employment and civil rights cases, and had the privilege of representing the United States in prosecuting criminal cases in both Federal court and in a military courts-martial setting.

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 appeared in court frequently during my tenure as both a Judge Advocate in the United States Marine Corps (1986 – 1989) and as an Assistant United States Attorney (1992 – 1994). My court opportunities while practicing civil litigation at both Oppenheimer, Wolff & Donnelly (1989 – 1992) and at Greene Espel (1994 – 1997) were less frequent but did result in periodic civil jury trial work. As the United States Attorney (1998 – 2001, 2009 - present) I did not and have not regularly appeared in court, although there were and are appropriate occasions when this occurs. During my most recent eight years in private practice (2001- 2009) I had many opportunities to appear in court for both civil and criminal motions practice and in several civil and criminal jury trials. The percentages below reference the entirety of my legal career, including Military service.

i. Indicate the percentage of your practice in:
   1. federal courts (including military); 80%
   2. state courts of record; 20%
   3. other courts; none
   4. administrative agencies; none

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 25%
   2. criminal proceedings: 75%

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

I tried approximately twenty (20) cases to verdict before a jury or members panel as sole counsel while in the military and as an Assistant U.S. Attorney. During this same time I was co-counsel on additional four or five (4-5) jury trials. These estimates are apart from the numerous cases which were resolved short of trial by plea or dismissal. As a civil practitioner or criminal defense counsel during my tenures at Greene Espel

and Robins, Kaplan Miller and Ciresi, I have tried an additional half dozen (6) cases as lead counsel before juries in state and Federal court.

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.

Although admitted, I have not yet had the opportunity to practice before the Supreme Court of the United States

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

a. the date of representation;

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

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

The following ten cases collectively reflect significant litigation I personally handled throughout the progression of my legal career (excluding my military legal service). The first five cases represent my work as a line prosecutor as an Assistant United States Attorney. Each of these cases involved the enhancement of community safety through the prosecution and conviction of drug traffickers and firearm offenders. Two cases represent civil litigation involving substantial public policy issues. Two cases involved my work as defense counsel in high-profile criminal cases, one involving a sports-celebrity and one involving a public official. The final case involved my dual role as a case prosecutor and United States Attorney in a significant terrorism prosecution.

1. *United States v. Norberto Trevino-Rodriguez and Rosalio Trevino-Lopez*

Citation:

994 F.2d 533 (8th Cir. 1993)

Party Represented:

United States of America

Summary of Case:

This was a criminal case that involved several individuals trafficking in substantial quantities of cocaine between Minnesota and Texas.

Nature of Participation:

As an Assistant United States Attorney, I was co-counsel for the government.

Final Disposition:

The defendants were adjudged guilty of the charges contained in the indictment by a federal jury following deliberation, and those convictions were upheld on appeal by the 8th Circuit Court of Appeals.

Date of Representation:

1992

Name of court and judge:

U.S. District Court for the District of Minnesota before Judge James Rosenbaum

Co-Counsel:

Jon Hopeman
Assistant U.S. Attorney, District of Minnesota (former)
Current position: Counsel
Felhaber, Larson, Fenlon & Vogt, P.A.
220 South Sixth St. Suite 2200
Minneapolis, MN 55402
(612) 373-8416

Counsel for other parties:

Jerry Strauss (Deceased)
Minneapolis, Minnesota

Arthur Martinez
250 Second Avenue South
Minneapolis, Minnesota 55401
(612) 333-6000

2. *United States v. Cassell Bobo, et al*

Citation:

49 F.3d 362 (8th Cir. 1995)

Party Represented:

United States of America

Summary of Case:

This criminal case involved a major narcotics distribution and money laundering conspiracy in both Minnesota and California. It resulted in the seizure of substantial quantities of cocaine and currency following intensive investigation by the DEA, including Title III wiretap evidence introduced at trial.

Nature of Participation:

As an Assistant United States Attorney, I was co-counsel for the government.

Final Disposition:

The defendants who proceeded to trial were adjudged guilty of the charges contained in the indictment by a federal jury following deliberation, and the convictions were upheld on appeal by the 8th Circuit Court of Appeals.

Date of Representation:

1993

Name of court and judge:

U.S. District Court for the District of Minnesota before then-Chief Judge Diana Murphy (currently sitting on the 8th Circuit Court of Appeals).

Co-Counsel:

Denise Riley
Assistant U.S. Attorney, District of Minnesota (former)
Current position: Assistant Chief Judge 4th Judicial District Minnesota
300 South 6th Street
Minneapolis, MN 55487
(612)-348-0112

Counsel for other parties:

Faisom Sessoms
Suite 840, 331 Second Avenue South
Minneapolis, Minnesota, 55401
(612) 344-1505

Barry Voss
527 Marquette Ave # 1050
Minneapolis, Minnesota, 55402
(612) 673-0707

John G. Dillon
237 Mackubin St.

St. Paul, Minnesota, 55102
(612) 703-8648

Richard Oakes (Deceased)
St. Paul, Minnesota

3. *United States v. Michael Severe, et al.*,

Citation:

29 F.3d 444 (8th Cir. 1994)

Party Represented:

United States of America

Summary of Case:

This was criminal case that involved a conspiracy to distribute crack cocaine in Minnesota which was obtained from sources in California. The case was the result of a joint state-federal narcotics investigation in the City of Minneapolis.

Nature of Participation:

As an Assistant United States Attorney, I was sole counsel for the government.

Final Disposition:

Several of the defendants entered pleas and cooperated with the government by providing testimony at trial. The defendant who proceeded to trial was adjudged guilty of the charges contained in the indictment by a federal jury following deliberation and that conviction was upheld on appeal by the 8th Circuit Court of Appeals.

Date of Representation:

1993

Name of court and judge:

U.S. District Court for the District of Minnesota before Judge David Doty.

Counsel for other party:

Craig Cascarano
150 South 5th Street, Suite 3260
Minneapolis, Minnesota, 55402
(612) 333-6603

4. *United States v. Hyten*,

Citation:

5 F.3d 1 154 (8th Cir. 1993)

Party Represented:

United States of America

Summary of Case:

This was criminal case that involved a convicted felon in constructive possession of a MAC- 10 semi-automatic weapon. The defendant was alleged to be an enforcer for a local motorcycle street gang.

Nature of Participation:

As an Assistant United States Attorney, I was sole counsel for the government.

Final Disposition:

Following a weeklong trial, which included testimony from the defendant's wife asserting ownership of the weapon, the defendant was adjudged guilty of the charges contained in the indictment by a federal jury following deliberation. The conviction was upheld on appeal by the 8th Circuit Court of Appeals.

Date of Representation:

1992

Name of court and judge:

U.S. District Court for the District of Minnesota before then-Chief Judge Diana Murphy (currently sitting on the 8th Circuit Court of Appeals).

Counsel for other party:

Bruce Hanley (deceased).

5. *United States v. Alex Horne and Joseph Franklin,*

Citation:

4 F.3d 579 (8th Cir. 1993)

Party Represented:

United States of America

Summary of Case:

This was a criminal case that involved a conspiracy to distribute crack cocaine, use of firearms, and operation of a crack house within 1000 feet of Minneapolis North High School.

Nature of Participation:

As an Assistant United States Attorney, I was sole counsel for the government.

Final Disposition:

The defendants were adjudged guilty of the charges contained in the indictment by a federal jury following deliberation, and those convictions were upheld on appeal by the 8th Circuit Court of Appeals.

Date of Representation:

1993

Name of court and judge:

U.S. District Court for the District of Minnesota before Judge Harry MacLaughlin (deceased).

Counsel for other party:

Bruce Hanley (deceased).

F. Clayton Tyler
331 Second Avenue South, Suite 230
Minneapolis, Minnesota
(612) 924-1648

6. *John Barlow v. Velma Throdahl*, (not reported).

Docket Number:

District Court File No. 95-849 (Minnesota State District Court, Hennepin County)

Party Represented:

Civil defendant Velma Throdahl

Summary of Case:

This case was a civil/employment law matter that involved a defamation lawsuit initiated against a municipal employee. The defendant, whom I represented, was indemnified by her employer, a municipal police department. The defendant had filed a sexual harassment complainant with the municipality against a co-worker police officer. The police officer was terminated based in part on the allegations raised in the sexual harassment complaint. Following his reinstatement as a result of a post-termination arbitration decision, the

plaintiff/police officer filed suit in 1995 against the defendant based upon the allegations in her sexual harassment complaint. I represented the defendant/sexual harassment complainant throughout the case, which involved extremely contentious litigation.

Nature of Participation:

As private counsel, I was lead attorney for the defendant.

Final Disposition:

Following several unsuccessful attempts to obtain summary judgment based on, among other legal theories, an immunity defense for sexual harassment complainants; we proceeded to trial in 1996. After several days of jury trial before Judge Gary Larson, the plaintiff police officer dismissed his case with prejudice in exchange for an agreement that defendant would not pursue costs or a malicious prosecution tort claim against the plaintiff.

Date of Representation:

1995-1996

Name of court and judge:

Minnesota District Court, Hennepin County, before Judge Gary Larson.

Co-Counsel:

Patricia Beety
League of Minnesota Cities Insurance Trust (LMCIT)
145 University Ave. W.
St. Paul, Minnesota, 55101
(651) 281-1270

Counsel for other party:

Joseph B. Marshall
304 Cheyenne Lane
Clinton, Arkansas 72301
(Note: Most recent business address I have located, circa 2008)

7. *Yvette Robinson, et al. v. Henry Cisneros, et al.* (not reported),

Docket Number:

Case No. CV-4-95-237(U.S. District Court, District of Minnesota)

Party Represented:

Civil defendant St. Paul Public Housing Authority

Summary of Case:

This case was a federal class action lawsuit filed in 1994 by Southern Minnesota Regional Legal Services. The civil complaint alleged a pattern of racial discrimination in the assignment of public housing by both HUD and the St. Paul Public Housing Agency (PHA). Essentially, the lawsuit challenged the right of the PHA and HUD to administer housing assistance in a racially-neutral manner by considering the race or ethnicity of those awaiting public housing or "steering" individuals to certain developments for purposes of changing racial composition. Interestingly, the plaintiff class consisted of African-American applicants who asserted that the PHA discriminated against them in favor of Asian-Americans.

Nature of Participation:

As private counsel, I was the lead attorney for the PHA from the initiation of the class action lawsuit until its resolution through settlement in 1996.

Final Disposition:

The case was resolved through a settlement agreement which I jointly negotiated.

Date of Representation:

1994-1996

Name of court and judge:

U.S. District Court for the District of Minnesota before Judge Ann Montgomery.

Co-Counsel:

Jacqueline Becerra (representing HUD)
Trial Attorney, Federal Programs Branch, Department of Justice (former)
Current position: Shareholder, Greenberg Traurig
333 SE 2nd Ave., Suite 4400
Miami, Florida, 33131
(305) 579-0500

Counsel for other party:

Jessie R. Nicholson
Southern Minnesota Regional Legal Services
55 E. 5th Street, Suite 1000
St. Paul, Minnesota, 55101
(651) 222-5863

8. *State of Minnesota v. Kirby Puckett*, (not reported),

Docket Number:

District Court File No. 27-CR02-07319 (Minnesota State District Court, Hennepin County)

Party Represented:

Criminal Defendant Kirby Puckett

Summary of Case:

This was a state criminal prosecution in which I successfully defended Hall of Fame baseball legend and former Minnesota Twins player Kirby Puckett in a high profile criminal trial involving allegations of sexual assault.

Nature of Participation:

As private counsel, I was the lead attorney for the criminal defendant.

Final Disposition:

Following trial, the jury acquitted defendant Puckett on all charges.

Date of Representation:

2003

Name of court and judge:

Minnesota District Court, Hennepin County, before Judge Stephen Swenson.

Co-counsel:

Christopher W. Madel
800 LaSalle Avenue
Minneapolis, Minnesota, 55402
(612) 349-8703.

Counsel for other party:

Alan Harris
Assistant Hennepin County Attorney
C-2000 Government Center, 300 South Sixth Street
Minneapolis, Minnesota 55487
(612) 348-5550.

9. *United States v. Alan Green, et.al.* (not reported),

Docket Number:

Case No. 2:04CR00295 (U.S. District Court, Eastern District of Louisiana)

Party Represented:

United States of America

Summary of Case:

This case was a Federal criminal action filed against a sitting state district court judge. The case, which was tried in 2005 before a jury in New Orleans, involved allegations of public corruption and conspiracy. The charges resulted from an extensive FBI wiretap (Title III) investigation. The underlying facts involved allegations of illegal contributions of cash and other gratuities in exchange for favorable treatment in bond hearings on behalf of defendant's bail bondsmen.

Nature of Participation:

As private counsel, I was lead attorney for criminal defendant Green.

Final Disposition:

Following a trial at which I served as co-lead defense counsel, the jury hung on all but one mail fraud count against Judge Green. The jury returned a verdict only on the sole mail fraud count of conviction.

Date of Representation:

2005

Name of court and judge:

U.S. District Court for the Eastern District of Louisiana before Judge Lance Africk.

Co-Counsel:

Frank DeSalvo
739 Baronne St.
New Orleans, Louisiana, 70113
(504) 524-4191.

Counsel for other party:

Michael Magner
Assistant U.S. Attorney, Eastern District of Louisiana (former)
Current position: Special Counsel
Jones, Walker, Waschter, Poitevent, Carrere, Denegre LLP
201 St. Charles Ave.
New Orleans, LA 70170
(504) 582-8316

10. *United States. v. Omer Abdi Mohamed* (not reported).

Docket Number:

Case No. 09-CR-352 (U.S. District Court, District of Minnesota)

Party Represented:

United States of America

Summary of Case:

This case was a high-profile criminal prosecution involving conspirators who recruited young men of Somali descent in the Minneapolis area to travel to Somalia to fight against Ethiopian troops, who were in Somalia assisting the internationally recognized Transitional Federal Government of Somalia. The defendant, Omer Abdi Mohamed, was a leader of the conspiracy. He was indicted in November 2009 in the District of Minnesota under my tenure as United States Attorney. In July 2011, defendant Mohamed pleaded guilty to one count of conspiracy to provide material support to a conspiracy to murder, kidnap, and maim abroad. As part of his plea, the defendant admitted that he attended meetings at a Minneapolis mosque, restaurant, and private residence for the purpose of formulating plans to further the conspiracy with his co-conspirators. He also admitted to assisting recruits to the conspiracy in planning their trips to Somalia, knowing that once they were there, they intended to kidnap or main Ethiopian and Somali government troops. The indictment of Mohamed arose out of "Operation Rhino," an investigation that to date has resulted in charges filed against 22 other individuals.

Nature of Participation:

As the United States Attorney, I was lead counsel for the government.

Final Disposition:

The defendant Mohamed entered a guilty plea to the main conspiracy count of the indictment in July 2011. Sentencing pending.

Date of Representation:

2009-2011

Name of court and judge:

U.S. District Court for the District of Minnesota before Chief Judge Michael J. Davis.

Co-Counsel:

Charles Kovats
Assistant U.S. Attorney, District of Minnesota
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
(612)-664-5700

William M. Narus

Trial Attorney, National Security Division
U.S. Department of Justice
950 Pennsylvania Ave.
Washington, D.C. 20530
(202) 307-0789

Counsel for other party:

Peter B. Wold
Aaron J. Morrison
Law Firm of Peter B. Wold, PA
247 Third Avenue South
Minneapolis, Minnesota
(612) 341-2525

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

I have not engaged in any lobbying activities at any time during my professional career.

In addition to the wide variety of criminal and civil cases I have tried over the years, and my current responsibilities as the United States Attorney for the District of Minnesota, I have also had the opportunity to work on a number of cases and matters that did not proceed to trial. These include several significant class actions, several of which were designated with MDL (Multi-District Litigation) status early on in my career. In the past ten years, I also served as lead co-counsel in a case in the successful defense of a publicly held global logistics company in a Federal class action discrimination lawsuit alleging Title VII violations on the basis of gender in compensation and promotion; lead counsel in the settlement of a Federal criminal action involving complex allegations of Medicare fraud against a privately held medical device manufacturer; and as lead counsel for the Board of Directors of a public utility company on an extensive internal investigation involving allegations of misconduct in the natural gas commodities market. Finally, in addition to these specific client and case matters, I have also recently had the privilege to:

- Lead the Bureau of Alcohol, Tobacco, Firearms and Explosives. In this role, I have had the opportunity to work on enhancing the Bureau's internal risk management processes and instituting appropriate structural changes to help the Bureau more effectively fulfill its law enforcement and regulatory functions.

- Serve as the Chair of the Attorney General's Advisory Committee (AGAC) of U.S. Attorneys. Between September 2009 and August of 2011 I led the effort to re-constitute the AGAC and effectively bridged the gap between new U.S Attorneys becoming engaged as a community and the departure of their predecessors from the previous Administration.

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.

    Over the years I have served as both an instructor and speaker at a variety of Continuing Legal Education programs and at the National Institute of Trial Advocacy. I have no syllabus for these courses.

    I have also, on occasion, served as a guest instructor or speaker at both the University of Minnesota Law School and at William Mitchell College of Law. In this capacity I have taught Fundamentals of Pretrial Litigation, Lawyering Skills, and Trial Advocacy. I have been unable to locate any syllabus for these courses.

    During the spring semester of 2002 I served as an Adjunct Professor of Law at William Mitchell College of Law in St. Paul Minnesota and taught a more substantive small group seminar course entitled "Race and the Law." Copy supplied.

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

    None

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

    None, except that as a U.S. government employee, I participate in the Thrift Savings Plan.

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 SF 278.

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.

Over the course of my career, particularly during my time in private practice, I have devoted extensive time in the representation of indigent criminal defendants. These matters have been assigned to me both as the result of my participation in the Federal Public Defender's Panel for the District of Minnesota between 2003 and 2009 (for which I did not submit applications for payment of fees), and as a consequence of the clients who individually approached my most recent private sector law firm for pro bono assistance in both criminal and civil rights assistance.

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.

***NOTE:** All amounts listed below are approximations.

ASSETS		LIABILITIES	
Cash on hand and in banks	$13,134.00	Notes payable to banks-secured	0
U.S. Government securities-add schedule	0	Notes payable to banks-unsecured	$91,000.00
Listed securities-add schedule	$9,665.00	Notes payable to relatives	0
Unlisted securities--add schedule	0	Notes payable to others	0
Accounts and notes receivable:		Accounts and bills due	$6,058.00
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	$173,250.00
Real estate owned-add schedule	$281,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable	0	Other debts-itemize:	
Autos and other personal property	$150,000.00	Parent-Plus Student Loans	$170,565.00
Cash value-life insurance	0		
Other assets itemize:			
Pension and Retirement Savings Plan	$220,389.00	Total liabilities	$440,873.00
Partner Capital Account	0	Net Worth	$233,315.00

Total Assets	$674,188.00	Total Liabilities and net worth	$674,188.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, co-maker or guarantor (co-signer of student loan for son)	$25,000.00	Are any assets pledged? (Add schedule)	No
On leases or contracts	None	Are you defendant in any suits or legal actions?	No
Legal Claims	None	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	None		
Other special debt	None		

Schedule A – Listed Securities

Listed Securities (as of January, 2013) for potential nominee, spouse and dependents:

1. Money market funds with BMO Harris Money Market Index Account ($5665.00);
2. Procter & Gamble stock ($4000.00)

Schedule B – Real Estate

Primary Residence (St. Paul, Minn.) Nationstar Mortgage, balance owed: $173,250

AFFIDAVIT

I, Byron Todd Jones, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

(DATE) (NAME)

26th FEBRUARY 2013
BYRON TODD JONES
(s) are
owledged
contained.

DISTRICT OF COLUMBIA
08/31/2015

SYLVIA J. TURNER
Notary Public, District of Columbia
My Commission Expires August 31, 2015

(NOTARY)

SYLVIA J. TURNER NOTARY PUBLIC DISTRICT OF COLUMBIA

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Stuart Frank Delery

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

   Assistant Attorney General, Civil Division

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 Department of Justice
   950 Pennsylvania Avenue NW
   Washington, DC 20530

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

   New Orleans, Louisiana, 1968

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

   Yale Law School
   1990-1993
   J.D., June 1993

   University of Virginia
   1986-1990
   B.A. with Highest Distinction, May 1990

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

   United States Department of Justice

950 Pennsylvania Avenue NW
Washington, DC 20530
January 2009-present
Acting Assistant Attorney General, Civil Division (March 2013-present; March 2012-November 2012)
Principal Deputy Assistant Attorney General, Civil Division (November 2012-present)
Senior Counselor to the Attorney General (August 2010-March 2012)
Associate Deputy Attorney General (February 2010-August 2010)
Chief of Staff and Counselor to the Deputy Attorney General (January 2009-February 2010)

Wilmer Cutler Pickering Hale and Dorr LLP (formerly Wilmer, Cutler & Pickering)
1875 Pennsylvania Avenue NW
Washington, DC 20006
November 1995-January 2009
Partner (January 2001-January 2009)
Counsel (January 2000-December 2000)
Associate (November 1995-December 1999)

Supreme Court of the United States
1 First Street NE
Washington, DC 20543
August 1994-August 1995
Law Clerk to Justice Sandra Day O'Connor and Justice (Ret.) Byron R. White

United States Court of Appeals for the Eleventh Circuit
300 N. Hogan Street
Jacksonville, FL 32202
August 1993-August 1994
Law Clerk to then-Chief Judge Gerald Bard Tjoflat

Yale University
221 Whitney Avenue (Office of Human Resources)
New Haven, CT 06511
January-May 1993
Teaching Assistant

Crowell & Moring
1001 Pennsylvania Avenue NW
Washington, DC 20004
May-July 1992
Summer Associate

McGlinchey Stafford PLLC (formerly McGlinchey Stafford Mintz Cellini & Lang)
601 Poydras Street
12th Floor

New Orleans, LA 70130
May-June 1991; August 1992
Summer Associate

Orleans Parish District Attorney's Office
619 South White Street
New Orleans, LA 70119
July-August 1991
Summer Law Clerk

Yale University
221 Whitney Avenue (Office of Human Resources)
New Haven, CT 06511
January-May 1991
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. I registered for the selective service.

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

   John H. Pickering Pro Bono Award, Wilmer Cutler & Pickering, 2003
   Articles Editor, Yale Law Journal, 1992-1993
   Thomas Swann Barristers' Union, Prize Trial Finalist, 1993
   Benjamin N. Cardozo Prize for Best Moot Court Brief, Yale Law School, 1992
   Edward & Barbara Younger Award for the Distinguished Major in American History, University of Virginia, 1990
   Phi Beta Kappa, 1989

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

   Advisory Committee on Civil Rules of Practice and Procedure (ex officio member, 2012-present)
   Board of Directors, Washington Council of Lawyers (2003-2007)
   Executive Council, Lawyers' Committee for the Shakespeare Theatre (2002-2006)
   District of Columbia Bar (1996-present) (no office held)
   Gaylaw (Gay and Lesbian Attorneys of Washington) (1996-2000, est.)

American Bar Association (1993-2009) (no office held)
Virginia State Bar (1993-present) (no office held)

10. **Bar and Court Admission**:

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

District of Columbia Bar, 1996
Virginia State Bar, 1993 (admitted Supreme Court of Virginia 1995) (currently Associate, or inactive, status)

There have been no lapses in membership, although as noted I am currently on inactive status in Virginia. I elected Associate, or inactive status, in 1996 after I was admitted to practice in the District of Columbia, where my office was located. In 2000, I resumed active status in Virginia in order to join the bars of the federal district courts there. After joining the government in 2009, I again took Associate status because I did not need to maintain active status in multiple state bars.

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
U.S. Court of Appeals for the First Circuit, 2006
U.S. Court of Appeals for the Second Circuit, 2007 (renewed 2012)
U.S. Court of Appeals for the Sixth Circuit, 2001
U.S. Court of Appeals for the Ninth Circuit, 2006
U.S. Court of Appeals for the District of Columbia Circuit, 1996
U.S. District Court for the District of Columbia, 1997
U.S. District Court for the Eastern District of Michigan, 1999
U.S. District Court for the Eastern District of Virginia, 2000
U.S. District Court for the Western District of Virginia, 2005
U.S. Court of Appeals for the Armed Forces, 2003
U.S. Air Force Court of Criminal Appeals, 2008
U.S. Army Court of Criminal Appeals, 2003
U.S. Navy-Marine Corps Court of Criminal Appeals, 2003
Supreme Court of Virginia, 1995
Court of Appeals for the District of Columbia, 1996

I renewed my Second Circuit membership in 2012 shortly after the initial period expired. I did not renew my paid membership in the U.S. District Court for the District of Columbia when it expired in 2009 because since then I have been a

lawyer for the federal government. Otherwise, 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.

Alumni Association of the University of Virginia, 1990-present
Yale Law School Alumni Association, 1993-present
Foundry United Methodist Church, 1996 to present
American Constitution Society, 2003 to 2008
Rainbow Families DC, 2005-present
Palisades Swimming Pool Association, Inc., 2011-present

In addition, I have made financial contributions to charitable organizations over the years and provided legal representation to some on a pro bono basis. I have not included in the list above any organizations to which I gave funds or provided pro bono legal representation and did not otherwise participate in programmatic activities.

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

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

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

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

I have done my best to identify all books, articles, reports, letters to the editor, editorials and other published material, including through a review of my personal files and searches of publicly available electronic databases. Despite my

searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

"GIs have resources to keep scammers at bay," *Stars and Stripes*, March 4, 2013, page 12. Copy Supplied.

"Fighting scams that target the military," *Gosport*, Naval Air Station Pensacola, January 11, 2013, page 3. Copy Supplied.

"The Real Cost of Cheap Online Meds," Department of Justice Blog, April 26, 2012. Copy Supplied.

"Fighting for the Crime Victims Who Don't Make Headlines," AARP Blog, April 25, 2012. Copy Supplied.

"Special Considerations Applicable to Bankruptcy Trustee or Examiner Investigations," in *Internal Corporate Investigations*, Business Law Monographs, Vol. C5 (Matthew Bender 2004) (with Andrew N. Goldman). Copy Supplied.

While I was in private practice (and particularly early in my career), it is possible that I worked on "client newsletters" for the law firm on current developments in the law. However, I cannot recall any specific newsletter. I have done my best to identify any such newsletter I prepared or contributed to, including through a 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 such materials.

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 to, including through a 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 such 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 through a review of my

personal files and searches of publicly available electronic databases. Despite my searches, there may be other items I have been unable to identify, find, or remember. I have located the following:

Letter to Judge David G. Campbell, Chair, Advisory Committee on Civil Rules, and to Judge John G. Koeltl, Chair, Duke Subcommittee, February 6, 2013, regarding proposed revisions to discovery rules. Copy Supplied.

Meeting of the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, Boston, MA, January 3-4, 2013. Only draft minutes are available at this time. Copy Supplied.

Letter to Judge David G. Campbell, Chair, Advisory Committee on Civil Rules, and to Judge Paul Grimm, Chair, Discovery Subcommittee, December 4, 2012, regarding proposed revision to Fed. R. Civ. P. 37(e). Copy Supplied.

Meeting of the Civil Rules Advisory Committee, Washington, D.C., November 2, 2012. Only draft minutes are available at this time. Copy Supplied.

Oversight Hearing, Subcommittee on Courts, Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, May 31, 2012. Copies of prepared testimony and hearing transcript supplied.

Minutes, Meeting of the Civil Rules Advisory Committee, Ann Arbor, MI, March 22-23, 2012. Copy Supplied.

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

I have done my best to identify transcripts or recordings of all speeches or talks I have delivered, including through a 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:

Second Annual Consumer Protection Summit, Georgetown University Law Center, Washington, DC, March 8, 2013. Copy Supplied.

Pen and Pad Briefing Announcing Indictments Related to Peanut Corporation of America, Department of Justice, Washington, DC, February 21, 2013. Announcement of enforcement action. Copy Supplied.

National Consumers League Fraud.org Relaunch Event, Washington, DC, February 20, 2013. The subject was the Civil Division's consumer protection work. Copy Supplied.

Press Conference Announcing Lawsuit Against S&P, Department of Justice, Washington, DC, February 5, 2013. Announcement of enforcement action. Copy Supplied.

Pensacola Naval Air Station, Pensacola, FL, December 10, 2012. The subject was the Civil Division's work on behalf of servicemembers. Copy Supplied.

Pen and Pad Briefing Announcing Record Civil FY 2012 Recoveries, Department of Justice, Washington, DC, December 4, 2012. Copy Supplied.

Press Conference Announcing "Operation Lost Opportunity," Federal Trade Commission, Washington, DC, November 15, 2012. Announcement of enforcement actions. Copy Supplied.

Training Seminar on False Claims Act, Department of Justice, Washington, DC, October 16, 2012. Introduction to the seminar and overview of the Civil Division's False Claims Act work. Copy Supplied.

Taxpayers Against Fraud Conference, Washington, DC, September 13, 2012. The subject was the Civil Division's False Claims Act work and related matters. Copy Supplied.

Wright Patterson Air Force Base, Dayton, OH, July 27, 2012. The subject was the Civil Division's work on behalf of servicemembers. Copy Supplied.

Training Seminar for Office of Immigration Litigation, National Advocacy Center, Columbia, SC, July 11, 2012. Introduction to the seminar and overview of the Civil Division's immigration work. Copy Supplied.

Press Conference Announcing Global Resolution with GlaxoSmithKline, Department of Justice, Washington, DC, July 2, 2012. Announcement of enforcement action. Copy Supplied.

American Bar Association's Ninth National Institute on the Civil False Claims Act and Qui Tam Enforcement, Washington, DC, June 7, 2012. The subject was the Civil Division's False Claims Act work. Copy Supplied.

American Bar Association Internal Corporate Investigations and Forum for In-House Counsel, San Francisco, CA, May 17, 2012. The subject was the Civil Division's anti-fraud work, particularly in the area of health care fraud. Copy Supplied.

White House LGBT Conference on Families, Minneapolis, MN, April 28, 2012. The subject was some of the Department of Justice's work of interest to families with gay and lesbian members. Copy Supplied.

Lawrence v. Texas Panel, George Washington Law School (sponsored by American Constitution Society), Washington, DC, September 29, 2008. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Presentation on the Supreme Court's decision in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008), Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, February 22, 2008. I have not been able to locate prepared remarks, a transcript, or a recording.

Investigations Workshop, Wilmer Cutler Pickering Hale and Dorr LLP, May 31, 2007. My subject was types of internal corporate investigations and issues that arise. I have not been able to locate prepared remarks, a transcript, or a recording; I did locate a brief handwritten outline. Copy Supplied.

Civil Liberties Class (seminar for 12th graders), Maret School, 3000 Cathedral Avenue NW, Washington, DC 20008, March 15, 2007. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Harvard Law School Gay & Lesbian Legal Advocacy Conference, March 2-3, 2007. I spoke on two panels, "What does *Lawrence v. Texas* Mean for the Future of 'Don't Ask, Don't Tell?'" and "The Contours of Judicial Deference to Military Personnel Policies." The sessions were transcribed and published at 14 Duke J. of Gender Law & Policy 1204, 1229 (2007). Copy Supplied.

FAIR Forum, Yale Law School, 127 Wall Street, New Haven, CT 06511, October 5, 2006, panelist on session entitled "Achieving Equality: Strategies for Defeating Don't Ask Don't Tell." I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Panelist (with Susan Markel, Chief Accountant of the SEC's Division of Enforcement), SEC Investigations in a Sarbanes-Oxley World, Women's Bar Association of the District of Columbia, 2020 Pennsylvania Avenue, NW, Suite 446, Washington, DC 20006, 2005 (exact date unknown). I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Panel on "Don't Ask, Don't Tell," Suffolk University Law School, 120 Tremont Street, Boston, MA 02108, 2005 (exact date unknown). I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Center on Adoption Policy Conference, "Gay and Lesbian Adoption: Past, Present and Future," New York Law School, 185 West Broadway, New York, NY 10013, May 20, 2005. I spoke on one of several panels, and my topic was "Appellate Litigation Challenging Gay and Lesbian Adoption." I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Luncheon in Honor of Judge Gerald Bard Tjoflat's 35 Years on the Federal Bench, Jacksonville, FL, May 1, 2005. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Military Cases Panel, Lavender Law Conference of the National LGBT Bar Association, Minneapolis, MN, October 1, 2004. I have not been able to locate prepared remarks, notes, a transcript, or a recording.

Corporations Class (Prof. Michael Diamond), Georgetown University Law Center, 600 New Jersey Ave NW, Washington, DC 20001, October 8, 2002. I spoke to the class about my experience representing the Special Investigative Committee of the Board of Enron Corp. I have not been able to locate prepared remarks, a transcript, or a recording. I did locate a handwritten outline. Copy Supplied.

I served as a presenter at various additional WilmerHale internal training workshops and seminars (including training on taking and defending depositions and issues in handling internal and SEC investigations). I have not been able to locate records about or remember other specific occasions.

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 through a review of my personal files and 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:

On March 8, 2013, I was interviewed by the Consumerist for the article entitled "Scammers Have Servicemembers In Their Sights: The DOJ Says It's Time to Fight Back." Copy Supplied.

On March 7, 2013, I was interviewed by Federal News Radio concerning the Civil Division's work on behalf of servicemembers. The audio is available at:

http://www.federalnewsradio.com/85/3242555/Federal-Drive-Interviews----March-7-2013

On December 14, 2012, I was interviewed by Federal News Radio concerning the Department of Justice's FY 2012 False Claims Act results. The audio is available at: http://www.federalnewsradio.com/?nid=85&sid=3157072

In July 2005, I was interviewed by Peter Baker of the Washington Post, in connection with an article about Justice O'Connor's resignation from the Supreme Court. The article, "Supreme Court Justice O'Connor Resigns," appeared on July 2, 2005. Copy Supplied.

I have been quoted in other articles based on statements I made in court filings or arguments, or in Department of Justice press releases, but I did not give interviews on those occasions.

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 have never been a candidate for public office. I have held the following positions in the federal government:

Acting Assistant Attorney General, Civil Division, designated by the President (March 2013-present; March 2012-November 2012)
Principal Deputy Assistant Attorney General, Civil Division, appointed by the Attorney General (November 2012-present)
Senior Counselor to the Attorney General, appointed by the Attorney General (August 2010-March 2012)
Associate Deputy Attorney General, appointed by the Attorney General (February 2010-August 2010)
Chief of Staff and Counselor to the Deputy Attorney General, appointed by the Attorney General (January 2009-February 2010)

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 2008, I was a volunteer for President Obama's campaign. During both the primaries and the general election, I worked on legal issues related to voter

protection. I also did some vetting work for the campaign. In 2004, I volunteered on voter protection legal issues for Senator Kerry's campaign.

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

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

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

I served as a law clerk to the Hon. Gerald Bard Tjoflat, United States Court of Appeals for the Eleventh Circuit (August 1993-August 1994) and to Justices Sandra Day O'Connor and Byron R. White (Ret.), United States Supreme Court (August 1994-August 1995).

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.

United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
January 2009-present
Acting Assistant Attorney General, Civil Division (March 2013-present; March 2012-November 2012)
Principal Deputy Assistant Attorney General, Civil Division (November 2012-present)
Senior Counselor to the Attorney General (August 2010-March 2012)
Associate Deputy Attorney General (February 2010-August 2010)
Chief of Staff and Counselor to the Deputy Attorney General (January 2009-February 2010)

Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale) (formerly Wilmer, Cutler & Pickering)
1875 Pennsylvania Avenue NW
Washington, DC 20006
November 1995-January 2009
Partner (January 2001-January 2009)
Counsel (January 2000-December 2000)
Associate (November 1995-December 1999)

Supreme Court of the United States
1 First Street NE
Washington, DC 20543
August 1994-August 1995
Law Clerk to Justice Sandra Day O'Connor and Justice (Ret.) Byron R. White

United States Court of Appeals for the Eleventh Circuit
300 N. Hogan Street
Jacksonville, FL 32202
August 1993-August 1994
Law Clerk to then-Chief Judge Gerald Bard Tjoflat

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.

I was a federal law clerk for then-Chief Judge Gerald Bard Tjoflat of the United States Court of Appeals for the Eleventh Circuit from 1993 to 1994 and for Justice Sandra Day O'Connor and Justice (Ret.) Byron R. White of the Supreme Court of the United States from 1994 to 1995.

From 1995 until 2009, I was in private practice at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (formerly Wilmer, Cutler & Pickering). I became a partner on January 1, 2001; before that, I was an associate and later a counsel at the firm. I was a member of the Securities and Litigation Departments and the Appellate and Supreme Court Litigation Practice Group.

I joined the U.S. Department of Justice in 2009. For just over three years, I served in senior positions in the Department's leadership offices. In those roles, I advised the Department's leadership on a range of matters as requested. My specific portfolios focused on civil litigation, appellate matters, and national security litigation and policy issues. Since March 2012, as the Acting Assistant Attorney General for the Civil Division and as Principal Deputy Attorney General, I have supervised much of the federal government's civil litigation.

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

During my government service from 2009 to present, my client has been the United States. I have provided legal advice to a range of government officials and have represented government officials and agencies in litigation. My work at the Department of Justice has focused primarily on civil litigation, appellate matters, and national security litigation and policy issues, although I have been involved in criminal matters as well.

When I was in private practice from 1995 to 2009, I had a range of clients, including large corporations, a public university, a national accounting firm, financial institutions, individuals, non-profit and public-interest organizations, and international organizations. The mix of my practice varied from year to year depending on which matters were active, but in general my practice fell into three categories. (1) Securities/business litigation and enforcement. I represented a range of clients in cases involving securities and other financial frauds in federal and state courts, and in enforcement proceedings by the Securities and Exchange Commission, the Department of Justice, and other regulators. (2) Internal

corporate investigations for boards of directors or board committees. (3) Constitutional and public policy litigation. My practice in this area focused on complex litigation, both in trial courts and on appeal, presenting novel questions of constitutional and federal 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.

At the Department of Justice (2009-present):

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: None
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 90%
   2. criminal proceedings: 10%

In Private Practice (1995-2009):

i. Indicate the percentage of your practice in:
   1. federal courts: 55%
   2. state courts of record: 5%
   3. other courts: None
   4. administrative agencies: 40%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

Since March 2012, as the Acting Assistant Attorney General for the Civil Division and as Principal Deputy Assistant Attorney General, I have supervised much of the federal government's civil litigation, including with respect to the legal positions of the government in cases; authorization to initiate affirmative suits; and approval of settlements. I have personally argued three cases in courts of appeals while serving as Acting Assistant Attorney General.

From 2009 to 2012, while serving in the Office of the Attorney General and the Office of the Deputy Attorney General, I provided staff advice and assisted in the supervision of various litigation matters—mostly civil and national security matters (as well as some criminal matters)—but did not

appear in court. Much of my work involved management, including management of litigation, and policy work.

In private practice, much of my practice was in litigation. Most was in federal courts, although a small percentage was in state courts. As discussed below in response to Question 16, I also represented clients in many government investigations that never reached litigation, and conducted internal investigations for corporations and non-profit organizations.

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 three cases to judgment. I was the lead counsel for one of those cases (a jury trial in Maryland state court). I was co-counsel in the other two cases, both of which were tried in federal district court (one was a jury trial and the other a bench trial). I conducted examinations of witnesses in all three cases.

I participated in a number of other cases in trial courts that reached final decision on dispositive motions and not through settlement.

i. What percentage of these trials were:
   1. jury: 66%
   2. non-jury: 33%

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

I have not argued orally before the Supreme Court. I am a member of the Supreme Court bar.

During my time at the Department of Justice, I have worked closely with the Office of the Solicitor General on cases before the Supreme Court. As head of the Civil Division, I regularly make recommendations to the Solicitor General concerning Supreme Court cases. In that position, my name has appeared on numerous briefs filed in the U.S. Supreme Court (including briefs filed at the certiorari stage and at the merits stage). The Office of the Solicitor General (OSG) was one of the components that I monitored for the Attorney General and Deputy Attorney General, so I consulted with OSG lawyers on Supreme Court cases in those positions as well. I have also participated in a number of moot courts for the Solicitor General and other OSG lawyers.

In private practice at WilmerHale, I was a member of the Supreme Court and Appellate Litigation Practice Group. I participated in drafting briefs for the Supreme Court. More generally, I consulted on a range of Supreme Court matters and participated in a number of moot courts for others lawyers who were arguing at the Court.

I am listed on the following briefs filed in the Supreme Court, according to searches of electronic databases.

Merits Briefs

Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc., No. 12-10
Arizona v. United States, No. 11-182
United States v. Windsor, No. 12-785
Clapper v. Amnesty Int'l USA, No. 11-1025
Horne v. U.S. Dep't of Agriculture, No. 12-123
Kloeckner v. Solis, No. 11-184
Levin v. United States, No. 11-1351
Millbrook v. United States, No. 11-10362
Moncrieffe v. Holder, No. 11-702
Sebelius v. Auburn Reg'l Med. Ctr., No. 11-1231
Sebelius v. Cloer, No. 12-236
United States v. Bormes, No. 11-192
Gratz v. Bollinger, No. 02-516
Grutter v. Bollinger, No. 02-241
McCarver v. North Carolina, No. 00-8727, Brief of Petitioner Ernest P. McCarver

Amicus Curiae Briefs at Merits Stage

Already, LLC v. Nike, Inc., No. 11-982
American Trucking Assocs., Inc. v. City of Los Angeles, No. 11-798
Association for Molecular Pathology v. Myriad Genetics, Inc., No. 12-398
Bowman v. Monsanto Co., No. 11-796
Bullock v. BankChampaign, N.A., No. 11-1518
Chafin v. Chafin, No. 11-1347
Dan's City Used Cars, Inc. v. Pelkey, No. 12-52
Delia (Wos) v. E.M.A., No. 12-98
Genesis Healthcare Corp. v. Symczyk, No. 11-1059
Hillman v. Maretta, No. 11-1221
Hollingsworth v. Perry, No. 12-144
Kiobel v. Royal Dutch Petroleum Co., No. 10-1491 (supplemental brief)
Kirtsaeng v. John Wiley & Sons, Inc., No. 11-697
Lozman v. City of Riviera Beach, No. 11-626
Marx v. General Revenue Corp., No. 11-1175
Mutual Pharm. Co. v. Bartlett, No. 12-142
Kennedy v. Louisiana, No. 07-343, Brief of the National Association of Criminal Defense Lawyers, et al., as Amici Curiae in Support of Petitioners

Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. and Motorola, Inc., No. 06-43, Brief of Business Roundtable as Amicus Curiae in Support of Respondents
Adarand Constructors, Inc. v. Mineta, No. 00-730, Brief of Lawyers' Committee for Civil Rights Under Law, et al., as Amici Curiae in Support of Respondents
Boy Scouts of America v. Dale, No. 99-699, Brief of Parents, Families and Friends of Lesbians and Gays, Inc., et al. as Amici Curiae in Support of Respondent
Board of Regents v. Southworth, No. 98-1189, Brief of Wisconsin Student Public Interest Research Group, et al., as Amici Curiae in Support of Petitioner

Petitions for a Writ of Certiorari

Federal Commc'ns Comm'n v. CBS Corp., No. 11-1240
Mayorkas v. De Osorio, No. 12-930
National Labor Relations Bd. v. Noel Canning, No. 12-1281
Office of Pers. Mgmt. v. Golinski, No. 12-16
Office of Pers. Mgmt. v. Pedersen, No. 12-302
Sebelius v. Auburn Reg'l Med. Ctr., No. 11-1231
Sebelius v. Cloer, No. 12-236
United States v. Beer, No. 12-801
United States v. Windsor, No. 12-307
United States Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc., No. 12-10
United States Dep't of Health & Human Servs. v. Massachusetts, No. 12-15

Briefs in Opposition to Certiorari

Akapo v. Holder, No. 11-7854
Alabama v. United States, No. 12-884
Al Alwi v. United States, No. 11-7700
Alden Leeds, Inc. v. United States, No. 11-1486
Al Kandari v. United States, No. 11-1054
Almerfedi v. Obama, No. 11-683
Almy v. Sebelius, No. 12-356
America v. Mills, No. 11-855
American Snuff Co. v. United States, No. 12-521
Beineke v. Kappos, No. 12-580
Bright v. Holder, No. 11-890
Byron v. Shinseki, No. 12-389
California Table Grape Comm'n v. Delano Farms Co., No. 11-1371
CCA Assocs. v. United States, No. 11-1352
Chaidy v. Holder, No. 12-332
Chhabra v. Holder, No. 12-411
Cordova-Soto v. Holder, No. 12-95
Craven v. Cobell, No. 12-234
De La Rosa v. Holder, No. 12-152
Djadjou v. Holder, No. 12-173

Empresa Cubana Exportadora de Alimentos y Productos Varios v. Dep't of the Treasury, No. 11-945
First Annapolis Bancorp, Inc. v. United States, No. 11-912
Frederick v. Shinseki, No. 12-749
Gaitan v. Holder, No. 11-1525
Garcia-Torres v. Holder, No. 11-1226
Good Bear v. Cobell, No. 12-355
Hadden v. United States, No. 11-1197
Hall v. Sebelius, No. 12-262
Henry Ford Health Sys. v. Dep't of Health & Human Servs., No. 11-975
Hepting v. AT&T Corp., No. 11-1200
Hitachi Home Elecs. v. United States, No. 12-148
Holistic Candlers & Consumers Assoc. v. Food & Drug Admin., No. 11-1454
Horne v. United States Dep't of Agriculture, No. 12-123
Huang v. Napolitano, No. 12-639
Igartua v. United States, No. 11-876
Initiative & Referendum Inst. v. U.S. Postal Serv., No. 12-722
Kwong v. Holder, No. 12-150
Lara v. Office of Pers. Mgmt., No. 11-915
Latif v. Obama, No. 11-1027
Levin v. United States, No. 11-1351
Lopez v. United States, No. 11-1367
Macarelli ex rel. Halloran v. United States, No. 11-838
Marcavage v. Saperstein, No. 11-1402
Marceau v. Blackfeet Housing Authority, No. 12-278
McGee v. Dep't of the Air Force, No. 11-8292
Michigan Dep't of Cmty. Health v. Sebelius, No. 12-589
Millbrook v. United States, No. 11-10362
Mirmehdi v. United States, No. 12-522
Montgomery v. Kappos, No. 12-182
Najbar v. United States, No. 11-967
Pasicov v. Holder, No. 12-493
Pecore v. United States, No. 12-250
Pierre v. Holder, No. 11-8335
Puerto Rico v. United States, No. 11-837
Renda Marine, Inc. v. United States, No. 12-699
Roeder v. Islamic Republic of Iran, No. 11-730
Sanchez v. United States, No. 12-335
Semper v. United States, No. 12-710
Sherley v. Sebelius, No. 12-454
Sioux Honey Ass'n v. United States, No. 11-1337
Spirit Airlines v. Dep't of Transp., No. 12-656
Tenenbaum v. Sony BMG Music Entm't, No. 11-1019
Thomas-Rasset v. Capitol Records, Inc., No. 12-715
Three-Dimensional Media Group v. Kappos, No. 12-48
Torres-Rendon v. Holder, No. 11-1056
Trinidad v. Thomas, No. 12-6615

Velazquez-Otero v. Holder, No. 11-1321
Veterans for Common Sense v. Shinseki, No. 12-296
Yang v. Holder, No. 11-1119
Gratz v. Bollinger, No. 02-516, Brief for Respondents Lee Bollinger, et al.
Grutter v. Bollinger, No. 02-241, Brief for Respondents Lee Bollinger, et al.
Patterson v. Gratz, No. 02-571, Brief for Respondents Lee Bollinger, et al.

Amicus Curaie Briefs at Certiorari Stage

American Trucking Assocs., Inc. v. City of Los Angeles, No. 11-798
Bank Melli Iran New York Representative Office v. Weinstein, No. 10-947
Bowman v. Monsanto Co., No. 11-796
DIRECTV, Inc v. Levin, No. 10-1322
EM Ltd. v. Republic of Argentina, No. 11-604
Faculty Senate of Florida Int'l Univ. v. Florida, No. 10-1139
GlaxoSmithKline v. Classen Immunotherapies, Inc., No. 11-1078
Hillman v. Maretta, No. 11-1221
Retractable Techs., Inc. v. Becton, Dickinson & Co., No. 11-1154
Rubin v. Islamic Republic of Iran, No. 11-431
Saint-Gobain Ceramics & Plastics, Inc v. Siemens Med. Solutions USA, Inc., No. 11-301
Lofton, et al. v. Florida Dep't of Children and Families, et al., No. 04-478, Brief of Child Welfare League of America, et al., as Amici Curiae in Support of Petitioners

Miscellaneous

Pedersen v. Office of Pers. Mgmt., No. 12-231 (brief in response to petition for certiorari)
Windsor v. United States, No. 12-63 (brief in response to petition for certiorari)
Liberty Univ. v. Geithner, No. 11-438 (brief in response to petition for rehearing)
Bipartisan Legal Advisory Group of the U.S. House of Representatives v. Windsor, No. 12-785 (brief in response to petition for certiorari)

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

    a. the date of representation;

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

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

1. *ACLU v. CIA*, 710 F.3d 422, (D.C. Cir. 2013)
U.S. Court of Appeals for the District of Columbia Circuit
Chief Judge Garland and Judges Tatel and Griffith

I represented the Central Intelligence Agency in this Freedom of Information Act ("FOIA") case. Plaintiff filed a FOIA request seeking any records in the possession of the CIA related to targeted killing by the government of individuals by unmanned aerial vehicles, or "drones." The CIA issued a *Glomar* response, indicating that it could neither confirm nor deny the existence or nonexistence of records responsive to plaintiffs' request pursuant to FOIA Exemptions 1 and 3. The district court upheld the CIA's *Glomar* response on summary judgment. On appeal, plaintiffs argued that the government waived any FOIA exemptions by officially acknowledging the existence of a drone program. Before oral argument, the CIA moved to remand the case to the district court for consideration of the effect, if any, of the government's acknowledgement of certain government records in another pending case. That motion was denied, and the court of appeals held argument on September 20, 2012. I presented the argument for the government. The court of appeals reversed, concluding that the CIA's original *Glomar* response was not justified but remanding for further proceedings to consider what, if any, information would need to be disclosed under FOIA.

Co-counsel:

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2. *Windsor v. United States*, 699 F.3d 169 (2nd Cir. 2012)
U.S. Court of Appeals for the Second Circuit
Chief Judge Jacobs and Judges Straub and Droney

Massachusetts v. U.S. Dep't of Health and Human Services; Gill v. Office of Personnel Management, 682 F.3d 1 (1st Cir. 2012)
U.S. Court of Appeals for the First Circuit
Chief Judge Lynch and Judges Torruella and Boudin

I represented the government in these two appeals. Section 3 of the Defense of Marriage Act (DOMA) defines the term "marriage" for all purposes under federal law, including the provision of federal benefits, as "only a legal union between one man and one woman as husband and wife." 1 U.S.C. § 7. These cases presented the question whether Section 3 of DOMA violates the Fifth Amendment's guarantee of equal protection of the laws as applied to persons of the same sex who are legally married under the laws of their State. The First Circuit case also presented the question whether Section 3 violates the Tenth Amendment. In February 2011, the Attorney General notified Congress that the President had determined that classifications based on sexual orientation warrant heightened constitutional scrutiny and that, under that standard, Section 3 violates equal protection. Following the Attorney General's announcement, the Bipartisan Legal Advisory Group of the United States House of Representatives (BLAG) intervened in these cases to present arguments in defense of the constitutionality of Section 3. I presented oral argument in the courts of appeals on behalf of the United States and the Executive Branch agencies in these cases. Both courts held that Section 3 is unconstitutional. The Supreme Court has granted the government's petition for a writ of certiorari in *Windsor* and held oral argument on March 27, 2013.

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3. *In re Bristol-Myers Squibb Derivative Litigation* (*Bellikoff v PricewaterhouseCoopers LLP, et al*), 2008 WL 4876804 (2nd Cir. 2008).
U.S. Court of Appeals for the Second Circuit
Judges Walker, Parker and Raggi

This case was part of a broader set of litigation against Bristol-Myers Squibb (BMS) following the company's restatement of financial statements for the years

1999-2002. I represented PricewaterhouseCoopers LLP (PwC) in these matters. PwC served as BMS's independent auditor during the relevant time. Several shareholder derivative actions were filed against BMS officers and directors, and against PwC. In this case, the district court granted PwC's motion to dismiss. The court found that plaintiffs had neither made a pre-suit demand on the BMS Board of Directors, as required under the relevant state law, nor pled with particularity that such a demand would have been futile because the BMS directors lacked the necessary independence to consider potential claims against PwC. Plaintiffs appealed, and I took the lead on briefing the appeal. The court of appeals decided the case without oral argument and affirmed, concluding that plaintiffs had not satisfied the demand requirement for derivative suits on behalf of a corporation and that the BMS Board had opposed the derivative litigation.

Co-counsel at WilmerHale included:

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Counsel for plaintiffs:

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4. *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. and Motorola, Inc.*, 552 U.S. 148 (2008).
Brief for Business Roundtable as Amicus Curiae in Support of Respondents.

The issue in this case was whether the private right of action recognized under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 extends to participants in a "scheme to defraud" who themselves did not employ a deceptive device on which a plaintiff relied. With others at WilmerHale, I drafted an amicus brief on behalf of the Business Roundtable, an association of chief executive officers of leading U.S. companies, urging the Supreme Court to reject this expansion of the private right of action. The brief argued principally that the Court should not extend the private right of action into new territory without an indication that Congress had authorized or approved the extension, and that the Court did not owe deference to the SEC's position in this circumstance. The Supreme Court held that defendants can only be held liable if their own conduct satisfies each of the elements for §10(b) liability and that a plaintiff therefore

must prove reliance, in making a decision to purchase or hold a security, upon a material misrepresentation or omission by the defendant itself.

Co-Counsel at WilmerHale included:

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Counsel for the United States as *amicus curiae*:

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Then-Deputy Solicitor General
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5. *Cook v. Gates*, 528 F.3d 42 (1st Cir. 2008)
U.S. Court of Appeals for the First Circuit
Judges Howard, Campbell, and Saris (D. Mass.)

I represented a group of gay and lesbian servicemembers who were discharged from the Armed Forces under 10 U.S.C. 654, known as the "Don't Ask, Don't Tell" law. Plaintiffs challenged "Don't Ask, Don't Tell" on its face and as

applied as violating due process, equal protection, and the First Amendment. The district court granted the government's motion to dismiss the appeal, and the court of appeals affirmed. On the due process claim, the First Circuit concluded that *Lawrence v. Texas* required a balancing of constitutional interests that went beyond rational basis review, but concluded that several factors (including deference to military judgments) required the statute to be upheld. The court also rejected the equal protection and First Amendment challenges. Judge Saris dissented and would have allowed the First Amendment claim to proceed. I oversaw the briefing and argued the case in the district court and the court of appeals.

Co-counsel at WilmerHale included:

Jonathan A. Shapiro
Benjamin C. Mizer (now Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice)
Julian Davis Mortenson (now Assistant Professor of Law, University of Michigan Law School).
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Opposing counsel at the U.S. Department of Justice:

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Pro Se Plaintiff:
James E. Pietrangelo, II
(current address unknown)

6. *Lorillard Tobacco Co. v. American Legacy Foundation*, 903 A.2d 728 (Del. 2006) Delaware Supreme Court
American Legacy Foundation v. Lorillard Tobacco Co., 886 A.2d 1 (Del. Ch. 2005).

Delaware Court of Chancery (Vice Chancellor Stephen P. Lamb)

With others at WilmerHale, I represented the American Legacy Foundation, a non-profit organization established by the 1998 Master Settlement Agreement (MSA) between 46 states and the major cigarette manufacturers with the public health mission of reducing youth smoking. The issue in the case was whether the Foundation's anti-smoking advertising campaign violated the prohibition against "vilification" and "personal attacks" in the MSA, or otherwise did not meet the agreement's terms. Lorillard asked the Court to order the Foundation to return more than $1 billion in payments the Foundation had received since its creation. I supervised a team of associates in completing discovery (including document discovery and fact and expert depositions) and argued a number of motions. I also worked closely with other lawyers at WilmerHale on the summary judgment briefing (almost 400 pages of briefs). The Chancery Court (Vice Chancellor Stephen P. Lamb) adopted definitions of "vilification" and "personal attack" very close to those the Foundation proposed and held that none of the Foundation's ads violated the MSA. I then worked extensively on the briefing before the Delaware Supreme Court, which affirmed the judgment of the Chancery Court.

Co-Counsel included:

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7. *Grutter v. Bollinger*, 539 U.S. 306 (2003)

Court of Appeals (en banc): 288 F.3d 732 (6th Cir. 2002)
District Court: 137 F.Supp.2d 821(E.D. Mich. 2001) (Friedman, J.)

Gratz v. Bollinger, 539 U.S. 244 (2003)
District Court: 122 F.Supp.2d 811 (E.D. Mich. 2000) (Duggan, J.)

With others at Wilmer, Cutler & Pickering, I represented the University of Michigan and its Law School in lawsuits challenging their consideration of race in admissions, from the trial courts through the Supreme Court. In the district court, I took a leading role in working with social science experts on the educational benefits of diversity and with statisticians on analysis of the admissions data. At trial in the law school case, I conducted the direct examination of the law school's statistics expert and cross-examined the plaintiff's statistician. I also participated in briefing the legal issues. On appeal, I participated in drafting the briefs and preparing counsel for oral arguments in the court of appeals and the Supreme Court. In *Grutter*, the Supreme Court upheld the consideration of race as one factor among many in admissions, and upheld the law school's admissions policy; in *Gratz*, the Court invalidated the undergraduate admissions system's consideration of race as insufficiently tailored.

Co-counsel included:

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8. *McBride and Associates, Inc. v. BAE Systems Mission Solutions, Inc., et al.*, Civil Action No. 01-1090-A (E.D. Va. 2001)
U.S. District Court for the Eastern District of Virginia (no single assigned judge)

I was the lead lawyer representing BAE Systems Mission Solutions, Inc., a corporate affiliate, and two individual officers in this successful defense of a breach of contract and fraud action arising out of the sale of a unit that supplied computer equipment to the federal government. The issue in the case was whether the purchaser had received sufficient and accurate information about the pricing structure on a particular subcontract. I led a team of lawyers through an extensive discovery process concerning the negotiations and due diligence on the transaction and then directed the summary judgment briefing. Once the summary judgment briefing was completed, the case was resolved by settlement.

Co-counsel at Wilmer, Cutler & Pickering: Sheila Cheston (now Corporate Vice President and General Counsel, Northrop Grumman Corporation); Lara A. Englund (now at U.S. Department of Justice)

Opposing counsel:

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Philip Chung
Chung & Press
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9. *Rendall-Speranza v. Nassim*, 107 F.3d 913 (D.C. Cir. 1997)
U.S. Court of Appeals for the District of Columbia Circuit
Judges Ginsburg, Sentelle and Rogers

I represented the International Finance Corporation (IFC), a member of the World Bank Group and an international, governmental organization established by multilateral treaty in 1956 to further economic development by encouraging the growth of private enterprise in less developed countries. The case involved a claim by a former employee of the IFC. The question was whether the plaintiff could use the federal courts, rather than the internal procedures provided by the IFC, to pursue the employment claim. The court of appeals held that the claim against the IFC itself was barred by the statute of limitations and the International

Organizations Immunities Act provided immunity for the IFC employee defendant international organizations like the IFC are immune from suits in U.S. courts over employment disputes as a matter of treaty and the International Organizations Immunities Act. I took the lead in drafting the appellate briefs for the IFC. This was one of several cases that I handled concerning immunities of international organizations.

Co-counsel at Wilmer, Cutler & Pickering: Michael S. Helfer (now Vice Chairman, Citigroup)

Counsel for Nassim:

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Lead counsel for plaintiff:

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10. *The Common Fund for Non-Profit Organizations v. KPMG Peat Marwick LLP*, No. 96 Civ. 0255 (GBD) (S.D.N.Y., Jury Trial October 2000). Memorandum Opinions related to this case are at 1996 WL 551605 and 2003 WL 1108493.
Judge George B. Daniels

Plaintiff Common Fund is a non-profit membership corporation that provides investment management services to colleges, universities, and other non-profit organizations. Following discovery of unauthorized trading activity at its security lending firm that resulted in the loss of over $100 million, Common Fund sued the securities lending firm and its principals (for securities fraud and other claims), as well as Common Fund's independent outside auditor (for professional malpractice and breach of contract). I represented Common Fund and worked extensively on essentially all aspects of this matter from 1996 through 2001, from the drafting of the complaint through post-trial motions. I oversaw significant document discovery; took and defended many depositions of fact and expert witnesses; briefed legal motions; and participated in the trial against the auditor, including by examining a witness. The jury returned a verdict for the auditor.

Co-counsel at Wilmer, Cutler & Pickering:

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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.)

Department of Justice. In March 2012, I was designated by the President as acting head of the Civil Division, the largest litigating component of the Department of Justice. As Acting Assistant Attorney General and Principal Deputy Assistant Attorney General, I have supervised approximately 1,000 lawyers representing the United States, the President and Cabinet officers and agencies, and other federal officials in a wide range of matters.

The Civil Division's docket covers the full range of government activities. Its cases include defense of legal challenges to Congressional statutes, Administration policies, and federal agency actions, and damages actions against the federal government for

accidents and other liability claims. They concern federal benefit programs; commercial issues such as contract disputes, banking, insurance, patents, and debt collection; international trade matters; enforcement of immigration laws; and civil and criminal violations of consumer protection laws. Each year, lawyers in the Civil Division handle thousands of cases that collectively involve billions of dollars in claims and recoveries. In FY 2012, the Justice Department secured nearly $5 billion in settlements and judgments in cases involving fraud against the federal government. Vigorous defense of claims against the government also protects the public fisc.

In addition to supervising the litigation of the cases themselves and making decisions about the positions the Division will take, I oversee investigations before they proceed to litigation and approve many settlements. I also work to resolve disagreements about legal issues within the Department and among client agencies.

I have devoted significant attention to the Civil Division's extensive docket of national security cases. These include defending the constitutionality of statutes authorizing the exercise of military detention authority; defending the wartime detention of individuals held at Guantanamo Bay in habeas proceedings; defending federal terrorist designations and screening provisions for travel; defending individual servicemembers and other government officials from suits seeking money damages for actions they have taken in the line of duty; and litigating FOIA requests seeking information relating to classified national security matters. The Division also defends in federal court every removal order involving terrorist and other national-security-risk aliens and litigates detention, benefits denial, and naturalization and denaturalization cases involving these individuals. In all of these areas, I have sought to ensure that the Division vigorously defends the national security interests of the United States consistent with the rule of law.

Prior to joining the Civil Division, I served for just over three years in senior positions in the Department's leadership offices, as Senior Counselor to the Attorney General (August 2010 to March 2012), Associate Deputy Attorney General (February to August 2010), and as Chief of Staff and Counselor to the Deputy Attorney General (January 2009 to February 2010). In those roles, I advised the Department's leadership on a range of matters as requested. My specific portfolios focused on civil litigation, appellate matters, and national security litigation and policy. While I did not personally handle legal arguments in court, I did often participate in cases raising significant issues of constitutional law, including cases listed in response to Question 14e above. And I worked extensively on national security litigation, including detainee habeas cases, state secrets cases, and Bivens actions against current and former government officials. I also contributed to the management of the Department, including through active involvement in the budget process.

Private Practice. A substantial portion of my work in private practice involved matters outside of litigation. In the area of securities litigation and enforcement, I represented a range of clients (including a national accounting firm, individuals, financial institutions, and corporations) in cases involving securities and other financial frauds in federal and state courts, and in enforcement proceedings by the SEC and other regulators. Many of

these matters involved representations of clients in parallel civil, criminal, and regulatory proceedings. Outside of litigation, I defended witness testimony before regulatory agencies and handled witness proffers of information, made legal and factual presentations on why it would not be appropriate for the government to bring an action, and negotiated settlements.

I also had substantial experience conducting high-profile, international internal corporate investigations for boards of directors or board committees. In these matters, the law firm was retained to conduct a thorough investigation of alleged misconduct, to make an independent evaluation of the facts, and to recommend disciplinary action or other remedial measures. Most notably, with other lawyers at the firm, I was involved of several of the most high-profile investigations of the last decade, including:

- Representation of the Special Investigative Committee of the Board of Enron Corp. in an investigation of the transactions between Enron and partnerships controlled by its former chief financial officer that led to the collapse of the company. In less than four months, our team reviewed thousands of documents, interviewed more than 65 witnesses, and produced a 200-page report.
- Representation of the Special Investigative Committee of the Board of WorldCom, Inc., chaired by former Attorney General Nicholas deB. Katzenbach, in its investigations of accounting irregularities and the company's resulting bankruptcy, then the largest bankruptcy in U.S. corporate history.

I also played a leading role in investigations related to alleged accounting issues on behalf of the Audit Committees of Royal Ahold, NV (an international food distributor and owner of supermarket chains) and Nortel Networks Corporation (a telecommunications company).

In these matters just described, I was one of several partners at the firm leading very large teams. On several other investigations, however, I was the lead lawyer – including on an investigation for a pharmaceutical company and one for a financial services firm. Much of my work in connection with government investigations and internal corporate investigations is not public.

I played significant roles in administration of the law firm. Among other things, I served as co-Vice Chair of the firm's Securities Department, part of the team responsible for managing a practice of more than 150 lawyers that is widely recognized as one of the leaders in the field. This role involved a range of day-to-day administrative activity, from preparing reports to management and monitoring productivity of lawyers to dealing with associate morale and thinking about strategic issues. I also served on the firm's Executive Committee and the committees on partner compensation and partnership elevation, as well as on a task force to study the future structure of the firm.

I have not performed lobbying activities.

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.

    During law school I served as a Teaching Assistant for an undergraduate history course at Yale College: American Political History, 1945-1984 (January-May 1991; January-May 1993). I led two discussion sections per week and graded all exams and papers for the students in those sections. I have not been able to locate a syllabus.

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

    I remain a participant in the 401(k) plan from my former law firm (although neither I nor the firm has made any new contributions since my departure). As a U.S. government employee, I participate in the Thrift Savings Plan.

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

    None.

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

    See attached SF-278.

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 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 I have entered into with the Department's designated 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 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 I have entered into with the Department's designated 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.

Throughout my time in private practice, I maintained an active pro bono practice on behalf of a variety of clients and in several different areas. In recognition of my record of pro bono work, I received the law firm's John H. Pickering Pro Bono Award in 2003. In addition, I served for several years on the Board of Directors of the Washington Council of Lawyers, a voluntary bar association whose mission is to promote the practice of pro bono and public interest law.

Some of my pro bono clients were individuals, others were non-profit organizations, and one was an arm of local government. To give a few examples, early in my career I worked on a team of firm lawyers who successfully overturned the conviction and death sentence of a Georgia inmate on state habeas corpus review. Later, on behalf of the board of a non-profit organization, I supervised an investigation into allegations of misconduct by a member of the management. I represented a preschool in a zoning dispute and resulting settlement. I also represented individuals and organizations in several cases related to LGBT issues. In addition to the *Cook* case listed above, I handled a six-day jury trial against a major teaching hospital on behalf of a plaintiff who claimed that the hospital had prevented him from visiting his critically ill partner because he was not family. I also filed amicus briefs on behalf of a variety of organizations in cases relating to adoption of children by gay parents and same-sex marriage.

Of particular note, in 2007 and 2008, I supervised a team of lawyers that conducted an investigation, on behalf of the Council of the District of Columbia's Office of Tax and Revenue Investigation Special Committee, into the theft of over $48 million in District of Columbia funds by Harriette Walters, a long-time employee in the Real Property Tax Administration of the Office of Tax and Revenue. (Ms. Walters pleaded guilty to federal charges on September 15, 2008.) We prepared a 100-page report that examined the facts and circumstances surrounding Walters' scheme and to make recommendations to help prevent a recurrence of any similar scheme to steal from the taxpayers of the District of Columbia.

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		24	174	Notes payable to banks-secured			0
U.S. Government securities-add schedule			854	Notes payable to banks-unsecured		74	691
Listed securities-add schedule	1	062	439	Notes payable to relatives			0
Unlisted securities- add schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends				Unpaid income tax			0
Due from others				Other unpaid income and interest			0
Doubtful				Real estate mortgages payable-add schedule	1	029	179
Real estate owned-add schedule	1	300	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			0
Autos and other personal property		56	500				
Cash value-life insurance		2	260				
Other assets itemize:							
A&J Residence Club Membership/Deposit		42	000				
				Total liabilities	1	103	870
				Net Worth	1	384	527
Total Assets	2	488	397	Total liabilities and net worth	2	488	397
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)			No
On leases or contracts			0	Are you defendant in any suits or			Yes

				legal actions?			
Legal Claims			0	Have you ever taken bankruptcy?			No
Provision for federal income tax			-				
Other special debt			0				

SCHEDULE OF ASSETS			
Cash on hand and in banks			24,374
U.S. Government Securities			854
Securities	401(k)	Oakmark Equity & Income Fund	122,504
		Vanguard Instut Index Fund	149,175
		FMI Large Cap Fund	146,239
		Ridgeworth Md Cap Value Equity Fund	103,988
		Causeway Int'l Value Fund	87,607
	IRA	BMO Prime Money Market Investor Fund	15,531
		BMO Large-Cap Growth Investor Fund	91,342
		BMO Large-Cap Value Fund	75,316
		BMO Mid-Cap Growth Fund	45,250
		BMO Small-Cap Growth Fund	31,830
	U.S. Thrift Savings Plan		6,399
	RG IRA	Fidelity	124,733
	RG IRA	TIAA/CREF	62,495
Accounts and Notes Receivable			0
Real Estate	Residence (Last Professional Appraisal)	Washington, DC 20015	1,300,000
Autos and Other Personal Property			56,500

Cash Value Life Insurance			2,260
Other Assets			42,000
TOTAL ASSETS			2,488,397
SCHEDULE OF LIABILITIES			
Notes Payable to Banks	Secured		0
	Unsecured	Citibank Ready Credit	74,691
Accounts and Bills Due			Paid w/in month of receipt
Real Estate Mortgages Payable	Residence	Citimortgage, Inc. Mortgage	596,185
		Citibank Home Equity Loan	432,994
Other Debts			0
TOTAL LIABILITIES			1,103,870
NET WORTH			1,384,527

AFFIDAVIT

I, Stuart F. Delery, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/30/13
(DATE)

STUART F. DELERY

(NOTARY)

KIMBERLY J. SASSER
NOTARY PUBLIC
MY COMMISSION EXPIRES 3/31 2016
DISTRICT OF COLUMBIA

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Judicial Nominations
June 11, 2013

Today the Judiciary Committee welcomes two of President Obama's executive nominees. B. Todd Jones is nominated to serve as the director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and Stuart Delery is nominated to serve as the Assistant Attorney General for the Civil Division at the U.S. Department of Justice. I thank Senator Klobuchar for chairing this important hearing.

The ATF has been without a permanent director since that position was designated as a Senate confirmable position in 2006. During this time, we have continued to rely heavily on the expertise of the ATF to protect our nation. The nominee before the committee today, Todd Jones, has led the ATF as the acting director since September 2011. Under his leadership, ATF has been called on to analyze the bombs left near the finish line at the Boston Marathon, to sift through burned debris in the West, Texas explosion and to trace the weapons used by the shooters in the Newtown and Aurora massacres. Agents of the ATF have played a major role in investigating some of our nation's worst tragedies. Yet, we continue to handicap their ability to prevent these tragedies from occurring. Todd Jones is the ATF's fifth acting director since 2006. During that time 80,000 Americans have been murdered with guns. The ATF helps protect our communities from dangerous criminals, gun violence, and acts of terror. It is a central piece of our law enforcement strategy but for the past six years it has been serving without a confirmed director. We should be doing everything we can to ensure the Bureau of Alcohol, Tobacco, Firearms, and Explosives has the tools it needs to keep Americans safe and that starts with a Senate-confirmed director.

Todd Jones has already served as his country in many ways. He volunteered for the U.S. Marine Corps in 1983, serving on active duty as a Judge Advocate and Infantry Officer until 1989. In 1991, he was recalled to active duty to command the 4th Marine Division's Military Police Company in Iraq. He also served as Commanding Officer of the Twin Cities Marine Reserve Unit. He has twice been unanimously reported out of the Committee and unanimously confirmed by the Senate – in 1998 and again in 2009 – to serve as the U.S. Attorney for the District of Minnesota. When confirmed in 1998, he became the first African American U.S. Attorney in Minnesota's history.

The Committee has received numerous letters of support for Todd Jones's nomination to head the ATF from law enforcement, legal professionals, and veterans of the U.S. Marine Corps.

The Ranking Member has said that this hearing should be postponed. This is not surprising considering that not one Republican showed up to the confirmation hearing in 2007 of President Bush's nominee to head this agency. That nominee was never confirmed because Senate Republicans refused to agree to a vote. President Obama's first nominee to head the ATF, Andrew Traver, never got a hearing after it was made clear that his nomination, too, would be blocked. Well, enough is enough.

I have accommodated the Ranking Member on requests for further information and delay on this nomination at every turn. Senator Grassley insisted on the production of documents from the Department of Justice that his staff had already had access to for months. He insisted that his staff be able to interview Todd Jones in his capacity as U.S. Attorney for the District of Minnesota as well as two other Department officials. The interview of Mr. Jones took place in early March. Senator Grassley requested additional background information from the administration not usually required by the committee for an executive nomination and he received that information. He requested that this hearing, originally scheduled for June 4 be postponed; the hearing was postponed. On Friday evening, Senator Grassley informed me that he was prepared to use Senate rules to call outside witnesses to testify at today's hearing. Despite there being no precedent for outside witnesses at a hearing for a sub-cabinet level position, when I sought to accommodate this request, I was rebuffed and told that it was unreasonable of me to agree to his own demand for outside witnesses.

In April, after learning that an Assistant U.S. Attorney had filed a complaint with the U.S. Office of Special Counsel alleging management failures and subsequent retaliation for raising these concerns in the U.S. Attorney's Office for the District of Minnesota, I put on hold a planned hearing on this nomination with the intention of not moving forward until OSC's work was complete – work that I understood to be confidential to protect all parties concerned. Unfortunately, in late April, a news article reported that "an aide to Senator Grassley" had released a letter from OSC that the Ranking Member and I had received on April 12. This public disclosure was unnecessary. It was at that time that I determined that this hearing should move forward to allow the nominee an opportunity to defend his reputation.

On June 5, OSC sent a letter notifying me and the Ranking Member that it had "closed the case file" on the underlying allegations made against Mr. Jones of "gross mismanagement and abuses of authority" due to insufficient evidence. And that furthermore, the complaint involving alleged retaliation for raising the underlying management issue was moving to mediation. Satisfied that the issues before OSC were heading for resolution, I made the decision to not further delay this hearing.

The Ranking Member has said to me that it is unheard of for the committee to move forward on a nomination while the OSC investigation is still technically "open"—the OSC would continue its work to determine if the allegations held any validity only if mediation does not work. Yet as the Ranking Member well knows, this committee has a tradition of looking into allegations made against nominees in a bipartisan way and making a determination on whether to proceed. We did this with the nomination of now-Judge Stephanie Rose of the United States District Court for the Southern District of Iowa. Judge Rose was confirmed in September 2012, despite a lawsuit having been filed making allegations against her – a lawsuit that is still ongoing today. Earlier this year, when defense counsel filed a motion against the U.S. Attorney for the District of New Mexico, Ken Gonzales, making allegations of wrongdoing, we worked together to resolve this issue—despite the fact that the motion is still pending.

My staff has reached out to the Ranking Member staff about getting back to our tradition of conducting a bipartisan inquiry into allegations made against any nominee. I hope that the Ranking Member will promptly make his staff available to conduct such an inquiry into the

allegation made against Mr. Jones in time to report back to committee members before the committee votes on the nomination.

Today, we will finally hear from B. Todd Jones. I look forward to his testimony. I hope the Ranking Member will take every opportunity to ask any and all questions he has of Mr. Jones.

#####

Senator Lee - Written Statement for Nominations Hearing of B. Todd Jones as ATF Director (June 11, 2013)

I share the concerns stated by the Ranking Member. Article II, Section 2, paragraph 2 of the Constitution provides that the President shall appoint principle officers "by and with the Advice and Consent of the Senate." The Constitution thus vests in the Senate an important function that is essential to the proper operation of our constitutional system of checks and balances. I take very seriously the duty of reviewing each candidate submitted by the President to this body for confirmation. By looking closely at a candidate's record and his or her qualifications, as well as by asking questions in person and in writing, members of this body are able to determine whether a candidate is qualified and will faithfully and impartially administer the law, or whether a candidate lacks sufficient experience and will likely be motivated unduly by political considerations.

Because I take so seriously my constitutional duty to advise and consent to the President's nominees, I am especially disappointed that we are prematurely holding this hearing today. With an open investigation before the Office of Special Counsel, we do not have the necessary information to ask effective questions regarding an important—and potentially dispositive—set of issues. I do not believe it is proper for this Committee's sole chance to question Mr. Jones during a hearing to come at a time when we do not have the results of an investigation because that investigation has not been concluded.

Mr. Jones has a record of public service and appears to have the necessary experience and qualifications. But these are not the questions that form the basis of doubt among a number of my colleagues as the propriety of his nomination. Rather, Mr. Jones has been the subject of a number of serious and troubling complaints from those who have worked with him. For us to pass judgment on whether we believe Mr. Jones can faithfully and impartially carry out the difficult and at times politically challenging role of director of the ATF, we must sort out the veracity and credibility of these accusations.

All the more reason that it is deeply troubling for us to be holding Mr. Jones's hearing at a time when we do not have the results of an open investigation and thus lack relevant information regarding one of these serious complaints.

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary

On the Nominations of:

B. Todd Jones, to be Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives

Stuart F. Delery, to be the Assistant Attorney General for the Civil Division

June 11, 2013

Madam Chair,

As the Chairman of this Committee knows, and as I told you yesterday, I objected to holding this hearing today and requested the hearing be postponed. As we sit here today, there remains an open investigation by the Office of Special Counsel regarding Mr. Jones' conduct as U.S. Attorney. Generally, when a nominee is the subject of an open investigation, the Committee does not move forward until the issues are resolved. That is the sensible thing to do.

When there is a pending investigation, the Committee obviously doesn't have the full information about the nominee. In this case, there are allegations of gross mismanagement and abuses of authority in Mr. Jones office. And there is a complaint that Mr. Jones retaliated against a whistleblower.

These are serious charges, and ones that are of particular concern to me. The public interest demands resolution of these issues. Members of the committee are entitled to know if these charges have merit.

One way for that to happen is for the Committee to undertake its own investigation. That has not happened. Another is to follow the usual committee practice and wait for any third-party investigating agency complete its process and reach a conclusion. That has not taken place, either.

So we are left today to take Mr. Jones' word. We have no way to independently verify what he says or to ascertain the truth of the matter.

In addition to the open complaint, there are numerous unresolved issues regarding Mr. Jones and his record while serving as United States Attorney and Acting ATF Director.

That is why I requested a postponement of the hearing. While the chairman did postpone the hearing one week, that did not cure the procedural defects with this nomination. So it is

unfortunate that the Chairman decided to go ahead with this hearing before the open complaint is resolved.

In April, when the Chairman started talking about a hearing for Mr. Jones, I was concerned about moving forward. There were a number of outstanding requests that I had made to Mr. Jones.

And I had previously received a copy of an anonymous letter to the Office of Special Counsel making various allegations against Mr. Jones. I sent a letter to OSC on April 8, asking for an update on those allegations.

On April 12, OSC responded that there were two pending matters involving the US Attorney's Office, District of Minnesota, where Mr. Jones is the United States Attorney. The first matter was a prohibited personnel practice complaint and the second was a whistleblower disclosure, alleging gross mismanagement and abuses of authority.

On May 28, the Chairman sent out a notice for a hearing for Mr. Jones, to be held the following week. The next day, on May 29, I sent a letter raising my concerns about proceeding with a nominee who had open complaints, and asked that the hearing be postponed, consistent with previous Committee practice.

On June 3rd, the Chairman postponed the hearing one week. However, in doing so, the Chairman expressed disappointment that the April OSC letter had been publicly disclosed. A continuing justification for holding this hearing today is that, based on this disclosure, the nominee should have an opportunity to respond.

But of course there was nothing confidential in the OSC letter. In fact, I am not about to hide this issue from the public. It is relevant to our inquiry as to the qualifications of this nominee. If others want to hide this information, that is their decision.

Additionally, there were numerous allegations that Republicans were holding up the nominee for no good reason. The OSC letter clearly identified why Mr. Jones' hearing was not going forward at that time. That justification remains valid today. Again, this would be consistent with prior Committee practice.

Furthermore, everyone knows that Mr. Jones' appearance today is no substitute for a full investigation. We know the investigation is open, so even if we ask questions today, we can't rely on the information we receive.

A nominations hearing is nothing like the investigative process conducted by the Office of Special Counsel. In a full OSC inquiry, there would be interviews with complaining witnesses, a review of documents, and interviews with line attorneys and law enforcement officials in Minnesota. We have access to none of these, at this point.

We only have one witness, the nominee, who is able to offer up his side of the story. Where are the whistleblowers? Where are the other assistant U.S. Attorneys and staff members? Who is offering the other side of the story?
We did receive a token offer from the Majority for one witness. That offer came Sunday night, a little over 36 hours ago.

And then late yesterday, we received from the Majority an offer to conduct some interviews this coming Friday, **AFTER** today's hearing. That is quite perplexing to me. We are going to **begin** the investigation **after** the hearing is concluded. When has the Committee ever conducted an investigation **AFTER** the hearing for that nominee?

On June 4, I suggested to the Chairman that a mere one-week postponement of the hearing would not allow sufficient time for the open matters to be resolved. We had **no** reason to believe the OSC investigation would be closed.

It seemed to me that if the Majority did not want to wait until the OSC completed its investigation, the Committee would be obligated to fully investigate the matter for itself. I therefore suggested that we begin that process by at least calling additional witnesses to testify at today's hearing.

On June 5, OSC provided the Committee with an update to the two pending cases. It reported that while the whistleblower disclosure case had been closed, the prohibited personnel practice complaint was moving to mediation, for the time being.

On June 6, the Chairman reported to me that he had been notified by OSC that it had reached a resolution on the retaliation allegations against Mr. Jones and that the investigation was now closed. This directly contradicted the information I had received.

I again suggested that additional witnesses might be necessary. On Sunday night, a little over 36 hours ago, my staff was notified by Majority staff that the chairman would agree to one minority witness. Of course, by that time there was no reasonable way that a witness could be contacted or arrange for travel on Monday for appearance at a Tuesday morning hearing.

Yesterday I contacted the Special Counsel, inquiring as to her availability to testify to at least explain more fully the status of the complaints. Ms. Lerner replied "I am unavailable to testify tomorrow about this matter. Moreover, it would not be appropriate for me to provide any additional information about a pending case."

Ms. Lerner confirmed for the second time that the investigation remains open. She stated, "The reassignment of the case for mediation did not result in the matter being closed."

Based on all of this, I cannot help but conclude that the Majority is intent on jamming this nomination through Committee, no matter what.

So here we are left with an open investigation of serious allegations of whistleblower retaliation. And these are not unsubstantiated charges.

In fact, of all the complaints received by OSC, only about 10% are chosen for further investigation. This case was one of them. Why did the career, nonpartisan staff at OSC forward the case for investigation? Presumably because they thought it needed to be looked into. That says something about the likely merits of the case. There are also indications of a larger pattern here – one known to OSC.

First, Acting Director Jones, in a video sent to all ATF agents, stated "[I]f you don't respect the chain of command, if you don't find the appropriate way to raise your concerns to your leadership, there will be consequences."

This video was seen by several employees in the U.S. Attorney's Office of Minnesota, also headed by Mr. Jones in his other capacity.

These employees anonymously wrote to the Office of Special Counsel asking for "a review of the patterns, practices, treatment, and abuse that [they] have suffered." They referenced the ATF video stating that they had "felt for the employees of ATF as we too have had the same types of statements made to us."

They then said Mr. Jones "ha[d] instituted a climate of fear, ha[d] pushed employees out of the office, dismissed employees wrongly, violated the hiring practices of the EEOC, and put in place an "Orwellian style of management that continues to polarize the office."

Next, a former Special Agent-in-Charge of the FBI's Minnesota Division, Mr. Donald Oswald, wrote to this committee voicing concern about Mr. Jones.

In that letter he wrote "As a retired FBI senior executive, I am one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him." Those are chilling words. He continued "[Mr. Jones] was, and still remains, a significant impediment for federal law enforcement to effectively protect the citizens of Minnesota…."

The concerns and allegations in Mr. Oswald's letter were corroborated by another AUSA in Mr. Jones' office, Mr. Jeffrey Paulson. Yesterday, Mr. Paulson gave his consent that his whistleblower disclosure complaint be released to the Committee. It contains a detailed account of the mismanagement, abuse of authority, and other problems within the office. It also detailed Mr. Jones' negative attitude towards whistleblowers, and retaliatory actions he took against Mr. Paulson.

We received this document late yesterday afternoon. We are still reviewing the document. OSC requested of the chairman that the file be designated "Committee Confidential."

Last evening my staff informed the Chairman's staff that I would be asking questions based on this document. We asked the Chairman's staff to let us know if he intended to

designate the document "Committee Confidential." To my knowledge, the Chairman has not done so. I certainly do not think it would be appropriate to hide this information.

I see no reason, given Mr. Paulson's waiver, why this should not be available as part of the full record. In fact, I was told repeatedly that today's hearing would be my one opportunity to ask Mr. Jones any questions I wished. I certainly intend to ask Mr. Jones questions about the allegations described in this Complaint.

I have additional procedural problems with this nomination today. A minor issue, but one which illustrates another basic breakdown of routine protocol and the normal committee process, was the delivery of certain routine nomination materials.

When I received a routine file required of all nominees, I noticed missing pages – two separate documents. I requested these from the White House on May 28. One of the requested documents was delivered to my office last night at 9:58 p.m. There was no explanation for the delay. I have yet to receive the other requested document.

Now, it is no secret that there have been a number of controversial events that Mr. Jones has been involved in, to one degree or another. I have sent numerous letters to the Department requesting information from or about Mr. Jones. In many cases I have received no response or an incomplete response. Here is a sampling:

1. FAST AND FURIOUS - Subpoenaed Documents
On October 12, 2011, the House OGR Committee subpoenaed records of the Attorney General's Advisory Committee relating to Operation Fast and Furious during a period Jones was committee chair. I reiterated the request on April 10, 2013.

2. ATF ACCOUNTABILITY FOR FAST AND FURIOUS
On October 19, 2012 and January 15, 2013, I requested information on which ATF employees would be disciplined for their roles in Fast and Furious.

3. FAST AND FURIOUS INTERVIEW REQUEST
From October 7, 2011 through January 2012, I requested a staff interview with Jones regarding Fast and Furious. I reiterated the request to Mr. Jones on April 10, 2013.

4. INTERVIEW REQUEST ON RENO ATF/U.S. ATTORNEY'S OFFICE BREAKDOWN
My April 10, 2013 letter also indicated that Mr. Jones' failure to act on Reno management issues was another area of questions to be covered in a staff interview.

5. INTERVIEW REQUEST ON OPERATION FEARLESS
My April 10, 2013 letter indicated that the botched Operation Fearless in Milwaukee was another area of questions to be covered in a staff interview.

6. DOCUMENT REQUEST ON OPERATION FEARLESS

On May 10, 2013, I sent Mr. Jones a letter requesting a copy of the Office of Professional Responsibility and Security Operations (OPRSO) report on the botched Milwaukee storefront operation.

What has been the reply to these requests?

On June 4, 2013, nearly two months after my request for many of these items, I received a letter from the Department of Justice stating in part, "Mr. Jones looks forward to answering your questions about these matters during his nominations hearing before the Senate Judiciary Committee."

I regret that the Chairman has allowed the Department of Justice to dictate to us how our oversight and investigations will be conducted. Furthermore, it is disappointing that the Department was allowed to hijack this nominations hearing to suit their purpose, not ours.

But, since we have held zero hearings dedicated to Fast and Furious in this committee, perhaps I should be happy that we have any opportunity to ask questions at all. The same goes for the other matters I mentioned.

On the St Paul quid pro quo matter, I was able to have a staff interview with Mr. Jones. Just to remind my colleagues about that issue, let me give a brief summary.

On February 3, 2012, the Department of Justice and the City of St. Paul struck a deal. The terms of the quid pro quo were as follows: the Department declined to intervene in two False Claims Act (FCA) cases that were pending against St. Paul, and St. Paul withdrew its petition before the U.S. Supreme Court in *Magner v. Gallagher*, a case that observers believed would invalidate the use of the disparate impact theory under the Fair Housing Act.

But this was no ordinary settlement. Instead of furthering the ends of justice, this settlement prevented the courts from reviewing potentially meritorious claims and the recovery of hundreds of millions of dollars for the U.S. treasury.

The U.S. Attorney in Minnesota at the time of the quid pro quo, Mr. Jones, was serving both as the U.S. Attorney and as the Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Mr. Jones was interviewed by Committee staff as part of the investigation on March 8, 2013. However, before agreeing to the interview, the Department demanded that staff not be permitted to ask Mr. Jones any questions other than those involving the Quid Pro Quo.

Questions remain about whether he was effectively managing both jobs as U.S. Attorney and Acting Director of ATF. For example, when asked by Committee staff about his failure to attend the seminal meeting between the Department's Civil Division and representatives from the City of St. Paul which occurred in December 2011, he stated that he did not attend because he had an event at ATF that precluded his attendance.

When pressed further, Mr. Jones indicated the important event at ATF was a Holiday party called "sweet treats" and he felt it was more important that he attend that event, than it was to attend the seminal meeting on two pending False Claims Act cases in his District.

So, there are many issues to cover in this hearing today and beyond. For his part, in a June 10, 2013 article in the Minneapolis Star Tribune, Mr. Jones said, "I am looking forward to meeting with the committee and answering all their questions."

I hope it is the case that today I will finally get some answers. But even so, many questions remain about this nominee.

The first question is, given the open complaint and all of the other concerns I have addressed, why are we even here today? I don't think anyone can provide a good answer to that question. Proceeding today is premature. Frankly, it is unfair to the nominee to force these questions today before the OSC process takes its course. But, if the Chairman insists on proceeding, it would be unfair to the public if we fail to perform our due diligence and examine these issues carefully.

Statement of B. Todd Jones
Senate Judiciary Committee
Hearing on Nominations
June 11, 2013

Good morning, Madam Chairwoman, Ranking Member Grassley, and members of the Committee.

Thank you for those generous and humbling introductions, and for granting me the opportunity to speak with you today. I am honored to be considered as the President's nominee to head the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Please permit me a moment to recognize my family and thank them for their incredible love and support. My wife Margaret is the tie that binds our family together. Margaret has shouldered much of the burdens and joys that come with raising five kids. She is back in St. Paul today with our youngest, Lucas, who completed his junior year of high school this month. Our youngest daughter, Monica, recently graduated from the University of Minnesota and is getting ready to move to the West Coast to start a career at a major retail company. Our oldest daughter, Stephanie, is teaching grade school in a small community in Nicaragua, and Michael is a graduate student in architecture in Seattle.

Today, representing the brood, is our oldest, Anthony. He lives and works here in DC. We didn't get to see much of each other the first several years of his life because I was deployed a lot with the 7th Marine Regiment. But if you choose to approve this nomination, Anthony's going to find he has a new roommate!

Over the years, my family has sacrificed a great deal to allow me to pursue a career in public service. That career began in 1977, when I was fortunate to work for Senator Hubert H. Humphrey. My parents were alive back then and they were so proud of my work there. As a constituent outreach intern I was privileged to witness Senator Humphrey use his influence, advocacy and leadership to positively affect the lives of our honorable veterans, our beloved seniors, and our students and families. He epitomized public service in the best Minnesota tradition and inspired me to follow that path.

After graduating from law school at the University of Minnesota, I did not join a private law firm or clerk for a judge. Instead, I enlisted in the United States Marine Corps. It was a decision that would forever change my life and help mold me into the person that sits before you today.

My formal leadership training began in the Marines. I joined the Marines to become a trial lawyer, but was also drawn to the fact that all Marine officers begin their matriculation process as basic infantry officers—"grunts"—the boots on the ground. Much to Margaret's chagrin, I was so energized by the challenges, spirit and camaraderie of basic training that I stayed an infantry officer rather than a lawyer for the first several years of my active duty tour.

As a Marine Corps officer, I learned the importance of unit cohesion, readiness and training, and staying focused on the mission. Characteristics like these don't just develop organically within a

military unit of any size, or any organization—public or private. They are built collectively and sustained from the top. They come from principled, ethical and dedicated leadership that exemplifies and demands the best of people within the organization. Through training, observation, and opportunity, the Marines taught me what leadership and command are all about. And I learned early on that it was not about me. It was about the team.

I returned to civilian life in Minnesota in 1989 and after several years in private practice found that I really wanted to get back to public service. Thankfully, Tom Heffelfinger, who was appointed United States Attorney by President George H. W. Bush, hired me to be an assistant U.S. Attorney in Minnesota. While my trial experience in the JAG was invaluable, it was as a first line federal prosecutor that I was able to learn the fundamentals of federal criminal investigations. The veteran prosecutors and investigators, I had the privilege of working with, taught me the right way construct cases for optimal use in the courtroom, as we worked together to seek justice. In working these cases, it also was reaffirmed that the same fundamental leadership principles that I had learned in the Marines were almost universally applicable.

I have continued to employ those fundamental principles when it has been my honor, twice, to serve as United States Attorney for the District of Minnesota. In that role, I worked with my team to tackle complex, large-scale cases, from the largest Ponzi scheme conviction in Minnesota history to our ongoing terrorism investigation that has led to 8 convictions to date, with considerable sentences for aiding the terrorist organization al-Shabaab. When it was my privilege to Chair the Attorney General's Advisory Committee, leading an incredibly talented group of fellow U.S. Attorneys, I called upon those leadership principles again. And most importantly, I have relied on all of my previous leadership experiences since being named Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

When I came to ATF Headquarters in September 2011, I discovered an agency in distress. There had been a lack of strong, visionary leadership, and of accountability and attention to detail. Poor morale undermined the efforts of the overwhelming majority of ATF employees who are hardworking, devoted public servants committed to the mission of professional law enforcement and public safety.

During my first six months on the job as the acting Director, I visited with ATF staff not only in headquarters, but also in our field divisions all across the country. From the most seasoned managers, agents and industry operations investigators to support staff at all levels, they openly shared their discouragement and disappointment in the agency they love. I listened to what they had to say, learned a lot, and took firm, immediate steps to address their concerns and the needs of the Bureau.

One of the early steps I took was to issue a memorandum clarifying ATF's policy on the transfer of firearms. This memo, which I issued Bureau-wide on November 3, 2011, made clear that ATF must take all reasonable steps to prevent the criminal misuse of a firearm, and that agents conducting investigations must focus on interdiction or other forms of intervention to prevent criminals from acquiring and trafficking firearms.

I also have appointed 22 new Special Agents in Charge (out of 25 field divisions) and 23

permanent headquarters executives. My new management team has conducted a top-to-bottom review of all ATF policies and procedures—some of which had not been updated in decades. To date, we have revised and implemented nearly 50 orders and directives, including essential updates and improvements to policies and programs that had been made just prior to my arrival at ATF. These include the Confidential Informant Policy, Undercover Operations Policy, and the Monitored Case Program. This process is not a one-time event. Recognizing the fluid and high-risk law enforcement environment in which ATF works, I have directed that the Bureau constantly assess and improve its policies and procedures, learning from our successes and our mistakes.

The ATF mission is somewhat unique in that it involves both regulatory and criminal enforcement. ATF works with our local, state and Federal partners to protect our communities from violent criminal activity and the illegal use of firearms and explosives. We also help regulate the lawful commerce of firearms and explosives. We investigate major arsons and bombings, in addition to criminal organizations that engage in alcohol and tobacco smuggling. ATF's special agents and industry operations investigators are supported by forensic scientists, accountants, intelligence specialists and administrative personnel all working toward the same goal: to protect America from violent crime.

ATF is a good partner, often working with the industries we regulate through their member organizations, and working shoulder-to-shoulder with state, local and other Federal law enforcement agencies. Even amidst the controversy that engulfed the Bureau and led to my appointment as acting Director, ATF has continued to nourish these partnerships.

Since my arrival, I have focused on creating a leadership team to strengthen the Bureau on its mission of working with our partners to combat violent crime and enhance public safety. The men and women of ATF have responded with the professionalism and dedication that has always been at the core of the organization. These traits have shone through the controversy time and time again during my tenure as Acting Director.

ATF was there in the wake of the horrific mass shootings in Aurora, Colorado, and Newtown, Connecticut, providing expertise and assistance on the firearms aspects of those investigations and, in Aurora, providing expert assistance in neutralizing numerous explosive devices and investigating the manufacture of those devices. ATF was there following the Boston Marathon Bombing, providing explosives specialists, bomb technicians, and Special Response Team support, including the ATF medic who provided critical first aid to one of the suspects until EMS arrived. ATF was there in West, Texas, investigating the fire and explosion of the fertilizer plant. And ATF is there, behind the scenes, working collaboratively around the clock and across the county, getting illegal firearms out of the hands of violent criminals and keeping the public safe.

Our vision for ATF is for a healthy, cohesive, and effective agency. We are have made progress over the last 20 months, but more can and must be done to move the agency forward.

We are beginning to roll out a new Bureau-wide business model called FRONTLINE. This comprehensive and sustainable business model, focusing on standardization and accountability, will be applied to our criminal investigations, investigative services, and industry operation

inspections. This strategy reflects the importance of intelligence-led law enforcement and risk-based regulatory practices. It is an exciting effort and we look forward to having it be fully implemented.

I am proud to be part of ATF, as its Acting Director, and should the Senate confirm my appointment, I look forward to helping the men and women of the Bureau of Alcohol, Tobacco, Firearms and Explosive continue to carry out its mission, and protect and serve the citizens of the United States. Thank you, and I'm happy to answer your questions.

Statement of Stuart F. Delery
Senate Judiciary Committee
Hearing on Nominations
June 11, 2013

Madam Chairwoman, Ranking Member Grassley, and members of the Committee, I am deeply honored to appear before you as the nominee to be Assistant Attorney General for the Civil Division, and I thank you for your consideration. I would like to thank the President for nominating me, and the Attorney General for his support. I am also blessed to have a wonderful family, and I thank them for the foundation they provide me.

Over the past fifteen months, I have had the great privilege to have served as acting head of the Civil Division, the largest litigating component of the Department of Justice. In that capacity, I have supervised approximately 1,400 lawyers and staff representing the United States, the President and Cabinet officers and agencies, and other federal officials in a wide range of matters. The Civil Division's most important resource is its people, particularly the career professionals who come every day with a single-minded dedication to protecting the interests of the country and its citizens -- whether through defending government programs and the national security, safeguarding taxpayer money from fraud, or protecting the health and safety of all Americans. My grandfather was a career lawyer in the Justice Department, including in the Civil Division, for more than 30 years. I am honored to follow in his footsteps in representing the United States and to be nominated to lead the Civil Division's outstanding team of career professionals.

The Civil Division's docket of tens of thousands of cases every year covers the full range of government activities. Its cases include defense of legal challenges to Congressional statutes, Administration policies, and federal agency actions, and damages actions against the federal government for accidents and other liability claims. They concern federal benefit programs; commercial issues such as contract disputes, banking, insurance, patents, and debt collection; international trade matters; enforcement of immigration laws; and civil and criminal violations of consumer protection laws. The Civil Division recovers billions of dollars for taxpayers through its affirmative litigation, such as its enforcement of federal consumer protection laws and its record-setting efforts under the False Claims Act, including cases targeting health care fraud, financial fraud, and fraud against the military. In this work, the Division uses powerful tools that Congress has provided with the leadership of this Committee. Our vigorous defense of claims against the government also protects the public fisc. Finally, the Division protects the health and safety of Americans by defending cases related to national security and by enforcing protections for the safety of food and medicines.

If I am fortunate enough to be confirmed, I will focus on what I view to be the Civil Division's top three priorities: defending our national security, fighting fraud and recovering money for the taxpayers, and promoting the health and safety of our citizens. I would bring to the job a commitment to advocating zealously in court on behalf of our country and its citizens, to providing candid advice, to hearing all sides of an issue with fairness and respect, and most of

all to working tirelessly with our strong team of career professionals to defend and advance the interests of the United States.

I thank you again for your consideration and look forward to answering any questions you may have.

Senator Richard J. Durbin
Nominations Hearing – June 11, 2013
Questions for B. Todd Jones

Crime gun tracing

1. Mr. Jones, crime gun tracing is one of the most important tools that law enforcement can use to help solve crimes. I have urged every law enforcement agency in Illinois to report the guns they recover in crimes to ATF for tracing to determine where that gun was first sold at retail and to generate leads for criminal investigations. As more crime gun tracing takes place, law enforcement can also getter understand trends and patterns in criminal gun trafficking.

   While thousands of law enforcement agencies regularly report their crime guns to ATF for tracing, there are many agencies that do not do so - even though ATF's eTrace system is free and easy for law enforcement agencies to use. I plan to introduce legislation to incentivize all law enforcement agencies to trace 100 percent of their recovered crime guns. **Will you work with me to promote this goal of 100 percent crime gun tracing among state and local law enforcement agencies?**

2. **Mr. Jones, just so it is clear to anyone unfamiliar with crime gun tracing, can you explain how ATF's crime gun tracing system is not a national registry of lawfully-owned firearms?**

Straw purchasing

3. Mr. Jones, the gun lobby and its allies in Congress often criticize ATF for not doing enough to enforce the gun laws on the books. However, when it comes to straw purchasing – which is one of the main ways that criminals get guns – the laws on the books are terribly weak. Under current federal law straw purchases can only be prosecuted as paperwork offenses, and it is difficult to get a conviction and rare to see a significant sentence imposed. **Would it help crack down on gun crime if Congress created a tough federal straw purchasing statute instead of the current paperwork offense?**

Plastic guns

4. Mr. Jones, it has come to light that guns can be manufactured almost entirely out of plastic using 3-D printer technology. While these guns typically can only be fired once or a few times before breaking, they pose serious security concerns because they can pass unnoticed through metal detectors.

   The Undetectable Firearms Act of 1988 requires that guns contain a certain amount of metal in them so that they can be noticed by metal detectors. However, this law expires at the end of 2013. **What would be the risk of harm if this law is not re-authorized? How would airports, courthouses, schools, and government buildings be vulnerable to undetectable weapons?**

Violence in Chicago, East St. Louis, and Rockford

5. Mr. Jones, when we last met in my office we discussed the work that ATF is doing on the ground fighting crime in neighborhoods in Chicago, East St. Louis, Rockford and elsewhere in Illinois. We discussed how ATF has long been used as a punching bag by the gun lobby and its allies in Washington, but whenever you talk to state and local law enforcement agencies who are facing armed criminals on the streets, they are glad to have ATF there by their side. **I want to thank you and the brave men and women of the Chicago ATF Field Division for the work they are doing in Illinois to fight violent crime, and ask if there are additional steps Congress can take to assist in the fight against violent gun crime in Illinois.**

6. Mr. Jones, like all federal law enforcement agencies ATF has been impacted by the budget sequester. **Is the sequester impacting ATF's ability to help combat gun crime in Illinois, and does ATF have the manpower it needs in Illinois and elsewhere to effectively investigate and fight gun crime?**

Senator Chuck Grassley
Questions for the Record

Stuart Delery
Nominee, Assistant Attorney General, Civil Division, U.S. Department of Justice

1. While at Wilmer Hale, you co-authored an amicus brief in *Boy Scouts of America v. Dale*. In the brief you argued that "anti-gay discrimination by organizations like Boy Scouts of America grants to each rising generation the tacit permission to hate, sowing the seeds of violence researchers describe as 'epidemic' in schools."

    a. Do you think the Boy Scouts of America is an organization that sows seeds of hatred and violence? Please explain your respone, particularly addressing the statement from your brief.

    b. Do you agree or disagree with the Supreme Court's decision that completely rejected your argument and instead defined and respected the implicit First Amendment right of association? Please explain your response.

    c. Can you explain your views on how the first amendment right to association works within a private, not-for-profit group like the Boy Scouts of America? If confirmed, what will you do to protect such rights?

    d. Pleases explain your views on whether or not it is appropriate for the courts to force private entities like the Boy Scouts to adopt and embrace policies that convey viewpoints to which they are clearly and fundamentally opposed.

2. You have been deeply involved in the cases regarding the Defense of Marriage Act.

    a. Please describe your participation in any internal policy or strategy discussions regarding the Administration's decision to abandon its defense of DOMA?

    b. Please describe your views on the Administration's position that no reasonable argument could be made in defense of DOMA's constitutionality.

3. Prior to the abandonment decision, the Obama administration and Department of Justice defended the Act on multiple occasions. In fact, the Attorney General's letter to Speaker Boehner admitted as much. Attorney General Holder wrote:

    > "Previously, the Administration has defended Section 3 in jurisdictions where circuit courts have already held that classifications based on sexual orientation are

> subject to rational basis review, and it has advanced arguments to defend DOMA Section 3 under the binding standard that has applied in those cases."

Given that the Department of Justice previously (and recently) defended the statute and that circuit courts accepted and adopted the its defense, do you sincerely believe that no reasonable argument can be made to defend the statute? Please explain.

4. If the Attorney General concludes that another statute should not be defended, but you disagree, what will you do in your position as Assistant Attorney General, if you are confirmed?

5. You argued in both the Proposition 8 and DOMA briefs that "sexual orientation" is a suspect classification that warrants heightened scrutiny. How would you legally define "sexual orientation"?

6. I'd like to discuss a recent case before the Federal Circuit that your division has been handling: National Organization of Veterans Advocates v. Secretary of Veteran Affairs. Earlier this year, the Federal Circuit threatened sanctions against the government for repeatedly making representations to the court when in fact the represented agency, in this case the Department of Veterans Affairs, continued to act contrary to those representations.

    a. How involved were you in this case?
    b. When did you first become aware of the VA's failure to comply with the representations made to the court on its behalf?
    c. Please explain why there was such a disparity between the promises made by your division's attorneys and the conduct of the VA.
    d. Is this sort of issue of agency behavior at odds with the Department of Justice's representation common? Is this an isolated or unique occurrence? Please explain.
    e. The reason the court in this case was so alarmed by the government's conduct was that the VA continued to act contrary to its repeated assurances to the court. Although the court recently gave its preliminary approval of the government's proposed remedy, subject to a few clarifications, what changes have occurred in this specific case that will ensure to the court and to this committee that the VA will comply with the representations you, as a DOJ attorney, have made to the court through your most recent filing?
    f. What efforts have you taken to ensure that this sort of issue doesn't occur again with respect to the VA?
    g. What steps have you taken to ensure that this issue doesn't arise between other executive agencies and the Department of Justice during future court action?

7. You have been involved in the Justice Department's challenge of state immigration laws, specifically the cases involving Arizona and Alabama's State laws, arguing that immigration legislation and enforcement lies in the sole purview of the federal government.

   Do you believe States have any interest or power to protect themselves from the effects of illegal immigration or from the lack of enforcement of immigration statutes by the Federal Government?

8. You argued on behalf of the admissions policies in *Gratz v. Bollinger* and *Grutter v. Bollinger* that both explicitly consider a person's race as a factor in determining whether to admit them to public universities.

   a. Setting aside the Supreme Court's decisions, do you personally believe the Constitution requires the government to be color blind? Please explain.

   b. Do you personally believe that the Constitution permits the use of race by the government in determining how to treat an individual? Please explain.

   c. In *Grutter*, Justice O'Connor stated that "25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." Do you agree with Justice O'Connor? Please explain.

   d. If, in the future, race based admissions policies are no longer necessary, will they then become unconstitutional? Please explain.

   e. If something will be unconstitutional 25 years from now, how can it be constitutional today?

9. Please describe your involvement in the drafting of any "White Paper" related to the use of unmanned aerial vehicles to conduct targeted killings as well as your involvement in any FOIA litigation related to that issue.

Senator Chuck Grassley
Questions for the Record

Byron Todd Jones
Nominee - Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives

1. In your hearing, you told me that you were aware that the Office of Special Counsel has an open complaint against you, but that you did not know the substance of the complaint.

    a. At the time of the hearing, you had not seen the complaint. Have you seen it now?
    b. Are you aware that the process is currently in a mediation phase?
    c. Did you personally agree to mediation?
        i. If no, who did on your behalf?
        ii. If yes, why did you agree to this without knowing the substance of the complaint?

2. In your hearing, I asked you about a letter signed by "Employees of the United States Attorney's Office for the District of Minnesota". You said that you had seen a copy of the letter.
    a. Did you at any time learn who these individuals were? If so, explain the details of how you learned this information.
    b. I asked you if you had taken any adverse action against them and you said that you had not. I then said I was including "unwanted, retaliatory transfer as an adverse action" and asked if that changed your answer. I did not get a clear answer from you. Please answer this question.
    c. Are there any other individuals in your office who believe you have retaliated against them for complaining about your management of the US Attorney's Office for the District of Minnesota?

3. In your hearing, I asked you about when you first took over the U.S. Attorney's Office in Minnesota in 2009. I asked three times if you removed the chief of the Narcotics and Violent Crime section at that time. You said that you made some reassignments and management changes.

    a. Did Thomas Hollenhorst resign, as you implied in the hearing, or was he demoted?
    b. If he resigned, was this resignation of his own volition or was it after you had had a conversation with him? Did you ever suggest that he resign or he would be removed?

c. Please identify by name and title the several individuals you received resignations from in 2009 who had been serving in supervisory roles. Recall that 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof."
d. You appointed a new Chief of this section in 2009. I asked you how you knew her and you said that you had known many of your new employees for over 20 years. How, specifically, did you know your new Narcotics and Violent Crime Section Chief?
e. Is it true that her father was a former partner of yours?
f. You said that she had "some" previous management experience. Please describe in detail her management experience.

4. According to the complaint filed with the Special Counsel, prosecutions in the unit are down significantly since you took over as U.S. Attorney. Why are the prosecutions down?

5. Mr. Oswald wrote that he is "one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him".

   a. Have you heard of complaints about you or the U.S. Attorney's Office for the District of Minnesota by federal or state law enforcement in Minnesota? If yes, please detail these complaints, as well as when and how they were brought to your attention and what you did to address them.

   b. The complaint filed with the Special Counsel alleges, "at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed." Have any federal judges spoken to you about the way the office was being managed? If so, please describe those contacts in detail.

6. Were complaints about the Narcotics Chief ever brought to your attention by anyone in the U.S. Attorney's office? If so, by whom?

7. The complaint filed with the Special Counsel alleges, "at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed." Do you recall federal judges reaching out to you? If so, please describe those contacts in detail.

8. The complaint alleges, that in October 2012 the Assistant U.S. Attorney wrote you a memo dated September 4, 2012 titled "Office Situation." Did you receive and review such a memorandum? Please explain fully.

9. Did you investigate these allegations to determine if they were in fact true? If so, please describe all your investigative efforts.

10. The memorandum describes a conversation between you and an Assistant U.S. Attorney about four incidents of unwarranted discipline against him. Do you recall a conversation about these actions?

11. The memorandum discusses concerns about the Narcotics Chief. Please describe any efforts you took to review these allegations?

12. What did you do to document any investigative efforts?

13. Please identify with whom you discussed this memorandum at the U.S. Attorney's Office.

14. Did you talk to anyone at the Department of Justice in Washington D.C.? If so, whom?

15. Did you speak with the Narcotics Chief about this memorandum?

    a. If so, please describe the nature of your conversations and your interactions with her.

    b. Please provide all written communications with the Narcotics Chief regarding the memorandum.

16. The memorandum also states that the Assistant U.S. Attorney would like to report to a new supervisor, but not transfer sections. Why didn't you grant this request?

17. Ultimately, the complaint alleges that you transferred the Assistant U.S. Attorney to the Appellate Section, against his wishes. Why did you make this transfer?

18. Please provide to the Committee any memoranda, email, notes or documents related your decision to make this transfer. If no documents exist, please explain why you did not document this action.

19. The complaint also alleges that in addition to the transfer, that you suspended the Assistant U.S. Attorney for five days without pay. Please provide to the Committee any memoranda, email, notes or documents related to this decision. If no documents exist, please explain why you did not document this action.

20. Both the Special Agent in Charge of the FBI and an AUSA in your office have informed me that the Narcotics Chief is responsible for the disenfranchisement and destruction of relationships between the USAO and the federal agencies involved with guns and drugs. Will you describe the professional relationship that the Narcotics Chief has with these federal agencies?

21. Sometime in either 2011 or 2012, your office was presented with a case that involved the seizure of 16.1 pounds of methamphetamine, two hand guns and half a million dollars in cash. According to reports, your office did not take this case because it was "undersold" to the Narcotics Chief.

    a. Did you ever discuss the handling of this case with her, either before or after her decision not to prosecute?
    b. If no, why not?
    c. If yes, what was the explanation for declination?

22. The number of drug cases your office has charged in FY 2012 dropped 42 percent. What is the reason for this?

23. A common complaint I've heard within ATF is that U.S. Attorney's Offices are unwilling to pursue straw purchasing charges. Yet according to one account, you reportedly said of gun and drug cases, "We could do that all day, but we've chosen not to because that's not the best use of our resources."

    a. If this statement is accurate, why did you not see gun cases as a good use of your resources?
    b. How do you expect to be able to encourage agents in ATF to pursue gun crime when you wouldn't even prosecute it yourself as a U.S. Attorney?
    c. You indicated in the hearing that the drop in prosecutions of gun and drug cases involved both resources and "collaboration with state and locals." Please identify the annual staffing levels of the Narcotics and Violent Crime Section from 2008 to 2013.
    d. If the staffing levels remain relatively constant between 2008 and 2013, what does your reallocation of resources away from guns and drugs consist of? If you have not shifted more Assistant U.S. Attorneys over to the White Collar Section or

other sections of the Criminal Division, what exactly are roughly the same number of Assistant U.S. Attorneys doing in the Narcotics and Violent Crime Section if they are not prosecuting gun and drug cases?

24. Your opening statement indicated your desire to strengthen ATF on its mission of working with partners to combat violent crime. Yet according to multiples sources of information in Minnesota, including the former FBI Special Agent in Charge in Minnesota, your office has failed to provide law enforcement with support on violent crime, as well as gang and drug matters. Reportedly, the situation has deteriorated to the point that federal agencies have opted to bring their cases to Dakota, Hennepin, and Ramsey counties for prosecution in state court.

    a. When did you first become aware of this deterioration in relations with law enforcement agencies in Minnesota?
    b. When you first learned of this, what actions did you take to investigate it?
    c. What did you do to try to remedy relations with law enforcement agencies?
    d. Did you personally meet with any specific state or federal law enforcement agencies to discuss their concerns regarding the office? If so, please describe the circumstances of the meeting.

25. You have attributed the diminishing prosecutions to a shift in priorities, stating at different times that you have refocused resources on white-collar cases and on terrorism cases. Yet the numbers show white-collar defendant charges dropped from 125 in Fiscal Year 2011 to 86 in Fiscal Year 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

26. Numbers I have seen show 15 counter-terrorism cases in Fiscal Year 2009 and 13 in 2010. The numbers then drop to 2 in 2011 and 2 in 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

27. You were chair of the Attorney General's Advisory Committee from 2009 to 2011. In that capacity, you were a member of the Southwest Border Strategy Group. In October 2009 that group decided to distribute a draft strategy for combating the Mexican cartels. The draft stated: "Merely seizing firearms through interdiction will not stop firearms trafficking to Mexico." The draft strategy goes on to emphasize identifying the members of arms trafficking networks. The implication is clear. The strategy placed a higher value on gathering intelligence about trafficking networks than on arresting straw purchasers.

a. You said that you did not attend the October 26, 2009 meeting of the Southwest Border Strategy Group. Did you approve of any strategy to de-emphasize straw purchasing cases?
b. Do you think it is an appropriate strategy to go for big cases instead of putting a stop to straw purchasers whenever you can?

28. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

a. I understand that in October 2012, ATF's Internal Affairs Division issued a report regarding the fire at Special Agent Jay Dobyns' home.
b. What were this report's findings regarding George Gillett?
c. Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Gillett?
d. What were this report's findings regarding William Newell?
e. Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Newell?
f. Separate from discipline that may have been contemplated against Mr. Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?
g. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
h. What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.
i. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?
j. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.

k. What date was Mr. Newell notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.

29. Why didn't you impose any discipline for Operation Fast and Furious when you became the Acting Director of ATF?

30. Have any ATF employees been terminated based solely on their involvement in Operation Fast and Furious? If so, who, and on what date?

31. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the jurisdiction of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

    I have heard that Fast and Furious Case Agent Hope MacAllister grieved her discipline for Fast and Furious to the Merit Systems Protection Board, and won.

    a. Is this true?

    b. What disciplinary measures did ATF propose for Ms. MacAllister as a result of her role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.

    c. Where is Ms. MacAllister now, and what is her current GS-level?

32. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

    I asked you in the hearing about David Voth, the Group Supervisor who oversaw Operation Fast and Furious. You responded: "Special Agent Voth was subject to the internal disciplinary process and there were repercussions."

a. What disciplinary measures did ATF propose for Mr. Voth as a result of his role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.
b. Where is he now, and what is his current GS-level?

33. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

    You stated at the hearing that James Needles currently serves in another capacity within ATF.

    a. What is that other capacity, and where is Mr. Needles assigned?
    b. Were any disciplinary measures proposed for Mr. Needles by ATF as a result of his role in Operation Fast and Furious? If so, please provide a copy of the disciplinary proposal.

34. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

    You stated at the hearing that George Gillett had retired from ATF.

    a. Separate from discipline that may have been contemplated against George Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?
    b. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
    c. What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.

d. On what date did Mr. Gillett retire?
e. Did Mr. Gillett retire with any ATF benefits? If so, what do Mr. Gillett's retirement benefits consist of?
f. Why was Mr. Gillett allowed to retire with his benefits, given his role both in Operation Fast and Furious and in the investigation into the fire at Special Agent Dobyns' home?

35. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated that the discipline proposed against former Special Agent in Charge William Newell "is a matter that has come quickly into resolution" and that "[t]here is still a resolution pending that should be forthcoming."

a. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?
b. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
c. What date was Mr. Newell notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.
d. Has Mr. Newell had any formal complaints pending against ATF in the past two years? If so, how were those resolved?
e. Did Mr. Newell conduct any type of settlement agreement with ATF in connection with proposed discipline? If so, what date was the settlement agreement concluded, and what did it consist of? Please provide a copy of any such settlement agreement.
f. What aspect of Mr. Newell's proposed discipline is still currently pending, as you stated in the hearing?
g. Where is Mr. Newell now, and what is his current GS-level?
h. On what date will Mr. Newell be eligible to retire with his full ATF benefits?
i. What will Mr. Newell's retirement benefits consist of?

36. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

    In response to questions regarding former Deputy Assistant Field Director for Field Operations William McMahon, you first stated in the hearing, "Bill McMahon has retired from ATF." You then later said, "Mr. McMahon was one of the individuals terminated. He was not allowed to retire. He was terminated."

    a. Did Mr. McMahon retire from ATF, or was he terminated?
    b. Either way, what date did Mr. McMahon leave ATF?
    c. Separate from discipline that may have been contemplated against Mr. McMahon for other reasons, what disciplinary measures for Mr. McMahon did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?

37. In the hearing, I asked you three questions, and you only answered one. I asked: "How was McMahon's status resolved? How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company, and what does that say about how you're running the agency?" You failed to answer the latter two questions, so I will ask them again.

    a. How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company?
    b. What does that say about how you're running the agency?

38. When I asked whether Mr. McMahon was only terminated after I brought his employment status to your attention, you answered: "The issue that you raised about his leave status and his prior employment status were all subject to a process. We very much appreciate the information enhancing our level of knowledge about things that were already in play internally."

a. What was already in play internally with respect to Mr. McMahon in August 2012, when I brought his double-dipping to your attention?
b. Please provide copies of the personnel proposals prior to August 21, 2012 that you were referring to regarding Mr. McMahon.

39. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

During your tenure as Acting Director, ATF engaged in a disastrous undercover storefront operation in Milwaukee, Wisconsin called Operation Fearless. The Office of Professional Responsibility and Security Operations (OPRSO) internal review of Operation Fearless recently found at least 11 problem areas, including poor planning in designing the case and insufficient management during the case. Operation Fearless included many of the same flaws as Operation Fast and Furious, suggesting that ATF's new leadership had learned nothing from that debacle.

a. Operation Fearless was part of a Monitored Case Program that was designed to give greater headquarters oversight to sensitive cases. Why did that oversight fail in this case?
b. Please provide a copy of the OPRSO report on Operation Fearless, as Chairman Issa, Chairman Goodlatte, Chairman Sensenbrenner and I requested on May 10, 2013.

40. According to the Justice Department, you were provided with Internal Affairs Division summaries regarding the theft of three ATF-issued firearms from a government vehicle and the burglary of the Operation Fearless storefront. However, the Department said you do not recall reading either of those summaries. Do you normally read summaries that are provided to you by the Internal Affairs Division? If not, why not?

41. I understand that the Special Agent in Charge of Milwaukee during Operation Fearless, Bernard Zapor, was promoted last fall to Deputy Assistant Director for Field Operations (Central). In a briefing providing to Committee staff on April 15, 2013, ATF indicated that disciplinary action was underway against Mr. Zapor. However, I have now heard that as a result of his failed management of Operation Fearless, Mr. Zapor was made the new Special Agent in Charge of the Phoenix Field Division, where his family was residing and he owns a home.

a. Is this true? If so, why would you put him in charge of an office that so clearly needs good leadership?

b. What disciplinary measures for Mr. Zapor did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the OPRSO report on Operation Fearless? What date did the Professional Review Board make its proposal?
c. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
d. What date was Mr. Zapor notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Zapor.
e. What disciplinary measures for the Milwaukee Field Division counsel named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
f. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
g. What date was the field division counsel notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the field division counsel.
h. What disciplinary measures for the Resident Agent in Charge named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
i. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
j. What date was the Resident Agent in Charge notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the Resident Agent in Charge.
k. What disciplinary measures for the Operation Fearless case agent did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
l. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.

m. What date was the Operation Fearless case agent notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the case agent.
n. What disciplinary measures for any other employee has ATF's Professional Review Board (PRB) proposed to ATF's Deciding Official as a result of the OPRSO report? Please name each employee for whom discipline was proposed, the date the Professional Review Board made its proposals, the discipline proposed by PRB, the decision made by ATF's Deciding Official, and the date the employee was notified of the proposed discipline. Please also provide a copy of the disciplinary proposal provided to each employee.

42. In Reno, Nevada, relations between ATF and the U.S. Attorney's Office completely fell apart in the fall of 2011. Things got so bad that that U.S. Attorney's Office refused to take cases from ATF. Whistleblowers within ATF say that when these problems in Reno were brought to your attention, you stated that you had bigger things to worry about. Ignoring the underlying issues, you simply moved most of ATF's agents out of Reno.

    a. You stated in the hearing: "I was very dismayed when I first heard of a disconnect between the federal prosecution office and Reno. . . . [W]e currently have two full-time and soon to be three agents in Reno. We're on a good path in Reno to fix whatever concerns historically existed there."
    b. What was the cause of the disconnect between the U.S. Attorney's Office and the Reno ATF office?
    c. In a letter of April 23, 2013, ATF stated that the San Francisco Field Division learned of this situation in August 2011 and engaged with the U.S. Attorney's Office and the Reno ATF office in an effort to resolve it. Why was the San Francisco Field Division unsuccessful?
    d. ATF indicated in its April 23, 2013 letter that ATF headquarters became aware of these issues in November 2011. When and how did you first personally become aware of these issues?
    e. What did you do to address these issues when you first became aware of them?
    f. ATF indicated in its April 23, 2013 letter that you had discussions in March 2012 with the U.S. Attorney for the District of Nevada. What was discussed, and why couldn't the matter be readily resolved at that time?
    g. Why were agents moved out of Reno? Wouldn't it have been more cost-effective to address the issues in Reno rather than simply transferring four agents out of the office?
    h. If there are soon to be three full-time agents in Reno, as you said, why was the Reno office ever stripped down to two full-time agents to begin with?

i. Now I understand ATF detailed a third agent back to Reno in February 2013 in order to work as a Violent Crime Coordinator with the Northern Nevada Project Safe Neighborhoods (PSN) Task Force. How many PSN cases have been prosecuted by the third agent in his capacity as the Violent Crime Coordinator?
j. What is the current cost of detailing the third agent to Reno?
k. What further relocation costs will be incurred by making the detail a permanent assignment?
l. ATF indicated in its April 23, 2013 letter that the cost of relocating the four agents from Reno was approximately $152,000. Does that figure include the lump sum payment for house hunting trips or the closing costs paid to the two agents who purchased homes during the move?
m. ATF indicated in its April 23, 2013 letter that a new Special Agent in Charge (SAC) of the San Francisco Field Division began in August 2012, and that "within weeks of his arrival the SAC met with [the U.S. Attorney for the District of Nevada] in Las Vegas to discuss a mutually agreeable resolution of the outstanding issues between the two offices." What date did this meeting take place? Was it scheduled before or after my letter to you of September 17, 2012 raising this matter?
n. ATF indicated in its April 23, 2013 letter that agents in Reno have opened 26 cases in 2013. How many of those were actual criminal cases, and how many were NICS retrievals that have no potential of being submitted for prosecution?

43. On October 12, 2012, the House Committee on Oversight and Government Reform subpoenaed "[a]ll agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General's Advisory Committee of U.S. Attorneys between March 1, 2009 and July 31, 2011, referring or relating to Operation Fast and Furious." That period specific is the time you were Chair. The Justice Department has never produced any such documents or certified that none exist. When I asked you about this at the hearing, you stated that you didn't "have any knowledge beyond the fact that relevant documents have been collected internally at the Department . . . ." I asked you if you would respond to the question in writing.

44. I also asked you about any personal notes from the Advisory Committee that you might have taken regarding Fast and Furious. On April 10, 2013, I sent you personally a letter asking that you meet with my staff for an interview. The letter stated: "In addition, by April 17, 2013, please provide my staff with any personal notes from the Attorney General's Advisory Committee that you may have taken regarding Operation Fast and Furious." You indicated to me in the hearing that you didn't have any recollection of a letter that had this request.

a. Do any such agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General's Advisory Committee exist that refer or relate to Operation Fast and Furious? If so, why haven't they been turned over pursuant to the subpoena?
b. Did you receive my April 10, 2013 letter? If so, why do you not have a recollection of my request?
c. Do you have any personal notes from the Attorney General's Advisory Committee in your possession that reference or relate to Operation Fast and Furious? If so, please produce a copy of them to the Committee.

45. Both my staff and the staff of the House Oversight and Government Reform Committee requested a staff interview with you multiple times during our investigation of Operation Fast and Furious. However, you never permitted yourself to be interviewed. You recently agreed to an interview regarding the St. Paul quid pro quo, but refused to answer questions about Fast and Furious or any other topic.

    a. Your predecessor, Kenneth Melson, participated in a voluntary staff interview. Why couldn't you?
    b. Did anyone at the Justice Department instruct you not to participate in a staff interview? If so, who? Please describe the circumstances.
    c. Were you otherwise willing to participate in a staff interview?

46. On July 9, 2012, you issued a video message in which you told ATF employees: "[I]f you don't respect the chain of command, if you don't find the appropriate ways to raise your concerns to your leadership, there will be consequences . . . ." I know you have since issued a clarification to ATF employees at the request of myself and Chairman Darrell Issa.
    a. Other than to keep whistleblowers from going outside their chain of command, what message were you intending to communicate to ATF employees in your original video?
    b. Did you make the clarification the same way you made the initial comment: in a video message to all ATF employees?
    c. Please provide a copy of the clarification you provided to all ATF employees.

47. You have stated that on November 3, 2011, you issued a memorandum saying that ATF must take all reasonable steps to prevent the criminal misuse of a firearm. You also agreed in the hearing to provide a copy of that order. Please provide a copy of the order.

48. I also asked you about any guidance issued regarding cooperating federal firearms licensees (FFL) and the role they should play in investigations. You indicated that you

have updated the confidential informant order. However, one of the issues in the Operation Fast and Furious surrounded the fact that none of the FFLs involved were signed up as confidential informants, including the primary FFL. Nevertheless, ATF agents encouraged the FFLs to continue selling to suspected straw purchasers.

a. Please provide a copy of the revised confidential informant order.
b. What have you done to shore up policies dealing with FFLs who are not confidential informants, especially to address encouraging them to go forward with sales that they would not otherwise go forward with?

49. I asked you in the hearing about ATF keeping a Suspect Gun Database despite the congressional prohibition against keeping a national gun registry. However, you seemed completely unfamiliar with the issue.

a. Had you ever heard of the Suspect Gun Database before this hearing? If not, why not?
b. When did ATF first begin using the Suspect Gun Database?
c. Is there any legal standard that ATF agents are required to meet before adding information on a purchaser to the Suspect Gun Database?
d. Is there any criteria for removing information on a purchaser from the Suspect Gun Database, or does information remain on the database indefinitely?
e. How does ATF headquarters conduct oversight on the usage of the Suspect Gun Database?
f. How many suspect gun purchases are currently recorded in the Suspect Gun Dabatase?
g. How many different purchasers are currently on record in the Suspect Gun Database?
h. How does the usage of the Suspect Gun Database square with the Firearm Owners Protection Act of 1986, which you referenced in the hearing and which makes a national gun registry illegal?

Senator Chuck Grassley
Questions for the Record

Stuart Delery
Nominee, Assistant Attorney General, Civil Division, U.S. Department of Justice

1. **While at WilmerHale, you co-authored an amicus brief in *Boy Scouts of America v. Dale*. In the brief you argued that "anti-gay discrimination by organizations like Boy Scouts of America grants to each rising generation the tacit permission to hate, sowing the seeds of violence researchers describe as 'epidemic' in schools."**

   a. **Do you think the Boy Scouts of America is an organization that sows seeds of hatred and violence? Please explain your response, particularly addressing the statement from your brief.**

   Response: In 2000, several other lawyers and I filed an *amicus* brief on behalf of a group of youth-focused organizations, including the National 4-H Council. The brief presented the position of the client organizations, which was based on the framework for evaluating the First Amendment right of expressive association established by the Supreme Court in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). The brief argued that the application of the New Jersey public accommodations law at issue was supported by compelling state interests. Among other things, the brief surveyed studies of violence against, and suicide and other self-destructive behavior by, gay and lesbian youth, and explained why the client organizations believed that exclusionary policies by governments and prominent non-governmental organizations contribute to these harms.

   The sentence from the brief quoted in the question referred to the position of the client organizations on the collateral, even unintended, effects that can result from exclusionary policies of respected organizations like the Boy Scouts. Indeed, the opening lines of the brief made clear the clients' view that the Boy Scouts is a vital and beneficial institution:

   > Boy Scouts of America ('BSA') is one of the great organizations devoted to the growth and development of America's youth. For nearly a century, BSA has provided incalculable benefit to generations of boys, teaching millions how to put up tents and survive in the wilderness, and how to be productive citizens in our civil society. BSA has sought and forged a close relationship with government at all levels, from Congress to towns and schools across the country, and it holds a special place in the life of many communities.

I myself was a Cub Scout growing up and learned first-hand the many benefits that Scouting has for youth.

If I am fortunate enough to be confirmed, I will make decisions as Assistant Attorney General based not on positions and arguments I previously advanced on behalf of my clients while in private practice, but on the long-term institutional interests of the United States and established legal principles.

b. **Do you agree or disagree with the Supreme Court's decision that completely rejected your argument and instead defined and respected the implicit First Amendment right of association? Please explain your response.**

Response: In *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), the Supreme Court applied the framework it had established in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), and held that New Jersey could not constitutionally apply its public accommodations law to require the Boy Scouts to accept an openly gay man as a scoutmaster because the Boy Scouts were an expressive association, the forced inclusion of the leader would impermissibly burden the organization's expression, and the burden could not be justified by the proffered state interests. If confirmed, I would follow this precedent, as well as the Supreme Court's other decisions on the First Amendment right of expressive association and principles of *stare decisis*, in carrying out the obligations of the office.

c. **Can you explain your views on how the first amendment right to association works within a private, not-for-profit group like the Boy Scouts of America? If confirmed, what will you do to protect such rights?**

Response: The Department of Justice has an obligation to safeguard the First Amendment rights of individuals and organizations, and I take that obligation very seriously. If I am fortunate enough to be confirmed, I will represent the interests of the United States in court vigorously and responsibly, and I will adhere to established legal principles in doing so. In particular, I will consider the litigating positions of the Civil Division carefully to make sure they appropriately reflect freedoms of association, speech, religion, and other rights protected by the First Amendment.

In *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984), the Supreme Court recognized that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." This freedom of expressive association "plainly presupposes a freedom not to associate," such that a group may only be required to accept members who would impair the ability of the group to express its views in narrow circumstances based on

"compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 623. *See also Boy Scouts of America v. Dale*, 530 U.S. 640, 647-48 (2000); *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 13 (1988). If confirmed as Assistant Attorney General, I would follow this precedent in carrying out the obligations of my office and would take it into account as appropriate in conducting litigation on behalf of the United States.

d. Pleases explain your views on whether or not it is appropriate for the courts to force private entities like the Boy Scouts to adopt and embrace policies that convey viewpoints to which they are clearly and fundamentally opposed.

Response: Under established Supreme Court precedent, a private group may only be required to accept members who would impair the ability of the group to express its views in narrow circumstances based on "compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984); *see also Boy Scouts of America v. Dale*, 530 U.S. 640, 647-48 (2000); *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 13 (1988). In *Dale*, the Supreme Court applied the framework it had established in *Roberts* and held that New Jersey could not constitutionally apply its public accommodations law to require the Boy Scouts to accept an openly gay man as a scoutmaster because the Boy Scouts were an expressive association, the forced inclusion of the leader would impermissibly burden the organization's expression, and the burden could not be justified by the proffered state interests. If confirmed as Assistant Attorney General, I would follow this precedent in carrying out the obligations of my office and would take it into account as appropriate in conducting litigation on behalf of the United States.

2. You have been deeply involved in the cases regarding the Defense of Marriage Act.

a. Please describe your participation in any internal policy or strategy discussions regarding the Administration's decision to abandon its defense of DOMA?

Response: I did not participate in the internal discussions and decision-making leading to the decision by the Attorney General and the President, reflected in the Attorney General's letter to congressional leaders dated February 23, 2011, that Section 3 of the Defense of Marriage Act violates equal protection as applied to same-sex couples married under state law, and that the Department of Justice would

cease defense of Section 3. I participated in the DOMA litigation after I joined the Civil Division in March 2012.

b. Please describe your views on the Administration's position that no reasonable argument could be made in defense of DOMA's constitutionality.

Response: *United States v. Windsor*, No. 12-307, remains pending in the Supreme Court, and I am not in a position to address these issues outside of my ongoing role representing the United States in that case. As explained in response to the previous question, I did not participate in the internal discussions and decision-making leading to the decision by the Attorney General and the President, reflected in the Attorney General's letter to congressional leaders dated February 23, 2011, that Section 3 of the Defense of Marriage Act violates equal protection as applied to same-sex couples married under state law, and that the Department of Justice would cease defense of Section 3.

I do not understand the Administration to have taken the position that no reasonable arguments can be made in defense of DOMA's constitutionality. As reflected in the Attorney General's February 2011 letter to congressional leaders in accordance with 28 U.S.C. § 530D, the President and the Attorney General determined that classifications based on sexual orientation warrant heightened scrutiny under the equal protection component of the Fifth Amendment, and that Section 3 of DOMA is unconstitutional under that standard. The President and the Attorney General therefore determined that this was one of the rare occasions in which declining to defend a federal statute was the proper course. The Attorney General's letter further stated, however, that "[i]f asked . . . for the position of the United States in the event [the] courts determine that the applicable standard is rational basis, the Department will state that, consistent with the position it has taken in prior cases, a reasonable argument for Section 3's constitutionality may be proffered under that permissive standard." In the Brief for the United States filed in the Supreme Court in *Windsor*, the Department said: "The government has concluded that heightened scrutiny governs classifications based on sexual orientation and that DOMA Section 3 cannot be sustained under that standard. If the Court disagrees and applies rational-basis review, the government has previously defended Section 3 under rational-basis review, and does not challenge the constitutionality of Section 3 under that highly deferential standard."

3. **Prior to the abandonment decision, the Obama administration and Department of Justice defended the Act on multiple occasions. In fact, the Attorney General's letter to Speaker Boehner admitted as much. Attorney General Holder wrote:**

> **"Previously, the Administration has defended Section 3 in jurisdictions where circuit courts have already held that classifications based on sexual orientation are subject to rational basis review, and it has advanced arguments to defend DOMA Section 3 under the binding standard that has applied in those cases."**

Given that the Department of Justice previously (and recently) defended the statute and that circuit courts accepted and adopted the its defense, do you sincerely believe that no reasonable argument can be made to defend the statute? Please explain.

Response: As reflected in the Attorney General's February 2011 letter to congressional leaders under 28 U.S.C. § 530D, the President and the Attorney General determined that classifications based on sexual orientation warrant heightened scrutiny under the equal protection component of the Fifth Amendment, and that Section 3 of DOMA is unconstitutional under that standard. The President and the Attorney General therefore determined that this was one of the rare occasions in which declining to defend a federal statute was the proper course. The Attorney General's letter further stated, however, that "[i]f asked . . . for the position of the United States in the event [the] courts determine that the applicable standard is rational basis, the Department will state that, consistent with the position it has taken in prior cases, a reasonable argument for Section 3's constitutionality may be proffered under that permissive standard." In the Brief for the United States filed in the Supreme Court in *Windsor*, the Department said: "The government has concluded that heightened scrutiny governs classifications based on sexual orientation and that DOMA Section 3 cannot be sustained under that standard. If the Court disagrees and applies rational-basis review, the government has previously defended Section 3 under rational-basis review, and does not challenge the constitutionality of Section 3 under that highly deferential standard."

4. **If the Attorney General concludes that another statute should not be defended, but you disagree, what will you do in your position as Assistant Attorney General, if you are confirmed?**

Response: The Department of Justice has a longstanding practice across Administrations of vigorously defending federal statutes, even if the Department disagrees with a particular statute on policy grounds, so long as reasonable arguments can be made in support of their constitutionality. (A statute that raises separation of powers issues and situations in which the President determines that a statute is unconstitutional present special circumstances.)

This foundational principle is consistent with the rule of law, affords appropriate respect to Congress as a co-equal branch of government, and recognizes the strong presumption of constitutionality that attaches to statutes that have been enacted by Congress and signed into law by the President. If I am fortunate enough to be confirmed, I will continue to discharge my responsibility to defend federal statutes in a manner that is consistent with the Department's established, bipartisan practice – a responsibility that I view as one of the most important of the office – as I have during my tenure over the past 15 months as Acting Assistant Attorney General.

Ultimately, the Attorney General has the statutory responsibility to direct the litigation of the United States; as a general matter, other officials in the Department exercise the Attorney General's delegated authority. *See, e.g.*, 28 U.S.C. §§ 516, 519. This question presupposes an extremely rare situation: one in which consideration is being given to declining to defend a statute. Should such a situation arise, I expect that I would have an opportunity to give the position of the Civil Division. In developing those views, I would consult with the many exceptional career lawyers who work in the Division and have vast expertise on issues related to the government's civil litigation. If confirmed, I will give my candid advice on all questions, even when (and indeed especially when) it appears that the Attorney General or other senior officials may have a different view. The Department's leadership would expect nothing less. The Committee should have confidence that I will examine all sides of an issue with fairness and respect, will exercise my best independent judgment to identify and defend the long-term institutional interests of the United States in accordance with established legal principles, and will act accordingly under the circumstances.

5. **You argued in both the Proposition 8 and DOMA briefs that "sexual orientation" is a suspect classification that warrants heightened scrutiny. How would you legally define "sexual orientation"?**

Response: This issue is currently pending before the Supreme Court in *United States v. Windsor*, No. 12-307, and *Hollingsworth v. Perry*, No. 12-144, in which I am representing the United States as counsel, and I am therefore not in a position to address the issue outside the context of my ongoing role representing my client in these pending matters. The position in the Department's briefs in these cases reflects the determination by the President and the Attorney General that classifications based on sexual orientation warrant heightened equal protection scrutiny. Under established Supreme Court precedent, one of the factors relied on by the Court to determine whether to apply heightened scrutiny to a classification that singles out a particular group is whether the disadvantaged class exhibits "obvious, immutable, or distinguishing characteristics that define them as a discrete group." *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (citation omitted). The Supreme Court provided in *Lawrence v. Texas*, 539 U.S. 558, 562, 576-77 (2003), that sexual orientation is a core aspect of a person's

identity, and that its expression is an "integral part of human freedom." The briefs for the United States in *Windsor* and *Perry* argue that sexual orientation is a sufficiently discernible characteristic to define a suspect classification. If confirmed as Assistant Attorney General, I will follow whatever legal definition of sexual orientation or other guidance the Supreme Court may provide in its decisions of those cases and will take that precedent into account as appropriate in conducting litigation on behalf of the United States.

6. **I'd like to discuss a recent case before the Federal Circuit that your division has been handling: National Organization of Veterans Advocates v. Secretary of Veteran Affairs. Earlier this year, the Federal Circuit threatened sanctions against the government for repeatedly making representations to the court when in fact the represented agency, in this case the Department of Veterans Affairs, continued to act contrary to those representations.**

   a. **How involved were you in this case?**

      Response: I had no personal involvement in this case prior to the Federal Circuit's Order to Show Cause dated March 21, 2013, to the best of my knowledge. I was briefed on the court's Order and the efforts of the Civil Division lawyers to respond and to remedy the issue in the following weeks.

   b. **When did you first become aware of the VA's failure to comply with the representations made to the court on its behalf?**

      Response: I first became aware of this issue after the Federal Circuit issued its Order to Show Cause.

   c. **Please explain why there was such a disparity between the promises made by your division's attorneys and the conduct of the VA.**

      Response: In this appeal, the National Organization of Veterans' Advocates (NOVA) challenged the Secretary of Veterans Affairs' promulgation of a regulation. My understanding is that the Department of Justice, after reviewing the case, informed the VA that it would not defend the regulation because it had not been properly promulgated. In addition to agreeing to withdraw the regulation, the VA agreed in the interim not to apply the regulation to future cases in the administrative appeals process. As counsel for the VA, DOJ represented to the court that the VA had informed the Department that the regulation would not be applied prospectively. Those representations were based on the assurances by the VA that it would discontinue application of the rule, and the Department of Justice relied on those assurances when it sought extensions of time from the court so that the VA could

repeal the rule without requiring the court to decide the issue. As I understand it, senior VA leadership instructed administrative judges to stop applying the challenged regulation. Some administrative judges, however, did not stop applying the rule by the date represented to the court. That fact led the court to consider sanctions against the VA and its officials for continuing to apply the rule. The court did not suggest that the DOJ lawyers handling the court case had acted inappropriately in any way. In its response to the Show Cause Order, the VA made clear that it "understands and appreciates the significance of [its] commitments and deeply regrets its failure to abide by them." *See* Response (May 20, 2013), at 3. This response included a plan, submitted with the support of NOVA, for identifying and rectifying the harms caused by this issue. The court "express[ed] satisfaction with the Government's Response and its timeliness" and found that "the Proposed Plan appears to address in a creative and comprehensive way most of the problems for veterans" created by the VA's failure to stop application of the challenged rule. *See* Order (June 10, 2013), at 2.

d. **Is this sort of issue of agency behavior at odds with the Department of Justice's representation common? Is this an isolated or unique occurrence? Please explain.**

Response: I take very seriously the Department of Justice's – and all attorneys' – duty of candor and honesty to courts. Our advocacy on behalf of the United States in particular is most effective when it builds upon the reservoir of trust and respect that the Department has established over many years. That is why our lawyers work closely with their agency counterparts to make sure that factual representations are complete and accurate. Fortunately the kind of situation that occurred during the VA case has been rare, including during my tenure in the Civil Division.

e. **The reason the court in this case was so alarmed by the government's conduct was that the VA continued to act contrary to its repeated assurances to the court. Although the court recently gave its preliminary approval of the government's proposed remedy, subject to a few clarifications, what changes have occurred in this specific case that will ensure to the court and to this committee that the VA will comply with the representations you, as a DOJ attorney, have made to the court through your most recent filing?**

Response: My understanding is that when the plaintiff contacted the Civil Division lawyers on the case about the VA's apparent failure to comply with its representations, our lawyers immediately brought the issue to the VA's attention and insisted that the agency stop applying the challenged rule. Following the court's Order to Show Cause, Civil Division lawyers worked with VA to develop a plan for identifying and rectifying the harms caused by this issue, and coordinated on behalf

of VA with NOVA to reach an acceptable proposal to resolve all harm caused by the failure by some administrative judges to cease application of the rule.

The VA's plan was submitted to the court, with NOVA's support, on May 20, 2013. The court filing said: "VA never intended to mislead the Court or NOVA, nor did it intend to prejudice any veteran's claims. VA undertook its commitment to cease applying the 2011 Rule with sincerity and deeply regrets that it fell short of that commitment. VA also never intended to evade responsibility for remedying any harm resulting from application of the 2011 Rule. VA has collaborated with NOVA in carefully drafting this Proposed Plan in an effort to ensure that any potentially affected appellant receives an opportunity for a new decision and a new hearing, including an opportunity to submit additional evidence." *See* Response (May 20, 2013), at 4-5. After reviewing this plan, the court "express[ed] satisfaction with the Government's Response and its timeliness" and found that "the Proposed Plan appears to address in a creative and comprehensive way most of the problems for veterans" created by the VA's failure to stop application of the challenged rule. *See* Order (June 10, 2013), at 2.

f. What efforts have you taken to ensure that this sort of issue doesn't occur again with respect to the VA?

Response: As noted above, my understanding is that when the plaintiff contacted the Civil Division lawyers on the case about the VA's apparent failure to comply with its representations, our lawyers immediately brought the issue to the VA's attention and insisted that the agency stop applying the rule. Following the court's Order to Show Cause, Civil Division lawyers worked with VA to develop a plan for identifying and rectifying the harms caused by this issue, and coordinated on behalf of the VA with NOVA to reach an acceptable proposal to resolve all harm caused by the failure by some administrative judges to cease application of the invalid rule. The lawyers also worked with the VA to file a statement with the court acknowledging the agency's obligation to follow through on the commitments it makes to the court and expressing regret for its failure to do so. I take very seriously the Department's obligation of candor and honesty to the courts. If confirmed, I will do everything in my power to safeguard the Department's hard-earned reservoir of trust, including through moving quickly and decisively to address any concerns that arise.

g. What steps have you taken to ensure that this issue doesn't arise between other executive agencies and the Department of Justice during future court action?

Response: As noted above, the Department of Justice's duty of candor and honesty to courts is a solemn obligation, and constant vigilance to meeting that obligation makes our advocacy on behalf of the United States most effective. That is among the

reasons why our lawyers work closely with their agency counterparts to make sure that factual representations are complete and accurate. If I am confirmed, I will continue to work with agency general counsel and other officials to maintain the high standards of candor that my predecessors and generations of career lawyers in the Department have set.

7. **You have been involved in the Justice Department's challenge of state immigration laws, specifically the cases involving Arizona and Alabama's State laws, arguing that immigration legislation and enforcement lies in the sole purview of the federal government.**

   Do you believe States have any interest or power to protect themselves from the effects of illegal immigration or from the lack of enforcement of immigration statutes by the Federal Government?

Response: In *United States v. Arizona*, 132 S. Ct. 2492, 2510 (2012), the Supreme Court confirmed that "[t]he National Government has significant power to regulate immigration" and found unconstitutional state laws that conflicted with federal law and interfered with federal policies and priorities as reflected in statutes that Congress has passed. That said, state and local governments undoubtedly have legitimate interests in certain matters concerning aliens and retain some authority to act on certain matters that may affect aliens and immigration. In its briefs in these cases, the Department has made clear that states serve as critical partners in assuring the effective enforcement of the federal immigration laws (although, as the Supreme Court confirmed, federal law also makes clear that such state efforts must proceed in cooperation with the federal government). *See Arizona*, 132 S. Ct. at 2508 ("Consultation between federal and state officials is an important feature of the immigration system."). The issue in the preemption cases is that federal law precludes state efforts to directly regulate immigration or to interfere with federal immigration law and policy. As the Supreme Court said, a state "may have understandable frustrations with the problems caused by illegal immigration . . . but the State may not pursue policies that undermine federal law." *Arizona*, 132 S. Ct. at 2510. If I am fortunate enough to be confirmed, I will guide litigation and make decisions as Assistant Attorney General based on the long-term institutional interests of the United States and established legal principles.

8. **You argued on behalf of the admissions policies in *Gratz v. Bollinger* and *Grutter v. Bollinger* that both explicitly consider a person's race as a factor in determining whether to admit them to public universities.**

   a. **Setting aside the Supreme Court's decisions, do you personally believe the Constitution requires the government to be color blind? Please explain.**

   Response: This question, like the others that follow in this section, asks about my personal views on legal issues, and relates to legal positions I took on behalf of clients while I was in private practice. If I am fortunate enough to be confirmed, whatever personal views I might have respecting any legal issue, like positions and arguments I previously advanced on behalf of clients before coming to the Department of Justice, will play no role in the discharge of my obligations. Instead, I will base my decisions on the law as Congress has enacted it and the courts have determined it, and will consult within the Department and with other agencies to determine what position is in the long-term institutional interests of the United States. I understand that I will have a special obligation to represent vigorously the broad interests of the United States to the best of my ability even if doing so conflicts with my own views on a particular matter, and I am firmly committed to doing so – as I have done during my service as Acting Assistant Attorney General.

   The Fourteenth Amendment to the Constitution prohibits the denial of "equal protection of the laws," which applies to government actions taken on the basis of race. As is now well-established, the Constitution requires that, regardless of the motivation, government may treat people differently because of their race only for the most compelling reasons, and only through means that are specifically and narrowly framed to accomplish those purposes. All government action based on race is inherently suspect and therefore subject to the most exacting judicial scrutiny.

   b. **Do you personally believe that the Constitution permits the use of race by the government in determining how to treat an individual? Please explain.**

   Response: The protections of the Fourteenth Amendment restrict government actions that treat people differently because of their race. As the Supreme Court made clear in *Grutter*, "whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." 539 U.S. at 327 (quoting *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 229-30 (1995)). Therefore, "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal

treatment under the strictest judicial scrutiny." *Adarand*, 515 U.S. at 224. The Supreme Court has established that, in certain limited circumstances, such treatment may nonetheless be lawful, but only where the relevant government action is undertaken to promote a compelling governmental interest, and only where the government action is narrowly tailored to achieve that interest. *See, e.g., Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 720 (2007); *Grutter*, 539 U.S. at 326; *Adarand*, 515 U.S. at 227. If confirmed as Assistant Attorney General, I would follow this established precedent in discharging my obligations and would take it into account as appropriate in conducting litigation on behalf of the United States.

c. **In *Grutter*, Justice O'Connor stated that "25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." Do you agree with Justice O'Connor? Please explain.**

Response: The Court in *Grutter* made clear that "[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause." 539 U.S. at 327. Context is important, in part, because the Constitution only allows a race-based classification where such a classification is narrowly tailored to promote a compelling governmental interest. In certain situations, the passage of time may bring about changed circumstances that heighten or diminish the importance of an interest promoted by a particular program, or the need for race-conscious government action to accomplish the interest.

The passage quoted in the question seems to reflect this aspect of the federal courts' typical strict scrutiny analysis:

> We take the Law School at its word that it would "like nothing better than to find a race-neutral admissions formula" and will terminate its race-conscious admissions program as soon as practicable. It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

539 U.S. at 343 (citations omitted). In context, the referenced quote represents a prediction that changed circumstances may alter the necessity of the consideration of race by the law school in admissions to pursue the compelling interest that supported the Court's decision. The Court has therefore made clear that, in cases involving

classifications based on race, it is important to assess whether changed circumstances affect whether a program continues to promote a compelling governmental interest and remains necessary to do so.

d. **If, in the future, race based admissions policies are no longer necessary, will they then become unconstitutional? Please explain.**

Response: The Supreme Court has made clear that the government may not employ race-based classifications unless those classifications are narrowly tailored to promote a compelling governmental interest. So, in the absence of a compelling interest, a governmental entity may not employ a race-based admissions policy (whether in the future or in the present). Noting that "[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race," 539 U.S. at 341 (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)), the *Grutter* Court emphasized that "race-conscious admissions policies must be limited in time" and that "[i]n the context of higher education, the durational requirement can be met by sunset provisions in race-conscious admissions policies and periodic reviews to determine whether racial preferences are still necessary to achieve student body diversity," *id.* at 342.

e. **If something will be unconstitutional 25 years from now, how can it be constitutional today?**

Response: As noted above, the Supreme Court has made clear that "[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause." *Grutter*, 539 U.S. at 327. Thus, in certain situations, changed circumstances may heighten or diminish the importance of an interest promoted by a particular program, and may otherwise affect the analysis of the constitutionality of that program. The Supreme Court has recognized this principle in a variety of contexts. *See, e.g., Craig v. Boren*, 429 U.S. 190, 198-99 (1976); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153-54 (1938); *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547 (1924).

9. **Please describe your involvement in the drafting of any "White Paper" related to the use of unmanned aerial vehicles to conduct targeted killings as well as your involvement in any FOIA litigation related to that issue.**

Response: I believe the question refers to a "Department of Justice White Paper" marked "Draft," titled "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force," and dated November 8, 2011. The Department released this document publicly in February 2013 and explained that

the draft was prepared as a possible vehicle to explain the Administration's legal views about the subject matter of the paper, but was not finalized; instead, on March 5, 2012, the Attorney General gave a speech at Northwestern University School of Law to convey those views. I was not the author of the draft "White Paper," but I led the drafting of the Attorney General's Northwestern speech when I worked in his office.

Under my supervision, the Civil Division is currently handling several FOIA cases related to the use of unmanned aerial vehicles in lethal counterterrorism operations. I argued one of those cases in the court of appeals, *ACLU v. CIA*, 710 F.3d 422 (D.C. Cir. 2013), and have otherwise been involved in briefing the cases.

ATF Director Confirmation Hearing
Questions for the Record
for
Senator Durbin

The following are submitted as responses to questions for the record from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Director Confirmation Hearing:

1. Mr. Jones, crime gun tracing is one of the most important tools that law enforcement can use to help solve crimes. I have urged every law enforcement agency in Illinois to report the guns they recover in crimes to ATF for tracing to determine where that gun was first sold at retail and to generate leads for criminal investigations. As more crime gun tracing takes place, law enforcement can also getter understand trends and patterns in criminal gun trafficking.

   While thousands of law enforcement agencies regularly report their crime guns to ATF for tracing, there are many agencies that do not do so - even though ATF's eTrace system is free and easy for law enforcement agencies to use. I plan to introduce legislation to incentivize all law enforcement agencies to trace 100 percent of their recovered crime guns. **Will you work with me to promote this goal of 100 percent crime gun tracing among state and local law enforcement agencies?**

   RESPONSE: Yes. Crime gun tracing is a cornerstone of ATF's strategic plan. ATF is committed to assisting all law enforcement agencies in tracing 100 percent of their recovered firearms. As of June 19, 2013, there are 4,722 law enforcement agencies throughout the United States that have direct access to ATF's eTrace application. According to the Department of Justice Bureau of Justice Statistics there are a total of 17,985 recognized law enforcement agencies in the United States. Firearms tracing significantly assists law enforcement in solving violent crimes and generating thousands of leads that may otherwise be available. By tracing firearms recovered by law enforcement authorities, ATF is able to discern patterns of names, locations, and weapon types. This information provides invaluable leads that aid in identifying persons engaged in the diversion of firearms into illegal commerce, linking suspects to firearms in criminal investigations, identifying potential traffickers, and detecting intrastate, interstate, and international patterns in sources.

2. **Mr. Jones, just so it is clear to anyone unfamiliar with crime gun tracing, can you explain how ATF's crime gun tracing system is <u>not</u> a national registry of lawfully-owned firearms?**

   RESPONSE: ATF does not maintain any type of national firearms registry and is prohibited by statute from doing so. ATF only traces firearms for law enforcement agencies where the firearm is involved or suspected to have been involved in a crime. During data entry into the Firearms Tracing System (FTS), the law enforcement officer must enter a "crime code" or the system will not permit the trace to

proceed. These limitations on data input ensure that only firearms associated with a bona fide investigation are traced. The data in the FTS is not part of a national firearms registry, and is limited to information necessary for tracing crime guns as authorized under the Gun Control Act (GCA). The Government Accountability Office (GAO) has addressed this very issue in a comprehensive report and concluded that the FTS was not a violation of either the GCA or ATF's appropriation restriction. See GAO Report "Federal Firearms Licensee Data: ATF's Compliance with Statutory Restrictions" (GAO/GGD 96-174), dated September 11, 1996.

3. Mr. Jones, the gun lobby and its allies in Congress often criticize ATF for not doing enough to enforce the gun laws on the books. However, when it comes to straw purchasing – which is one of the main ways that criminals get guns – the laws on the books are terribly weak. Under current federal law straw purchases can only be prosecuted as paperwork offenses, and it is difficult to get a conviction and rare to see a significant sentence imposed. **Would it help crack down on gun crime if Congress created a tough federal straw purchasing statute instead of the current paperwork offense?**

RESPONSE: Yes. The trafficking of firearms to violent criminals, gangs, and drug trafficking organizations, whether into our cities or across the Southwest border, presents a grave threat to public safety. Straw purchasers, individuals without a criminal record who purchase firearms for drug dealers, violent criminals, firearms traffickers, and prohibited persons are the linchpin of most firearms trafficking operations. Straw purchasers, often acquiring a relatively small number of firearms in each transaction, make it possible for firearms traffickers to effectively circumvent the background check and recordkeeping requirements of Federal law, ultimately putting guns into the hands of criminals. Under current law, there is no statute specifically directed at straw purchasing. Instead, prosecutors rely primarily on 18 U.S.C. § 922(a)(6), which prohibits making a material false statement, typically on a Firearms Transaction Record, ATF Form 4473, in connection with the purchase of a firearm from a Federal Firearms Licensee (FFL), and 18 U.S.C. § 924(a)(1)(A), which prohibits making a false statement with regard to any information that FFLs are required by law to keep on file. These violations are often perceived as technical "paperwork" violations, which result in penalties that are too low to serve as a meaningful deterrent, provide for consistent and proportionate sentences, or genuinely account for the violence associated with gun trafficking. Due in large part to the low penalties they face, defendants arrested for straw purchasing or related conduct have little or no incentive to cooperate with law enforcement. This lack of cooperation frustrates efforts to identify other members and leaders of trafficking schemes, and build cases against those individuals and their organizations. A tough federal straw purchasing statute with meaningful penalties and a broad forfeiture provision would encourage straw purchasers to cooperate with law enforcement, deter future straw purchasers, and deprive drug trafficking and violent criminal organizations of the proceeds they use to acquire additional weapons or otherwise support their illicit activities.

4. Mr. Jones, it has come to light that guns can be manufactured almost entirely out of plastic using 3-D printer technology. While these guns typically can only be fired once or a few times before breaking, they pose serious security concerns because they can pass unnoticed through metal detectors.

   The Undetectable Firearms Act of 1988 requires that guns contain a certain amount of metal in them so that they can be noticed by metal detectors. However, this law expires at the end of 2013. **What would be the risk of harm if this law is not re-authorized? How would airports, courthouses, schools, and government buildings be vulnerable to undetectable weapons?**

   RESPONSE: ATF has been working closely with the FBI, U.S. Secret Service and TSA on 3-D printing of plastic firearms and the risks to public safety posed by these undetectable firearms. Since these firearms cannot be detected by metal detectors, they increase the risk that would-be assassins, terrorists and murderers would be able to bring these firearms through security at our nation's airports, courthouses, schools and legislative bodies in order to commit acts of violence. When Congress passed the original Undetectable Firearms Act of 1988, technologies such as 3-D printing did not exist, and self-manufactured plastic firearms were only a theoretical risk. Today that risk is real. These firearms can be made by individuals using existing technology that can be purchased or leased. We believe it is likely this technology will improve as time advances allowing individuals to make more sophisticated undetectable firearms.

5. Mr. Jones, when we last met in my office we discussed the work that ATF is doing on the ground fighting crime in neighborhoods in Chicago, East St. Louis, Rockford and elsewhere in Illinois. We discussed how ATF has long been used as a punching bag by the gun lobby and its allies in Washington, but whenever you talk to state and local law enforcement agencies who are facing armed criminals on the streets, they are glad to have ATF there by their side. **I want to thank you and the brave men and women of the Chicago ATF Field Division for the work they are doing in Illinois to fight violent crime, and ask if there are additional steps Congress can take to assist in the fight against violent gun crime in Illinois.**

   RESPONSE: As I referenced in my testimony at the confirmation hearing, ATF is facing an unprecedented attrition rate in its Special Agent population. By 2017, approximately 40 percent of ATF's Special Agent population will be retirement eligible. The President's FY 2014 budget proposal contains essential additional resources for ATF Special Agent hiring. These resources would allow ATF to begin hiring new Special Agents next year, and allow us to use our existing highly-experienced Senior Agent cadre to help train and mentor those new agents, before we lose to retirement those Senior Agents and their wealth of knowledge. ATF Special Agents are the core of our criminal investigative processes. ATF Special Agents work side by side with State and local law enforcement, such as the Chicago Police Department and the Illinois State Police, and

the local US Attorneys' Offices, to combat violent crime and enhance public safety. Absent budget support to address Special Agent attrition, the resulting decrease in our Special Agent population would lessen our ability to deploy agents to the field to work closely with our state and local law enforcement partners. Experience has shown that these partnerships are among the most effective means of curbing violent crime. Hence, the need for Congressional support for additional hiring resources for ATF in FY 2014 and ensuing years is essential to assisting the fight against violent firearm crime in cities like Chicago and throughout the nation.

6. Mr. Jones, like all federal law enforcement agencies ATF has been impacted by the budget sequester.

   a. **Is the sequester impacting ATF's ability to help combat gun crime in Illinois?**

   RESPONSE: Yes. ATF's FY 2013 budget was reduced by $58 million due to sequestration, and contributed to an overall decrease of $82 million in resources this year. As a result, ATF has been unable to hire Special Agents as vigorously as needed and has deferred the hiring of hundreds of critical non-agent personnel. We have also been forced to cut back services provided through contractual support, and have reduced travel and professional development training. All resources provided to ATF are used to execute our primary mission of fighting violent crime. Therefore, sequestration, and any other resource reductions, will have a direct impact on ATF's ability to execute this mission. The priority of ATF is to work with state and local law enforcement for the positive advancement of public safety and violent crime reduction in our nation's communities. Dedication of ATF's resources is prioritized to enable the agency to best fight violent crime while other agency responsibilities may be disadvantaged. Furthermore, as mentioned in the response to Question 5 above, ATF is facing an unprecedented attrition rate in its Special Agent population. ATF Special Agents are the core of our criminal investigative processes. Sequestration has made Special Agent hiring very challenging. Therefore, additional hiring resources, such as those included in the President's FY 2014 budget proposal, are essential to assisting the fight against violent firearm crime in cities like Chicago and throughout the nation.

   b. **Does ATF have the manpower it needs in Illinois and elsewhere to effectively investigate and fight gun crime?**

   RESPONSE: I am mindful of the austere fiscal challenges facing the Department of Justice, and ATF continues to identify and adjust existing resources to maintain the absolutely essential law enforcement programs and services that we are charged with providing to the American people in the fight against violent crime. However, ATF's funding over the last decade has struggled to keep pace with the growing threats of violent gun crime, violent gangs, and illegal firearms trafficking. This has affected ATF's capacity to properly replace essential law enforcement equipment for Special Agents and surveillance technology, and to plan for the attrition of an increasingly aging Special Agent population. With respect to manpower, by 2017, approximately 40 percent of ATF's Special Agent population will be retirement eligible. The President's FY 2014 budget proposal contains essential additional resources for Special Agent hiring that

would allow for ATF to begin addressing essential attrition replacement hiring. These resources would allow ATF to begin hiring new Special Agents next year, and allow us to use our existing highly-experienced Senior Agent cadre to help train and mentor those new agents, before we lose to retirement those Senior Agents and their wealth of knowledge.

Senator Chuck Grassley
Questions for the Record

Byron Todd Jones
Nominee - Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives

1. **In your hearing, you told me that you were aware that the Office of Special Counsel has an open complaint against you, but that you did not know the substance of the complaint.**

    a. **At the time of the hearing, you had not seen the complaint. Have you seen it now?**

RESPONSE: No, I have not seen the complaint.

    b. **Are you aware that the process is currently in a mediation phase?**

RESPONSE: Yes, I have been advised of that.

    c. **Did you personally agree to mediation?**

RESPONSE: No, but I did consult with my United States Attorney's Office (USAO) staff about mediation.

        i. **If no, who did on your behalf?**

RESPONSE: The First Assistant U.S. Attorney for the District of Minnesota.

        ii. **If yes, why did you agree to this without knowing the substance of the complaint?**

RESPONSE: Based on publicly available information, I am aware of the general nature of the allegations. I believe that it is best to make every effort to resolve personnel matters informally if possible. Doing so serves the best interests of the Office and the employee.

2. **In your hearing, I asked you about a letter signed by "Employees of the United States Attorney's Office for the District of Minnesota". You said that you had seen a copy of the letter.**

    a. **Did you at any time learn who these individuals were? If so, explain the details of how you learned this information.**

RESPONSE: No.

b. **I asked you if you had taken any adverse action against them and you said that you had not. I then said I was including "unwanted, retaliatory transfer as an adverse action" and asked if that changed your answer. I did not get a clear answer from you. Please answer this question.**

RESPONSE: I am unaware of the identity of the author or authors of that letter, or if any authors are actually employees of the USAO. Regardless, I do not believe that I have ever engaged in a prohibited personnel practice.

c. **Are there any other individuals in your office who believe you have retaliated against them for complaining about your management of the U.S Attorney's Office for the District of Minnesota?**

RESPONSE: I am not aware of any at this time.

3. **In your hearing, I asked you about when you first took over the U.S. Attorney's Office in Minnesota in 2009. I asked three times if you removed the chief of the Narcotics and Violent Crime section at that time. You said that you made some reassignments and management changes.**

a. **Did Thomas Hollenhorst resign, as you implied in the hearing, or was he demoted?**

RESPONSE: All Assistant United States Attorney (AUSA) management positions within a USAO are temporary appointments and it is the prerogative of all United States Attorneys to select their management teams. Upon becoming United States Attorney in August 2009, I met with all AUSAs individually and, after these meetings, I decided to reassign the AUSA who had been serving as chief of the Narcotics and Violent Crime Section to the OCDETF/Violent Crime Section at the same pay.

b. **If he resigned, was this resignation of his own volition or was it after you had had a conversation with him? Did you ever suggest that he resign or he would be removed?**

RESPONSE: Please see the response to Question 3a. Consistent with the Privacy Act, it would not be appropriate to disclose the contents of my conversation with him.

c. **Please identify by name and title the several individuals you received resignations from in 2009 who had been serving in supervisory roles. Recall that 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof."**

RESPONSE: Consistent with the Privacy Act, I am able to provide the following information: AUSAs who were serving as the First Assistant United States Attorney, two Senior Litigation Counsels, and the Criminal Chief resigned those positions and were reassigned as line AUSAs at the same pay. The Civil Chief and two Deputy Criminal Chiefs remained in the positions that they occupied prior to my arrival. Over the past four years, I have made further changes in my management team.

d. You appointed a new Chief of this section in 2009. I asked you how you knew her and you said that you had known many of your new employees for over 20 years. How, specifically, did you know your new Narcotics and Violent Crime Section Chief?

RESPONSE: I primarily knew her through the outstanding professional reputation she enjoyed within the office before I returned as U.S. Attorney. She joined the United States Attorney's Office for the District of Minnesota after working as a career prosecutor (an AUSA in the Northern District of Georgia) and as a county prosecutor in Georgia. She was not a personal friend; I had only briefly met her in a social setting on one or two occasions while I was in private practice several years before I returned to the U.S. Attorney's Office.

e. Is it true that her father was a former partner of yours?

RESPONSE: Yes.

f. You said that she had "some" previous management experience. Please describe in detail her management experience.

RESPONSE: When I promoted her to OCDETF/Violent Crime Section Chief, she brought with her 20 years of experience as a lawyer, 13 of them as a state or federal prosecutor who had done extensive work in the area of guns, drugs, and violent crime. As a state and federal prosecutor, the Section Chief routinely managed investigative task forces and prosecution teams consisting of agents from multiple agencies targeting large, multi-state, drug trafficking organizations. She also had served periodically as an acting Section Chief for the asset forfeiture, gun, and narcotics sections in the Northern District of Georgia during absences of the assigned Chief.

4. According to the complaint filed with the Special Counsel, prosecutions in the unit are down significantly since you took over as U.S. Attorney. Why are the prosecutions down?

RESPONSE: When I returned to the Office in 2009, I immediately prompted a review of all criminal cases to better understand the caseload of the office. During the review, I learned that the USAO was expending significant resources prosecuting street level drug dealers that I believed were more appropriately prosecuted by state and local law enforcement.

Although these small drug prosecutions provided a rise in the office's statistics, they did not substantially improve public safety, and they diverted federal resources from the prosecution of

other important federal law enforcement priorities, including complex frauds, national security matters, Indian country cases, and child exploitation cases. After the review, I redirected prosecution resources to address these more significant federal interest cases that could not be addressed by state and local law enforcement. Prosecuting cases in these priority areas requires a substantial commitment of prosecutorial resources, but often results in a smaller total number of defendants. For instance, the average criminal defendant prosecuted in 2007 required about 150 hours of AUSA time.[1] In 2012, the average criminal defendant required about 300 hours. This doubling of prosecutorial time reflects the redirection of prosecutorial resources to larger, more complex federal cases that may involve fewer individual defendants.

For example, we needed to dedicate prosecution resources to address several of the largest, most complex cases brought in the history of the District of Minnesota, including: U.S. v. Thomas Petters ($3.5 billion dollar Ponzi scheme with 13 convicted defendants to date); U.S. v. Trevor Cook ($190 million dollar fraud with 6 convicted defendants); U.S. v. Wakinyon McArthur (Native Mob organized crime case with over 25 convicted defendants); and the Operation Rhino Somali terrorism case (9 defendants convicted to date). Many of these complex cases resulted in lengthy trials requiring enormous commitments of time by AUSAs and staff.

5. Mr. Oswald wrote that he is "one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him".

a. Have you heard of complaints about you or the U.S. Attorney's Office for the District of Minnesota by federal or state law enforcement in Minnesota? If yes, please detail these complaints, as well as when and how they were brought to your attention and what you did to address them.

RESPONSE: In any working relationship, it is not uncommon for disagreements to arise as to agency priorities and missions. These disagreements are usually resolved through communication and coordination between line staff and supervisors. When that is ineffective, it is my practice to meet with the appropriate agency head. By doing this, I have been able to resolve specific issues, although that does not mean others agree with the decisions or policy adjustments I have implemented as U.S. Attorney. As several of the letters submitted to the Committee in support of my nomination make clear, I have always valued collaboration and communication with law enforcement and prosecution partners. My goal has always been to represent the interests of the United States and to protect its citizens in a collaborative manner.

b. The complaint filed with the Special Counsel alleges, "at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed." Have any federal judges spoken to you about the way

[1] For guilty pleas, the time needed to prosecute case would be less, for trials, the time would be substantially more. These statistics reflect an average across all cases.

the office was being managed? If so, please describe those contacts in detail.

RESPONSE: I have not seen the complaint and, hence, do not know what you mean by "the situation." I have had periodic discussions with the Chief federal judge and other federal judges about various matters during my tenure, but I do not recall that any of these conversations has included complaints about the USAO. I have not "rebuffed" any inquiry from a federal judge.

6. **Were complaints about the Narcotics Chief ever brought to your attention by anyone in the U.S. Attorney's office? If so, by whom?**

RESPONSE: Consistent with the Privacy Act, I am not in a position to answer this question.

7. **The complaint filed with the Special Counsel alleges, "at least two federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed." Do you recall federal judges reaching out to you? If so, please describe those contacts in detail.**

RESPONSE: Please see the response to Question 5b.

8. **The complaint alleges, that in October 2012 the Assistant U.S. Attorney wrote you a memo dated September 4, 2012 titled "Office Situation." Did you receive and review such a memorandum? Please explain fully.**

RESPONSE: Yes, I received, via email, a memorandum entitled "Office Situation" on about that date.

9. **Did you investigate these allegations to determine if they were in fact true? If so, please describe all your investigative efforts.**

RESPONSE: I did not conduct any independent investigation of allegations in the AUSA's memorandum as I was recused from the decision making process related to disciplinary matters with the AUSA.

10. **The memorandum describes a conversation between you and an Assistant U.S. Attorney about four incidents of unwarranted discipline against him. Do you recall a conversation about these actions?**

RESPONSE: Without more information as to the circumstances of the conversation, I am unable to answer this question. Further, consistent with the Privacy Act, it would not be appropriate to

disclose the contents of a conversation with this AUSA concerning discipline imposed against him.

11. The memorandum discusses concerns about the Narcotics Chief. Please describe any efforts you took to review these allegations?

RESPONSE: Please see the response to Question 9.

12. What did you do to document any investigative efforts?

RESPONSE: Please see the response to Question 9.

13. Please identify with whom you discussed this memorandum at the U.S. Attorney's Office.

RESPONSE: I shared this memorandum with the First Assistant U.S. Attorney (FAUSA).

14. Did you talk to anyone at the Department of Justice in Washington D.C.? If so, whom?

RESPONSE: No. I believe that the FAUSA emailed a copy of the AUSA's September 4, 2012, memorandum to EOUSA's Office of General Counsel, on about September 10, 2012.

15. Did you speak with the Narcotics Chief about this memorandum?

a. If so, please describe the nature of your conversations and your interactions with her.

b. Please provide all written communications with the Narcotics Chief regarding the memorandum.

RESPONSE: No.

16. The memorandum also states that the Assistant U.S. Attorney would like to report to a new supervisor, but not transfer sections. Why didn't you grant this request?

RESPONSE: Please see the response to Question 17.

17. Ultimately, the complaint alleges that you transferred the Assistant U.S. Attorney to the Appellate Section, against his wishes. Why did you make this transfer?

RESPONSE: I made the transfer in part because the Appellate Section was understaffed. Consistent with the Privacy Act, I am not in a position to discuss internal conversations with the AUSA about this matter.

18. Please provide to the Committee any memoranda, email, notes or documents related your decision to make this transfer. If no documents exist, please explain why you did not document this action.

RESPONSE: I believe I have explained my decision and the reason for it above. Additionally, I am not in a position to disclose internal documentation regarding this matter, consistent with the Privacy Act.

19. The complaint also alleges that in addition to the transfer, that you suspended the Assistant U.S. Attorney for five days without pay. Please provide to the Committee any memoranda, email, notes or documents related to this decision. If no documents exist, please explain why you did not document this action.

RESPONSE: Consistent with the Privacy Act, I am not in a position to disclose the requested documents.

20. Both the Special Agent in Charge of the FBI and an AUSA in your office have informed me that the Narcotics Chief is responsible for the disenfranchisement and destruction of relationships between the USAO and the federal agencies involved with guns and drugs. Will you describe the professional relationship that the Narcotics Chief has with these federal agencies?

RESPONSE: I believe that the OCDETF/Violent Crimes Section Chief, acting consistent with my instruction, has focused on transitioning the Office's prosecutions from street level narcotics investigations to targeting sophisticated criminal organizations. She and other members of my management team are dedicated to improving the quality of narcotics investigations in the District. Please see also the response to Question 24a.

21. Sometime in either 2011 or 2012, your office was presented with a case that involved the seizure of 16.1 pounds of methamphetamine, two hand guns and half a million dollars in cash. According to reports, your office did not take this case because it was "undersold" to the Narcotics Chief.

a. Did you ever discuss the handling of this case with her, either before or after her decision not to prosecute?
b. If no, why not?
c. If yes, what was the explanation for declination?

RESPONSE: The USAO had formally opened the matter and assigned prosecutors to work with agents on it. The decision to ultimately remove the case from the U.S. Attorney's Office and present the case to the County Attorney was that of the federal agents. The USAO concurred in the decision at the request of the agents. Fortunately, in the District of Minnesota, we have very strong prosecution partners at the state and local level. These local prosecutors effectively handle narcotics cases day in and day out. By way of example, the case in question resulted in a 30 year sentence for the lead defendant when prosecuted by the Hennepin County Attorney's Office.

22. The number of drug cases your office has charged in FY 2012 dropped 42 percent. What is the reason for this?

RESPONSE: Please refer to the response to Question 4. After arriving at the United States Attorney's Office, I conducted a total review of prosecutorial policies and determined that the USAO had to more closely scrutinize the drug cases being referred to us since many of them, particularly those that focused on local drug trafficking, could—and should—be prosecuted by the County Attorney's Office. I also determined that while it was incumbent upon us to vigorously litigate large-scale drug trafficking cases, the USAO had to ensure that those referrals demonstrated an actual or potential link to regional, national, or international drug trafficking or money laundering organizations, as mandated for OCDETF designation and the investigative funding that includes overtime dollars. To that end, training was provided to case agents that focused on, among other things, the financial investigation component necessary in OCDETF cases. This strategic pivot was necessary to ensure the appropriate use of limited federal investigative resources in a manner that complemented existing state law enforcement efforts. The Special Agent in Charge of the Chicago Division of DEA, which includes the District of Minnesota, has concurred with this more focused approach to drug prosecutions and has worked proactively with me to address deficiencies in previous investigations.

23. A common complaint I've heard within ATF is that U.S. Attorney's Offices are unwilling to pursue straw purchasing charges. Yet according to one account, you reportedly said of gun and drug cases, "We could do that all day, but we've chosen not to because that's not the best use of our resources."

a. If this statement is accurate, why did you not see gun cases as a good use of your resources?

RESPONSE: As noted above, serious gun and drug cases are an appropriate priority for federal prosecution, and have been aggressively prosecuted. However, given the limited resources available, we must choose wisely and prioritize cases.

b. How do you expect to be able to encourage agents in ATF to pursue gun crime when you wouldn't even prosecute it yourself as a U.S. Attorney?

RESPONSE: The District of Minnesota has focused on prosecuting those offenders who pose the greatest threat to public safety, such as felons with significant criminal histories who possess and use firearms. The State of Minnesota has robust laws to address gun crimes. In making a decision to bring a prosecution, my staff closely examines the merits of handling a case at the federal level or deferring to state prosecution. Through this process, and the wise allocation of limited resources, the gun prosecution program has substantially advanced public safety in Minnesota. In fact, this past year saw a 21.4% increase in the number of defendants found guilty of firearms offenses, and a 55.3% increase in the number of defendants receiving sentences in excess of 61 months. These statistics reflect my focus on targeting the most serious threats – the most effective approach to improving public safety. Please see also the response to Question 27b.

c. You indicated in the hearing that the drop in prosecutions of gun and drug cases involved both resources and "collaboration with state and locals." Please identify the annual staffing levels of the Narcotics and Violent Crime Section from 2008 to 2013.

RESPONSE: Staffing in the Narcotics and Violent Crime Section has remained roughly stable over the past five years: between 8-10 total AUSAs are assigned to cover the entire District of Minnesota. I am not aware of a drop in the prosecution of gun cases. The drop in the prosecution of narcotics cases has been addressed in previous responses.

d. If the staffing levels remain relatively constant between 2008 and 2013, what does your reallocation of resources away from guns and drugs consist of? If you have not shifted more Assistant U.S. Attorneys over to the White Collar Section or other sections of the Criminal Division, what exactly are roughly the same number of Assistant U.S. Attorneys doing in the Narcotics and Violent Crime Section if they are not prosecuting gun and drug cases?

RESPONSE: Please see the response to Question 4.

24. Your opening statement indicated your desire to strengthen ATF on its mission of working with partners to combat violent crime. Yet according to multiples sources of information in Minnesota, including the former FBI Special Agent in Charge in Minnesota, your office has failed to provide law enforcement with support on violent crime, as well as gang and drug matters. Reportedly, the situation has deteriorated to the point that federal agencies have opted to bring their cases to Dakota, Hennepin, and Ramsey counties for prosecution in state court.

a. When did you first become aware of this deterioration in relations with law enforcement agencies in Minnesota?

RESPONSE: I do not believe any such deterioration occurred. As evidenced by the numerous letters the Committee received in support of my nomination, I believe my relationship with the

Minnesota law enforcement community—federal, state and local—is outstanding. Upon assuming responsibility as the Chief Law Enforcement Officer of the District of Minnesota, I implemented significant changes to improve the quality of federal criminal investigations with an emphasis on more robust risk management. The changes that we have implemented are intended to serve the public interest with integrity and efficiency.

b. When you first learned of this, what actions did you take to investigate it?

RESPONSE: Please see the response to Question 24a.

c. What did you do to try to remedy relations with law enforcement agencies?

RESPONSE: Please see the response to Question 24a.

d. Did you personally meet with any specific state or federal law enforcement agencies to discuss their concerns regarding the office? If so, please describe the circumstances of the meeting.

RESPONSE: As U.S. Attorney, I meet regularly with the leadership of all federal law enforcement agencies in the District of Minnesota. I also periodically meet with the leadership of state law enforcement agencies and county prosecutors. These meetings provide an open forum where any concerns of law enforcement can be heard and addressed. These meetings have included productive and open discussions of prosecution priorities, ensuring appropriate venues for certain prosecutions and resource allocation. They also have fostered, not hindered, the outstanding relationships that exist among law enforcement in the District of Minnesota.

25. You have attributed the diminishing prosecutions to a shift in priorities, stating at different times that you have refocused resources on white-collar cases and on terrorism cases. Yet the numbers show white-collar defendant charges dropped from 125 in Fiscal Year 2011 to 86 in Fiscal Year 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

RESPONSE: After assuming responsibility as the United States Attorney, and as noted above, I directed that prosecutors focus on cases of substantial federal interest not capable of being handled by our state and local partners. As a result, the USAO has successfully prosecuted a series of the largest, most complex white collar cases in the State's and Nation's history. Our focus on these extremely large, complex cases, many of which proceeded to trial, has limited the resources of our fraud prosecutors in charging and investigating new matters. However, we have developed fraud working groups with the metropolitan area County Attorneys to triage the prosecution of fraud cases to ensure that fraud cases are efficiently handled. Our state prosecutor partners have stepped up to the challenge, handling fraud cases. With the severe reduction in available resources as a result of sequestration, partnership building with state and local law enforcement is now paramount. The number of cases prosecuted does not necessarily reflect the

enormous importance of prosecuting more complex and significant cases or our diligence in this effort.

26. Numbers I have seen show 15 counter-terrorism cases in Fiscal Year 2009 and 13 in 2010. The numbers then drop to 2 in 2011 and 2 in 2012. How do you account for this decrease, and how does it square with your public statements about shifting priorities to this area?

RESPONSE: In collaboration with the Minneapolis Division of the FBI, and its Joint Terrorism Task Force (JTTF), we have investigated, charged, and obtained convictions in one of the broadest anti-terrorism cases in the history of this country. This investigation and many other terrorism investigations are ongoing. I have assigned two AUSAs to work full time on terrorism matters, and have trained other AUSAs to step in to assist in terrorism matters if necessary. Deterring, investigating, and prosecuting terrorism is our lead priority. The numeric reduction of terrorism cases is not indicative of a shifted priority, but rather reflects the serious and dedicated work of the JTTF and the USAO to combat terrorism in the District.

27. You were chair of the Attorney General's Advisory Committee from 2009 to 2011. In that capacity, you were a member of the Southwest Border Strategy Group. In October 2009 that group decided to distribute a draft strategy for combating the Mexican cartels. The draft stated: "Merely seizing firearms through interdiction will not stop firearms trafficking to Mexico." The draft strategy goes on to emphasize identifying the members of arms trafficking networks. The implication is clear. The strategy placed a higher value on gathering intelligence about trafficking networks than on arresting straw purchasers.

a. You said that you did not attend the October 26, 2009 meeting of the Southwest Border Strategy Group. Did you approve of any strategy to de-emphasize straw purchasing cases?

RESPONSE: As I have said before, I was not involved in formulating the Department's Cartel Strategy. I would note the Department's Office of Inspector General concluded that it was "not reasonable" to interpret the border strategy memoranda "as supportive of a strategy that deferred overt action against subjects as they continued to traffic hundreds of weapons with impunity." *See* Report at 436. I agree with this conclusion, and under my leadership, the U.S. Attorney's office and ATF have pursued, and will continue to pursue, straw-purchasing investigations and prosecutions. That said, however, I must note that the prosecution of straw purchasers poses significant challenges.

b. Do you think it is an appropriate strategy to go for big cases instead of putting a stop to straw purchasers whenever you can?

RESPONSE: Public safety is the number one priority in all criminal investigations. Developing evidence to prosecute larger firearm trafficking organizations and drug cartels instead of

individual offenders is a valuable law enforcement approach that is essential to dismantling these trafficking networks. Development of such cases, however, should never compromise public safety. As Acting Director of ATF, I have strongly reinforced that public safety outweighs collection of evidence for prosecution of cases. On November 3, 2011, I issued a memorandum clarifying ATF policy regarding firearms transfers. This policy was formalized on March 19, 2013, in an ATF Order and was broadcast to all ATF employees on March 26, 2013. The policy states that interdiction or other forms of early intervention may be necessary to prevent the criminal acquisition, trafficking, or misuse of firearms, and that, during the course of an investigation, protecting the public and officer safety should be the primary considerations.

Under the policy, an agent must take all reasonable steps to prevent a firearm's criminal misuse. In this regard, the policy expressly prohibits a firearm involved in a government-controlled transfer from leaving ATF's control. A government-controlled firearm transfer (also known as a controlled delivery) occurs when the Government actively participates in the transfer of a firearm to any person, whether associated with a drug cartel or otherwise, believed to be unlawfully acquiring or possessing the firearm. The firearm(s) involved in the controlled delivery may or may not be owned by the Government. Continuous physical (onsite) surveillance by ATF is required for a firearm to be considered within ATF's control. Any exception to this policy must be approved in writing in advance of the operation by the Director. This policy was instituted to ensure that ATF is effectively pursuing those individuals involved in firearms trafficking schemes while protecting the public.

28. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

a. I understand that in October 2012, ATF's Internal Affairs Division issued a report regarding the fire at Special Agent Jay Dobyns' home.
b. What were this report's findings regarding George Gillett?
c. Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Gillett?
d. What were this report's findings regarding William Newell?
e. Did the report substantiate any of Special Agent Dobyns' allegations against Mr. Newell?
f. Separate from discipline that may have been contemplated against Mr. Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?
g. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the

h. **What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.**
i. **Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Internal Affairs Division report? What date did the Professional Review Board make its proposal?**
j. **What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**
k. **What date was Mr. Newell notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.**

RESPONSE: I understand that Special Agent Dobyns is currently in litigation with the Department over issues relating to this fire. Accordingly, and consistent with the Privacy Act, I am not in a position to answer these questions.

29. Why didn't you impose any discipline for Operation Fast and Furious when you became the Acting Director of ATF?

RESPONSE: Discipline is not ordinarily proposed at the Director's level, but rather by a lower level supervisor of the employee to be disciplined, or by the ATF Professional Review Board. Consistent with standard practice, I did not personally propose or impose disciplinary action in connection with the deficiencies identified in the Office of Inspector General's Report on Operation Fast and Furious and related matters; however, other ATF officials did propose or impose disciplinary action.

Moreover, as you are aware, at the time I became the Acting Director of ATF, Operation Fast and Furious was the subject of an ongoing investigation by the Department of Justice Office of Inspector General. During the pendency of that investigation, and prior to the release of the Inspector General's findings, it would have been premature and inappropriate for me or anyone else at ATF to take disciplinary action against ATF employees. Taking action prior to the issuance of the OIG findings and the review of those findings through the established ATF disciplinary process would have been inconsistent with federal employment law principles and standards of due process.

30. Have any ATF employees been terminated based solely on their involvement in Operation Fast and Furious? If so, who, and on what date?

RESPONSE: Consistent with the Privacy Act, I am able to provide the following information: of the Senior Executive Service (SES) employees involved in Fast and Furious, one voluntarily

separated from Federal service before the disciplinary process was complete; a second was removed from Federal service for misconduct unrelated to Operation Fast and Furious; a third was disciplined, but not removed from service; and, a fourth voluntarily separated from Federal service before the Office of the Inspector General issued its report in the matter.

31. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the jurisdiction of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

I have heard that Fast and Furious Case Agent Hope MacAllister grieved her discipline for Fast and Furious to the Merit Systems Protection Board, and won.

a. Is this true?

RESPONSE: Please see response to Question 31b.

b. What disciplinary measures did ATF propose for Ms. MacAllister as a result of her role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.

RESPONSE: I have not been involved in a disciplinary process regarding Special Agent MacAllister and, consistent with the Privacy Act, I am not in a position to answer this question.

c. Where is Ms. MacAllister now, and what is her current GS-level?

RESPONSE: Special Agent MacAllister is a GS-13 serving in the field. ATF is not prepared to disclose her location for security reasons.

32. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

I asked you in the hearing about David Voth, the Group Supervisor who oversaw Operation Fast and Furious. You responded: "Special Agent Voth was subject to the internal disciplinary process and there were repercussions."

a. What disciplinary measures did ATF propose for Mr. Voth as a result of his role in Operation Fast and Furious? Please provide a copy of the disciplinary proposal.

RESPONSE: I was not involved in a disciplinary process regarding Special Agent Voth and, consistent with the Privacy Act, I am not in a position to answer this question.

b. Where is he now, and what is his current GS-level?

RESPONSE: Special Agent Voth is a GS-13 who will be reporting for duty in the field in July. ATF is not prepared to disclose his location for security reasons.

33. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated at the hearing that James Needles currently serves in another capacity within ATF.

a. What is that other capacity, and where is Mr. Needles assigned?

RESPONSE: Special Agent Needles currently serves as Deputy Division Chief in the Firearms Operations Division.

b. Were any disciplinary measures proposed for Mr. Needles by ATF as a result of his role in Operation Fast and Furious? If so, please provide a copy of the disciplinary proposal.

RESPONSE: I have not been involved in a disciplinary process regarding Special Agent Needles and, consistent with the Privacy Act, I am not in a position to answer this question.

34. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

You stated at the hearing that George Gillett had retired from ATF.

a. **Separate from discipline that may have been contemplated against George Gillett for other reasons, what disciplinary measures for Mr. Gillett did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?**

RESPONSE: I did not participate in a disciplinary process regarding Special Agent Gillett and, consistent with the Privacy Act, I am not in a position to answer this question.

b. **What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**

RESPONSE: Special Agent Gillett voluntarily separated from service on December 29, 2012.

c. **What date was Mr. Gillett notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Gillett.**

RESPONSE: Please see the response to Question 34a.

d. **On what date did Mr. Gillett retire?**

RESPONSE: December 29, 2012.

e. **Did Mr. Gillett retire with any ATF benefits? If so, what do Mr. Gillett's retirement benefits consist of?**

RESPONSE: Special Agent Gillett retired with the benefits to which he was entitled under applicable federal law.

f. **Why was Mr. Gillett allowed to retire with his benefits, given his role both in Operation Fast and Furious and in the investigation into the fire at Special Agent Dobyns' home?**

RESPONSE: Please see the response to Question 34c.

35. **5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.**

You stated that the discipline proposed against former Special Agent in Charge William Newell "is a matter that has come quickly into resolution" and that "[t]here is still a resolution pending that should be forthcoming."

a. Separate from discipline that may have been contemplated against Mr. Newell for other reasons, what disciplinary measures for Mr. Newell did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?

RESPONSE: Please see the response to Question 35b.

b. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.

RESPONSE: I was not involved in a disciplinary process regarding Special Agent Newell and, consistent with the Privacy Act, I am not in a position to answer this question.

c. What date was Mr. Newell notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Newell.

RESPONSE: Please see the response to Question 35b.

d. Has Mr. Newell had any formal complaints pending against ATF in the past two years? If so, how were those resolved?

RESPONSE: Consistent with the Privacy Act, I am not in a position to answer this question.

e. Did Mr. Newell conduct any type of settlement agreement with ATF in connection with proposed discipline? If so, what date was the settlement agreement concluded, and what did it consist of? Please provide a copy of any such settlement agreement.

RESPONSE: Please see the response to Question 35b.

f. What aspect of Mr. Newell's proposed discipline is still currently pending, as you stated in the hearing?

RESPONSE: Please see the response to Question 35b.

g. Where is Mr. Newell now, and what is his current GS-level?

RESPONSE: Special Agent Newell is currently assigned to the Tactical Operations Branch, and is a GS-13.

h. On what date will Mr. Newell be eligible to retire with his full ATF benefits?

RESPONSE: June 19, 2013.

i. What will Mr. Newell's retirement benefits consist of?

RESPONSE: Special Agent Newell will retire with the benefits to which he is entitled under applicable federal law at the time of his retirement.

36. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

In response to questions regarding former Deputy Assistant Field Director for Field Operations William McMahon, you first stated in the hearing, "Bill McMahon has retired from ATF." You then later said, "Mr. McMahon was one of the individuals terminated. He was not allowed to retire. He was terminated."

a. Did Mr. McMahon retire from ATF, or was he terminated?

RESPONSE: I removed Special Agent McMahon from federal service, effective on November 27, 2012, for conduct unrelated to Operation Fast and Furious.

b. Either way, what date did Mr. McMahon leave ATF?

RESPONSE: Please see the response to Question 36a.

c. Separate from discipline that may have been contemplated against Mr. McMahon for other reasons, what disciplinary measures for Mr. McMahon did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the Inspector General report on Operation Fast and Furious and related matters? What date did the Professional Review Board make its proposal?

RESPONSE: Consistent with the Privacy Act, I am unable to provide information in response to this question other than to note that Special Agent McMahon was removed from federal service

before the Professional Review Board made any disciplinary proposal regarding his involvement in Operation Fast and Furious.

37. In the hearing, I asked you three questions, and you only answered one. I asked: "How was McMahon's status resolved? How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company, and what does that say about how you're running the agency?" You failed to answer the latter two questions, so I will ask them again.

a. How is it possible that one of your senior leaders in headquarters could be overseas for months while drawing a federal paycheck without ATF knowing it and working for a private company?

RESPONSE: We provided Special Agent McMahon with a fair, thorough, and even-handed disciplinary process, and when that process was complete, I concluded that it was appropriate to remove him from the ATF.

b. What does that say about how you're running the agency?

RESPONSE: I believe that it demonstrates that I am committed to leading an agency that conducts the disciplinary process and addresses performance issues in a deliberate, fair, and even-handed way.

38. When I asked whether Mr. McMahon was only terminated after I brought his employment status to your attention, you answered: "The issue that you raised about his leave status and his prior employment status were all subject to a process. We very much appreciate the information enhancing our level of knowledge about things that were already in play internally."

a. What was already in play internally with respect to Mr. McMahon in August 2012, when I brought his double-dipping to your attention?

RESPONSE: I am not in a position to provide additional information about this matter, consistent with the Privacy Act.

b. Please provide copies of the personnel proposals prior to August 21, 2012 that you were referring to regarding Mr. McMahon.

RESPONSE: Please see the response to Question 38a.

39. 5 U.S.C. § 522(b)(9) of the Privacy Act permits disclosure of otherwise-protected information if the disclosure is made "to either House of Congress, or, to the extent of

matter within its jurisdiction, any committee or subcommittee thereof . . . ." ATF oversight is clearly within the provenance of this Committee. Therefore, the Privacy Act does not apply to questions from this Committee regarding discipline proposed for ATF employees.

During your tenure as Acting Director, ATF engaged in a disastrous undercover storefront operation in Milwaukee, Wisconsin called Operation Fearless. The Office of Professional Responsibility and Security Operations (OPRSO) internal review of Operation Fearless recently found at least 11 problem areas, including poor planning in designing the case and insufficient management during the case. Operation Fearless included many of the same flaws as Operation Fast and Furious, suggesting that ATF's new leadership had learned nothing from that debacle.

a. Operation Fearless was part of a Monitored Case Program that was designed to give greater headquarters oversight to sensitive cases. Why did that oversight fail in this case?

RESPONSE: The Monitored Case Program (MCP or Program) was established to provide enhanced, headquarters-level oversight of sensitive and high-risk investigations. Since its inception, the MCP has been continually refined and improved as we have learned from experience. On learning of the troubling allegations of problems in Operation Fearless, I directed OPRSO to conduct a thorough review of the investigation to identify deficiencies and recommend measures ATF could take to better protect the public. One of the identified deficiencies was that the MCP missed indicators that the investigation was in several respects poorly planned and executed. Consequently, the problems with the investigation were not briefed to appropriate headquarters personnel. As a result of OPRSO's findings about deficiencies in the MCP's performance, we have taken several steps to further refine and improve the Program. These steps include changes in permanent staffing, issuance of an updated Program directive, enhanced training for MCP personnel, and a requirement that field supervisors and case agents participate directly in select monitored case briefings to ATF headquarters.

b. Please provide a copy of the OPRSO report on Operation Fearless, as Chairman Issa, Chairman Goodlatte, Chairman Sensenbrenner and I requested on May 10, 2013.

RESPONSE: As the Department advised you in its letter of May 31, 2013, ATF is not in a position to release the OPRSO report, as it contains substantial sensitive law enforcement information, details regarding open criminal matters, and information relating to ongoing personnel matters.

40. According to the Justice Department, you were provided with Internal Affairs Division summaries regarding the theft of three ATF-issued firearms from a government vehicle and the burglary of the Operation Fearless storefront. However, the Department said

you do not recall reading either of those summaries. Do you normally read summaries that are provided to you by the Internal Affairs Division? If not, why not?

RESPONSE: I often review the summaries. I also rely on my staff to bring information in the summaries to my attention when they believe it appropriate.

41. I understand that the Special Agent in Charge of Milwaukee during Operation Fearless, Bernard Zapor, was promoted last fall to Deputy Assistant Director for Field Operations (Central). In a briefing providing to Committee staff on April 15, 2013, ATF indicated that disciplinary action was underway against Mr. Zapor. However, I have now heard that as a result of his failed management of Operation Fearless, Mr. Zapor was made the new Special Agent in Charge of the Phoenix Field Division, where his family was residing and he owns a home.

a. Is this true? If so, why would you put him in charge of an office that so clearly needs good leadership?
b. What disciplinary measures for Mr. Zapor did ATF's Professional Review Board propose to ATF's Deciding Official as a result of the OPRSO report on Operation Fearless? What date did the Professional Review Board make its proposal?
c. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
d. What date was Mr. Zapor notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to Mr. Zapor.
e. What disciplinary measures for the Milwaukee Field Division counsel named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
f. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.
g. What date was the field division counsel notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the field division counsel.
h. What disciplinary measures for the Resident Agent in Charge named in the OPRSO report did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?
i. What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the

disciplinary measures proposed by the Professional Review Board, please explain why.

j. **What date was the Resident Agent in Charge notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the Resident Agent in Charge.**

k. **What disciplinary measures for the Operation Fearless case agent did ATF's Professional Review Board propose to ATF's Deciding Official? What date did the Professional Review Board make its proposal?**

l. **What disciplinary measures did ATF's Deciding Official determine were appropriate? If the Deciding Official decided not to impose the disciplinary measures proposed by the Professional Review Board, please explain why.**

m. **What date was the Operation Fearless case agent notified of the discipline ATF's Deciding Official had determined was appropriate? Please provide a copy of the disciplinary proposal provided to the case agent.**

n. **What disciplinary measures for any other employee has ATF's Professional Review Board (PRB) proposed to ATF's Deciding Official as a result of the OPRSO report? Please name each employee for whom discipline was proposed, the date the Professional Review Board made its proposals, the discipline proposed by PRB, the decision made by ATF's Deciding Official, and the date the employee was notified of the proposed discipline. Please also provide a copy of the disciplinary proposal provided to each employee.**

RESPONSE: Consistent with the Privacy Act, I am not in a position to disclose some of the information requested by this question. I can state that I am confident that Mr. Zapor is well qualified to provide strong and effective leadership in Phoenix.

The OPRSO review of Operation Fearless led to the referral of several matters to IAD. For consistency, IAD will refer all these matters to the PRB at the same time. Several investigations are still ongoing and should they indicate that an employee engaged in misconduct, the matter will be referred to the PRB upon the completion of all related IAD investigations.

42. **In Reno, Nevada, relations between ATF and the U.S. Attorney's Office completely fell apart in the fall of 2011. Things got so bad that that U.S. Attorney's Office refused to take cases from ATF. Whistleblowers within ATF say that when these problems in Reno were brought to your attention, you stated that you had bigger things to worry about. Ignoring the underlying issues, you simply moved most of ATF's agents out of Reno.**

    a. **You stated in the hearing: "I was very dismayed when I first heard of a disconnect between the federal prosecution office and Reno. . . . [W]e currently have two full-time and soon to be three agents in Reno. We're**

on a good path in Reno to fix whatever concerns historically existed there."

b. What was the cause of the disconnect between the U.S. Attorney's Office and the Reno ATF office?

RESPONSE: Through a collaborative effort of ATF and the Nevada United States Attorney's office, difficulties in the working relationship between the offices in Reno have been identified and addressed.

c. In a letter of April 23, 2013, ATF stated that the San Francisco Field Division learned of this situation in August 2011 and engaged with the U.S. Attorney's Office and the Reno ATF office in an effort to resolve it. Why was the San Francisco Field Division unsuccessful?

RESPONSE: Upon learning of the situation between the Reno field office and the U.S. Attorney's office, the leadership of the ATF San Francisco Field Division actively engaged the U.S. Attorney's Office to address the issues. The new ATF San Francisco Special Agent in Charge and the U.S. Attorney have met several times and have re-established an effective working relationship.

d. ATF indicated in its April 23, 2013 letter that ATF headquarters became aware of these issues in November 2011. When and how did you first personally become aware of these issues?

RESPONSE: I first became personally aware of the issues in Reno in early March 2012, when the Assistant Director of Field Operations provided me a summary of the situation.

e. What did you do to address these issues when you first became aware of them?

RESPONSE: On becoming aware of the issues, I directed the Office of Field Operations to undertake additional fact-finding and sent a senior headquarters manager to Nevada to address the situation with the U.S. Attorney directly.

f. ATF indicated in its April 23, 2013 letter that you had discussions in March 2012 with the U.S. Attorney for the District of Nevada. What was discussed, and why couldn't the matter be readily resolved at that time?

RESPONSE: My discussion with the Nevada U.S. Attorney focused on taking all steps necessary to resolve the situation as soon as possible. I advised the U.S. Attorney that I had directed the new Assistant Director of Field Operations to review the situation and then travel to Nevada to meet directly with him to address and resolve the areas of concern.

g. Why were agents moved out of Reno? Wouldn't it have been more cost-effective to address the issues in Reno rather than simply transferring four agents out of the office?

RESPONSE: ATF Headquarters became aware of the issues in Reno in November 2011 and after separate discussions in March 2012 involving the U.S. Attorney for the District of Nevada, myself, and the Assistant Director for Field Operations, it became apparent that the issues could not be readily resolved at that time in a manner that would allow ATF to best utilize its limited agent resources. ATF subsequently decided to reassign four special agents from ATF Reno to duty posts with pressing needs for additional agents. These moves were made with minimal permanent change of station (PCS) costs.

h. If there are soon to be three full-time agents in Reno, as you said, why was the Reno office ever stripped down to two full-time agents to begin with?

RESPONSE: Although only two special agents continued to be permanently assigned to ATF Reno, it remains a satellite of ATF's Las Vegas field office, under the San Francisco Field Division. Accordingly, the Las Vegas Resident Agent in Charge provides leadership, oversight, support and other resources, to include nine Las Vegas-based Special Agents, to the ATF Reno office when required. The Special Agents who transferred out of Reno all requested reassignments for various reasons and were placed in understaffed or priority locations at minimal PCS costs.

i. Now I understand ATF detailed a third agent back to Reno in February 2013 in order to work as a Violent Crime Coordinator with the Northern Nevada Project Safe Neighborhoods (PSN) Task Force. How many PSN cases have been prosecuted by the third agent in his capacity as the Violent Crime Coordinator?

RESPONSE: The third agent, who is currently detailed to ATF Reno, has been assigned to the United States Attorney's Office's PSN Task Force. He has worked on ATF firearms investigations and prosecutions, as well as multiple pending explosives investigations.

j. What is the current cost of detailing the third agent to Reno?

RESPONSE: The total cost to date of detailing a third agent to the Reno satellite office has been approximately $13,803. The projected cost for the remainder of the assignment, scheduled to end the first week of August 2013, is $11,158. Therefore, the total estimated cost for the detail will be approximately $24,962.

k. What further relocation costs will be incurred by making the detail a permanent assignment?

RESPONSE: The expense could approach $163,000 to permanently relocate an agent to the Reno satellite office. Many costs related to a PCS come in significantly under that amount contingent upon multiple factors, such as family size, home ownership status and other factors.

l. ATF indicated in its April 23, 2013 letter that the cost of relocating the four agents from Reno was approximately $152,000. Does that figure include the lump sum payment for house hunting trips or the closing costs paid to the two agents who purchased homes during the move?

RESPONSE: Yes.

m. ATF indicated in its April 23, 2013 letter that a new Special Agent in Charge (SAC) of the San Francisco Field Division began in August 2012, and that "within weeks of his arrival the SAC met with [the U.S. Attorney for the District of Nevada] in Las Vegas to discuss a mutually agreeable resolution of the outstanding issues between the two offices." What date did this meeting take place? Was it scheduled before or after my letter to you of September 17, 2012 raising this matter?

RESPONSE: On August 16, 2012, the newly appointed SAC of the San Francisco Field Division met with the District of Nevada U.S. Attorney to address the issues with the ATF Reno Office. These events occurred prior to ATF's receipt of Senator Grassley's letter on September 17, 2012.

n. ATF indicated in its April 23, 2013 letter that agents in Reno have opened 26 cases in 2013. How many of those were actual criminal cases, and how many were NICS retrievals that have no potential of being submitted for prosecution?

RESPONSE: By the end of April 2013, the ATF Reno Office had opened 30 criminal investigations, 22 of which were NICS delayed denial cases.

43. On October 12, 2012, the House Committee on Oversight and Government Reform subpoenaed "[a]ll agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General's Advisory Committee of U.S. Attorneys between March 1, 2009 and July 31, 2011, referring or relating to Operation Fast and Furious." That period specific is the time you were Chair. The Justice Department has never produced any such documents or certified that none exist. When I asked you about this at the hearing, you stated that you didn't "have any knowledge beyond the fact that relevant documents have been collected internally at the Department . . . ." I asked you if you would respond to the question in writing.

RESPONSE: The Department provided a written response to you on this issue prior to my confirmation hearing. In a letter dated June 5, 2013, the Department explained that, in response to the House Committee on Oversight and Government Reform's subpoena of October 11, 2011,

the Department had already searched for these materials. It is my understanding that the Department produced on October 31, 2011, the single responsive document located in that search.

44. I also asked you about any personal notes from the Advisory Committee that you might have taken regarding Fast and Furious. On April 10, 2013, I sent you personally a letter asking that you meet with my staff for an interview. The letter stated: "In addition, by April 17, 2013, please provide my staff with any personal notes from the Attorney General's Advisory Committee that you may have taken regarding Operation Fast and Furious." You indicated to me in the hearing that you didn't have any recollection of a letter that had this request.

a. Do any such agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General's Advisory Committee exist that refer or relate to Operation Fast and Furious? If so, why haven't they been turned over pursuant to the subpoena?

b. Did you receive my April 10, 2013 letter? If so, why do you not have a recollection of my request?

c. Do you have any personal notes from the Attorney General's Advisory Committee in your possession that reference or relate to Operation Fast and Furious? If so, please produce a copy of them to the Committee

RESPONSE: The single responsive document that the Department located in its search for these materials indicates that I did not attend an AGAC meeting in which Operation Fast and Furious was mentioned. I am not aware of any additional responsive materials.

45. Both my staff and the staff of the House Oversight and Government Reform Committee requested a staff interview with you multiple times during our investigation of Operation Fast and Furious. However, you never permitted yourself to be interviewed. You recently agreed to an interview regarding the St. Paul quid pro quo, but refused to answer questions about Fast and Furious or any other topic.

a. Your predecessor, Kenneth Melson, participated in a voluntary staff interview. Why couldn't you?

b. Did anyone at the Justice Department instruct you not to participate in a staff interview? If so, who? Please describe the circumstances.

c. Were you otherwise willing to participate in a staff interview?

RESPONSE: I welcomed the opportunity during my hearing, and now, in these responses, to answer Committee Members' questions, including any you may have had about Fast and Furious or any other topic. I am advised that it is unprecedented for a nominee to be asked to participate in a Senate staff interview—which is not a matter of public record—prior to his or her nomination hearing. I believed it would be appropriate to answer the Committee's questions publicly and under oath, in accordance with the established practice of the confirmation process.

46. On July 9, 2012, you issued a video message in which you told ATF employees: "[I]f you don't respect the chain of command, if you don't find the appropriate ways to raise your concerns to your leadership, there will be consequences . . . ." I know you have since issued a clarification to ATF employees at the request of myself and Chairman Darrell Issa.

a. Other than to keep whistleblowers from going outside their chain of command, what message were you intending to communicate to ATF employees in your original video?

RESPONSE: Beginning in March 2012, I released a series of videotaped internal messages to ATF employees known as "Change Casts" in an effort to strengthen and improve ATF. The video message quoted above was an excerpt from one of these Change Casts. This excerpt was provided to the media by an unknown source. One of the main employee concerns expressed to me since my appointment has been the lack of accountability for those who do not abide by agency rules. The Change Cast at issue focused on the need for accountability at all levels of ATF, from senior management to the most junior employees, and was not intended to discourage protected disclosures nor to suggest that any prohibited personnel practices would result from protected disclosures. Since my appointment, I have expanded opportunities for ATF employees to raise work-related concerns and stressed the need for attention to those concerns by supervisory ATF officials.

b. Did you make the clarification the same way you made the initial comment: in a video message to all ATF employees?

RESPONSE: This message was written, not a video. The message was posted on ATF's intranet, as were the Change Casts, and was also sent to all employees via email.

c. Please provide a copy of the clarification you provided to all ATF employees.

RESPONSE: See attachment.

47. You have stated that on November 3, 2011, you issued a memorandum saying that ATF must take all reasonable steps to prevent the criminal misuse of a firearm. You also agreed in the hearing to provide a copy of that order. Please provide a copy of the order.

RESPONSE: I did commit in the hearing to providing a copy of that Order, and I will honor that commitment. However, because it is a law-enforcement sensitive document, its public disclosure could compromise investigations and officer safety. I respectfully request the opportunity to work with your staff to provide the Order in an appropriate manner separate from these responses.

48. I also asked you about any guidance issued regarding cooperating federal firearms licensees (FFL) and the role they should play in investigations. You indicated that you have updated the confidential informant order. However, one of the issues in the Operation Fast and Furious surrounded the fact that none of the FFLs involved were signed up as confidential informants, including the primary FFL. Nevertheless, ATF agents encouraged the FFLs to continue selling to suspected straw purchasers.

a. Please provide a copy of the revised confidential informant order.

RESPONSE: Enclosed please find a redacted copy of the Order that is appropriate for public release.

b. What have you done to shore up policies dealing with FFLs who are not confidential informants, especially to address encouraging them to go forward with sales that they would not otherwise go forward with?

REPSONSE: On November 3, 2011, I issued a memorandum clarifying ATF policy regarding firearms transfers. The memorandum specifically addressed the issue of FFL inquiries about proceeding with suspect sales by directing ATF Special Agents that they should advise FFLs that FFLs are under no obligation to sell firearms under circumstances that the licensee feels are suspicious, and that FFLs should always use their best judgment in determining whether or not to sell or transfer a firearm; a very narrow and specific exception to this policy exists for authorized controlled deliveries. The policies outlined in the November 3, 2011, memorandum were formalized on March 19, 2013, in an ATF Order, and the Order was broadcast to all ATF employees on March 26, 2013.

49. I asked you in the hearing about ATF keeping a Suspect Gun Database despite the congressional prohibition against keeping a national gun registry. However, you seemed completely unfamiliar with the issue.

a. Had you ever heard of the Suspect Gun Database before this hearing? If not, why not?

RESPONSE: Yes, I was aware of the Suspect Gun Program prior to the hearing.

b. When did ATF first begin using the Suspect Gun Database?

RESPONSE: The Suspect Gun Program is a feature in ATF's Firearms Tracing System (FTS), which enables ATF Special Agents to flag firearms that they suspect to be illegally trafficked or otherwise connected with potential illegal activity that ATF is investigating. If the firearm is subsequently recovered by a law enforcement agency and traced, the Special Agent who flagged the suspect firearm would be notified. A suspect firearm may only be submitted in association with a criminal investigation by ATF. The Suspect Gun Program has been utilized since 1992.

c. Is there any legal standard that ATF agents are required to meet before adding information on a purchaser to the Suspect Gun Database?

RESPONSE: Under Federal law, 18 USC 923(g)(7), firearms can only be traced pursuant to a bona-fide criminal investigation. When suspect gun data is entered into FTS, such data must be connected to a criminal investigation.

d. Is there any criteria for removing information on a purchaser from the Suspect Gun Database, or does information remain on the database indefinitely?

RESPONSE: A firearm flagged in the Suspect Gun Program may be deactivated and the Special Agent would no longer be notified if that firearm was subsequently recovered and traced. The data, however, remains in FTS so that when future recoveries of those firearms are traced, the investigative lead is preserved.

e. How does ATF headquarters conduct oversight on the usage of the Suspect Gun Database?

RESPONSE: Only firearms involved in an open ATF criminal investigation can be flagged in FTS under the Suspect Gun Program. Periodic reviews are conducted to determine if investigations of firearms submitted under the Suspect Gun Program are still active. If the case is no longer active, appropriate administrative steps are taken to remove the notification settings on the flagged firearms.

f. How many suspect gun purchases are currently recorded in the Suspect Gun Dabatase?

RESPONSE: There are 173,784 firearms currently listed as suspect firearms in the FTS. Firearms information is not removed from FTS. All firearms were associated with ATF criminal investigations.

g. How many different purchasers are currently on record in the Suspect Gun Database?

RESPONSE: There are currently 7,329 individuals who may be purchasers and/or suspects that are associated with a suspect firearm in the FTS. All of the individuals identified were associated with ATF criminal investigations.

h. How does the usage of the Suspect Gun Database square with the Firearm Owners Protection Act of 1986, which you referenced in the hearing and which makes a national gun registry illegal?

RESPONSE: ATF does not maintain any type of national firearms registry and is prohibited by statute from doing so. Information under the Suspect Gun Program relates to firearms suspected to be illegally trafficked or otherwise having a connection with potential illegal activity that ATF

is investigating. If the firearm is subsequently recovered by a law enforcement agency and traced, the Special Agent who flagged the suspect firearm will be notified. A suspect firearm may only be submitted in association with a criminal investigation. The information is not used for any other purpose. The GAO has addressed this very issue in a comprehensive report and concluded that the FTS was not a violation of either the Gun Control Act or ATF's appropriations restriction. *See* U.S. Government Accounting Office Report, "ATF's Compliance with Firearms Licensee Data Restrictions," September 11, 1996 (GAO/GGD 96-174). *See also* J&G Sales v. Truscott, 473 F.3d 1043 (9th Cir. 2007) and Blaustein & Reich, Inc. v. Buckles, 365 F.3d 281 (4th Cir. 2004).

Response to Question 46

SPECIAL MESSAGE FROM THE ACTING DIRECTOR
SUPPLEMENT TO CHANGE CAST #8
July 25, 2012

As you may be aware, some employees have raised questions about my recent ChangeCast #8, "Choices and Consequences." The goal of the ChangeCast program is to strengthen and improve ATF. ChangeCast #8 focused on the need for accountability at all levels of ATF – from senior management to the most junior employees. One of the main employee concerns expressed to me since my appointment has been the lack of accountability for those who do not abide by the rules. ChangeCast #8 specifically addressed employee concerns about aceountability.
Let me reiterate, however, that ATF orders requiring all employees to report through the chain of command as to daily duties and responsibilities do not override the Whistleblower Protection Act, 5 U.S.C, 2302(b)(8), which prohibits personnel actions taken because of protected disclosures. "Protected disclosures" include disclosures of information by an employee or applicant which the employee or applicant reasonably believes evidence a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. ChangeCast #8 was not intended in any way to discourage disclosures covered by the Whistleblower Protection Act or imply that employees would be disciplined for making such protected disclosures.

A previous message addressing these protections was posted on the ATF Web Portal on May 2, 2012, and may be found at this link: Supplemental Message to All Employees on Disclosure Policy.

Response to Question 48

ATF O 3252.1

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

DATE: 11/8/2011
Includes Change 1 - Date: 7/2/2012

OPI: 701200

OPI RECERTIFICATION DATE: 11/8/2016

CONFIDENTIAL INFORMANT USAGE

FOREWORD

TO: All Field Operations Personnel

1. PURPOSE. This order contains policy and instructions relating to confidential informant (CI) usage within the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

2. CANCELLATIONS. This order cancels:

   a. Chapters A and D of ATF O 3250.1A, Informant Use and Undercover Operations, dated 10/26/2001; and

   b. Memorandum from the Assistant Director (Field Operations), SUBJECT: Use of and Reporting on Illegal Aliens as Informants/Witnesses, dated 6/23/2010.

3. DISCUSSION. This order incorporates the Attorney General's Guidelines Regarding the Use of Confidential Informants (hereinafter referred to as the Department of Justice (DOJ) Guidelines), dated May 30, 2002, into the ATF directives system. As a result of the issuance of the DOJ Guidelines, ATF has been required to establish a CI Review Committee, which must evaluate the use of long-term CIs, high-level CIs, and persons under the obligation of a legal privilege of confidentiality or affiliated with the media. In addition, this order incorporates updated policy regarding sponsoring illegal aliens or foreign nationals as CIs or witnesses. Finally, the requirement for a CI semiannual review remains in effect.

4. REFERENCES.

   a. Department of Justice Guidelines Regarding the Use of Confidential Informants, dated May 30, 2002.

   b. ATF O 1720.1D, Physical Security Program, dated 8/15/2008.

   c. ATF O 3210.7C, Investigative Priorities, Procedures, and Techniques, dated 2/25/1999.

   d. ATF O 3254.1A, Victim and Witness Assistance Program, dated 11/17/2010.

   e. ATF O 3251.1, Expenditure of Funds for Investigative Purposes, dated 2/20/1997.

   f. ATF O 3040.1A, Operations Security Program, dated 2/15/2011.

   g. ATF O 3040.2A, Operations Security - Threat Policy, dated 11/17/2008.

h. U.S. Sentencing Guidelines Manual, located at: http://www.ussc.gov/Guidelines/2010_guidelines/index.cfm

i. U.S. Attorneys' Manual § 9-21.050.

j. Title 26 U.S.C. S 7623.

k. Title 27 CFR § 70.41.

l. Title 19 U.S.C. § 1619.

m. Title 22 U.S.C. § 401(b).

n. Title 19 U.S.C. § 1619.

o. Title 28 U.S.C. § 524.

p. Title 28 U.S.C. § 530A.

q. Title 28 CFR part 16.

r. Title18 U.S.C. § 1905.

5. FORMS AVAILABILITY. All ATF forms outlined in this order are available on the ATF Web Portal > Knowledge Center > Forms Web site. Directions on how to obtain other agencies' forms discussed in this order have also been included in the body of the order.

6. CI REFERENCE DOCUMENTS. Please see the Enforcement Support Branch's ATF Web Portal page for sample memorandums and other related reference documents that are discussed in this order.

7. RECORDS RETENTION REQUIREMENTS. Documents outlined in this order must be retained in accordance with ATF's records management program.

8. QUESTIONS. Any questions regarding the provisions of this order may be directed to the Chief, Special Operations Division (SOD), on 202-648-8620.

Ronald B. Turk
Assistant Director
(Field Operations)

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CHAPTER A. GENERAL PROVISIONS

1. PURPOSE, SCOPE, AND AUTHORITY.

   a. This order sets ATF policy consistent with the DOJ Guidelines.

   b. This order applies to the use of all CIs under ATF's direction. It does not limit ATF's ability to impose additional restrictions on CI use.

   c. This order does not create any enforceable legal right or private right of action by a CI or other person, is to be used solely as internal ATF policy, and is to be considered as law enforcement sensitive.

   d. The order is only to be applied to CIs as defined in subparagraph 3a.

   e. All previous ATF policies regarding CIs are hereby superseded. The DOJ Guidelines are mandatory and must be followed absent an express exemption there from. The DOJ Guidelines do not supersede ATF and DOJ attorneys' otherwise applicable ethical obligations, which can, in certain circumstances (e.g., with respect to contacts with represented persons), have an impact on special agents' conduct.

2. POLICY ON THE USE OF CIs. ATF's policy is to use CIs to assist in investigating criminal activity, developing them to the point where they will regularly contribute information. Since using CIs is a sensitive matter and requires the association of special agents with persons whose motivations may be suspect or ultimately challenged by courts, this investigative technique shall be carefully controlled and closely monitored. Proper use of CIs requires that individual rights not be infringed upon and that special agents conduct themselves within the parameters of ethical and legal law enforcement behavior.

3. DEFINITIONS.

   a. CI Defined.

      (1) CIs are defined as persons who assist enforcement efforts, providing information and/or lawful services related to criminal or other unlawful activity to ATF that otherwise might not be available—in return for money or some other specific consideration. CIs shall work under ATF special agents' direction and control. Information or services provided must have specific investigative or general intelligence value in enforcing laws and regulations within ATF's responsibility.

(2) In addition to providing information, CIs may be expected to participate in investigations or testify in open court, if required. They may also expect that their identities will not be disclosed, except with their approval or within the exceptions set forth in this order. The United States will strive to protect CIs' identities but cannot guarantee that they will not be divulged.

(3) Special agents in charge (SACs) shall approve all CIs before ATF uses them; however, this does not preclude a special agent from receiving information from a person on a one-time-only basis. Persons providing information on a one-time-only basis need not be documented; however, as always, special agents should verify the information and attempt to identify the persons providing it.

b. Federal Inmate. This is any person in Federal custody—under either the Bureau of Prisons' (BOP) or U.S. Marshals Service's (USMS) control.

c. Fugitive. This is a person who meets the following conditions:

(1) For whom a Federal, State, or local law enforcement agency has placed a wanted record in the National Crime Information Center (NCIC) database;

(2) Who is located either within the United States or in a country with which the United States has an extradition treaty; and

(3) Whom the law enforcement agency that has placed the wanted record in NCIC is willing to take into custody upon his or her arrest and, if necessary, seek his or her extradition to its jurisdiction.

d. Tier 1 Otherwise Illegal Activity. This is any activity that:

(1) Would constitute a misdemeanor or felony under Federal, State, or local law if engaged in by a person acting without authorization; and

(2) Involves the following:

(a) The commission, or the significant risk of the commission, of any act of violence by a person or persons other than the CI;

(b) Corrupt conduct, or the significant risk of corrupt conduct, by senior Federal, State, or local public officials;

(c) The manufacturing, importing, exporting, possession, or trafficking of controlled substances in a quantity equal to or exceeding those quantities specified in the U.S. Sentencing Guidelines (USSG) § 2D1.1(c)(1);

NOTE: This citation is for the 2010 edition of the USSG Manual (http://www.ussc.gov/Guidelines/2010_guidelines/index.cfm), and it is intended that this subparagraph will remain applicable to the highest offense level in the Drug Quantity Table in future USSG Manual editions.

(d) Financial loss, or the significant risk of financial loss, in an amount equal to or exceeding those amounts specified in the USSG § 2B1.1(b)(1)(I);

NOTE: It is intended that this will remain applicable to dollar amounts that in future editions of the USSG Manual trigger sentencing enhancements similar to those set forth in § 2B1.1(b)(1)(I) of the 2010 edition.

(e) A CI providing to any person (other than a special agent) any item, service, or expertise that is necessary for the commission of a Federal, State, or local offense that the person otherwise would have difficulty obtaining; or

(f) A CI providing to any person (other than a special agent) any quantity of a controlled substance with little or no expectation of its recovery by a law enforcement agency.

e. Tier 2 Otherwise Illegal Activity. This is any other activity that would constitute a misdemeanor or felony under Federal, State, or local law if engaged in by a person acting without authorization. (NOTE: This is any illegal activity that does not fall under the definition of Tier 1 and would qualify as a misdemeanor or felony. Many activities could fall under this category, including (but not limited to) burglary, street racing, bribery, etc.)

f. Control Agent. This is the ATF special agent responsible for ensuring that a CI adheres to this order's policies and guidelines and that all of this order's requirements regarding a CI are followed.

g. CI Review Committee (CIRC). This is a committee created by ATF to review certain decisions relating to registering and using CIs. The committee chair is the appropriate deputy assistant director (DAD) (Field Operations) (FO), and membership includes the following two representatives designated by the Assistant Attorney General (AAG) for DOJ's Criminal Division: (1) a Deputy AAG for the Criminal Division and (2) an assistant U.S. attorney (AUSA). In addition, the Chief, SOD, and the Associate Chief Counsel (Field Operations and Information) are CIRC members. The DAD(FO) may add personnel as necessary. All CIRC decisions are final unless a request for exception or dispute resolution is submitted as described in paragraph 8.

h. High-Level CI. This is a CI who is part of the senior leadership of a criminal enterprise that does the following:

(1) Has (a) a national or international sphere of activities or (b) high significance to ATF's mission, even if the enterprise's sphere of activities is local or regional; and

(2) Engages in, or uses others to commit, any of the conduct described in subparagraph 3d(2)(a) through (d).

i. Federal Prosecuting Office (FPO). This is any of the following:

(1) U.S. attorneys' offices (USAOs);

(2) The DOJ Criminal Division, Tax Division, Civil Rights Division, Antitrust Division, and Environmental and Natural Resources Division; and

(3) Any other DOJ litigating component with authority to prosecute Federal criminal offenses.

NOTE: For the purposes of this order, the term "USAO" will be used to reflect the term "FPO."

4. PROHIBITION ON COMMITMENTS OF IMMUNITY BY FEDERAL LAW ENFORCEMENT OFFICERS. ATF special agents do not have authority to make any promise or commitment that would prevent the Government from prosecuting a person for criminal activity that is not authorized pursuant to chapter D or that would limit the use of any evidence by the Government—without the prior written approval of the Federal or State prosecutor who has primary jurisdiction to prosecute the CI for such criminal activity. ATF special agents must take the utmost care to avoid giving any person the erroneous impression that they have any such authority.

5. DUTY OF CANDOR. ATF employees have a duty of candor in discharging their responsibilities and must so perform to comply with the requirements and terms of ATF orders and policies.

6. CI DISCLOSURE ISSUES.

a. CIs' identities and CI identification and control files are not normally subject to disclosure. However, personal information CIs furnish about another, which becomes a part of an ATF records system, could become subject to disclosure under the Privacy Act. Disclosure of personal information to CIs about a third party under investigation during the course of any information exchange is a Privacy Act disclosure. Disclosing special agents must account for the disclosure by notating it in the CI file as prescribed in

subparagraph 7c. CIs' true names need not be a part of the accounting; aliases or assigned confidential identity codes may be substituted.

b. Except in the case of approvals and reviews described in paragraph 19 (Review of Long-Term CIs), subparagraph 81i (coordination concerning payments to CIs), paragraph 94 (notification that a CI has obtained privileged information), and paragraph 18 (coordination concerning deactivation of a CI, but only with respect to a CI whose identity was not previously disclosed), whenever ATF is required to make contact of any kind with a USAO pursuant to this order regarding a CI, ATF should not withhold the true identity of the CI from the USAO without the express approval of the appropriate SAC.

c. Demands to identify CIs before any legal proceedings should be handled in the same manner as requests for information that are subject to the provisions of 28 CFR Part 16 and 18 U.S.C. § 1905. The response to any subpoena, court order, or any other request seeking a CI's identification or production of any CI's control file, documents, or data or other disclosure that could reveal the CI's identity must have the SAC's prior approval. Division counsel should immediately be notified upon receipt of such a demand.

d. Where prosecution is contemplated in matters in which information has been received from a CI who requested anonymity and the USAO can give no assurance of its ability to protect the CI's identity, ATF shall take no further action until the appropriate DAD(FO) can be advised and decide whether to engage DOJ's Criminal Division.

e. CIs have a duty and obligation to safeguard confidentiality agreements with ATF. If CIs break the agreements by disclosing their working relationship to anyone other than a law enforcement officer or during courtroom testimony, they will be immediately removed for cause. (See paragraph 16.) If information comes to ATF's attention that a DEACTIVATED CI disclosed the relationship with ATF, such information will be documented in a memorandum and placed in the deactivated CI's file.

7. MAINTAINING CONFIDENTIALITY.

a. ATF special agents must take the utmost care to avoid conveying any confidential investigative information to a CI (e.g., information relating to electronic surveillance, search warrants, the identity of other actual or potential CIs, etc.) other than what is necessary and appropriate for operational reasons.

b. Pursuant to the DOJ Guidelines, AUSAs are required to maintain as confidential CIs' identities and the information they provide unless obligated to disclose it by law or court order. If ATF provides U.S. attorneys (USAs)

or their designees with written material containing such information, the handling of the information must be in accordance with the DOJ Guidelines. At the end of the investigation, all written material concerning the information that has not been disclosed is to be returned to ATF. Special agents shall notate the return of undisclosed documents in N-Force.

c. Any disclosure of information in the CI file outside of ATF must be documented in the CI's control file in a memorandum. This should include the name of the person to whom the CI's identity was disclosed, the specific nature of the information disclosed, and the reason for the disclosure. Before any information is disseminated, a review by the SAC is required and should be noted on the memorandum.

d. ATF employees have a continuing obligation after leaving DOJ employment to maintain as confidential CIs' identities and information they provided, unless the employees are obligated to disclose it by law or court order.

8. EXCEPTIONS AND DISPUTE RESOLUTION.

a. Whenever any exception to any provision of this order is justified or whenever there is a dispute between ATF and any other DOJ agency (except the Criminal Division) regarding this order, dispute resolution requests for exceptions must be sought in writing through the appropriate SAC to the Assistant Director (AD) (FO), who will forward it to the AAG for the Criminal Division or the AAG's designee for resolution. The Deputy Attorney General or his or her designee shall hear appeals, if any, from the AAG.

b. Whenever there is a dispute between the Criminal Division and ATF, it shall be resolved by the Deputy Attorney General or his or her designee.

c. Any exception granted or dispute addressed and resolved shall be documented in ATF files maintained by the AD(FO) or designee.

9. COMPLIANCE.

a. SACs shall ensure that all of their assigned special agents receive sufficient training, including in-service training, in the use of CIs consistent with this order, to include registering, reviewing, and terminating CIs and notifying outside entities. Training shall be repeated as warranted.

b. The AD(FO) or designee will maintain at all times an active roster of all ATF CIRC members for the purpose of conducting CIRC reviews.

10 RESERVED

CHAPTER B. CI SUITABILITY DETERMINATION AND SPECIAL APPROVAL REQUIREMENTS

11. CI SUITABILITY DETERMINATION (INITIAL).

a. Before committing substantial resources or taking significant enforcement action based upon information provided by a CI of unknown reliability, special agents shall make all reasonable efforts to ensure that information provided by a CI is reliable and that the CI will not jeopardize an enforcement mission. Additionally, before using any CI, the SAC or ASAC shall make a suitability determination. Thereafter, the SAC or ASAC shall document in the field division's CI control files that the suitability determination has been made. Information to be obtained and assessed must include the following:

(1) The CI's true name and all known aliases.

(2) Residence/business addresses and telephone numbers.

(3) Personal description, including date and place of birth.

(4) Employment history. If unemployed, current source of income.

(5) Social Security number.

(6) Past activities (criminal or criminally associated).

(7) Whether the CI is a substance abuser or has a history of substance abuse.

(8) Whether the CI is related to an employee of any law enforcement agency.

(9) Federal Bureau of Investigation (FBI) number and State and local criminal identification numbers.

(10) Criminal reputation and known associates.

(11) Whether the CI is in the military or is a public official, law enforcement officer, representative of the news media, union official, employee of a financial institution or school, or a party to privileged communications (e.g., a member of the clergy, a physician, a lawyer, etc.).

(12) The extent to which the person would make use of his or her affiliations with legitimate organizations in order to provide information or assistance to ATF, and if so, how ATF will ensure that the information or assistance is limited to criminal matters.

(13) Citizenship/alien status. (See paragraph 23.)

(14) Parole/probation status. (See paragraph 27.)

(15) The extent to which the person's information or assistance can be corroborated.

(16) Brief synopsis of information furnished in the past, including:

(a) The name, title, and agency of the law enforcement official contacted regarding the CI's reliability.

(b) The reliability and truthfulness of the information provided.

(c) The date and value of the information furnished.

(d) Whether the CI will testify in open court.

(e) Identity of other agencies to which the CI is currently supplying information.

(f) If the CI has served in that capacity for another law enforcement agency, whether the agency terminated that relationship for cause and why.

(17) Person's prior known record as a witness in any proceeding.

(18) Motivation in providing information or assistance, including any consideration sought from the Government for assistance.

(19) Whether the CI has shown any indication of emotional instability or unreliability or of furnishing false information.

(20) The nature of the information or service to be supplied and the nature and importance of the information to a present or potential investigation, including whether the information can be corroborated.

(21) The nature of any relationship between the potential CI and the subject or target of an existing or potential investigation or prosecution, including but not limited to a current or former spousal relationship or other family tie and any current or former employment or financial relationship.

(22) The risk that the CI may adversely affect an investigation or potential prosecution.

(23) The risk of physical harm that may occur to the CI, his or her immediate family, or his or her close associates as a result of assisting ATF.

(24) Financial or other arrangements—including promises or other benefits given a CI by ATF, any other law enforcement office (if available and known to ATF), a Federal prosecuting office, and any other State or local prosecuting office (if available to ATF)—in return for providing information or services to any Federal, State, or local agency.

(25) Whether the CI is reasonably believed to be a subject or target of a pending investigation, is under arrest, or has been charged in a pending prosecution.

(26) Whether the CI poses a criminal threat or danger to the public.

(27) Whether the CI poses a risk for flight.

(28) Whether the CI is a relocated witness (WITNESS SECURITY (WITSEC) PROGRAM ONLY).

(29) Whether CI relocation or application to the WITSEC Program is anticipated.

b. In addition to the above information, the following items shall be attached to the memorandum:

(1) Completed ATF F 3252.2, Informant Agreement (English Version), or ATF F 3252.3, Informant Agreement (Spanish Version).

(2) Current CI color photograph and fingerprints (FBI Form FD-249, Arrest and Fingerprint Card, or appropriate copy of fingerprints from the Joint Automated Booking System).

NOTE: FBI Form FD-249 may be ordered through the following link: http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ordering-fingerprint-cards.

(3) State and Federal (NCIC) criminal history documents.

(4) State and Federal (NCIC) warrant check documenting that the CI does not have any pending arrest warrants.

(5) Treasury Enforcement Communications System (TECS) query.

c. Unless extraordinary circumstances exist and are substantiated, the SAC or ASAC shall not approve the following persons as ATF CIs:

(1) Persons convicted of perjury.

(2) Persons under 18 years of age (juveniles). If a juvenile is approved for use, written consent must be obtained from a parent or guardian.

(3) News media representatives. (See paragraph 21.)

(4) Persons who have been adjudicated mentally incompetent, have a history of mental illness, or appear to be mentally or emotionally disturbed.

(5) Persons who are known or are believed to have given false information to law enforcement authorities in the past.

(6) Persons who have set preconditions for remuneration or other considerations that are unrealistic.

(7) Persons who have odious criminal records or reputations or who have personal character traits that would make them undesirable as CIs.

(8) Persons who have been arrested for or convicted of sex crimes involving minors.

(9) Persons who are current or former participants in the WITSEC Program. (See paragraph 22.)

(10) Persons who are foreign nationals/illegal aliens. (See paragraph 23.)

(11) Persons who are on active military duty. (See paragraph 24.)

(12) Person who are fugitives. (See paragraph 25.)

(13) Persons in Federal custody, on parole, on supervised release, or on probation or who are detainees, unless prior approval through the appropriate official has been obtained. (See paragraph 26.)

(14) Persons in State or local custody, on parole, on supervised release, or on probation or who are detainees, unless prior approval through the appropriate official has been obtained. (See paragraph 27.)

(15) BOP personnel. (See paragraph 29.)

(16) Persons previously documented as ATF CIs and who were removed for cause.

(17) Persons who are licensees in an industry in which ATF has jurisdiction (including Federal firearms and explosives licensees). (See paragraph 31.)

12. EMERGENCY CI APPROVAL. In emergency situations where a CI's immediate use is necessary or desired due to valid and necessary investigative needs, the requesting special agent may obtain verbal approval for the CI's use pending official field division or CIRC review and approval. The SAC or ASAC shall approve all verbal requests. Once the emergency situation has subsided, the special agent shall document in N-Force the time and date that the SAC or ASAC provided verbal approval and initiate the CI's registration in accordance with this order.

13. REGISTRATION.

a. In registering a CI, the control agent, along with one additional special agent or other law enforcement official present as a witness, shall review written instructions that include the below information, which should then be reflected and retained in the CI file. (See ATF F 3252.2 or ATF F 3252.3.)

(1) The CI must provide truthful information to ATF at all times;

(2) The CI's assistance and the statements made to ATF are entirely voluntary;

(3) The U.S. Government will strive to protect the CI's identity but cannot guarantee that it will not be divulged;

(4) ATF on its own cannot promise or agree to any immunity from prosecution or other consideration by a Federal prosecutor's office or a court in exchange for cooperation, since the decision to confer any such benefit lies outside of ATF's discretion;

(5) The CI will have no immunity or protection from investigation, arrest, or prosecution for anything the CI says or does, and ATF cannot promise or agree to such immunity or protection, unless and until specifically granted such immunity or protection in writing by a USA or his or her designee (i.e., the AUSA). ATF will advise any prosecuting office(s) of the nature and extent of the CI's cooperation;

(6) Without explicit authorization and written pre-approval, the CI has not been authorized to engage in criminal activity (Tier 1 or Tier 2 Otherwise Illegal Activity (subparagraphs 3d and e)) and could be prosecuted for any unauthorized criminal activity in which the CI has engaged or will engage in the future;

(7) The CI must abide by the control agent's instructions and must not take or seek to take any independent action on the U.S. Government's behalf;

(8) The CI is not an employee of the U.S. Government and may not represent himself or herself as such;

(9) The CI may not enter into any contract or incur any obligation on the U.S. Government's behalf, except as specifically instructed and approved by ATF;

(10) ATF cannot guarantee any rewards, payments, or other compensation to the CI;

(11) If the CI receives any rewards, payments, or other compensation from ATF, the CI is liable for any taxes that may be owed;

(12) No promises or commitments can be made, except by the U.S. Citizenship and Immigration Services, regarding the alien status of any person or the right of any person to enter or remain in the United States;

(13) The CI shall be advised that he or she is not to attempt to be present during conversations between persons under criminal indictment and their attorneys. If the CI is inadvertently present and learns of defense plans or strategy, the CI shall be informed that he or she is not permitted to report such conversations without the USA's prior approval.

(14) The CI will not disclose the nature of his or her relationship with ATF to anyone other than a law enforcement officer or during courtroom testimony—and only with the control agent's approval before any such disclosure.

b. Immediately after these instructions have been given, the special agent shall ensure that the CI acknowledges his or her receipt and understanding of the instructions in writing, and, along with the other law enforcement official, document his or her review of the instructions with the CI and his or her understanding of them. As soon as practicable thereafter, the SAC or ASAC shall review and, if warranted, approve the documentation.

The instruction and documentation procedures shall be repeated whenever it appears necessary or prudent to do so and, in any event, at least every 12 months.

c. If the CI is approved, an entry shall be made on ATF F 3252.1, Informant Control Log, reflecting the name of the CI, the confidential identity code assigned to the approved CI (e.g., 784000-002), the name of the special agent requesting use of the CI, the date of approval, verification date, and the date of removal (to be completed when appropriate).

d. The SAC or ASAC shall notify the requesting special agent of approval to use the CI, through his or her resident agent in charge (RAC)/group supervisor (GS), by signing and returning a copy of the requesting memorandum (paragraph 11), which the RAC/GS shall retain as notification of approval. These documents shall be maintained in accordance with the security provisions outlined in ATF O 1720.1D, Physical Security Program; operations security principles; and subparagraph 41b.

e. After registration of the CI and documentation of instructions have occurred, one special agent and at least one other law enforcement officer shall fully debrief the CI to reconfirm his or her knowledge of criminal or other unlawful activities. When the CI is likely to provide information that is subject to legal claim or privilege (e.g., privileged conversation between client/attorney), ATF will ensure prior coordination with an appropriate prosecuting attorney.

14. CONTINUING SUITABILITY REVIEW.

a. Beginning the first week of January and July of each year, the field division shall review each CI's file to determine if the CI should: (1) remain active, (2) be deactivated (paragraph 15), or (3) be removed for cause (paragraph 16). If the CI is to remain active, the control agent shall complete and sign a continued suitability review memorandum directed to the SAC for his or her written approval. In completing the memorandum, the control agent must address the factors set forth in subparagraphs 11a(1) through (29), and the memorandum must state any changes that have occurred since either the initial CI suitability memorandum or the most recent CI continuing suitability review memorandum was executed.

(1) General Background Information. If there have been no changes to the CI's general background information, the memorandum shall state that there have been no changes regarding information contained in the initial or most recent CI suitability review memorandum; subparagraphs 11a(1) through (29) will not need to be specifically addressed.

(2) Criminal History. If there have been no changes to the CI's criminal history, the memorandum shall state that there are no changes

regarding the CI's criminal history contained in the initial or most recent CI suitability review memorandum. If there are changes, these changes to the CI's criminal history or TECS record may be paraphrased within the continuing suitability review memorandum in lieu of submitting the actual criminal history printout.

(3) ATF F 3252.2 or ATF F 3252.3. A newly executed CI Agreement (ATF F 3252.2/ATF F 3252.3) will only accompany the semiannual continuing suitability review memorandum in preparation for the January review period, thus making the submission of a new CI Agreement (ATF F 3252.2/ATF F 3252.3) an annual requirement.

(4) Other. The continued suitability review memorandum shall contain the following:

(a) Length of time that the person has been registered as a CI;

(b) Length of time that the CI has been handled by the same control agent;

(3) Cumulative amount of money paid to the CI during the previous 6-month period;

(4) Case numbers in which the CI participated.

b. Each CI must be documented on a separate memorandum. Each special agent shall submit this semiannual review, through his or her RAC/GS, to the SAC by memorandum. This semiannual review requirement is the minimum review amount. Additional reviews may be conducted if deemed necessary by the control agent, SAC, or other appropriate management official.

c. Semiannual reviews shall be conducted in the following manner:

(1) The RAC/GS shall advise the control agent and appropriate ASAC that it is time for the review. The RAC/GS is responsible for maintaining the field office's CI identification and control files. (See subparagraph 41b.)

(2) The control agent shall obtain the CI's file and any related information from the RAC/GS and ensure that all contracts, payments, and related items are current and complete. The control agent shall then conduct records and criminal history checks and reflect any changes or note that there are no changes in the continuing suitability review memorandum as stated in subparagraphs 14a(1) and (2). Once complete, the CI continuing suitability review memorandum shall be forwarded to the SAC, along with all pertinent documentation for

review together with recommendations. The CI continuing suitability review memorandum must contain an appropriate explanation regarding any CIs who are to be retained or removed from active status.

(3) An approved CI shall not be recommended for removal as long as any investigation that he or she has contributed to is still pending final disposition unless the assigned prosecutor and ATF supervisor jointly concur that such a removal will not impede the prosecution. The only other exception to this is that a CI may be removed for cause at any time.

(4) The SAC will indicate his or her determination by signing the CI continuing suitability review memorandum. All files shall be securely returned to the RAC/GS.

d. Special agents must notify the RAC/GS when an active CI is arrested or believed to have engaged in unauthorized and/or unlawful conduct, except for a minor traffic infraction. Any unauthorized and/or unlawful conduct must be recorded and maintained in the CI's file. Upon receipt of any such information, the SAC shall ensure that a new continuing suitability review memorandum is promptly prepared and submitted, and the SAC must approve the CI's continued use.

(1) If ATF is involved in an investigation with more than one Federal law enforcement agency using the CI, coordination among all of the relevant agencies' SACs or designated representative should occur.

(2) In situations where a prosecutor is either (1) participating in the conduct of the underlying investigation using the CI or (2) working with the CI in connection with a prosecution, ATF must immediately inform the prosecutor of the arrest or the nature and extent of the alleged unauthorized, unlawful conduct.

e. Unless extraordinary circumstances exist that would convince the SAC that the approval should continue, a previously approved CI shall be removed from the files when either of the following circumstances occur:

(1) It is determined that the CI falls within one of the categories listed in subparagraph 11c. In such instances, the responsible special agent shall document the facts in a memorandum and forward it to the SAC, through his or her RAC/GS.

(2) During the semiannual verification or prior thereto, the responsible special agent determines that a CI should be removed and so notifies the SAC by memorandum, through his or her RAC/GS.

15. DEACTIVATION OF APPROVED CIs.

a. When it has been determined that a CI is to be deactivated, special agents shall take the following steps and document them via memorandum through channels to the SAC:

(1) Document the reasons for deactivating the CI in the CI's files;

(2) If the CI can be located, notify the CI that he or she has been deactivated as a CI and provide documentation that such notification was provided;

(3) If the CI was authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity pursuant to paragraph 62, revoke the authorization under the provisions of paragraph 67.

(4) Document the length of time that the CI was registered as a CI;

(5) Document the cumulative amount of money paid to the CI during the previous 6-month period; and

(6) Document the cumulative amount of money paid to the CI by ATF.

b. The SAC shall notify the requesting special agent, through his or her RAC/GS, of the removal by returning a signed copy of the above request memorandum conspicuously marked "Informant Removed." When a CI has been removed, an entry shall be made on ATF F 3252.1 reflecting the date removed. The SAC shall have that CI's identification file placed in the field division inactive file by numerical sequence, where it shall be retained according to ATF's records management program. CI files maintained by the field office shall also be retained in compliance with ATF's records management program. At the end of the prescribed retention period, files shall be shredded.

c. Emergency removal may take place by telephone, followed as soon as possible by submission of a memorandum.

16. REMOVAL FOR CAUSE (UNDESIRABLE/UNRELIABLE) OF APPROVED CIs. When it appears that a CI shows indications of emotional instability or unreliability or has willfully furnished false, materially substantive information, the SAC shall be advised immediately as outlined below. Depending upon the significance of the materiality and the impact on the problem, the SAC shall notify the appropriate DAD(FO).

a. When any CIs are suspected or known to be undesirable or unreliable, their services shall be discontinued immediately. Special agents making the

determination shall immediately notify their SAC, through channels, by memorandum. The memorandum shall address the following items:

(1) Document the reasons for deactivating the CI in the CI's files;

(2) If the CI can be located, notify the CI that he or she has been deactivated as a CI and provide documentation that the CI has been notified. (If possible, obtain a signed statement from the former CI acknowledging that he or she is no longer an ATF CI.);

(3) If the CI was authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity pursuant to paragraph 62, revoke the authorization under the provisions of paragraph 67.

(4) Document the length of time that the person has been registered as a CI;

(5) Document the cumulative amount of money paid to the CI during the previous 6-month period; and

(6) Document the cumulative amount of money paid to the CI by ATF.

b. [redacted]

[redacted]

c. [redacted] The memorandum, along with the CI's file, shall be forwarded to the Chief, SOD, where it will be stored. The CI's file shall be stamped "Informant Removed for Cause."

17. CONTACTS WITH FORMER CIs DEACTIVATED FOR CAUSE. Absent exceptional circumstances that are approved by a RAC/GS and in advance whenever possible, special agents shall not initiate contacts with, or respond to contacts from, former CIs who have been deactivated for cause. When granted approval, such approval shall be documented in the CIs' files.

18. COORDINATION WITH PROSECUTORS ON CI DEACTIVATION/REMOVAL FOR CAUSE. In situations where the USAO is either participating in the conduct of an ATF investigation utilizing a CI, or working with a CI in connection with a prosecution, the special agent shall coordinate with the attorney assigned to the matter, in advance whenever possible, regarding any of the decisions described in paragraphs 15 and 16.

19. REVIEW OF LONG-TERM CIs. The review process for long-term CIs will begin at the 6-year point with a review by the CIRC and every successive 6-year interval (12 years, 18 years, etc.) thereafter. These reviews also require 3-year DAD(FO) reviews beginning at the 9-year mark and continuing every 3 years thereafter following a CIRC review (15 years, 18 years, etc.). If a CI meets a 6- or 3-year review interval during the year, the CI's review packet will be forwarded to the appropriate DAD(FO) at the next semiannual review interval.

a. Six-year CI Reviews.

(1) When a CI has been registered for more than 6 consecutive years, and to the extent such a CI remains open every 6 years thereafter, the CIRC shall review the CI's completed initial and continuing suitability review memorandum packages and decide whether, and under what conditions, the person should continue to be utilized as a CI. A DOJ Criminal Division representative on the CIRC who disagrees with the decision to approve the continued use of such a CI may seek review of that decision pursuant to paragraph 8.

(2) The field division procedure for submitting CIs for the 6-year review to the CIRC is as follows:

(a) The field division SAC or his or her designee shall review all active CIs to determine which, if any, CIs have been active for 6 years (or subsequent 6-year intervals) and must be submitted for CIRC review. This review shall occur after all field division continuing suitability review memorandums have been received but no later than February 1 and August 1.

(b) No later than February 15 and August 15, all field divisions shall submit by memorandum to the Chief, SOD, a listing by assigned confidential identity code any CIs who must be reviewed by the CIRC. (If no CIs within a field division require submission to the CIRC, the memorandum shall state as such.)

(c) A separate CIRC review packet shall be submitted for each CI requiring review. Each packet shall include a copy of the CI's initial suitability review memorandum, a copy of the new semiannual continuing suitability review memorandum, and a

copy of the new semiannual CI agreement (ATF F 3252.2 or ATF F 3252.3). A cover memorandum from the SAC to the Chief, SOD, will accompany the packet addressing the following areas in order to assist the CIRC in making a decision for the CI's continued use:

1 A synopsis of accomplishments.

2 A justification for continued use.

3 Any judicial consideration(s) given to the CI for his or her cooperation.

4 A summary of the CI's criminal history or the actual printout.

5 The control agent's contact information.

6 A certification from the SAC stating that he or she has reviewed the above and it meets the requirements of paragraphs (II)(A)(3)(a) and (b) of the DOJ Guidelines.

b. Subsequent Three-year CI Reviews.

(1) All CIs who meet the 9-year mark after the 6-year CIRC review will require an internal review by the appropriate DAD(FO). The procedure for submitting CIs to the appropriate DAD(FO) for review is as follows:

(a) The field division SAC or his or her designee shall review all active CIs to determine which, if any, CIs have been active for 9 years (or subsequent 3-year intervals not coinciding with a 6-year CIRC review) and must be submitted to the appropriate DAD(FO) for review. This review shall occur after all field division continuing suitability review memorandums have been received but no later than February 1 and August 1.

(b) No later than February 15 and August 15, all field divisions shall submit by memorandum a listing by assigned confidential identity code any CIs that the appropriate DAD(FO) must review. (If no CIs require submission to the DAD(FO), the memorandum shall state as such.) A separate DAD(FO) review packet shall be submitted for each CI requiring review. Each packet shall include a copy of the initial suitability review memorandum, a copy of the most recent semiannual continuing suitability review memorandum with any additional documentation, and a copy of the most

recent annual CI agreement (ATF F 3252.2 or ATF F 3252.3). A cover memorandum from the SAC to the Chief, SOD, will accompany the packet addressing the following areas to assist the DAD(FO) in making a decision for the continued use of the CI:

1 A synopsis of accomplishments.

2 A justification for continued use.

3 Any judicial consideration(s) given to the CI for his or her cooperation.

4 A summary of the CI's criminal history or the actual printout.

5 The control agent's contact information.

6 A certification from the SAC stating that he or she has reviewed the above and it meets the requirements of paragraphs (II)(A)(3)(a) and (b) of the DOJ Guidelines.

(2) If the appropriate DAD(FO) decides that there are any apparent or potential problems that may warrant any change in the use of the CI, he or she shall consult the appropriate SAC and provide the CI's initial and continuing suitability review memorandum packages to the CIRC for review in accordance with subparagraph 19a.

20. USE OF HIGH-LEVEL CIs (HLCIs).

a. Before using a person as an HLCI, the control agent shall first obtain CIRC written approval. A Criminal Division CIRC representative who disagrees with a decision to approve an HLCI may seek review of that decision pursuant to paragraph 8.

b. To submit an HLCI for review/approval, the field division SAC or his or her designee shall first review all CI initial and continuing suitability review memorandums to determine if a CI meets the HLCI definition (subparagraph 3h). If the determination is made that a potential CI meets the HLCI definition or that an existing CI's status within an organization has changed so that the CI now meets the HLCI definition, then a memorandum requesting CIRC review shall be submitted immediately to the Chief, SOD, along with copies of any available initial and continuing suitability review memorandums.

c. After a final CIRC decision to approve or disapprove an HLCI has been made, the Chief, SOD, shall notify the field division SAC via memorandum.

d. In addition, after a final decision has been made to approve an HLCI, the CIRC shall consider whether to notify the USA who is participating in the conduct of an investigation that is, or would be, utilizing the HLCI, or any USAO that has been, or would be, working with the HLCI in connection with a prosecution, of the decision to approve the HLCI. If the CIRC determines that no such notification shall be made, the reason(s) for the determination shall be provided to the Criminal Division.

e. None of the sections of this paragraph shall prevent a field division from using a CI who has been granted emergency approval by the SAC, but CIRC review and approval must be immediately subsequently obtained.

21. PERSONS UNDER THE OBLIGATION OF A LEGAL PRIVILEGE OF CONFIDENTIALITY OR AFFILIATED WITH THE MEDIA (LPCM).

NOTE: Before using a person as a CI who is under the obligation of an LPCM, the requesting special agent shall first obtain written CIRC approval, through channels. A DOJ Criminal Division representative on the CIRC who disagrees with a decision to approve the use of such a person as a CI may seek review of that decision pursuant to paragraph 8.

a. The field division SAC or his or her designee shall review all CI initial and continuing suitability review memorandums to determine if a CI is under the obligation of an LPCM. If the field division determines that a potential CI is under the obligation of an LPCM or that an existing CI's status within an organization has changed so that the CI now is under the obligation of an LPCM, a memorandum requesting CIRC review shall be submitted immediately to the Chief, SOD, along with copies of any available CI initial and continuing suitability review memorandums.

b. After a final CIRC decision to approve or disapprove a CI who is under the obligation of an LPCM has been made, the Chief, SOD, shall notify the field division SAC via memorandum.

c. In addition, after a final decision has been made to approve a CI who is under the obligation of a LPCM, the CIRC shall consider whether to notify the USAO that is participating in the conduct of an investigation that is, or would be, utilizing the person—or any USAO that has been, or would be working with that person in connection with a prosecution—of the decision to approve that person in connection with a prosecution, of the decision to approve that person as a CI. If the CIRC determines that no notification shall be made, the reason(s) for the determination shall be provided to the CIRC Criminal Division representative. A CIRC Criminal Division representative who disagrees with a decision not to provide such notification may seek review of that decision pursuant to paragraph 8.

d. None of the sections of this paragraph shall prevent a field division from utilizing a CI who has been granted emergency SAC approval, but CIRC review and approval must be immediately subsequently obtained.

22. USE OF CURRENT OR FORMER PARTICIPANTS IN THE FEDERAL WITNESS SECURITY (WITSEC) PROGRAM AS CIs.

a. If ATF or any other agency has placed a person in the WITSEC Program, further use of that person in a new investigation shall be governed by the guidelines of this chapter and consistent with DOJ requirements. These guidelines apply even if all subsistence and support to the person have been terminated and the witness has been voluntarily or involuntarily separated from the program.

b. The Chief, SOD's concurrence must be obtained before any WITSEC participant may be used as a CI or for any other assignment. Failure to obtain approval could endanger the WITSEC participant, obligate ATF to major expenditures, or provoke a civil action against ATF. For the purpose of this order, a "WITSEC participant" is a person who has been officially relocated by DOJ.

c. When it is suspected that a prospective or approved CI is a WITSEC participant, the SAC shall immediately notify the Chief, SOD, who shall contact DOJ's Office of Enforcement Operations (OEO), and the appropriate AUSA must be notified. The AAG who authorized the witness protection will make approval for the WITSEC participant's usage. Without such express approval, the WITSEC participant shall not be used or contacted further.

d. OEO will consider requests to use a WITSEC participant as a CI on a case-by-case basis. When requesting the use of a WITSEC participant as a CI, the SAC must include the following information in the request to the Chief, SOD, so that OEO may make an informed judgment:

(1) The name of the CI or person relocated.

(2) Alias(es) used by the CI.

(3) Approval of the appropriate headquarters official of the concerned agency.

(4) If the CI is not a witness, the relationship of the CI to the witness and the name(s) of the witness(es).

(5) Identifying data on the CI (e.g., date of birth (DOB), place of birth, Social Security number, FBI number, BOP register number, sex).

(6) Whether the CI left voluntarily or was removed from the WITSEC Program.

(7) The CI's employment. If unemployed, include how the CI is subsisting and the extent to which this activity jeopardizes the CI's livelihood.

(8) The name(s) of the target(s) of the investigation, including his or her role in the crime, or the organization under investigation.

(9) The significance and/or scope of the criminal activity and the target(s).

(10) The CI's relationship or association with the target(s) under investigation.

(11) Whether the CI is able to report substantial information concerning significant criminal activity.

(12) The necessity of using the CI in the investigation, including details about the nature of the use being requested.

(13) Whether information or assistance that the CI may be able to contribute may prevent the death of another person.

(14) The consideration of alternatives to the CI's use and an indication of why they will not work.

(15) A detailed account of the CI's involvement in criminal activity after being approved for the WITSEC Program.

(16) An appraisal of whether the request centers on the CI's new criminal involvement and how the CI is aware of the new criminal activity.

(17) Whether the CI will become involved in criminal activity by acting as a CI.

(18) Whether the CI wants to furnish information/assistance to the Government because of the belief that he or she may be apprehended for participating in a crime.

(19) The benefit that the CI expects in return for his or her cooperation.

(20) A statement as to whether the CI's activity requires him or her to testify.

(21) An indication as to whether the CI completed the testimony for which he or she was placed in the WITSEC Program.

(22) Details about other agencies' use of the CI since his or her relocation.

(23) The CI's probation or parole status, including whether the U.S. Probation Office and the U.S. Parole Commission should be notified.

(24) The security measures to be taken to ensure the CI's safety and to minimize the risk to the public.

(25) Use of electronic devices, bodywires, video, etc.

(26) The number of law enforcement agents assigned to the security detail.

(27) The length of time that the CI will be needed.

(28) Whether the CI is incarcerated. If so, whether the prosecutor and/or judge should be advised.

(29) If the CI is an inmate, the location of his or her incarceration.

(30) If the CI is an inmate, whether he or she will remain in the custody of the investigative agency, be housed in jails or similar facilities at certain times, or be unguarded (except for his or her protection).

(31) If the CI is an inmate, whether a prison redesignation will be necessary upon completing the activity.

(32) If the CI is represented by counsel, whether counsel concurs with the activity.

(33) If applicable, whether the activity has been endorsed by the appropriate Federal/State prosecutor. If so, provide the prosecutor's name, telephone number, and location.

(34) Whether the CI's activities will require submission of a new WITSEC Program application and a subsequent relocation.

(35) Whether the CI will be charged/indicted in this investigation.

e. Once the Chief, SOD, concurs with the request, he or she shall forward it to OEO for DOJ approval before the person may be used as a CI.

f. SOD, Enforcement Support Branch (ESB), shall maintain a centralized alphabetical file of all ATF witnesses/CIs who have been submitted for acceptance into the WITSEC Program.

23. USE AND REPORTING OF FOREIGN NATIONALS/ILLEGAL ALIENS AS CIs OR WITNESSES.

a. Five programs exist to request use of illegal aliens as ATF CIs or to maintain their presence in the United States as witnesses. All of these programs are administered through the Department of Homeland Security, Immigration and Customs Enforcement (ICE). All questions related to the use of illegal aliens as CIs/witnesses shall be directed to SOD, ESB.

(1) Significant Public Benefit Parole (SPBP), which grants aliens temporary non-immigrant status in the United States for a 1-year period or less. SPBP is available for aliens who are needed as CIs for investigative efforts or as witnesses in proceedings that are being, or will be, conducted by judicial, administrative, or legislative bodies in the United States. SPBPs are authorized only on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided that the aliens present neither a security risk nor a risk of absconding. To initiate a request for this program, a special agent should contact ESB, which will advise the special agent of current ICE procedures and provide sample documents and assistance throughout the process. The subsequent official request is made via memorandum from the respective SAC to the Chief, SOD. This memorandum, commonly called a "risk and threat assessment memorandum," includes the alien's background, an explanation of the alien's potential benefit to a specific investigation, a risk and threat assessment, the expected duration of the need and use of the alien, and finally, designation of two special agents with responsibility for the alien. The application packet shall be forwarded through SOD to the AD(FO) or his or her delegate for final approval. This memorandum accompanies the ICE SPBP template and a cover letter to ICE from the AD(FO).

(2) Deferred Action, which stays the deportation proceedings of an illegal alien who is in ICE custody or an illegal alien who has an extensive criminal history that would prohibit obtaining an SPBP. There is no statutory basis for the deferred action program, and therefore, these requests are granted for 1 year or less, on a case-by-case basis, at ICE's discretion. This program is available to delay deportation for law enforcement reasons or pending an alien's application for other types of temporary status, as described in this order. To initiate a request for this program, a special agent should contact ESB, which will advise of current ICE procedures and provide sample documents and assistance throughout the process.

The subsequent official request is made as stated in subparagraph (1), above (i.e., a risk and threat assessment memorandum from the SAC to the Chief, SOD). The application packet shall be forwarded through SOD to the AD(FO) or his or her delegate for final approval. The memorandum accompanies a cover letter to ICE from the AD(FO), as well as other forms.

(3) U-Visa Program, which is granted to witness or victim immigrants who have incurred substantial suffering as a result of physical or mental abuse related to a specified criminal activity, who possess information about this crime, and who have been helpful, are being helpful, or will be helpful to Federal, State, or local authorities, including police or prosecutors. The temporary status granted to the immigrant is for 3 years, may be extended by law enforcement, and is eligible to be converted to permanent status. The status is available for those who assisted in an investigation or prosecution. ATF can submit law enforcement agency (LEA) certifications on behalf of victim/witness immigrants for crimes related to its primary jurisdiction. If a special agent is contemplating submitting this type of certification on behalf of such an immigrant, he or she should contact ESB, which will advise of current procedures and provide sample documents and assistance throughout the process. The subsequent official request is made as outlined in subparagraph 23a(1) (i.e., a risk and threat assessment memorandum from the SAC to the Chief, SOD), with the addition of Form I-918, Petition for U Nonimmigrant Status, and I-918 Supplement B, U Nonimmigrant Status Certification, both of which will detail the immigrant's helpfulness and victim status. Division counsel will assist the SAC in drafting a memorandum addressing the legal qualifications of the immigrant, which will be sent to ESB for processing. The Chief, SOD, will evaluate the application packet for endorsement, forwarding it to the AD(FO) for final approval. If the AD(FO) approves the application, the memorandum accompanies a cover letter to the U.S. Citizenship and Immigration Services (USCIS) from the AD(FO), as well as other forms. It should be noted that an alien does not have to be currently sponsored by ATF via another program (e.g., SPBP or deferred action) to apply for a U-Visa. The U-Visa certification does not constitute a final determination of status, but it should be filled out in full to demonstrate that ATF believes that the applicant qualifies for the status. Additionally, unlike the S-Visa described below, ATF bears no responsibility for continued observation of or contact with these applicants, and it is the aliens' responsibility to maintain their status and seek any adjustments to legal permanent resident (LPR) status. [redacted]

(4) S-Visa Program, which has a considerably more complicated application process and should be sponsored by ATF only in the most compelling circumstances. ATF assumes responsibility for these applicants, if they are granted the status, for the duration of the 3-year status, which means that ATF Headquarters must send reports to the Attorney General quarterly and immediately report any criminal activity or lapse in contact. At the discretion of the Attorney General, the Department of Homeland Security, and the State Department, an S-Visa is available to a limited number of aliens who supply critical, reliable information necessary to successfully investigate and/or prosecute a criminal organization or who supply critical, reliable information concerning a terrorist organization—if the alien is eligible to receive a State Department reward under the Rewards for Justice Program. The S-Visa Program can also be used as a path to U.S. citizenship. To initiate a request for this program, a special agent should contact ESB, which will advise of current ICE procedures and provide sample documents and assistance throughout the process. The subsequent official request is made as stated in subparagraph 23a(1) (i.e., a risk and threat assessment memorandum from the SAC to the Chief, SOD). The assessment memorandum and required attachments shall be forwarded to ESB for processing and will be evaluated for endorsement by the Chief, SOD. The application packet will be forwarded to the AD(FO) for final approval. If the AD(FO) approves the application, the memorandum accompanies a cover letter to OEO from the AD(FO) as well as other forms. Additionally, this program requires ATF to submit the request packet to DOJ's OEO for approval of the AAG, Criminal Division, before USCIS processing. If a sponsored alien is granted an S-Visa, ATF maintains responsibility for supervising and monitoring the alien for the entire 3-year term, which includes completing 30-day status memorandums as described in subparagraph 23b(4). In addition, ATF Headquarters must send quarterly reports to OEO and immediately report any criminal activity or lapse in contact. Once approved, the alien may apply for an adjustment to LPR status. This adjustment in LPR status is not automatic and must be initiated within the approved 3-year S-Visa term. The sponsoring special agent must contact ESB for guidance during this process, which involves submitting Form I-854, Inter-Agency Alien Witness and Informant Record, for Headquarters approval and subsequent submission of Form I-485, Application to Register Permanent Residence or Adjust Status.

(5) T-Visa Status, which is available to victims of human trafficking and is similar to U-Visas in process and length of status. Unlike the S-Visas and U-Visas, the T-Visa does not REQUIRE an LEA certification to support an application, but a certification is used as evidence to support the application. ATF has no potential primary

jurisdiction over human-trafficking crimes. Therefore, if ATF is asked to support an application for T-Visa non-immigrant status, referral should be made to an LEA with jurisdiction over human-trafficking crimes or to the USAO with jurisdiction over the case for certification. In the unlikely event that there is no other avenue available to the victim (because prosecution or referral was denied) and ATF has primary responsibility for investigating the crime that was related to the trafficking, then a certification should be handled in the same manner as a U-Visa application. The T-Visa LEA certification form is Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

NOTE: All of the above programs require requests from the field through ESB/SOD to the AD(FO). SOD will only endorse applications supported by a field division SAC, and a SAC may deny any request received from his or her field division without forwarding it to Headquarters. [redacted]

b. In addition to any requirements stated in subparagraph 23a, all requests to sponsor illegal aliens or foreign nationals who are brought into the United States to perform investigative activity or attend trial shall adhere to the following requirements:

(1) All requests to use or sponsor an illegal alien or foreign national as a CI or witness shall be directed to ESB, SOD.

(2) There are various circumstances in which a sponsored illegal alien is not an active, registered CI. These include witnesses, family members of alien CIs, and former alien CIs who are in the process of obtaining an ATF-sponsored S-Visa or adjustment to LPR. Because these types of aliens are not serving as actual CIs, they are not to be registered and reflected in the ATF CI files; however, all records associated with the sponsorship must be maintained at the field office and field division levels by creating and maintaining a folder for each alien for the duration of the sponsorship. The alien's folder will be used to maintain all documents relating to the application and approval of the temporary legal status from ICE as well as the monthly supervision memorandums from the sponsoring control agent. Any information regarding requests to adjust status or related

to any of the programs outlined in this order must be well documented in the alien's folder.

(3) If initially, or at any point in the sponsorship period, there is a need for an alien to be used as an active, registered CI in an investigation, special agents must coordinate with ESB and follow the procedures in the programs described in subparagraph 23a. Once ICE approves the temporary legal status, the alien must then be registered as a CI and a CI file will be created and maintained by both the field office and field division as required by this order. A copy of all of the information in the alien's folder will be included in the new CI file. Once the alien CI is deactivated or removed for cause, the alien's ongoing sponsorship records will still be maintained in the field office and field division alien folder.

(4) All requests to sponsor illegal aliens or foreign nationals shall include the designation of two special agents who will be responsible for supervising and tracking during the sponsorship period. Their names must be submitted with the original request to SOD. If one of the special agent's transfers, retires, or is promoted, another special agent shall immediately be designated as a replacement. Any changes in the control agents shall be documented in a memorandum from the SAC to the Chief, SOD—a copy of which will be maintained in the field office and field division alien folders and related CI file, if applicable.

(5) Special agents receiving authorization to sponsor illegal aliens or foreign nationals under the programs of subparagraph 23a must submit status memorandums every 30 days to their SACs (with a copy to ESB) informing of the assistance, location, change in criminal history, and expected duration of use. For assistance in preparing this memorandum, special agents should contact ESB. If the sponsored alien is serving as an actual CI, the additional semiannual CI reporting requirements of this order must be followed as well.

(6) If a special agent learns of any illegal activity or has any other reason to discontinue the use or sponsorship of the illegal alien or foreign national, he or she shall report the discontinuance to the immediate supervisor as well as compose a memorandum through his or her SAC to the Chief, SOD, notifying of the change. Additionally, ESB should be immediately notified when a special agent is unable to locate an illegal alien or foreign national sponsored by ATF. This notification will be followed by a memorandum from the SAC to the Chief, SOD, outlining the circumstances of the missing alien. The memorandum should include the illegal alien's/foreign national's name, identifiers, last known address and/or work address, and last

contact. ESB will then notify ICE and any other agencies involved with the sponsorship that the alien is unaccounted for.

(7) As the illegal alien's or foreign national's approved period of temporary legal status nears its end, ESB shall advise affected special agents of their options to extend or terminate the sponsorship within 3 months before the expiration date. The ESB coordination with special agents will be in conjunction with, but not limited to, the 30-day reporting requirements of subparagraph 23b(5).

(8) At the end of the sponsored alien's service to ATF, the special agents supervising the illegal alien or foreign national will coordinate with ESB to turn the alien over to the nearest ICE office. This is mandatory for all sponsorships under the deferred action, SPBP, and S-Visa programs and may apply to other programs at ICE's discretion.

c. Foreign nationals legally in the United States by way of a valid visa, asylum, or other similar program or an alien currently sponsored by another law enforcement agency and in temporary legal status may be used as CIs or witnesses. Questions concerning this type of CI should be directed to ESB. Special agents may use such foreign nationals as CIs without ATF Headquarters' approval described in the previously mentioned sponsorship programs (subparagraph 23a) and without the associated monitoring and reporting; however, the below procedures must be followed:

(1) The special agent must obtain from the foreign national or alien sponsored by another law enforcement agency a copy of his or her entry or status document(s) (e.g., green card, asylum document, visa, mandatory tracking requirements, deferred action approval letter, etc.). The special agent must also verify the validity of the document(s) with the local ICE office or the other law enforcement agency holding sponsorship. This will ensure the authenticity of the alien's status and show any restrictions or expirations associated with it. After the temporary legal status or sponsorship has been verified, a copy of this document(s) will be placed in the field office and field division CI files. Special agents using a legal foreign national under this exception must monitor the alien's legal status to ensure the alien's visa or temporary legal status does not expire during his or her service with ATF.

(2) During the CI approval process, the SAC should use caution when assessing the risk associated with using legally present foreign nationals as CIs to minimize the potential liability and problems of an international nature.

d. If a foreign national is a senior ranking member of a foreign government, requests for approval must contain the information required in subparagraphs 11a(1) through (29).

24. USE OF MILITARY PERSONNEL AS CIs.

a. The Posse Comitatus Act (18 U.S.C. § 1385) and the Defense Drug Interdiction Assistance Act (18 U.S.C. §§ 371-78) establish prohibitions against the use of the military to enforce civilian laws.

b. These acts do not apply to the Coast Guard, since it is under the Department of Homeland Security during peacetime and is considered a civilian organization. Unless imperative, active duty members of the Coast Guard should not be recruited or used as CIs.

c. Generally, members of the National Guard and the reserve components of the U.S. military fall under the definition of military personnel and should not be used as CIs, but a determination must be made as to whether the personnel are on active duty.

d. In view of the prohibitions imposed, special agents shall not use active duty military personnel in ongoing criminal investigations arising under laws administered by ATF without prior approval from the SAC, concurrence of the USA, and if appropriate, coordination with the Department of Defense. This does not preclude military personnel from providing technical assistance, such as providing render safe assistance, or from furnishing information concerning a criminal violation, and it does not prohibit ATF from using military storage facilities to store firearms or explosive materials.

25. FUGITIVES.

a. Except as provided below, a special agent shall have no communication with a current or former CI who is a fugitive.

b. A special agent is permitted to have communication with a current or former CI who is a fugitive in the following circumstances:

(1) If the communication is part of a legitimate effort by that special agent to arrest the fugitive; or

(2) If the communication is approved, in advance whenever possible, by the ASAC; the designated representative of any Federal, State, or local law enforcement agency that has a wanted record for the person in NCIC; and in the case of a Federal warrant, by the USAO for the issuing district.

c. A special agent who has communication with a fugitive must promptly report the communication to all Federal, State, and local law enforcement agencies and other law enforcement agencies having a wanted record for the person in NCIC. Those communications must be documented in the fugitive CI's files.

26. FEDERAL INMATES, PROBATIONERS, PAROLEES, DETAINEES, AND SUPERVISED RELEASEES.

a. Before using a Federal probationer, parolee, or supervised releasee as a CI, the RAC/GS shall determine if the use of that person in such a capacity would violate the terms and conditions of the person's probation, parole, or supervised release. If the RAC/GS has reason to believe that it would violate such terms and conditions, before using the person as a CI, the RAC/GS or his or her designee must obtain the permission of a Federal probation, parole, or supervised release official with authority to grant such permission, and the permission must be documented in the CI's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate Federal official, the special agent may seek to obtain authorization for use of such a person as a CI from the court then responsible for the person's probation, parole, or supervised release, provided that the special agent first consults with the USAO for that district.

b. In situations where a USAO is either participating in the conduct of an investigation by ATF in which a Federal probationer, parolee, or supervised releasee would be used as a CI, or where a USAO would be working with a Federal probationer, parolee, or supervised releasee in connection with a prosecution, the special agent shall notify the attorney assigned to the matter before using the person as a CI.

c. Consistent with DOJ requirements, use of a CI who is in the custody of the USMS or BOP—or who is under BOP supervision—must have prior approval from the Criminal Division, OEO. (See U.S. Attorneys' Manual § 9-21.050.)

d. In causing a Federal inmate to be remanded into ATF custody, ATF assumes a great responsibility. If the inmate or the general public experience personal injury and/or death while the inmate is ATF's responsibility, liability may arise under the Federal Employees' Compensation Act or the Federal Tort Claims Act. There is also a potential for adverse publicity. Therefore, prudent decisions must be made when considering such requests.

e. The Chief, SOD's concurrence shall be obtained before any Federal inmate, probationer, parolee, detainee, or supervised releasee may be used as a CI or for any other assignment on ATF's behalf. When making such requests, the SAC shall submit a memorandum to the Chief, SOD, who shall make a recommendation to OEO. Approval for use will be made by the AAG, in conjunction with the Director of the BOP, USMS, or other appropriate investigative agency.

f. All requests for using a Federal inmate, probationer, parolee, detainee, or supervised releasee in investigations must be coordinated with ESB/SOD. When a special agent determines the need to use a Federal inmate, probationer, parolee, detainee, or supervised releasee in an investigation, he or she shall prepare a memorandum to the SAC addressing the following:

(1) The current location of the inmate, probationer, parolee, detainee, or supervised releasee. (In the case of an inmate, include the name of the correctional facility, city, and State.);

(2) Identifying data on the inmate, probationer, parolee, detainee, or supervised releasee (e.g., DOB, BOP number, FBI number, Social Security number, sex, etc.);

(3) The charges, including specific statutes for which the inmate is being detained; whether sentenced or unsentenced; and sentencing details, including date. (In the case of a probationer, parolee, detainee, or supervised releasee, provide information relative to the statutes for which the potential CI is being supervised);

(4) A copy of the inmate's arrest record or summary of the arrest record must be attached (NCIC);

(5) An explanation of the necessity of using the inmate, probationer, parolee, detainee, or supervised releasee in the investigation, including other techniques that have been tried or considered and the reasons why these techniques have not worked or been tried;

(6) The name(s) and DOB(s)of the target(s) of the investigation, role in the crime or organization under investigation, citation to principal criminal statutes involving the target(s), identifying data on the target(s), and summary of criminal history;

(7) The inmate's, probationer's, parolee's, detainee's, or supervised releasee's relationship or association with the target(s) under investigation;

(8) Whether the target(s) is aware of the cooperator's arrest or incarceration. Include the inmate's, probationer's, parolee's, detainee's, or supervised releasee's cover story to safeguard the security of the cooperator and the investigation;

(9) An indepth explanation of the nature of the activity being requested, including the type of electronic surveillance equipment that will be used and how it will be used (if applicable);

(10) Whether the person must be released from the custody of the USMS or BOP and if so, into whose custody;

(11) In the case of a Federal inmate, security measures to be taken to ensure the inmate's safety, alleviate the risk to the public, and prevent the inmate's escape;

(12) The length of time the inmate, probationer, parolee, detainee, or supervised releasee will be needed in the activity;

(13) Whether the inmate, probationer, parolee, detainee, or supervised releasee will be needed as a witness, including whether he or she will be considered for the WITSEC Program;

(14) In the case of a Federal inmate, whether a redesignation in custodial location will be necessary during or upon completing the investigative activity;

(15) In the case of a Federal inmate, the number of special agents and other law enforcement agency personnel assigned to the security detail and which law enforcement agencies they represent;

(16) Whether the appropriate Federal prosecutor has endorsed the request. If not, explain why. If so, provide the name, phone number, and location of the prosecutor who is endorsing the request;

(17) Whether the potential CI is represented by counsel; if so, an acknowledgement by ATF that the counsel concurs with his or her client's participation in this activity; and whether the potential CI is facing pending criminal charges. If the potential CI is facing pending criminal charges but is not represented by counsel, the memorandum must indicate that the potential CI is participating in the activity voluntarily and does not wish to consult with an attorney;

(18) Whether the inmate will engage in warrantless interception of certain categories of verbal communications as specified by the Attorney General;

(19) Whether entrapment and McDade issues have been discussed with the AUSA. If there are no issues, give a brief statement to this effect.

NOTE: In 1989, then-Attorney General Richard Thornburgh issued a memorandum that purported to unilaterally exempt DOJ lawyers from certain State rules of ethics governing all other lawyers. The McDade-Murtha Law, codified at 28 U.S.C. § 530A, was enacted in 1998 to reaffirm the traditional role of the States in this area, clarifying that Federal prosecutors, like all other lawyers, are subject to State ethical rules governing attorney conduct.

(20) Acknowledgement by ATF that the Federal prosecutor has determined that the planned operation is not violative of the Attorney General's "Contact with Represented Persons" guidelines with regard to either the cooperating individual or any target(s) or other persons to be contacted during this operation.

g. If the SAC concurs, the memorandum will be forwarded to the Chief, SOD, for endorsement.

h. If the Chief, SOD, endorses the request, it will be forwarded to OEO. In accordance with DOJ procedures, requests must be submitted to OEO in writing to the Chief, Special Operations Unit, OEO, Criminal Division. In exigent circumstances requiring an immediate response from OEO, oral requests for approval will be accepted from the Chief, SOD. However, confirmation of the request and appropriate supporting information must be submitted to OEO in writing as soon as possible after approval.

i. As part of the review process, OEO coordinates with headquarters personnel of all appropriate agencies (e.g., BOP, USMS). Upon approval or denial of the request, OEO will advise the Chief, SOD, of the decision.

j. In the case of a Federal inmate, the warden of the facility in which the inmate is held will, if the request is approved, contact the identified control agent and coordinate the activity. Any exceptional security problems that prohibit notifying the warden of the inmate 's assistance to ATF must be explained in the original request.

k. In those situations in which OEO has approved the request but the person whose release is being sought for investigative purposes is being held in USMS or BOP custody BY ORDER OF A COURT, the AUSA must obtain a court order authorizing the release from custody by the USMS or BOP to the approved investigative agency. Such an order should be sealed by the court for the security of both the inmate and the investigation. NO court order shall be obtained transferring the custody of a person from the USMS or BOP to an investigative agency without OEO's prior approval.

l. Progress reports shall be submitted to the Chief, SOD, if requested.

m. ESB shall maintain a centralized alphabetical file of Federal inmates, probationers, parolees, detainees, and supervised releasees assisting ATF.

n. In the case of the use of a Federal inmate only, the special agent shall prepare a report detailing the results of the inmate's activity and submit it through channels to the Chief, SOD, within 14 days of concluding the inmate's cooperation. This report will be forwarded to OEO.

27. USE OF STATE OR LOCAL PRISONERS, PROBATIONERS, PAROLEES, DETAINEES, AND SUPERVISED RELEASEES.

a. In general, the same factors outlined in paragraph 26 with respect to using Federal inmates, probationers, parolees, detainees, and supervised releases as CIs shall also apply to using State or local prisoners, probationers, parolees, detainees, and supervised releases as CIs. Further, ATF shall comply with any applicable State or local laws, rules, and regulations pertaining to using State or local prisoners, probationers, parolees, detainees, and supervised releasees as CIs.

b. Special agents wishing to use State or local prisoners, probationers, parolees, detainees, and supervised releasees as CIs must obtain approval through the normal CI registration process. The memorandum must include the information referenced in subparagraph 27c.

c. Before using such a person as a CI, the RAC/GS or designee must obtain the permission of a State or local prison, probation office, parole office, applicable court with authority, or supervised release official with authority to grant such permission. This is to ensure the proper authorization has been obtained since the CI's use would violate the terms and conditions of his or her incarceration, probation (e.g., associating with the criminal element), parole, or supervised release. If it is a new CI request, the official's name and the date permission was granted shall be documented in the CI initial suitability review memorandum—specifically when addressing subparagraph 11a(14). In the case of an existing CI, the official's name and the date permission was granted shall be documented in a memorandum from the control agent to the RAC/GS and placed into the CI file. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate State or local official, authorization may be sought from the State or local court responsible for the CI's incarceration, probation, parole, or supervised release.

d. In situations where the USAO is either participating in the conduct of an investigation in which a State or local prisoner, probationer, parolee, or supervised releasee would be used as a CI, or where the USAO would be working with a State or local prisoner, probationer, parolee, or supervised

releasee in connection with a prosecution, the appropriate special agent shall notify the assigned attorney before using the person as a CI.

28. USE OF LAW ENFORCEMENT OFFICERS AS CIs. While law enforcement officers (whether Federal, State, or local) may be used as sources of information, they should not be documented as CIs.

29. USE OF BUREAU OF PRISONS (BOP) PERSONNEL AS CIs. BOP has requirements for its personnel being involved in undercover operations that may include their use as CIs. A special agent seeking to use a BOP employee as a CI shall, through the chain of command, contact the Chief, SOD, who shall coordinate with BOP Headquarters for approval.

30. USE OF OTHER LAW ENFORCEMENT AGENCIES' CIs. In joint investigations where another agency is paying subsistence to a CI, ATF may provide funds to the CI to purchase evidence but is not required to document the person as an ATF CI.

31. USE OF FEDERAL FIREARMS LICENSEES OR OTHER LICENSEES AS CIs. Because of the licensing relationship with ATF, a licensee in an industry in which ATF has jurisdiction (i.e., firearms, explosives, alcohol, or tobacco) should not be documented as a CI. As an example, special agents should not document a Federal firearms licensee through the normal course of an ATF investigation, such as firearms trafficking, but should instead seek the licensee's cooperation to whatever level is necessary to successfully complete the investigation or to which the licensee is willing to cooperate outside the normal requirements and responsibilities of the license. There are two areas of exceptions involving the documentation of a licensee:

    a. If such a licensee were arrested, charged, or facing charges—and the licensee agrees to cooperate as a CI in consideration for reduction of sentence or in lieu of prosecution—then documentation as a CI would be permitted. Prior approval and coordination must be obtained from the USAO and defense counsel involved in the investigation.

    b. Employees of licensees who are not actual license holders or corporation officers listed under such an ATF license may be documented as CIs in investigative efforts against a licensee suspected of illegal activity.

32. LISTING A CI IN AN ELECTRONIC SURVEILLANCE APPLICATION.

    a. A special agent shall not name a CI as a named interceptee or a violator in an affidavit in support of an application made pursuant to 18 U.S.C. § 2516 for an electronic surveillance order unless the special agent believes that (a) omitting the name of the CI from the affidavit would endanger that person's life or otherwise jeopardize an ongoing investigation; or (b) the CI is a bona fide subject of the investigation based on his or her suspected involvement in unauthorized criminal activity.

b. If a CI is named in an electronic surveillance affidavit under subparagraph 32a, the special agent must inform the AUSA making the application and the court to which the application is made of the CI's actual status.

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CHAPTER C. GENERAL POLICY CONSIDERATIONS AND MANAGEMENT

41. CI IDENTIFICATION AND CONTROL FILE.

a. Special agents increase their personal hazard when working with CIs whose identities are known only to themselves. If special agents are injured, killed, held hostage, etc., while working in connection with a CI, ATF would find it extremely difficult to undertake an investigation if the CI's identity and background information were not available. To ensure that this does not occur, all CIs shall be identified and documented according to the provisions of this order. Only after identification, documentation, and approval by the SAC shall special agents use a CI. In addition, all special agents, before personally contacting a CI (or potential CI), shall inform at least one ATF special agent or the RAC/GS of the CI's identity, the location where the CI will be contacted, and the expected duration of the contact. For the initial contact, special agents shall only meet with a potential CI if accompanied by at least one other law enforcement officer.

b. Each field division shall establish a CI identification file. Additionally, ATF F 3252.1 shall be maintained under the SAC's direction in accordance with the security provisions outlined in ATF O 1720.1D and operations security principles. Further, all correspondence reflecting CIs' actual names shall be transmitted in double-sealed envelopes, with the inner envelope marked "to be opened only by (appropriate addressee)." In addition to the SAC maintaining a CI identification file, each RAC/GS shall maintain a duplicate CI identification file. This file shall contain all correspondence on each CI and shall be maintained under the same security provisions previously outlined in this order.

c. The CI identification file shall contain information on each approved CI, and ATF F 3252.1 will serve as a cross-reference index to the respective CI files.

d. In addition to the initial and continuing suitability review memorandums, all required information from subparagraphs 11a and b, such as a current CI photograph and the FBI Form FD-249 (or Joint Automated Booking System/FBI-compliant printouts), MUST be maintained in the CI control file and in the duplicate CI control file maintained by the RAC/GS at the field office where the CI is registered.

e. The information required under paragraphs 11 through 16 and any subsequent information that may be required would constitute a respective CI control file. As new or additional personal information is developed, it shall be included in that CI's file.

f. The identification file for each approved CI shall be filed in the field division active file in numerical sequence of the assigned confidential identity codes used by that division. The first six digits shall be the appropriate field office organizational code. (For example, Los Angeles I Field Office has three approved CIs who have been assigned confidential identity codes "784000-002, 784000-006, and 784000-009." The three respective CI identification files would be noted "784000-002, 784000-006, and 784000-009" and would be filed in this same sequence.)

g. The assigned confidential identity code of an approved CI shall be used in all subsequent instances where reference is made to the respective CI (e.g., case reports, agent cashier fund reports, referrals).

h. Control and use of an approved CI may be transferred interdivision upon proper notification and approval of the SACs involved. However, transferring the respective CI identification file to the receiving field division is not necessary unless the CI is actually relocating to that division. The original confidential identity code assigned to the approved CI should be used when the CI is working temporarily in another field division. A new confidential identity code shall be assigned when a CI permanently relocates to a new field division (gaining field division). The new identity code shall be documented via memorandum and entered into the CI control file. The original confidential identification code (losing field division) shall be deactivated for the purposes of the field division and field office recordkeeping.

42. OPERATIONS SECURITY.

a. To ensure maximum security in ATF offices, all CI communications, claims for reward, reports, memorandums, or documents identifying CIs shall be stored according to the security provisions outlined in ATF O 1720.1D as well as operations security principles. Access shall be limited to persons responsible for security of the aforementioned documents. Personnel to whom CIs' identities become known or who receive information that identifies CIs shall treat such information as highly confidential and shall exercise security precautions as required for those primarily responsible.

b. To ensure operations security and to protect CIs' identities, CIs shall be escorted at all times while inside an ATF office, command post, offsite, or at any other location where they could gain unauthorized access or become privy to sensitive documents, the identities of other ATF CIs, or ATF information systems. Adherence to operations security guidelines and extreme care must be exercised in dealing with CIs to prevent them from having unauthorized access to official documents or otherwise becoming aware of and having the opportunity to obstruct ATF's function.

43. SENSITIVITY OF INFORMATION PERTAINING TO CIs. A CI's identity, information provided, assignments, and other pertinent matters are sensitive and shall be treated with the utmost security. (b) (7)(E) (b) (7)(E) (b) (7)(E) It cannot be overemphasized that the relationship with a CI requires the utmost discretion and demands from special agents the highest degree of honesty, integrity, and tact.

44. CONTACT WITH PROSECUTING OFFICES. No special agent shall contact the USAO or other prosecuting office requesting the reduction of bail for a person who is or will be providing information to ATF without receiving prior approval of the SAC or ASAC. Great care should be taken when seeking a reduction in bail, comparing the information that the person can provide against the charges that are pending (e.g., armed robbery, sex offense, etc.).

45. RELIABILITY OF INFORMATION PROVIDED BY CIs. Every investigative avenue available should be pursued to ensure that information provided by a CI is reliable. Special agents should be alert for dishonesty or false statements when a CI's testimony may be necessary for a successful prosecution. Juries tend to discredit the testimony of such persons and anyone associated with them. (NOTE: If any CI is determined to be unreliable, see paragraph 16.) Finally, special agents must ensure that it is they, not the CIs, who direct investigations.

46. MATTERS FALLING OUTSIDE OF ATF's PRIMARY JURISDICTION. Special agents shall instruct CIs to confine themselves to matters within ATF's primary investigative jurisdiction, so far as possible. When CIs provide information on planned criminal activity not within ATF's enforcement responsibility, special agents shall, without compromising the CIs, expeditiously transmit that information to the appropriate law enforcement agency.

47. CIs' INVOLVEMENT IN ATF FUNCTIONS. CIs shall be advised that they are not ATF employees. (b) (7)(E) (b) (7)(E) (b) (7)(E)

48. MEETINGS WITH CIs OF THE OPPOSITE SEX. When possible, a minimum of one special agent and another law enforcement officer should be present whenever meeting with a CI of the opposite sex. If possible, at least one of the two law enforcement officers should be of the same sex as the CI.

49. PROHIBITED CI TRANSACTIONS AND RELATIONSHIPS.

a. An ATF special agent shall not do the following:

(1) Exchange gifts with a CI;

(2) Provide the CI with anything more than nominal value;

(3) Receive anything of more than nominal value from a CI; or

(4) Engage in a business or financial transaction with a CI.

b. Except as authorized pursuant to chapter E, any exception to the above provisions requires the RAC/GS' written approval, in advance whenever possible, based on a written finding by the RAC/GS that the event or transaction in question was necessary and appropriate for operational reasons. This written finding shall be maintained in the CI's files.

c. Under no circumstances are special agents to become involved with CIs on a social or personal level. All contacts with CIs should be limited to official business only.

d. In situations where a USAO is either participating in the conduct of an ATF investigation that is utilizing a CI, or working with a CI in connection with a prosecution, ATF shall notify the AUSA assigned if ATF approves an exception or if an ATF special agent socializes with a CI in a manner not permitted in this paragraph.

50. UNUSUAL AND/OR SIGNIFICANT MATTERS.

a. All unusual and/or significant matters involving approved CIs must be reported immediately to the SAC, through the chain of command. The SAC will determine if the matter should be reported to the appropriate DAD(FO). Matters that must be reported immediately to the appropriate DAD(FO) include, but are not limited to, the following: murder, bodily injury, threats of bodily harm, or property damage to CIs or their families resulting from CI activities; CIs' involvement in any felonious criminal activity; or CIs' involvement in any sensitive matters as defined in ATF O 3210.7C, Investigative Priorities, Procedures, and Techniques.

b. (b) (7)(E)
(b) (7)(E)

(1) A signed statement should be obtained from CIs/witnesses for inclusion in the case report. In situations where it is believed that (b) (7)(E)
(b) (7)(E)
(b) (7)(E)

(2) (b) (7)(E)
(b) (7)(E)

51. CI/WITNESS PROTECTION AND RELOCATION (ATF).

a. Protection. Each special agent has a duty and an obligation to make every effort to protect CIs/witnesses, their dependents, and their property at all times, particularly when it becomes known or suspected that their identities are known by those against whom they may testify. Failing to take adequate safeguards may cause liability issues and great expense to ATF and could result in successful civil actions against the Bureau.

b. Threat Assessment. Any CI/witness threat(s) shall be investigated by the ATF control agent and/or other field division special agents, and a threat assessment shall be completed. Please contact the field division's victim/witness coordinator or the Headquarters National Victim/Witness Coordinator for a current "threat assessment" form. (In addition, see ATF O 3254.1A, Victim and Witness Assistance Program.)

c. Refusal of Protection. When CIs/witnesses refuse protection after a special agent advises that a clear and present danger to their safety exists, the USA should be advised immediately. The special agent should document the circumstances, noting the date and time that CIs/witnesses were advised of the danger and refused protection. When possible, CIs/witnesses should be asked to sign a statement indicating their refusal to accept protection.

d. Expenses.

(1) Good judgment should be exercised to avoid suggestions to CIs/witnesses that might cause them to become unduly alarmed over their safety. However, when circumstances indicate that CIs/witnesses, their dependents, or their property is in danger, the special agent shall take whatever immediate action he or she deems necessary. If it is not possible to contact the SAC before taking protective action, then the SAC must be notified as soon as possible after the action has been taken, through the chain of command. ATF protection will continue until such time as the SAC determines that a valid threat no longer exists or CIs/witnesses are transferred to the USMS' custody upon authorization by the Attorney General.

(2) When CIs/witnesses are taken into protective custody or relevant expenditures are incurred, they shall be reported immediately to the SAC, through the chain of command. The SAC must approve all expenses incurred for witness/CI subsistence, travel, and relocation. Funds for these expenditures will be drawn from the ATF agent

cashiers fund. Requests for these funds must be made through the SAC using ATF F 3251.3, Request for Advance of Funds.

NOTE: CIs may additionally be eligible to receive Emergency Witness Assistance Program (EWAP) funds through the respective USAO. Special agents should contact their local USAO for further information regarding EWAP funds. If the CI receives EWAP funding or ATF funding directly related to the safety and security of the CI and/or the CI's family members, additional requirements related to ATF's Victim/Witness Assistance Program are required; the special agent will need to note funding use in the N-Force management log and notify the respective field division victim/witness coordinator. Please contact the field division victim/witness coordinator or the Headquarters National Victim/Witness Coordinator for further instructions and services.

52. WITSEC PROGRAM.

a. Guidelines. The Witness Security Reform Act of 1984 continues the authority of the Attorney General to establish guidelines for use by USAs to provide protection and security by means of relocation for witnesses, their relatives, and associates. The responsibility for the security and maintenance of a protected witness and his or her dependents and associates rests with the USMS and DOJ's OEO. Requests for protection of a witness, etc., must be made through the USA. DOJ policy requires that protection of a witness and family members and associates in a local or State police matter be handled by those authorities. Exceptions to this policy will be allowed only upon the finding of the AAG of the concerned division that the proposed witness meets all of the following conditions:

(1) The person is a qualifying witness in a specific case in process, or during or after a grand jury proceeding.

(2) Evidence in possession indicates that the life of the witness and/or that a member of the witness' family or household is in immediate jeopardy.

(3) Evidence in possession indicates that it would be in the Federal interest for DOJ to protect the witness and/or a family or household member.

b. Procedures.

(1) Requests to place a person and his or her family and associates in the WITSEC Program must be made to the USA. No ATF employee is authorized to make representations or promises, either expressed

or implied, to prospective witnesses regarding WITSEC Program services with the intent to elicit their cooperation as Government witnesses.

(2) When it is known that the USA is recommending an ATF witness for the program, the case agent shall immediately prepare a threat assessment or threat/risk assessment memorandum and forward it to the SAC for review. The SAC shall forward the memorandum, along with his or her written recommendation, to the Chief, SOD.

(3) If the prospective witness is a prisoner, a threat assessment must be completed. Once this prisoner is released from custody, and if it is determined that additional program services are necessary, then a risk assessment will be needed. If the witness is not a prisoner, then a threat/risk assessment must be completed. Separate threat/risk assessment memorandums are required for each family member or associate who will be entering the program with the witness/because of a witness' participation. A threat/risk assessment memorandum must contain the following information:

(a) Threat Assessment.

1 A statement that the appropriate USA has recommended the witness for participation in the program.

2 The facts of the specific case or cases in progress, including the role of the recommended witness; the record and reputation of the defendants, the criminal organization, and their illegal activities; and the involvement of any other agencies in the investigation.

3 Detailed information on the threat, whether direct or potential, to the witness and his or her family as a result of his or her cooperation with the Government.

4 Names and identifying data for all persons who may pose a danger to the witness. (See subparagraph 52b(10).)

5 The recommended witness' criminal record and reputation.

6 If the witness is a prisoner, a statement as to whether a change of identity is necessary or whether the Central Monitoring Program would satisfy safety concerns. This program ensures separation of the prisoner from

other prisoners or visitors who pose some level of risk to his or her personal safety.

7 The names of any relatives or members of the household of the principal witness, including their criminal backgrounds, and information documenting the threat against their safety.

(b) Risk Assessment.

1 Significance of the investigation or case in which the witness is cooperating.

2 The relative importance of the witness' testimony.

3 Whether the prosecutor can secure similar testimony from other sources.

4 The alternatives to program use (such as a lump-sum relocation) that were considered and why they will not work. What capability does the person posing the threat have that a complete change of identity is required to ensure the witness' safety?

5 The possible danger to other persons or property in the relocation area if the witness is placed in the program. Any prior criminal behavior must be addressed. (Applies to the witness and his or her family members.)

6 Whether the need for the witness' testimony outweighs the risk of danger he or she may pose to the public. (Applies to the witness and his or her family members.)

7 If minor children are involved, whether any child custody issues need to be addressed. (See subparagraph 52b(13).)

(4) The Chief, SOD, will forward the threat/risk assessment, with his or her recommendation, to OEO.

(5) To expedite approval of requests to place persons in the program and to relieve ATF of the costly responsibility of protecting witnesses for lengthy periods of time, the SAC shall ensure that threat/risk assessments are submitted to the Chief, SOD, as soon as it becomes apparent that program services will be needed. Conditional approval may then be obtained, allowing witnesses to continue their undercover activities and yet permitting their entry on

an expedited basis when their cooperation becomes known or indictments are returned. The SAC will forward to the Chief, SOD, timely reports of significant occurrences (e.g., search warrants, arrests, indictments, convictions, etc.) involving any person recommended for the program.

(6) No State or local witness will be admitted to the program unless the State or locality fully reimburses the USMS for the total cost of services rendered.

(7) Upon request, the case agent shall produce the witness and adult family members (those being considered for relocation) for a preliminary interview at a site that the USMS selects. Also present will be the AUSA who is recommending the witness. The case agent, in close cooperation with the USA, shall thoroughly debrief each person recommended for the program. The debriefing should include all areas of knowledge that the witness may have concerning criminal activity. The special agent shall submit a written report of the debriefing, including to whom the information has been disseminated, to the SAC, who will forward it to the Chief, SOD, within 14 calendar days of submitting the threat/risk assessment.

(8) The case agent will be required to produce the witness and adult family members/associates for psychological testing by a BOP psychologist. All appointments will be coordinated through the Chief, SOD. The psychologist will not know the witness' and family members' true names and, as a security requirement, will refer to them by an OEO-assigned code number. Copies of the psychological tests will be made available to the prosecutor for a determination as to any Brady problems.

(9) A polygraph examination is required of all WITSEC Program candidates who are incarcerated or will be incarcerated in the near future. If this occurs, the case agent may be asked to arrange to have a polygraph examination administered. WITSEC Program authorization may be rescinded if the results of the examination reflect deception indicating that the candidate intends to harm or disclose other protected prisoner-witnesses or information obtained from such witnesses.

(10) The case agent shall assist the sponsoring attorney in providing the following information to OEO on all persons who have been identified as posing a threat to the witness and who are in or are likely to come into Federal custody. This essential information will enable the BOP to determine the appropriate institution for safe housing of a prisoner-witness and to monitor the separation needs of protected prisoner-witnesses.

(a) Name.

(b) Alias.

(c) Date of birth.

(d) FBI number.

(e) Race.

(f) Sex.

(g) Ethnic origin.

(h) Offense/charge.

(i) Current status (appeal, fugitive, un-incarcerated).

(11) If the prospective WITSEC Program candidate is an illegal alien, the attorney or special agent seeking to sponsor the WITSEC Program candidate must contact ESB during the planning phase of the WITSEC Program application. ESB will provide guidance and the current procedures for obtaining temporary legal status for the alien and any family members from ICE. ESB will also supply the current ICE forms for the sponsorship program and assist the special agent through the process. Once temporary status for the alien(s) is obtained from ICE, the special agent will receive the ICE authorization documents allowing the WITSEC Program candidate and family members to remain in the United States while the WITSEC Program application is in process. WITSEC Program candidates who are illegal aliens cannot be accepted into the program or relocated by the USMS until all documents relating to the temporary legal status of the alien(s) have been provided to OEO or the USMS. In cases where the ICE procedures to obtain temporary legal status for an illegal alien candidate require a lengthy time period, the special agent should secure from ICE a letter of intent to change the witness' status as part of the requirements for relocation under the WITSEC Program. For more information concerning the sponsorship of illegal aliens as CIs or witnesses, special agents should review paragraph 23.

(12) The Witness Security Reform Act of 1984 authorizes a Federal probation officer, upon the request of the Attorney General, to supervise any person provided protection under 18 U.S.C. chapter 224 section 3521 who is on probation or parole under State law if the State involved consents to such supervision. To have a State parolee or probationer supervised under Federal jurisdiction, the

State must provide written consent to such supervision. The case agent should assist in obtaining from the State specific documents needed for proper supervision of a State parolee or probationer.

(a) Documents needed for State parolees include a presentence or background report detailing the circumstances of the instant offense and prior criminal conviction history, a sentence date record indicating the type and length of sentence imposed by the State court, a signed parole or release certificate, and all available institutional materials, such as progress reports and classification materials.

(b) Documents needed for State probationers include a presentence or background report detailing a description of the instant offense and prior criminal conviction history, the order of probation from the court indicating the sentence of probation imposed with signed conditions of release, and any other pertinent materials.

(c) A State parolee or probationer cannot be relocated out of the sentencing State without these documents and written consent from the supervising State releasing supervision to Federal authorities.

(13) The Witness Security Reform Act of 1984 provides that a child may not be relocated unless the parent to be relocated (the "program parent") has legal custody. Court orders concerning custody and visitation must be obtained and reviewed before relocation of the child is allowed to ensure that compliance with the order is possible. If compliance is not possible, the program parent must initiate legal action to modify the order. The case agent must obtain from the program parent all legal custody documents that are required under the act. Where possible, these documents must be submitted to OEO with the WITSEC Program application. If the legal custodial parent's location is unknown, the case agent must make good faith efforts to locate the parent for the purpose of obtaining a legal custody change and/or written consent to the child's relocation by the USMS for security reasons.

(14) Once a witness has entered the WITSEC Program and is under the supervision of the USMS, ATF is not to have any further contact with the witness.

(a) The area of the witness' relocation should be known only to the USMS and must not be made known to the sponsoring AUSA, ATF case agent, or their staff members. All contact with the witness should be made through OEO or the USMS

Witness Security Inspector. The witness should be instructed to keep secret the area of his or her relocation and all associated matters.

(b) If a WITSEC Program participant directly contacts an ATF special agent, the special agent should immediately inform the witness to keep his or her location and identity secret and inform the witness to coordinate any concerns through his or her appropriate USMS point of contact. The special agent should then immediately contact SOD, which will report the incident to OEO. Under no circumstances should an ATF agent solicit the witness' new location or new identity. If the witness' new location or identity becomes known to an ATF special agent, the special agent should contact SOD immediately to report the breach, identifying the witness only by his or her former name. Under no circumstances should an ATF special agent further disclose the new identity or location of a witness. It is made criminal in 18 USC section 3521(b)(3) to disclose information related to a witness' new identity or location.

(c) The Attorney General delegated the Director of OEO as the only official who is authorized to disclose the identity or location of a witness in the WITSEC Program. If for some reason it becomes necessary for an ATF special agent to contact a WITSEC Program witness, such contact should be coordinated through ESB, which will contact OEO and the USMS for guidance and approval to assist the requesting special agent. ESB shall notify the requesting special agent of the approval or declination. If approved, ESB shall coordinate the witness contact as directed by OEO or the USMS.

(15) Normally, witnesses in the program will not be returned to a danger area for conferences or meetings. Special agents shall conduct interviews in neutral sites selected by the USMS. Exceptions to the use of a neutral site for interviews must be requested, in writing, by the Chief, SOD, to OEO. If approved by OEO, the requesting office may be required to provide the necessary security for the witness. Exception requests must be submitted at least 10 working days before the meeting and must include detailed explanations of why exceptions are necessary.

(16) After the use of a relocated witness has concluded, the case agent shall forward to the SAC a summary of results obtained through the use of the witness. This report shall include actions taken by other agencies based on information referred to them by ATF. The SAC

shall forward this report to the Chief, SOD, after receipt. The following should be addressed:

(a) Name of the witness.

(b) Name of the case.

(c) Jurisdiction.

(d) Did the witness testify before grand jury? Trial? If the witness did not testify, why not?

(e) Status of the witness in the case:

1 Defendant.

2 Unindicted coconspirator.

3 Prisoner.

4 Victim.

5 Other.

(f) Names of all defendants.

(g) Statutory violations charged.

(h) Date of indictment.

(i) Date of conviction.

(j) Disposition of the case as to each defendant.

(k) If convicted, the details of the sentence imposed on each defendant, including fines levied, etc.

(l) Any information as to significant forfeitures or seizures accomplished because of the assistance of the witness.

(m) Any information as to contributions made by this witness to the law enforcement effort (Federal, State, and local) in your field division and elsewhere as a result of your request to place the witness in this program (e.g., furnishing probable cause for Title IIIs, search warrants, locations of fugitives).

(17) If a former program participant is involved in criminal activity after relocation and is convicted of a State offense, he or she will not be accepted into Federal custody (via the WITSEC Program) unless the State authorities involved advise OEO that they cannot keep him or her safe either in their own facilities or through transfer to another State. OEO will arrange, through the sponsoring investigative agency, to have the State authorities provided with background information concerning the witness cooperation so that they may provide for his or her security needs.

(18) ESB shall maintain a centralized alphabetical file of relocated witnesses.

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CHAPTER D. AUTHORIZATION OF OTHERWISE ILLEGAL ACTIVITY

61. GENERAL PROVISIONS.

a. A CI shall not be authorized to engage in any activity that otherwise would constitute a misdemeanor or felony under Federal, State, or local law if engaged in by a person acting without authorization, except as provided in the authorization provisions in this chapter.

b. ATF is never permitted to authorize a CI to do the following:

(1) Participate in an act of violence;

(2) Participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or fabrication, alteration, or destruction of evidence);

(3) Participate in an act designed to obtain information that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespassing amounting to an illegal search); or

(4) Initiate or instigate a plan or strategy to commit a Federal, State, or local offense.

62. AUTHORIZATION.

a. Tier 1 Otherwise Illegal Activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by the SAC and the USA of the appropriate USAO. For purposes of this subparagraph, the "appropriate USA" is the USA who:

(1) Is participating in the conduct of an investigation by ATF that is utilizing an active CI, or is working with an active CI in connection with a prosecution;

(2) With respect to Otherwise Illegal Activity that would constitute a violation of Federal law, would have primary jurisdiction to prosecute the Otherwise Illegal Activity; or

(3) With respect to Otherwise Illegal Activity that would constitute a violation only of State or local law, is located where the otherwise criminal activity is to occur.

b. Tier 2 Otherwise Illegal Activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by the SAC.

63. FINDINGS.

a. The SAC who authorizes Tier 1 or 2 Otherwise Illegal Activity must make a finding, which shall be documented in the CI's files, that authorization for the CI to engage in the Tier 1 or 2 Otherwise Illegal Activity meets both of the following criteria:

(1) That the activity is necessary either to:

(a) Obtain information or evidence essential for the success of an investigation that is not reasonably available without such authorization; or

(b) Prevent death, serious bodily injury, or significant damage to property.

(2) That in either of the above case, the benefits to be obtained from the CI's participation in the Tier 1 or 2 Otherwise Illegal Activity outweigh the risks.

b. In making these findings, the SAC shall consider, among other factors, the following:

(1) The importance of the investigation;

(2) The likelihood that the information or evidence sought will be obtained;

(3) The risk that the CI might misunderstand or exceed the scope of his or her authorization;

(4) The extent of the CI's participation in the Otherwise Illegal Activity;

(5) The risk that ATF will not be able to supervise closely the CI's participation in the Otherwise Illegal Activity;

(6) The risk of violence, physical injury, property damage, and financial loss to the CI or others; and

(7) The risk that ATF will not be able to ensure that the CI does not profit from his or her participation in the authorized Otherwise Illegal Activity.

64. INSTRUCTIONS.

a. After a CI is authorized to engage in Tier 1 or 2 Otherwise Illegal Activity, at least one special agent, along with one additional special agent or other law

enforcement official present as a witness, shall review with the CI written instructions that state, at a minimum, the following:

(1) The CI is authorized only to engage in the specific conduct set forth in the written authorization described in paragraph 62 and not in any other illegal activity;

(2) The CI's authorization is limited to the time period specified in the written authorization;

(3) Under no circumstance may the CI do the following:

(a) Participate in an act of violence;

(b) Participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or fabrication, alteration, or destruction of evidence);

(c) Participate in an act designed to obtain information for ATF that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespassing amounting to an illegal search); or

(d) Initiate or instigate a plan or strategy to commit a Federal, State, or local offense;

(4) If the CI is asked by any person to participate in any such prohibited conduct or if he or she learns of plans to engage in such conduct, he or she must immediately report the matter to the control agent; and

(5) Participation in any prohibited conduct could subject the CI to full criminal prosecution.

b. Immediately after providing these instructions, the CI shall be required to sign or initial and date a written acknowledgment of the instructions, using ATF F 3252.2 or ATF F 3252.3 as appropriate. As soon as practicable thereafter, the SAC shall review and, if warranted, approve the written acknowledgment.

65. PRECAUTIONARY MEASURES. Whenever ATF has authorized a CI to engage in Tier 1 or 2 Otherwise Illegal Activity, it must take all reasonable steps to:

a. Supervise closely the illegal activities of the CI;

b. Minimize the adverse effect of the authorized Otherwise Illegal Activity on innocent individuals; and

c. Ensure that the CI does not profit from his or her participation in the authorized Otherwise Illegal Activity.

66. SUSPENSION OF AUTHORIZATION.

a. Whenever ATF cannot, for legitimate reasons unrelated to the CI's conduct (e.g., unavailability of the control agent), comply with the precautionary measures described in this chapter, it shall immediately:

(1) Suspend the CI's authorization to engage in Otherwise Illegal Activity until such time as the precautionary measures can be complied with;

(2) Inform the CI that his or her authorization to engage in any Otherwise Illegal Activity has been suspended until that time; and

(3) Document these actions in the CI's files.

b. Immediately after the CI has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the CI shall be required to sign or initial and date a written acknowledgment that he or she has been informed of this fact.

c. As soon as practicable thereafter, the SAC shall review and, if warranted, approve the written acknowledgment.

d. If the CI refuses to sign or initial the written acknowledgment, the special agent who informed the CI of the revocation of authorization shall document that the CI has orally acknowledged being so informed and the SAC shall, as soon as practicable thereafter, review and, if warranted, approve the written documentation.

67. REVOCATION OF AUTHORIZATION.

a. If a special agent has reason to believe that a CI has failed to comply with the specific terms of the authorization of Tier 1 or 2 Otherwise Illegal Activity, he or she shall immediately:

(1) Revoke the CI's authorization to engage in Otherwise Illegal Activity;

(2) Inform the CI that he or she is no longer authorized to engage in any Otherwise Illegal Activity;

(3) Comply with the notification requirement of subparagraph 67b, below;

(4) Make a determination whether the CI should be deactivated pursuant to paragraphs 15 and 16; and

(5) Document these actions in the CI's files.

b. Immediately after the CI has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the CI shall be required to sign or initial and date a written acknowledgment that he or she has been informed of this fact.

c. As soon as practicable thereafter, the SAC shall review and, if warranted, approve the written acknowledgment.

d. If the CI refuses to sign or initial the written acknowledgment, the special agent who informed the CI of the revocation of authorization shall document that the CI has orally acknowledged being so informed and the SAC shall, as soon as practicable thereafter, review and, if warranted, approve the written documentation.

68. RENEWAL AND EXPANSION OF AUTHORIZATION.

a. Any special agent who seeks to reauthorize any CI to engage in Tier 1 or 2 Otherwise Illegal Activity after the expiration of the authorized time period, or after revocation of authorization, must first comply with paragraphs 62 through 65.

b. A special agent who seeks to expand in any material way a CI's authorization to engage in Tier 1 or 2 Otherwise Illegal Activity by ATF must first comply with paragraphs 62 through 65.

69. EMERGENCY AUTHORIZATION.

a. In exceptional circumstances, the SAC and the appropriate USA may orally authorize a CI to engage in Tier 1 Otherwise Illegal Activity without complying with the documentation requirements in this chapter when they each determine that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 48 hours of the oral approval and maintained in the CI's files.

b. In exceptional circumstances, a SAC may orally authorize a CI to engage in Tier 2 Otherwise Illegal Activity without complying with the documentation requirements in this chapter when he or she determines that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral

authorization, shall be completed within 48 hours of the oral approval and maintained in the CI's files.

70. DESIGNEES. The SAC and the appropriate USA may, with the concurrence of each other, agree to designate particular individuals in their respective offices to carry out the approval functions assigned to them above in paragraphs 62 through 69.

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CHAPTER E. MONETARY PAYMENTS

81. CI REMUNERATION.

a. General. Most CIs expect some form of remuneration in return for information provided. In many cases, the only consideration expected is money. Therefore, once the information, the time and effort expended by the CI, and/or the significance of any seizures and/or arrests have been evaluated, the procedures for payment provided in this chapter should be followed. Monies that a special agent pays to a CI in the form of fees and rewards shall be commensurate with the value, as determined by the special agent, of the information that the CI provided or the assistance he or she rendered to that special agent. A special agent's reimbursement of expenses incurred by a CI shall be based upon actual expenses incurred.

b. Contingencies on Payments. Under no circumstances shall any payments to a CI be contingent upon the conviction or punishment of any person.

c. Requests for Consideration of Leniency. ATF does not have authority to make any promise or commitment that would prevent the Government from prosecuting a person for criminal activity that is not authorized pursuant to this order. When a CI, who is also a defendant, requests some consideration of leniency in exchange for information, special agents are limited to advising the prosecutor and/or court in an appropriate manner, before trial, of what the defendant/CI has done to assist law enforcement.

d. Paying CIs. All payments to CIs shall be witnessed by another special agent, sworn law enforcement officer, or State-certified fire investigator using ATF F 3251.1, Payment Receipt for Investigative Expenses and/or Information. (NOTE: Only under extenuating circumstances, with prior ASAC approval, may an unaccompanied special agent make a payment to a CI. The special agent shall denote the date and time approved in the witness section of ATF F 3251.1.) If obtaining a CI's true signature would jeopardize an investigation or the CI's safety, then the CI must sign the form with an assumed name or alias. However, this name/alias must be documented in the CI file to maintain the true identity of the recipient of funds. At the time of the payment, the special agent shall advise the CI that the monies may be taxable income that must be reported to appropriate tax authorities.

e. Intermediaries. Special agents shall not approach, directly or indirectly, representatives of private industry and request assistance in providing money, gifts, or products of such companies to CIs. Additionally, special agents shall not act as intermediaries between other law enforcement agencies and CIs to deliver money furnished to the CI by other enforcement agencies. If other enforcement agencies desire to pay ATF CIs for

information or services rendered, special agents are not precluded from arranging necessary contacts between the CI and other enforcement agencies, but the actual exchange of monies shall be made directly between the CI and the respective enforcement agency—in accordance with the procedures established by those two parties. Likewise, ATF money shall be paid directly to a CI rather than through intermediaries.

f. Single Payment Authorizations. A single payment of between $2,500 and $25,000 per case to a CI must be authorized, at a minimum, by the SAC. A single payment in excess of $25,000 per case shall be made only with the authorization of the SAC and the express approval of the appropriate DAD(FO).

g. Approval for Annual Payments. Consistent with subparagraph 81f, above, payments by a special agent to a CI that exceed an aggregate of $100,000 within a 1-year period, as that period is defined by the special agent, shall be made only with the authorization of the SAC and the express approval of the appropriate DAD(FO). A DAD(FO) may authorize additional aggregate annual payments in increments of $50,000 or less.

h. Approval for Aggregate Payments. Consistent with subparagraphs 81f and g, above, and regardless of the timeframe, any payments by a special agent to a CI that exceed an aggregate of $200,000 shall be made only with the authorization of the SAC and the express approval of the appropriate DAD(FO). After the DAD(FO) has approved payments to a CI that exceed an aggregate of $200,000, he or she may authorize, subject to subparagraph g, above, additional aggregate payments in increments of $100,000 or less.

i. Coordination With Prosecution. In situations where a USAO is either participating in the conduct of an investigation by a special agent that is using a CI, or working with a CI in connection with a prosecution, the special agent shall coordinate with the attorney assigned to the matter, in advance whenever possible, the payment of monies to the CI pursuant to subparagraphs 81f through h, above.

82. REWARDS AND PURCHASE OF INFORMATION.

a. Authorities.

(1) Title 26 U.S.C. § 7623.

(2) Title 27 CFR § 70.41.

(3) Title 19 U.S.C. § 1619, called the Moiety Statute. (See regulations at 19 CFR §§ 161.11-161.15.) Title 22 U.S.C. § 401(b) provides that rewards for information concerning arms exports are payable pursuant to 19 U.S.C. § 1619.

(4) Asset forfeiture funds may be used to pay awards for specific information or instances of assistance pursuant to 28 U.S.C. § 524.

(5) The Annual DOJ Appropriations Bill.

b. Rewards - General Procedures.

(1) A reward payment is made to a person who furnishes information contributing to the detection of persons who violate the provisions of statutes enforced by ATF. Except as provided in subparagraph 82b(2), below, reward payments shall not be contingent upon prosecution, conviction, or punishment of such persons or used to compensate CIs for their testimony in court or in administrative hearings. Rewards must be commensurate with the value of the information provided or assistance rendered.

(2) Under 26 U.S.C. § 7623's authority, payment of sums may be made that are necessary for detecting and bringing to trial and punishment persons guilty of violating the Internal Revenue laws. Because payments under this statute are based upon punishment or the outcome of a proceeding, these payments to ATF CIs could give rise to claims of entrapment. To avoid entrapment issues, reward payments under 26 U.S.C. § 7623 shall be paid where information concerning violations of the Internal Revenue laws is furnished by (1) a person who was not working as a CI for ATF or another law enforcement agency at the time the information was furnished and was not involved in the violation, or (2) a person who was a CI for ATF or another law enforcement agency but was not involved in the violation. An example of an appropriate reward payment under 26 U.S.C. § 7623 is a payment to a person not working as a Government CI who furnishes information to ATF about another individual's outstanding tax liabilities. Payment of a reward to a Government CI involved in the violation should be made under subparagraph 82b(1), above.

(3) The decision as to when to offer a reward payment must be carefully considered. During an ongoing investigation, special agents shall adhere to the following guidelines regarding the appropriate time to offer a reward for information:

(a) Offering a reward for information leading to apprehension and/or conviction of an ATF suspect should be treated as an

investigative tool. Although offering rewards has proven to be a successful method by which to obtain pertinent information, its use is not intended to circumvent the normal investigative process.

(b) The primary objective for offering a reward is to encourage obtaining information that may not have otherwise been obtained were it not for the reward—not to offer payment for information that could very well be acquired through general investigative procedures and practices. To that end, typically rewards should be offered after reasonable investigative attempts have been exhausted and it becomes apparent that new information must be generated to successfully conclude the investigation.

(c) There are, however, exigent circumstances that may necessitate offering a reward earlier in the investigative process. For example, in cases where a serious threat to the general public exists from a serial arsonist or bomber, it may be beneficial to offer a reward before exhausting additional investigative techniques, thereby causing witnesses to come forward sooner and hence preserving public safety. These circumstances should be considered on a case-by-case basis and treated as exceptions to the rule.

(d) All payments must be made in a manner that avoids even the appearance of impropriety. Special agents should be aware that ATF does not pay for testimony, and our actions should never give rise to that impression. Therefore, special agents shall consult with their supervisors and the prosecuting attorney to ensure that paying any reward before trial is not misinterpreted.

(4) Requests for payment of rewards or purchase of original information shall be made on ATF F 3200.13, Application and Public Voucher for Reward. Instructions for completing ATF F 3200.13 are outlined below and are on the form itself. The instructions shall be separated from the form before presenting it to the CI/claimant.

(a) ATF F 3200.13 will be prepared reflecting the name of the vendor (CI/claimant) and justifying reward payment. Justification shall include, at a minimum, a narrative description of the violations, the magnitude of violations, the names and criminal records/reputations of the persons arrested, the seizure of any property, and other pertinent information that will substantiate and support the recommended reward.

(b) The vendor must sign the ATF F 3200.13 in INK. The vendor's name will be typed below his or her signature and must be identical to the vendor's signature. (NOTE: If obtaining the vendor's true signature would jeopardize the investigation or the vendor's safety, then he or she may sign the form with an assumed name or alias. However, this name/alias must be documented in the CI file.) If the vendor signs with an "X," then the mark must be witnessed by two special agents, whose names must be legibly signed in INK on all copies of the ATF F 3200.13; the appropriate confidential identity code will be documented under the mark.

(c) The special agent will not enter the amount recommended until after the vendor has signed the form, and no promises will be made concerning the amount of the reward.

(5) The special agent shall submit the original and copies of ATF F 3200.13 to his or her RAC/GS for review. The RAC/GS shall review the ATF F 3200.13, make a recommendation of amount, sign the form, and forward it to the SAC.

(6) The SAC may approve payment of rewards of $25,000 or less but should have the funds available in his or her agent cashier account on the date of approval to cover the reward. The reward, if approved, shall be processed within 2 weeks of receipt by the SAC. Rewards in excess of $25,000 must be approved by the appropriate DAD(FO). (See subparagraph 81f.) After approving the reward, the SAC shall process the payment using agent cashier funds. The agent cashier shall issue a check to the special agent for payment to the vendor or authorize the RAC/GS to provide the reward funds from his or her subcashier fund.

(7) In situations where a prosecutor is either participating in the conduct of the underlying investigation utilizing a CI or working with a CI in connection with a prosecution, payments to the CI shall be coordinated with the prosecutor. Additionally, field divisions should consider disclosing to the prosecuting attorney rewards paid in any investigation when the case is forwarded for prosecution.

(8) When a "general reward" is to be offered (e.g., press releases, posters, etc., announcing a $25,000 reward for any information leading to the arrest and conviction of those responsible for a crime), the appropriate DAD(FO) must approve the request from the SAC in advance, and the SAC, Resource Management Section, should be notified.

c. Payment of Rewards From Agent Cashier Funds.

(1) Upon SAC approval, the following procedures shall be observed:

(a) The SAC shall sign the ATF F 3200.13 and place the amount of the reward and the accounting classification in the appropriate boxes. The appropriate organizational codes will be used. [redacted]

(b) The SAC shall forward the original ATF F 3200.13 to the agent cashier. The check will be made payable to the special agent requesting the reward or the SAC may authorize the RAC/GS to provide the funds from his or her subcashier fund. (See subparagraph 82d.) The ATF F 3200.13 shall note the date the check was issued and the check number.

(c) The original ATF F 3200.13 shall be filed in the field division cashier file. The copy, with attached check, will be returned to the special agent, through his or her RAC/GS, or the approved copy will be forwarded to the RAC/GS authorizing use of the subcashier fund to provide the reward. The special agent will file the approved copy in the respective field office investigative file folder.

(2) The agent cashier will replenish the investigative funds in the normal manner by including the expense on the field division's monthly OF 1129, Cashier Reimbursement Voucher and/or Accountability Report, which is submitted to the Financial Management Division. (See ATF O 3251.1, Expenditure of Funds for Investigative Purposes.) The OF 1129 will contain a statement in the accounting classification section as to the total amount expended for rewards, and the phrase "ORIGINAL INFORMATION ON FILE IN THE FIELD DIVISION OFFICE" will be typed in all caps. [redacted]

d. Transmittal of Reward Checks.

(1) Agent cashier checks for rewards will be made payable to the special agent—who will cash the check and transfer the money to the vendor—or the funds may be obtained from the RAC/GS subcashier fund, transferred to the special agent, and then paid to the vendor.

(2) The special agent shall have the vendor sign ATF F 3251.1 to verify the transfer of the money to the vendor. This receipt must

be witnessed by another law enforcement officer. (See subparagraph 81d.) The special agent will retain a copy of the receipt for his or her personal record, place a copy in the respective field office investigative file folder, and return the original to the SAC, through his or her RAC/GS. The SAC will file the original ATF F 3251.1 in the appropriate field division file.

(3) If the funds for the reward are provided directly from the field division, then the field division must include the expenditure as an additional subvoucher item on the monthly OF 1129. (See subparagraph 82c(2).) If the funds are provided by the subcashier, then the expenditure is included on the subcashier's subvoucher log and monthly OF 1129.

(4) Reward payments must be calculated in the "Total Funds Expended in the Case to Date" section when completing an ATF F 3251.3 in the investigation for which the reward was paid.

e. Requests for Rewards or Payment of Information Exceeding $25,000. On requests of payment in excess of $25,000, the SAC shall recommend approval by signing and dating both copies of the ATF F 3200.13. The SAC shall then forward the copies to the appropriate DAD(FO), who shall either approve or disapprove the request. The documents shall be transmitted in double-sealed envelopes. Upon approval, the DAD(FO) shall return the documents to the SAC. The SAC shall then pay the reward from the agent cashier fund.

f. Purchase of Information Without Use of ATF F 3200.13. When a special agent finds it necessary to purchase specific information or when time and circumstances will not permit executing an ATF F 3200.13, he or she may negotiate an informal contract with the CI, the amount of which may not exceed $200. This money is to be paid only after the information has been determined to be worthy of compensation.

(1) All such negotiations in excess of $200 per investigation shall be subject to the SAC's approval. The special agent shall receipt payment of cash to the CI by executing ATF F 3251.1 and ensure that the payment is witnessed as outlined in subparagraph 81d. The special agent shall retain one copy for his or her personal record, place one copy in the respective field office investigative file folder, and forward the original to the SAC, through his or her RAC/GS. The special agent shall claim the amount paid to the CI on SF 1164, Claim for Reimbursement, or through the agent cashier fund procedures and attach the ORIGINAL ATF F 3251.1 to substantiate his or her payment. The entry on SF 1164 shall state "Purchase of

Information" and shall include the case number, [redacted] The organizational code must also be used.

(2) [redacted] Finally, a CI paid a lump sum for information shall be informed that if he or she is required by law to file an income tax return, the money so paid must be included as other income.

83 – 90 RESERVED

CHAPTER F. SPECIAL NOTIFICATION REQUIREMENTS

91. NOTIFICATION OF INVESTIGATION OR PROSECUTION.

a. A special agent must take the utmost care to avoid interfering with or impeding any criminal investigation or arrest of a CI by another law enforcement agency.

b. When a special agent has reasonable grounds to believe that a current or former CI is being prosecuted, is the target of an investigation, or is expected to become a target of an investigation by a prosecutor for engaging in alleged felonious criminal activity, he or she must immediately notify, through channels, the SAC, who will immediately notify the USAO of that person's status as a current or former CI.

c. Whenever such a notification is provided, the USA and SAC, with the concurrence of each other, shall notify any other Federal, State, or local prosecutors' offices or law enforcement agencies that are participating in the investigation or prosecution of the CI.

92. NOTIFICATION OF UNAUTHORIZED ILLEGAL ACTIVITY.

a. When a special agent has reasonable grounds to believe that a CI, who is currently authorized to engage in specific Tier 1 or 2 Otherwise Illegal Activity, has engaged in unauthorized criminal activity or when a special agent knows that a CI who has no current authorization to engage in any Tier 1 or 2 Otherwise Illegal Activity has engaged in any criminal activity, he or she must immediately notify, through channels, the SAC, who shall immediately notify the following USAs of the CI's criminal activity and his or her status as a CI:

(1) The USA whose district is located where the criminal activity primarily occurred, unless a State or local prosecuting office in that district has filed charges against the CI for the criminal activity and there clearly is no basis for Federal prosecution in that district by the USA;

(2) The USA, if any, whose district is participating in the conduct of an investigation that is utilizing that active CI or is working with that active CI in connection with a prosecution; and

(3) The USA, if any, who authorized the CI to engage in Tier 1 Otherwise Illegal Activity pursuant to paragraph 62.

NOTE: Whenever such notifications to USAOs are provided, the special agent must also comply with the continuing suitability requirements described in paragraph 14.

b. When such notifications are provided, the USA(s) and the SAC, with the concurrence of each other, shall notify any State or local prosecutor's office that has jurisdiction over the CI's criminal activity, and that has not already filed charges against the CI for the criminal activity, of the fact that the CI has engaged in such criminal activity. The USA(s) and the SAC are not required but may, with the concurrence of each other, also notify the State and local prosecutor's office of the person's status as a CI.

93. NOTIFICATION REGARDING CERTAIN FEDERAL JUDICIAL PROCEEDINGS. Whenever a special agent has reasonable grounds to believe that any of the below conditions apply, he or she shall, through channels, apprise the SAC, who shall immediately notify the USA for that proceeding of the person's status as a current or former CI:

a. A current or former CI has been called to testify by the prosecution in any Federal grand jury or judicial proceeding;

b. The statements of a current or former CI have been, or will be, utilized by the prosecution in any Federal judicial proceeding; or

c. A Federal prosecutor intends to represent to a court or jury that a current or former CI is or was a coconspirator or other criminally culpable participant in any criminal activity.

94. PRIVILEGED OR EXCULPATORY INFORMATION.

a. In situations where a USAO is either participating in the conduct of an investigation that is utilizing a CI or working with a CI in connection with a prosecution, a special agent shall notify the attorney assigned to the matter, in advance whenever possible, if he or she has reasonable grounds to believe that a CI will obtain or provide information that is subject to, or arguably subject to, a legal privilege of confidentiality belonging to someone other than the CI.

b. If a special agent has reasonable grounds to believe that a current or former CI has information that is exculpatory as to a person who is expected to become a target of an investigation, or as to a target of an investigation, or as to a defendant (including a convicted defendant), the special agent shall notify the USA responsible for the investigation or prosecution of such exculpatory information.

95. RESPONDING TO REQUESTS FROM THE U.S. ATTORNEY (USA) REGARDING A CI. If a USA seeks information from a SAC as to whether a particular person is a current or former CI and states the specific basis for his or her request, the SAC shall promptly provide such information. If the SAC has an objection to providing such information based on specific circumstances of the case, he or she shall explain the objection to the USA, and any remaining

disagreement as to whether the information should be provided shall be resolved pursuant to paragraph 8.

96. FILE REVIEWS. When a special agent discloses any information about a CI to a Federal prosecuting office pursuant to paragraphs 91 through 95, the SAC and the USAO shall consult to facilitate any review and copying of the CI's files by the USAO or other USA that might be necessary to fulfill the disclosure obligations.

97. DESIGNEES. A SAC and an USA may, with the concurrence of each other, agree to designate particular persons in their respective offices to carry out the functions assigned to them in paragraphs 91 through 96.

98 – 100 RESERVED

EXPLANATION OF CHANGES TO ATF O 3252.1

CHANGED 1, DATED 7/2/2012 AND SIGNED BY ASSISTANT DIRECTOR RONALD B. TURK (FIELD OPERATIONS)

TO: All Field Operations Personnel

1. PURPOSE. This change adds, clarifies, and corrects specific policies and procedures for using confidential informants (CIs) in Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) investigations.

2. DISCUSSION/BACKGROUND FOR CHANGES.

   a. There are two changes in the FOREWORD. One clarifies the name of The Attorney General's Guidelines Regarding the Use of Confidential Informants (hereinafter referred to as the Department of Justice (DOJ) Guidelines), and the other explains that sample CI memorandums and other related reference documents have been placed on the Enforcement Support Branch's ATF Web Portal page.

   b. Chapter A, General Provisions, incorporates a new definition, Federal Prosecuting Office.

   c. In chapter B, CI Suitability Determination and Special Approval Requirements, for the various standard CI reporting memorandums, the reporting period for the amount of money paid to Cis has been corrected.

   d. In chapter B, Paragraph 11, CI Suitability Determination (Initial), Paragraph 12, Emergency CI Approval and Paragraph 13, Registration, have been revised to allow for assistant special agents in charge to approve Cis.

   e. Chapter B, Paragraph 14, Continuing Suitability Review, is revised as follows:

      (1) To clarify the factors that must be addressed in the continued suitability review memorandums, the handling of criminal history information, and when to submit executed CI agreements (ATF F 3252.2/ATF F 3252.3).

      (2) To incorporate an exception for removing Cis whose investigations are pending final disposition.

   f. Chapter B, Paragraph 16, Removal for Cause (Undesirable/Unreliable) of Approved Cis, is revised to modify the Treasury Enforcement Communications System entry in these situations.

g. Chapter B, Paragraph 19, Review of Long-term CIs, has been revised to read that the CI Review Committee will convene to make its review of a CI at the 6-year point and every successive 6-year interval (e.g., 12 years, 18 years, etc.) thereafter. These reviews also require a 3-year deputy assistant director (Field Operations) review beginning at the 9-year mark and continuing every 3 years after a CI Review Committee (e.g., 15 years, 18 years, etc.) convenes. In addition, the contents of the submitted CI packets has been clarified.

h. Chapter B, Paragraph 23, Use and Reporting of Foreign Nationals/Illegal Aliens as CIs or Witnesses, modifies the requirement to document sponsored illegal aliens as CIs unless they are serving as actual CIs. This revision does not eliminate required 30-day status reporting or full compliance with the order's requirements governing illegal alien use.

i. Chapter B, Paragraph 26, Federal Inmates, Probationers, Parolees, Detainees, and Supervised Releasees, has been revised to incorporate language from the DOJ Guidelines. Specifically, it clarifies that the resident agent in charge/group supervisor (RAC/GS) shall determine if the use of the person as a CI would violate the terms and conditions of the person's probation, parole, or supervised release. In addition, the paragraph is revised to note that the appropriate special agent shall notify the U.S. attorney's office prior to using the person as a CI.

j. Chapter B, Paragraph 27, Use of State or Local Prisoners, Probationers, Parolees, Detainees, and Supervised Releasees, has been revised to reflect that the RAC/GS or designee must obtain the permission of a State or local prison, probation office, parole office, applicable court with authority, or supervised release official with authority to grant such permission before using such a person as a CI.

k. In chapter B, a new paragraph has been added to the order to incorporate language from the DOJ Guidelines. Specifically, the new Paragraph 32, Listing a CI in an Electronic Surveillance Application, discusses when a CI would be named in an electronic surveillance affidavit.

l. Chapter C, Paragraph 52, WITSEC Program, has been incorporated into the order. When the order was updated, this paragraph was inadvertently omitted from the new order.

m. Chapter F, Paragraph 91, Notification of Investigation or Prosecution, incorporates language from the DOJ Guidelines explicitly stating that special agents will not interfere with or impede an investigation or arrest of a CI by another law enforcement agency.

3. SPECIFIC PAGE CHANGES AND UPDATES.

a. FOREWORD: Paragraphs 3 and 6.
Pages 1 through 2.

b. TABLE OF CONTENTS: Paragraph titles are added and page numbers are updated.

c. Chapter A.: Paragraph 3.
Page A-4.

d. Chapter B.: Paragraph 11.
Pages B-1 and B-4.

e. Chapter B.: Paragraph 12.
Page B-5.

f. Chapter B.: Paragraph 13.
Pages B-6 through B-7.

g. Chapter B.: Paragraph 14.
Pages B-7 through B-9.

h. Chapter B.: Paragraph 15.
Page B-10.

i. Chapter B.: Paragraph 16.
Page B-11.

j. Chapter B.: Paragraph 19.
Pages B-12 through B-14.

k. Chapter B.: Paragraph 23.
Pages B-22 through B-24.

l. Chapter B.: Paragraph 26.
Pages B-26 through B-27 and pages B-29 through B-30.

m. Chapter B.: Paragraph 27.
Page B-30.

n. Chapter B.: Paragraph 32.
Pages B-31 through B-32.

o. Chapter C.: Paragraph 52.
Pages C-6 through C-14.

p. Chapter F.: Paragraph 91.
Pages F-1.

4. QUESTIONS. Questions regarding these changes should be directed to the Chief, Special Operations Division, at 202-648-8620.

May 1, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We have served as Assistant Attorneys General for the Civil Division in the Administrations of Presidents Ronald Reagan, George H.W. Bush, William Clinton and George W. Bush, and in some cases have served in other positions in the United States Department of Justice as well. We write in strong support of the nomination of Stuart Delery to become Assistant Attorney General for the Civil Division.

Some of us have worked closely with Mr. Delery and others know him only by reputation and observation of his performance in office. All of us agree that Mr. Delery's experience as a lawyer in private practice and as a senior official in the Department of Justice since 2009 – including distinguished service in an acting capacity in the position for which he has been nominated – render him well qualified to perform the important duties of this position. We know or understand that Mr. Delery is a person of integrity and civility, who will be open to competing viewpoints about a particular matter and with the benefit of due consideration will seek to pursue the best interests of the United States. He has demonstrated throughout his career both great legal talent and sound judgment, central prerequisites for the job. Because the Civil Division has important enforcement responsibilities with respect to civil frauds and consumer protection, as well as lead responsibility for defending the legal interests of the United States in civil litigation, it is extremely valuable that his prior experience includes both extensive civil litigation and enforcement experience. Mr. Delery has further demonstrated that he is an able manager and leader, also key skills needed to run this significant litigating unit.

For all of these reasons we hope that the Senate will confirm Mr. Delery promptly to serve as the Assistant Attorney General for the Civil Division.

Sincerely,

Peter D. Keisler
AAG, Civil Division, 2003-2007
Acting Attorney General, 2007

Currently:
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

David W. Ogden
AAG, Civil Division, 1999-2001
Deputy Attorney General, 2009-2010

Currently:
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
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Richard K. Willard
AAG Civil Division, 1985-1988

Currently:
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
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Stuart M. Gerson
AAG Civil Division 1989-1993
Acting Attorney General, 1993

Currently:
Epstein Becker & Green, P.C.
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Frank W. Hunger
AAG, Civil Division, 1993-1999

Currently:
Walker, Tipps & Malone PLC
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Nashville, TN 37219

Robert D. McCallum, Jr.
AAG, Civil Division, 2001-2003
Associate Attorney General, 2003-2006

Currently:
No. 15 Regents Park
2440 Peachtree Road, NW
Atlanta, GA 30305

Jeffrey S. Bucholtz
Acting AAG, Civil Division, 2007-2008

Currently:
King & Spalding
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Gregory G. Katsas
AAG, Civil Division, 2008-2009

Currently:
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

May 13, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing to express our strong support for Stuart Delery's nomination to become Assistant Attorney General for the Civil Division of the Department of Justice.

The undersigned have held government office in Democratic and Republican administrations. We all know and have worked directly with Mr. Delery—some of us for many years, others of us only more recently. All of us hold him in the very highest regard, and admire him for his even-handedness, his integrity, his exceptional intellect, and his superb legal judgment.

Mr. Delery has had a distinguished career in both public service and private practice. He graduated from Yale Law School in 1993, and served as a law clerk for Judge Gerald Tjoflat of the United States Court of Appeals for the Eleventh Circuit and Justices Byron White and Sandra Day O'Connor of the Supreme Court of the United States. He joined the firm that is now Wilmer Cutler Pickering Hale and Dorr in 1995, where he was promoted to partner in 2001. He joined the Department of Justice in 2009, where he has served with distinction, including (in an acting capacity) in the position for which he has been nominated. His legal experience spans internal investigations, defense of clients in criminal, civil and administrative investigations, trial-level litigation, and appeals.

Mr. Delery has earned our trust, confidence and respect. As former government officials from across the political spectrum, we have the utmost confidence that he will continue to serve (as he has since 2009) as the model government lawyer—committed above all to serving both principles of justice and the interests of the United States.

For all of these reasons we strongly urge the Senate to confirm Mr. Delery to serve as the Assistant Attorney General for the Civil Division.

Sincerely,

Jamie S. Gorelick
Deputy Attorney General
Department of Justice
1994-1997

David Barron
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice
2009-2010

Brian A. Benckowski
Chief of Staff, Office of the Attorney General
Department of Justice
2008-2009

Reginald J. Brown
Former Special Assistant to the President
and Associate White House Counsel
2003-2005

Jonathan G. Cedarbaum
Acting Assistant Attorney General
Office of Legal Counsel
Department of Justice
2010-2011

Paul D. Clement
Solicitor General
Department of Justice
2005-2008

Viet D. Dinh
Assistant Attorney General
Office of Legal Policy
Department of Justice
2001-2003

John P. Elwood
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice
2005-2009

Mark Filip
Deputy Attorney General
Department of Justice
2008-2009

Joseph R. Guerra
Principal Deputy Associate Attorney General
Department of Justice
2009-2010

Jeh Charles Johnson
General Counsel
Department of Defense
2009-2012

David S. Kris
Assistant Attorney General
National Security Division
Department of Justice
2009-2011

Joan Larsen
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice
2002-2003

William R. McLucas
Director, Division of Enforcement
Securities and Exchange Commission
1989-1998

Daniel Meron
General Counsel
Department of Health and Human Services
2007-2007

Randolph D. Moss
Assistant Attorney General
Office of Legal Counsel
Department of Justice
2000-2001

Carl J. Nichols
Principal Deputy Associate Attorney General
Department of Justice
2008-2009

Thomas J. Perrelli
Associate Attorney General
Department of Justice
2009-2012

Jeannie S. Rhee
Deputy Assistant Attorney General
Office of Legal Counsel
Department of Justice
2009-2011

Howard M. Shapiro
General Counsel
Federal Bureau of Investigation
1993-1997

Theodore W. Ullyot
Chief of Staff, Office of the Attorney General
Department of Justice
2005

Seth P. Waxman
Solicitor General
Department of Justice
1997-2001

Robert N. Weiner
Associate Deputy Attorney General
Department of Justice
2010-2012

TRISTRAM J. COFFIN
UNITED STATES ATTORNEY

January 22, 2013

The Honorable Senator Patrick J. Leahy
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Leahy,

I wanted to take a moment and write to you primarily for two purposes.

First, I would like to congratulate you on your continued chairmanship of the Judiciary Committee. I am so glad that you decided to continue leading that crucial committee. I wish you the best of fortune as you address the litany of important issues facing our judicial system in the upcoming Congress. The constitutional and policy issues the Judiciary Committee will confront in the upcoming session are among the most important we face as a nation. I am glad you will continue to lead the Committee as it moves forward on these pivotal matters.

Second, I want to commend to you again B. Todd Jones, who has been nominated to be Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. Todd is a good friend whom I know well from our days in U.S. Attorney orientation together and through his leadership as head of the Attorney General's Advisory Committee. He is an outstanding leader and a person of the highest integrity. I know you will do all in your power to secure him a fair and speedy hearing and confirmation. Thank you for that. He is a special person.

P.O. BOX 570, BURLINGTON, VERMONT 05402

Finally, thank you again for the great trust you have shown in me. I appreciate it greatly.

Sincerely,

TRJC

Tristram J. Coffin

P.O. BOX 570, BURLINGTON, VT 05402

International Association of Chiefs of Police

515 North Washington Street
Alexandria, VA 22314-2357
Phone: 703-836-6767, 1-800-THE IACP
Fax: 703-836-4543
Web: www.theiacp.org

President
Craig T. Steckler
Chief of Police
Fremont Police Department
Fremont, CA

Immediate Past President
Walter A. McNeil
Chief of Police
Quincy Police Department
Quincy, Florida

First Vice President
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Director
Woodway Public Safety Department
Woodway, TX

Second Vice President
Richard Beary
Chief of Police
University of Central Florida
Orlando, FL

Third Vice President
Ronal W. Serpas
Superintendent of Police
New Orleans Police Department
New Orleans, LA

Fourth Vice President
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Chief of Police
Wellesley Police Department
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Tualatin Police Department
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Chief, Community Policing & Human Rights Center
Policia Militar do Distrito Federal
Brasilia, Brazil

Vice President-Treasurer
Dwight Henninger
Chief of Police
Vail Police Department
Vail, CO

General Chair Division of State Associations of Chiefs of Police
Peter Carnes
Chief of Police
Stonehill College Police & Safety
Easton, MA

General Chair Division of State and Provincial Police
Colonel Michael D. Edmonson
Deputy Secretary, Public Safety Services
Superintendent, Louisiana State Police
Baton Rouge, LA

Parliamentarian
Ellen Hanson (retired)
Chief of Police
Lenexa Police Department
Lenexa, KS

Executive Director
Bart R. Johnson
Alexandria, VA

Deputy Executive Director Chief of Staff
James W. McMahon
Alexandria, VA

January 29, 2013

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

Dear Senator Leahy:

On behalf of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of B. Todd Jones to serve as the next Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Throughout his career, Mr. Jones has demonstrated an unyielding commitment to protecting public safety. His years of experience as a U.S. Attorney have provided him the opportunity to work with law enforcement agencies and he has gained a unique understanding of the challenges and the complexities agencies face in combating firearms violence, gang crime, and other threats to our communities.

The IACP believes that Mr. Jones' years of experience, his expertise, and his record of success are evidence of his outstanding qualifications to serve as the next ATF Director. The IACP urges the Judiciary Committee and the members of the United States Senate to confirm Mr. Jones' nomination in a timely fashion.

Thank you for your attention to this matter. Please let me know how the IACP may be of further assistance in this vitally important process.

Sincerely,

Chief Craig Steckler
President

Serving the Leaders of Today, Developing the Leaders of Tomorrow

February 4, 2013

The Honorable Amy Klobuchar
United States Senator
302 Hart Senate Office Building
Washington, DC 20510
Fax: 202-228-2186

The Honorable Patrick Leahy
Chairman, Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202-224-9516

The Honorable Al Franken
United States Senator
309 Hart Senate Office Building
Washington, DC 20510
Fax: 202-224-0044

The Honorable Chuck Grassley
Ranking Member, Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
Fax: 202-224-9102

Sent Via Fax

Re: Nomination of B. Todd Jones and Response to Letter of Donald Oswald

Dear Mr. Chairman and Members of the Committee:

Over the 32 years of my career as a federal prosecutor in the Districts of Minnesota, Northern Indiana and the Virgin Islands, I worked for nine United States Attorneys.

Two of them, Tom Heffelfinger and Todd Jones, I worked for twice. I have worked for many Acting and Interim U.S. Attorneys. I served as an Acting and Interim U.S. Attorney. I also served for the Department of Justice as an evaluator of the performance of U.S. Attorney's Offices around the United States.

I know a good U.S. Attorney when I see one. Todd Jones has been an outstanding and highly effective U.S. Attorney.

If confirmed as the Director of the ATF he will continue his exemplary and dedicated service to the United States.

Todd, in each of his tenures as U.S. Attorney, demonstrated the highest level of leadership. His decisions were always based on what is the best method of accomplishing the mission of the United States Attorney's Office. As U.S. Attorney he recognized that effective law enforcement as a goal required a close working relationship with all levels of federal, state and local law enforcement and prosecutors.

He also recognized that communication with the various communities within Minnesota was an essential element of any enforcement action and he established methods by which prosecutors and law enforcement could disseminate information to

those communities impacted by crime. In doing so, he smartly leveraged the federal resources through strong partnerships with local prosecutors, law enforcement, and the community.

I observed Todd make decisions about cases and personnel which were complicated and difficult. His decision making process always included the input from the interested parties. He always wanted open expression of views and he received critical evaluation of options with an open mind. In the final analysis as the U.S. Attorney, the decision and responsibility for those decisions were his. In my view, he always made sound and ethical decisions after careful consideration of the various options. Even when I had disagreed with Todd on an issue, his acceptance of the disagreement was professional and courteous. His reasons for his decisions were well formulated and demonstrated a clear understanding of the issues. Mr. Oswald's recollections and description, which arise from just one year in Minneapolis, are completely inconsistent with my observations of Todd's performance over the 20+ years that I have known him.

Politics never entered his decision making. Never. The accusation by Mr. Oswald that he was politically motivated is outlandish, contrary to all my experiences with Todd, and in my opinion is absolutely without basis in fact and is not true.

Annual prosecution statistics served as a management tool during my 10 years as Chief of the Criminal Division in Minnesota and Todd's years, to ensure that workloads were carefully managed so that proper time and attention was devoted to each case. To each defendant. Never, absolutely never, did those statistics drive the decisions made by Todd that a particular case or defendant should be prosecuted. Generation of numbers is not a proper basis for prosecutorial decision making. Todd's decisions were always fact driven. Goal driven.

Justice driven by statistics is not justice.

High federal prosecution numbers does not mean a good job is being done. Lower numbers does not mean a poor job is being done. Taking the easy stats from the low-hanging fruit may look good to Mr. Oswald, however, it is not the way to effectively combat crime on the federal level. Mr. Oswald recites statistics as if recording high numbers of defendants demonstrates that effective work is being done, and he does so without consideration of whether or not any particular case or defendant, on the facts, is one that should be prosecuted with limited prosecutor and court resources.

Addressing the difficult cases, the complex cases with substantial community impact — gun smuggling, drug cartels, financial fraud, child pronography, terrorism — that require substantial resources and extremely hard work is a primary objective of federal prosecutions. Prosecuting cases in federal court that state and local prosecutors could otherwise prosecute more swiftly and with equal success is typically not a smart use of

taxpayer dollars, the federal court system, the unique capabilities of federal agents, or the special expertise of federal prosecutors.

Is the mere fact that a case is deferred to local prosecution rather than the U.S. Attorney's Office a demonstration of a lack of commitment to gun and drug prosecutions? It is not. Those local prosecutors are not potted palms, nor are they a second prize in the field of prosecution. Indeed, they and their staffs are on the front line of prosecution efforts — alongside federal prosecutors.

Perhaps the best way to demonstrate what has been accomplished by the U.S. Attorney's Office in Minnesota under Todd Jones' management is to review the published reports of the cases prosecuted by his legal teams. Petters. Hecker. Beckman. Al-Shabaab. In addition to these high profile cases, the office has prosecuted a wide breadth of crime and the complexity is significant and impressive.

Financial crime cases are time and resource intensive involving hundreds and even thousands of hours of work to gather the evidence, bring to indictment, prepare the case for trial, and if necessary try the cases over many weeks. Often that work occupies an Assistant United States Attorney or two, full time for more than a year. The harm that financial crimes cause to the community is widespread impacting various institutions, businesses, and their employees. It is also devastating to the individual victims and their families who are financially ruined. Many times the victims of financial crimes are senior citizens who have their retirement money stolen. They will never recover from the loss.

Addressing these financial crimes requires that sufficient resources within the U.S. Attorney's Office be allocated to them and that often means those resources are taken away from other types of crimes.

Mr. Oswald misunderstands the statistics he cites. His analysis is simplistic to the point of being wrong. The aphorism that for every problem there is a solution which is simple, clean and wrong, applies to Mr. Oswald's understanding of how to address prosecution decisions. Indeed, fewer resources devoted to a particular type of crime will reduce the numbers of those cases. But, higher numbers of prosecutions is a simple, but wrong solution. Declinations of cases is not the only reason that the number of prosecutions may decrease and his assumption is therefore incorrect.

For example, Mr. Oswald's chart on Counter-Terrorism shows 15 defendants prosecuted in FY09; 13 in FY10; 2 in FY11 and 2 in FY12. He concludes that the U.S. Attorney must not be devoting sufficient resources to those crimes. It is a false analysis and incorrect conclusion based on incomplete information.

First, I think we would all agree the high number of terrorist prosecuted in FY09 and FY10 means that there were way to many terrorist in Minnesota. The fact that only two were prosecuted in FY11 and in FY12 each may be nothing but good news that many terrorists had been prosecuted in FY09 and FY10 and taken off the street and there were fewer of them in FY11 and FY12. Would be terrorists may have been detered, left town or were not detected or presented for prosecution. The facts relied upon by Mr. Oswald are simply incomplete.

As an example of his position regarding the terrorist prosecutions, Mr. Oswald broached "Operation Wrong Reich" in his missive and the decision made with regard to a specific prosecution target in that matter. Putting aside the propriety of publically discussing specific matters learned during federal employment, especially the guilt or innocence of a person not charged with an offense, he seems to imply that for FY12 that there should have been three defendants prosecuted —not two.

The devil is always in the details. Does declining a single prosecution evidence a lack of commitment to prosecution of gun crimes or terrorism? It does not. For all anyone knows that case deserved to be declined on its facts or on the resources it would take to prosecute it. Mr. Oswald infers this subject was guilty of a federal crime. Without knowing the evidence no one else should do so. Every prosecution has to be judged on its individual merits and statistics alone of the number of defendants presented, declined, prosecuted, tried or pled tell nothing of the quality of the cases. Prosecuting defendants just to increase the statistics is not proper. The two main defendants in "Operation Wrong Reich" were prosecuted and the federal interests in that regard were vindicated.

Gun violence is becoming an ever greater issue across this country, as was evidenced by your recent hearings on the subject. A strong leader at ATF is essential to the success of that agency —if success is the desired outcome.

Todd is all about management. As a leader he makes the goals and objectives crystal clear. He makes certain to consider the views of his staff and stakeholder groups in formulating those goals and objectives. He thinks strategically and operationally about how those goals can be achieved. He has a persistent habit of following up relentlessly to ensure that milestones in the process are being met and, in the end, the goals and objectives are realized. I have worked for many good leaders and Todd is excellent.

Because of all these traits I really liked working for Todd. I knew what was expected of me and my associates in the U.S. Attorney's Office. There was always a well defined path to achieving the desired outcome.

You and other members of the Senate Judiciary Committee are considering Todd's nomination as Director of the ATF

I urge you and the committee members to reject Mr. Oswald's and all similar unfounded criticisms and to approve Todd for that position. He will do an excellent job.

Sincerely,

Paul A. Murphy

Paul Murphy
Retired Assistant U.S. Attorney
[redacted]
St. Paul, Minnesota

ROBERT M. SMALL
[redacted]

February 5, 2013

SENT VIA FACSIMILIE (202) 224-3479

Honorable Patrick J. Leahy
United States Senator
Chairman, Senate Judiciary Committee
437 Russell Senate Building
Washington, DC 20510

Re: B. Todd Jones,
Nominee for Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Senator Leahy:

Having read the letter to you from Mr. Donald Oswald that was printed in our local newspapers, I feel the need to provide you information about Mr. Jones from someone who has known him far longer than one year.

Before being appointed to the State Court Bench in February 2006, I was an Assistant United States Attorney (AUSA) in the District of Minnesota for twenty-five years. I was proud to have worked under six United States Attorneys during my tenure. I worked in both the Criminal and Civil Divisions within the office and in supervisory and non-supervisory positions.

I was Mr. Jones' First Assistant United States Attorney from 1998 to January 2001. I had the opportunity to observe Mr. Jones' leadership abilities first hand and on a daily basis. He demonstrated a fair minded approach to every matter that crossed his desk and he had an incredible focus on assuring that justice was done in each and every situation. When he became the United States Attorney in 1998, he was aware of some tensions that existed between federal and local prosecution and law enforcement agencies about prosecution priorities. He had a clear vision of what needed to be done to maximize federal, state, and local cooperation and make the best of a situation in which resources were limited. He spent significant time and energy to accomplish this goal.

It was my experience that when prosecution priorities were established by the Department of Justice, it was not unusual for the federal and local law enforcement agencies to voice some level of disagreement with the Department's priorities. However, to Mr. Jones, it mattered not in which jurisdiction criminals were prosecuted, only that they were prosecuted in the most efficient manner. Indeed, the two cases cited by Mr. Oswald were prosecuted by very capable prosecutors in the Hennepin county Attorney's Office and resulted in convictions and substantial sentences. This allowed more resources in the United States Attorney's Office to be allocated to significant and complex economic crime prosecutions and other cases higher on the priority list.

My first hand assessment of Mr. Jones' leadership skills and abilities would be consistent with that of Ralph Boelter, the special agent in charge of the FBI's Minneapolis office from 2007 through 2011, who is quoted in the local media as saying that he didn't experience anything like the behavior Mr. Oswald described. He said when he had an issue, Jones was "attentive to it, he was sensitive to it and he responded to it."

Please take this into consideration as you and your committee explore the potential confirmation of an outstanding public servant, B. Todd Jones.

Sincerely,

Robert M. Small

Congress of the United States
Washington, DC 20515

February 6, 2013

~~RECEIVED FEB 06 2013~~

The Honorable Patrick Leahy
Chairman, U.S. Senate Judiciary Committee
437 Russell Senate Building
United States Senate
Washington, DC 20510

RECEIVED FEB 15 2013

Re: Nomination of B. Todd Jones as Bureau of Alcohol, Tobacco and Firearms Director

Dear Chairman Leahy:

We write to express our enthusiastic support for President Obama's nomination of B. Todd Jones to serve as Director of the Bureau of Alcohol, Tobacco and Firearms (ATF). Mr. Jones has served the American people with distinction for the past 30 years in a variety of capacities.

For the last two years, Mr. Jones has been Acting Director for the ATF. During this time, he has effectively and diligently overseen the agency's wide ranging law enforcement efforts to protect the American public against illegal use of guns, and the illegal diversion of alcohol, tobacco and explosives.

Mr. Jones has served simultaneously as United States Attorney for the District of Minnesota, where he has been a persistent, determined leader. As U.S. Attorney, Mr. Jones has been a staunch defender of the rule of law and has worked tirelessly with federal, state, county and local officials to keep communities safe by prosecuting violent and organized criminals.

The Senate has not confirmed an ATF director since the position was changed to require Senate confirmation in 2006. This is a disservice to the agency and its important work.

The American public is focused on the need for strong leadership to protect against the devastating consequences of illegal guns and illegal trafficking of firearms. We support the President's efforts to take sensible steps to reduce gun violence, including the appointment and confirmation of an ATF director.

Mr. Jones has demonstrated sound judgment and effective leadership, and would be a well-qualified Director of the Bureau of Alcohol, Tobacco and Firearms. We urge his swift confirmation.

Sincerely,

Marcia L. Fudge

Keith Ellison

PRINTED ON RECYCLED PAPER

B. Todd Jones Letter page 3

Wm Lacy Clay

Eleanor Holmes Norton

February 6, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman:

I am writing in strong support of B. Todd Jones to lead the Bureau of Alcohol, Tobacco and Firearms. I was an Assistant United States Attorney in the District of Minnesota from 1984 through 2006, serving both as a line AUSA prosecuting cases and as a management team member as Civil Chief. I served under five different United States Attorneys, and I understand what good leadership looks like. Since my government service, I have worked in the private sector, as General Counsel of a large division at UnitedHealth Group, and currently Deputy General Counsel and Vice President of Litigation and Investigations at Medtronic, Inc. In both those capacities, I have also been exposed to a whole range of leadership styles and capacities.

I can say without hesitation that Todd is one of the brightest and most strategic leaders that I have been privileged to work with. He understands the law, he understands strategic priorities and he understands people. You cannot succeed as a leader with only one of those qualities. Todd has all three. And because he leads with courage, he is willing and able to make difficult, and occasionally unpopular, decisions. That kind of courage and integrity necessarily exposes a leader to criticism. I am not at all surprised that he is the focus of some criticism as he is nominated for this critical leadership position. A leader who has sought only to keep people happy, and who has not stood firm on difficult issues, may not receive any criticism. That, to me, is not an indicator of a good leader. As an AUSA, I could count on Todd to evaluate all sides of an issue, to not prejudge the outcome, to listen to all stakeholders, to consult with trusted colleagues, and then make the decisions a leader is required to make. That kind of leadership will be required for the ATF, and Todd is the best candidate to provide it.

I learned significant lessons under Todd's leadership that I continue to use every day. I saw a leader who was thoughtful, open-minded, and direct. He cared about the impact of his decisions, but did not hesitate when tough decisions were required. When my leadership gets

tested. I can think back on the tough issues we faced and how Todd demonstrated accountability with compassion. As a former federal servant, I have deep loyalty and concern for how the federal agencies I served are managed. If I were a member of the ATF staff, I would welcome Todd as a leader and feel confident that the agency was in good hands.

Respectfully,

Joan D. Humes

Joan D. Humes
[redacted]

RECEIVED FEB 07 2013

ATF Association

525 SW 5th Street, Suite A • Des Moines, IA 50309
Phone: 515-282-8192 • Fax: 515-282-9117
Email: attfa@atfassociation.org • Web: www.atfassociation.org

January 29, 2013

Honorable Patrick J. Leahy
United States Senate
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Leahy:

As President of the ATF Association I write in support of the President's recommendation for a prompt Senate hearing and confirmation of Acting Director B. Todd Jones as permanent Director for the Bureau.

As stated by President Obama, and certainly a high priority of our Association members, the Bureau has been without a permanent Director for over six years. Unlike any other Federal law enforcement agency, ATF enforces laws and regulates industries that touch on some of the most sensitive and emotionally charged issues in our nation. ATF is recognized as the primary federal law enforcement agency focusing on reducing violent crime involving firearms and explosives. With these critical responsibilities the vacuum caused by a lack of permanent leadership distorts the clarity of the Bureau's mission and diminishes the accountability of its leaders.

ATF employees exemplify the highest professional standards and their dedication to protect and serve the citizens of this country is without question. They deserve, and above all the American people deserve, to have ATF led by a permanent Director who will ensure that clarity of mission and be accountable to the constituency they serve.

Respectfully,

Steven Pirotte
President ATF Association

About the ATF Association: The ATF Association represents retired and current professional staff of ATF. Its members use their skills and abilities to support the missions of ATF, care for members and families in difficult times and endow a foundation for charitable and educational needs.

February 9th, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman,

I am respectfully composing this letter in order to request that you confirm B Todd Jones to be the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

I would first like to tell a little about myself. I was employed as an ATF Special Agent for just shy of 25 years with my final 4 years being the Resident Agent in Charge of the ATF West Palm Beach Field Office. I retired in December of 2011. I was a police officer before my employment with ATF for 7 years and I currently am employed as a Detective in the Violent Crime Division of the Palm Beach County Sheriff's Office in West Palm Beach Florida. During my tenure at ATF I also instructed and developed courses for ATF in the areas of firearms identification, firearms imports and firearms trafficking. I also am a firearms collector and firearms instructor. I have been the case agent of all types of investigations from the career offenders in possession of firearms to large scale domestic and international firearms trafficking investigations.

In March 2011 I was asked to go the ATF Phoenix Field Division to assist in the evaluation and restructuring of that Division due to the Fast and Furious Investigation. Frankly I was shocked at what I saw happened in that investigation but I was not surprised. This was the Perfect Storm: out of control firearms trafficking to Mexican Drug Cartels, failed ATF leadership, lack of training and allowing the U.S. Attorney's Office to make both tactical decisions as well as overreaching investigative decisions. The ATF failure of this operation can be traced to the lack of a true leader which causes any agency to lose focus. In my time at ATF I have witnessed a Director appointed for his political ties who embarrassed ATF and a great candidate for Director nominated but never confirmed along with lack luster nominees sent to ATF just to have someone there. So where is the: leadership, direction and focus ?

I have met B Todd Jones and found him to be a real genuine penitent man who is a true leader. He did not ask to be the Acting Director of ATF but it is in his DNA to do the job to the best of his ability. This is clearly shown through his choice of Deputy Director Thomas Brandon whom I worked with closely in Phoenix. Mr. Jones already has made many changes one of which is training and the development of training. I still work closely with ATF and have spoken to many agents who also praise B Todd Jones and agree with me that ATF needs a Director and that Director should be Acting Director B Todd Jones.

Please feel free to contact me at my email address: BarboriniS@pbso.org or on my cell phone 561 644-3715.

Sincerely,

Stephen J Barborini
Detective PBSO/Ret. ATF RAC

RECEIVED FEB 13 2013

FDLE

Florida Department of Law Enforcement

Gerald M. Bailey
Commissioner

Office of Executive Director
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-7001
www.fdle.state.fl.us

Rick Scott, *Governor*
Pam Bondi, *Attorney General*
Jeff Atwater, *Chief Financial Officer*
Adam Putnam, *Commissioner of Agriculture*

February 12, 2013

Honorable Patrick Leahy
United States Senate
437 Russell Senate Building
Washington, DC 20510

Dear Senator Leahy:

I am writing in support of the confirmation of Acting Director B. Todd Jones as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. As the Commissioner of the Department of Law Enforcement, a statewide agency responsible for investigative and forensic services across Florida, I recognize the importance of strong partnerships between federal, state and local law enforcement agencies. Since his appointment as Acting Director in September 2011, Director Jones has been an effective leader and strong partner on many of the violent crime issues confronting our communities. Specifically, in 2012, under Director Jones' leadership, ATF placed highly experienced leaders in key positions who have enhanced working relationships with Florida law enforcement.

Our nation's violent crime issues mandate the creation of strong multi-agency partnerships to maximize intelligence-driven initiatives, effective communication and the use of technology. A critical tool in combating violent crime is the National Integrated Ballistic Information Network (NIBIN). Director Jones has been instrumental in the implementation of this technology in our crime laboratories and NIBIN has proven to be invaluable in the identification and linkage of gun-related data to crime scenes.

Having served as the Commissioner of FDLE for over six years, I personally know the value of having a constant, reliable leader directing a law enforcement agency. Based on my own experience, I believe that ATF will also benefit from the steady leadership of a confirmed Director. I respectfully request the Senate Judiciary Committee confirm Mr. Jones as the Director of the United States Bureau of Alcohol, Tobacco, Firearms and Explosives.

Sincerely,

Gerald M. Bailey
Commissioner

GMB/kst

OFFICE OF DAKOTA COUNTY ATTORNEY
JAMES C. BACKSTROM
COUNTY ATTORNEY

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E-mail: attorney@co.dakota.mn.us

February 13, 2013

THE HONORABLE PATRICK LEAHY
CHAIRMAN
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
224 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

Re: Nomination of B. Todd Jones as ATF Director

Dear Senator Leahy:

I have had the privilege of serving as the Dakota County Attorney since 1987 and am the longest serving County Attorney in the metropolitan area of the Twin Cities. I also have served as a member of the Board of Directors of the National District Attorneys Association since 1987 and the Minnesota County Attorneys Association since 1988. In my role as the County Attorney in our state's 3rd largest county, I have worked closely with the United States Attorney for the District of Minnesota.

I am writing to provide my strong recommendation for the confirmation of B. Todd Jones as the next Director of the United States Bureau of Alcohol Tobacco, Firearms and Explosives (commonly referred to as ATF). I have had the privilege of working with Todd Jones throughout both of his terms as the United States Attorney for the District of Minnesota. I can tell you without hesitation that Todd Jones has been an outstanding United States Attorney who has developed a close working relationship not only with me, but with other County Attorneys throughout Minnesota. He has worked hard to forge a partnership with our state's prosecutors which has always been greatly appreciated.

Todd Jones has always been available to meet and discuss items concerning the prosecution of crime with me and my colleagues. He has, in fact, gone out of his way to communicate with Minnesota's County Attorneys by often attending the Board of Directors meetings of the Minnesota County Attorneys Association and the Minnesota Urban County Attorneys Association (the latter organization is comprised of County Attorneys in our state's largest jurisdictions). Whenever he attends one of these meetings, he provides us with updates regarding the work and priorities of his office. He is always open to questions and considers our input when offered.

Beyond these interactions, Todd Jones has spoken at training sessions for Minnesota's County Attorneys on several occasions, most recently at a training provided to the senior managers of Minnesota's largest County Attorney's offices. He is a great speaker who is always well prepared and well received. On another occasion during his first tenure as our U.S. Attorney, Todd Jones actually came to Dakota County to speak to all of the attorneys working in my office. I mention this to reflect upon Todd's willingness to share with his state colleagues his insight and knowledge despite the many obligations of his job in serving as our state's leading federal litigator.

Throughout his tenure as United States Attorney, Todd Jones has managed his office with professionalism and integrity. In my opinion, his leadership and management skills are superb. He is always upfront and open, acknowledging as he must when he is not at liberty to discuss certain matters due to national security or privacy concerns, but he has never been evasive or misleading in any of my interactions with him. To the contrary, what you see with Todd Jones is what you get – and that is a man of honor and integrity who has served his nation and state with impeccable skills, wisdom and devotion throughout his career, both in the military and as the U.S. Attorney for the District of Minnesota.

I am grateful for the opportunity that I have had to work with Todd Jones as the United States Attorney for the District of Minnesota and I do not believe that you can find anyone more qualified to carry out the important duties of leading the ATF. Thank you for considering my recommendation for B. Todd Jones. Please feel free to contact me if you have any additional questions.

Very truly yours,

James C. Backstrom

JAMES C. BACKSTROM
DAKOTA COUNTY ATTORNEY

JCB:jlr

cc: The Honorable Chuck Grassley
The Honorable Amy Klobuchar
The Honorable Al Franken

RECEIVED FEB 13 2013

2-13-2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman:

"Public safety and law enforcement should be above politics," then-Gov. Tim Pawlenty once told me. "They're too important to the citizens of Minnesota."

And, I believe, public safety and law enforcement are just as important to the people of this great land of ours. They should be above politics on a national level.

As a special agent and administrator with the Minnesota Bureau of Criminal Apprehension for more than 30 years, and as Gov. Pawlenty's commissioner of the Department of Public Safety for seven years, I have seen a lot of US Attorneys come and go. And, in my view, Todd Jones has been one of the two or three best US Attorneys I have ever worked with here in Minnesota. Period.

I first met Todd in the early 1990s when he was a line prosecutor for US Attorney Tom Heffelfinger. I was a narcotics investigator for BCA for a very long time. Todd was one of those rare young prosecutors who was willing to learn from seasoned agents. Many of us had years of experience running street-level investigations, collecting evidence and testifying in federal court.

Todd chose to solicit our views and advice to ensure he brought the strongest cases possible to federal court — and put bad guys away. In fact, as Todd's confidence and legal sophistication grew, BCA agents actively sought out his availability to work on cases together.

Investigators at BCA, the city police departments and county sheriffs offices had it good during the Clinton Administration when Todd was US Attorney. Violent crime involving gangs of all stripes was a major focus of federal prosecutions

back then. We worked with the AUSAs in Todd's office to win a host of successful federal firearms, narcotics, trafficking and conspiracy cases.

Some street cops may well have expected those days to continue when Todd began his second stint as US Attorney in 2009. But the world had changed, as had Todd's priorities as federal prosecutor.

With limited resources in his office, Todd strategically chose to collaborate more intensely with county prosecutors. They would tackle more narcotics cases the feds once pursued, freeing up AUSAs to prosecute the most violent of violent offenders — the worst of the worst — as well as incredibly time-consuming cases involving white collar crime, financial fraud and terrorism. I can't argue with those priorities.

As acting director at ATF, Todd is working hard to right a troubled ship. Todd has always done what's right and has stood up alongside those with the high professional standards and commitment to the law.

As someone who has spent a career at the state and local level in the Criminal Justice system, I know that Todd Jones has always been a leader. He knows how to motivate, foster professionalism and promote collaboration. He leads by example. And I believe he is a man of great integrity.

Additionally, I believe Todd has the courage to stand up on the national stage against those who don't want enforcement of existing laws.

I urge the Committee's approval of Todd Jones as the director of ATF.

Sincerely,

Michael Campion

[redacted]

Marriott International, Inc.

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Bethesda, MD 20817

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President and Chief Executive Officer
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301/380-8646 Fax
arne.sorenson@marriott.com

February 13, 2013

VIA FACSIMILIE: 202-224-9516

RECEIVED FEB 13 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman:

Re: Byron "Todd" Jones

I write in reference to the nomination of Byron "Todd" Jones to be Director of the Bureau of Alcohol, Tobacco and Firearms. I have known Todd for over 30 years, since we met as second year law students at the University of Minnesota. At that time, he was passionately interested in the issues confronting our communities, our state and our country and actively engaged in discussions about what could be done to address those issues. He still is.

Perhaps even more remarkable than his interest in the issues of the day is the practical, non-ideological approach he has always brought to those issues. It has always been impossible to describe Todd in superficial terms, or to assume that he will approach an issue with the approach most commonly expected from a party politician. His experience as a soldier, as a prosecutor, and as a practicing lawyer has brought to him a breadth and depth of perspective that is sorely needed in our government leaders.

In addition to this thoughtfulness, Todd understands how to manage an organization. This is often about the most basic things: setting goals, communicating those goals and holding an organization accountable through measurement and repetition to achieving those goals. Todd will bring that capacity for management to the ATF, an organization that is in need of such leadership.

In summary, I recommend Todd highly and encourage you to confirm his appointment as Director of the ATF. Please let me know if there is any further information I can provide to you in connection with your consideration of his nomination.

Sincerely,

Arne M. Sorenson

Mark A. Myhre

[redacted]

February 13, 2013

RECEIVED FEB 1 3 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman:

I do not profess to understand politics, at least the kind that rears its ugly head whenever a willing, highly-qualified American is scrutinized upon being nominated to fill an important post. I hail from a long line of farmers and teachers from the great state of North Dakota. My people are staunch Republicans; they fish and hunt when time allows; they generally root for the Minnesota Twins in the summer months and a college hockey team formerly called the Fighting Sioux in the winter months. More importantly, they objectively commend a person of integrity and honor, even though that person has different political affiliations, if the person is a public servant. I heard my father say, on several occasions during his lifetime, "good people are hard to find and great ones nearly impossible, especially those willing to serve public office." I apologize for a potentially patronizing tone in quoting my father's obvious proposition, but isn't it so true, more today than ever before?

I write today, of my own accord, to share something of my long history with B. Todd Jones – a history spanning nearly 30 years. By almost every measure that society today employs to define people and judge worthy our relationships – heritage, party affiliations (including shades of conservatism/liberalism), social tendencies, religious views, etc. – Todd and I have little in common. We reside on diametrically opposite sides of the political, social and professional spectrum. Yet, I know Todd to be a man of great integrity and honor, a great leader, and willing to serve in public office. And so I write.

To put my comments in perspective, allow me to share three points of departure. First, Todd and I served together as Infantry Officers in the Marine Corps with 1st Battalion, 7th Marines. Second, Todd and I were partners at a boutique litigation firm in Minneapolis. Third, we remain friends of the most worthy kind; over the years, we have gone months without contact, only upon re-entry to rekindle honest and earnest discussion about the state of our country, our beloved Corps, the legal profession, the local church, fallen warriors, our families, etc.

I know Todd as a man of immense leadership skill and self-discipline. Our service as Marine Officers overlapped closely by nearly three years in the mid-1980s when we were stationed together at Camp Pendleton. The quality of a junior military officer, serving in a combat unit during peace time, may be interrogated in three related ways: from the eyes of senior officers in the command, from the eyes of other company-grade officers in the unit, and from the eyes of the enlisted men. I worked closely with Todd at the Marine rifle company level. We were roommates in the BOQ for six months during our unaccompanied tour to Okinawa, Japan in 1984. I know, from close and constant observation, that Todd was a very special Marine officer. He was highly regarded by the senior officers in the Battalion, and was given opportunities involving both command and staff advisor reserved for only the best and the brightest. He was highly trusted by his fellow Lieutenants, the ones who know first-hand who on your flank is to be trusted if bullets begin to reign. And, he was genuinely respected by the enlisted Marines in his Weapons Platoon and, later, in all of Company B, which he eventually commanded. Enlisted Marines are trained to respect their officers, but respecting the man beyond the rank is another matter. Todd earned and held the respect of all enlisted Marines, from PFCs to senior NCOs. All of this is an undisputable sign of great leadership.

In a Marine rifle company, there are no politics, and rank does not equate to automatic regard, trust or respect. These, rather, are earned by judgment, discipline, fairness, and consistent performance. Todd was an exceptional Marine Officer, and I know that the qualities which made him exceptional carried into his professional life after he left the Marines and entered the legal profession.

In 1994, I invited Todd to join Greene Espel, an upstart litigation boutique law firm in Minneapolis. Six lawyers passionate about the law and community had cast together a unique firm in 1993. While interested in growing the firm, we were very cautious about preserving our unique culture. I knew Todd would be a perfect addition to our group. He was an immediate leader in the firm, helping to establish it as a leading litigation firm in Minneapolis – where it remains today. Todd led the firm by example and he shaped many of the principles that still frame the firm over a decade later. He helped manage the firm, even as he won cases, served clients and developed junior lawyers. Eventually, he left a lucrative practice at the firm to serve as a federal prosecutor – not for money or personal gain, but to answer a call to public service.

Finally, I share unabashedly the fact that I consider Todd to be my friend. I do not believe this truth should be apprehended as a cause of bias, but rather one that lends deeper insight into the man. I am proud to know Todd Jones.

I know him not only as an exceptional leader and attorney, but also as a wonderful citizen, husband and father. I believe that everyone who has ever worked with Todd or for him has benefitted from his leadership. I cannot conceive of the motivation of the counter-voices of recent publicity. But, I hope the political process sees past these voices and finds the integrity and honor to confirm this nomination.

I believe each of us holds dear a "short-list" – that very careful cropping of chosen few whom we would call upon *first* when a situation calls for talented, clear-minded, resourceful leadership to address crises or equally when a situation calls simply for integrity, passion and compassion in life's private moments of joy or despair. Todd Jones is on my short-list.

Sincerely,

Mark A. Myhra

Thomas B. Heffelfinger
Attorney DIRECT 612.349.5657
theffelfinger@bestlaw.com

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BEST & FLANAGAN

February 15, 2013

VIA FAX (202-224-9516)

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

Re: **B. Todd Jones, Nominee, Director**
Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Senator Leahy:

I write in strong support for the confirmation of B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). I have known Mr. Jones for almost 25 years and can speak to his character, professionalism and reputation.

I have practiced law in the State of Minnesota for approximately 35 years. My practice has been almost evenly divided between public service and private practice. Currently, I am a partner with the law firm of Best & Flanagan LLP in Minneapolis, practicing in the areas of white collar criminal defense and Native American law. In From September 2001 to February 2006, I was the United States Attorney for the District of Minnesota. I was appointed by President George W. Bush and confirmed by your Committee and the full Senate. During my period of service as United States Attorney, I also chaired the United States Department of Justice Native American Issues Subcommittee. I have had the honor to testify six times before the United States Senate Committee on Indian Affairs either as a government representative or as a private citizen. From September 1991 to April 1993, I also served as the United States Attorney for the District of Minnesota. I was appointed by President George H. W. Bush and was confirmed by your Committee and the full Senate. Prior to Mr. Jones' appointment as United States Attorney for the District of Minnesota in 2008, I was the only United States Attorney in the District of Minnesota who served twice as a result of appointments by two different Presidents. From 1981 to 1988, I was an Assistant United States Attorney in the District of Minnesota, responsible for the prosecution of a wide range of criminal conduct, including white collar crime, guns, drugs and crimes in Indian Country. From 1976 to 1981, I was an Assistant Hennepin County

Attorney, primarily responsible for the prosecution of habitual, violent offenders. When not employed as a state or federal prosecutor, I have been in private practice with three different Minneapolis law firms. A copy of my resume is attached for your consideration.

I first met Mr. Jones in approximately 1989. At that time, as a partner with the law firm of Opperman, Heins & Paquin, I attempted to hire Mr. Jones as an associate in our firm. I was very impressed with him personally and professionally. Unfortunately, he chose to accept a position with another firm. In 1992, as United States Attorney for the District of Minnesota, I hired Mr. Jones to be an Assistant United States Attorney for the District of Minnesota. I sought him out and he was one of my first hires. During the balance of my first term as United States Attorney, Mr. Jones was my subordinate and I found him at all times to be highly competent. I assigned him to the prosecution of drug offenses, especially drug offenses coming out of the Cities of Minneapolis and St. Paul. I further assigned to him to outreach with both communities to attempt to reduce violent crime and drug activity in those communities. He performed admirably in that position. After leaving the United States Attorney position in 1993, I continued my professional association with Mr. Jones, while we were both in private practice and when he returned to the United States Attorney's Office ultimately as United States Attorney under President Clinton. During my second term as United States Attorney from 2001 to 2006, I continued to have ongoing professional dealings with Mr. Jones. Following President Obama's election, I was honored to be appointed by Senator Amy Klobuchar to serve on a screening committee to identify individuals she could consider for nomination to the position of United States Attorney. Mr. Jones was a consensus recommendation to Senator Klobuchar.

My practice, either as a prosecutor or as a defense lawyer, has kept me in constant contact with Minnesota local, state and federal law enforcement officers and prosecutors. As fellow current and former United States Attorneys, Mr. Jones' performance in that position is well known to me. His performance has also been a subject of comment to me by current and former law enforcement and prosecutorial leaders. I can report to you without hesitation that Mr. Jones enjoys a stellar reputation in the State and District of Minnesota as a prosecutor for his professionalism, effectiveness, efficiency, competence and ethical demeanor. This opinion is based not only on my own 25 years of experience with Mr. Jones, but also

on feedback I have received from others who have had direct experience with him as an Assistant United States Attorney and during his two terms as United States Attorney.

I was disheartened, surprised and offended upon reading the letter from former FBI Special Agent in Charge (SAC) Donald Oswald questioning the reputation and competence of Mr. Jones. Mr. Oswald's opinion could not be further from the truth and further from the reality of Mr. Jones' actual reputation in the State and District of Minnesota.

In the areas of guns and drugs, in my experience, Mr. Jones has been an innovative United States Attorney. He has focused on the prosecution of criminal offenders in a manner that is efficient, effective and utilizes the combined resources of state and federal authorities. Efficient and effective prosecution is not all about numbers and does not necessarily mean that that prosecution must be undertaken in federal court. For example, Minnesota state firearms laws are very stringent. Recognizing this, during the late 1990s, then United States Attorney Jones developed a program with the Minnesota County Attorneys wherein each gun case would be reviewed by a representative of the United States Attorney's Office and an appropriate county attorney. The matter would be prosecuted in the jurisdiction in which the defendant would face the greatest penalties. As a result, some cases ended up in state court and some in federal court. The end result was the offender received the maximum sentence available under state or federal law. The goal was not numbers – the goal was effective prosecution. This was an innovative program developed under a Democratic-appointed United States Attorney. When I succeeded Mr. Jones in approximately 2001 as a Republican appointee, I was impressed by the program and continued and attempted to expand upon it.

In the area of drug and gang prosecutions, Minnesota has a long tradition of state/federal task forces. As United States Attorney in the late 1990s and again since 2008, Mr. Jones has continued that long tradition. The result of cross-jurisdictional gang and drug task forces is that some cases are prosecuted in state court, while others are prosecuted in federal court. Both Minnesota state and federal law provide serious sanctions for gang and drug activity and the United States Attorney must make decisions regularly whether to defer to state prosecution as compared to federal prosecution. This is true under Mr. Jones' leadership and was true under my leadership.

Considering the vitriolic nature of Mr. Oswald's criticism, I am not surprised that he failed to report to you that Mr. Jones has undertaken one of the most significant gang and drug prosecutions in the history of the District of Minnesota in regard to the prosecution of members of the Native Mob. This prosecution is the result of an investigation commenced while I was United States Attorney by a tribal, state and federal task force. This long-term investigation has addressed one of the most dangerous organized drug rings in Indian Country nationally, not to mention the State of Minnesota. The trial of this matter is currently taking place in the United States District Court in Minneapolis.

In the State and District of Minnesota, there are very few state and local resources available for the investigation or prosecution of white collar crime. As a result, these labor-intensive investigations must be undertaken federally. In late 2008, Minnesota found itself facing an explosion of significant white collar crimes, including mortgage fraud and Ponzi schemes by individuals like Tom Petters and Trevor Cook. Had the United States Attorney for the District of Minnesota not devoted the appropriate resources to these crimes, they would not have been investigated and prosecuted effectively. As a lawyer on the other side of the table from Mr. Jones' Assistant United States Attorneys, I will report to you that his office has been aggressive in attacking white collar crime in the District of Minnesota. This was an appropriate utilization of his resources. I will also report to you that had such a situation arisen during my tenure as a Republican-appointed United States Attorney for the District of Minnesota, I would have similarly reallocated my resources to address this explosion of fraud.

The United States Attorney for each federal district is the chief federal law enforcement official for that district. As such, that individual is responsible for the implementation of the policies of the President and of the Attorney General. That United States Attorney is also responsible for developing strategies that will meet the unique law enforcement needs of his or her respective district. Mr. Jones has performed that duty responsibly and highly proficiently during two separate terms in office.

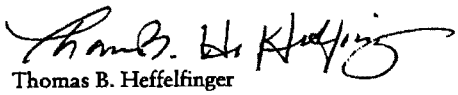
I am disheartened by former SAC Oswald's vitriolic attack on Mr. Jones. Mr. Oswald, whom I note had never served as an SAC before his appointment in Minnesota, overlooks the fact that the United States Attorney, not the FBI SAC or any

other federal agency SAC, is the federal official responsible for establishing law enforcement priorities in his or her district. There is a procedure wherein an SAC may question the priorities of a sitting United States Attorney. That procedure involves consultation with the Director of the FBI and the Deputy Attorney General. Mr. Oswald does not report that he used established procedures while he was in office to raise his concerns. I also note that Mr. Oswald was in the District of Minnesota for only one year before returning to Florida. One year in Minnesota is hardly long enough to learn how to shovel snow, much less long enough to learn what Mr. Jones' reputation is among local, state and federal law enforcement officials.

In conclusion, I strongly recommend that the Senate Judiciary Committee confirm the nomination of Mr. Jones to serve as the Director of ATF. He is highly qualified for that position and will be able to effectively and efficiently direct ATF into the fulfillment of their duties and mission of reducing gun violence in America. Mr. Jones' reputation as an effective, efficient, competent, ethical and professional lawyer and prosecutor will further enhance his ability to effectively lead ATF.

Thank you for your consideration in this matter. If you have any questions, please contact me.

Sincerely,



Thomas B. Heffelfinger

TBH:jmt
Enclosure

cc w/enc. via fax to Committee members:

Hon. Chuck Grassley, Ranking Member
Hon. Chuck Schumer
Hon. Sheldon Whitehouse
Hon. Al Franken
Hon. Richard Blumenthal
Hon. Dianne Feinstein
Hon. Dick Durbin
Hon. Amy Klobuchar
Hon. Christopher CA. Coons
Hon. Mazie Hirono

Hon. Orrin G. Hatch
Hon. Lindsey Graham
Hon. Michael S. Lee
Hon. Jeff Flake
Hon. Jeff Sessions
Hon. John Cornyn
Hon. Ted Cruz

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OFFICE OF THE SAINT LOUIS COUNTY ATTORNEY

MARK S. RUBIN COUNTY ATTORNEY

February 15, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Via Facsimile - (202) 224-9516

RE: Nomination of B. Todd Jones as ATFE Director

Dear Chairman Leahy:

Every once in awhile, we encounter remarkable individuals who have not forgotten the path they have walked and work relentlessly for a more just world. My colleague, B. Todd Jones, is just such a man.

Through my years as a prosecutor, but especially through my current term as the St. Louis County Attorney, I have been very fortunate to work with Todd in addressing some major issues in our part of the State. As a good leader should, Todd took the initiative to contact me and visit when I first took office. He wanted to explore the ways we could better serve the people of Minnesota through collaboration and cooperation.

As a result, our streets are safer because of the number of successful narcotics and firearms investigations and prosecutions. Two of our Assistant St. Louis County Attorneys are even serving as Special Assistant United States Attorneys. Most importantly, B. Todd Jones and his attorneys have led and coordinated a large group of both federal and state law enforcement authorities to address the scourge of synthetic drugs in our communities.

In all of our dealings, Todd has demonstrated that he is a man of high moral character and integrity. His word is his bond and it is a pleasure to be serving with him.

I am honored to offer my highest recommendation of B. Todd Jones to you for the position of the Director of ATFE.

Sincerely,

MARK S. RUBIN
St. Louis County Attorney

MSR:ymk

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OFFICE OF THE SAINT LOUIS COUNTY ATTORNEY

MARK S. RUBIN COUNTY ATTORNEY

February 15, 2013

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Via Facsimile - (202) 224-9102

RE: Nomination of B. Todd Jones as ATFE Director

Dear Senator Grassley:

Every once in awhile, we encounter remarkable individuals who have not forgotten the path they have walked and work relentlessly for a more just world. My colleague, B. Todd Jones, is just such a man.

Through my years as a prosecutor, but especially through my current term as the St. Louis County Attorney, I have been very fortunate to work with Todd in addressing some major issues in our part of the State. As a good leader should, Todd took the initiative to contact me and visit when I first took office. He wanted to explore the ways we could better serve the people of Minnesota through collaboration and cooperation.

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I am honored to offer my highest recommendation of B. Todd Jones to you for the position of the Director of ATFE.

Sincerely,

MARK S. RUBIN
St. Louis County Attorney

MSR:ymk

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February 19, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516 (2 pages)

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman:

I am writing this letter in support of B. Todd Jones for your consideration. I served with B. Todd Jones when he was the Commanding Officer of 4th MP Company, US Marine Corps Reserve Minneapolis, Minnesota.

Mr. Jones took the reins of MP Company at a strategic and somewhat difficult time, shortly after 4th MP Company had returned from service in Desert Storm. As you can imagine, there was a great deal of turnover within the MP Company staff as well as a fair amount of rancor in terms of who would lead MP Company into the future. Mr. Jones navigated this politically dicey situation with great skill and leadership. Very quickly after assuming command, he established a rapport with all who served under him and a direction for MP Company going forward.

I was privileged to be part of his rebuilding of MP Company and served at his pleasure as a platoon commander and the head of the Criminal Investigation Division within MP Company. Mr. Jones' leadership style was consummate in that while he built an incredibly motivated and tight group of Marines with a single purpose, i.e. train to be prepared for the next fight, he did so with fairness and with a leadership style honed from his vast experience.

Mr. Jones was, in my opinion, always professional both in support of Marines and their families at all times, but also in his discipline when faced with difficult leadership positions.

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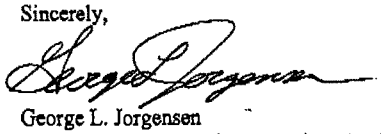
I was, and remain, in awe of Mr. Jones' vast knowledge and experience and his ability to understand and arrive at decisions and action plans in the face of difficult and complex situations.

Having maintained my association with Mr. Jones after my retirement from the Marine Corps, I have continued to be impressed with his ability to function at extremely high levels of organizations in a calming, but yet decisive manner. I can think of no situation in which Mr. Jones will not be a consummate leader. I would passionately suggest that you would look upon him favorably as you consider his nomination for the directorship of ATF.

Sincerely,



George L. Jorgensen
United States Marine Corps, Major – Retired

Office of the Mayor

Mayor Sylvester "Sly" James, Jr.

29th Floor, City Hall
414 East 12th Street
Kansas City, Missouri 64106

(816) 513-3500
Fax: (816) 513-3518

February 20th, 2013

RECEIVED FEB 20 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

Effective government is dependent upon the strengths of those who serve. Byron Todd Jones brings many personal and professional strengths to the service of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). As you know, the ATF serves an extremely important function in protecting the public from a variety of potential threats. Bold, thoughtful agency leadership is an absolute necessity to ensure ATF is being the most effective at protecting public welfare. I wholeheartedly believe Mr. Jones' leadership will be invaluable to the agency in the coming years, particularly as Americans debate and reflect upon the type of society we wish to live in with regard to gun regulation.

The ATF has a wide range of responsibilities, requiring strategic focus, transparency, data-driven results, and unwavering professionalism. These standards are set at the top of any organization, whether it be a government agency, nonprofit entity, or corporation. Furthermore, an agency like ATF has to balance many different goals, interests, and programs. Mr. Jones' experience balancing two separate but related roles in service of country, one as Acting Director of ATF and the other as United States Attorney for the District of Minnesota, make him the perfect role model and leader for this type of organization.

I have known Mr. Jones for 30 years. We are law school classmates and friends. I know his family and I know what type of man he is. He has compiled an impressive legal career and record of public service. Undoubtedly, many individuals will tell you that he is the consummate professional. I am honored to also tell you that his character is as strong as his resume, his dedication to his personal moral values is as strong as his commitment to professional excellence, and his love of country runs as deep as his intellect. I am both honored and proud to be his friend.

The ATF is at a crossroads due largely to the fact that Americans are examining the agency with greater scrutiny now, more than ever, because of the hot button topic of gun control. At a time like this, when political discourse can be inflammatory and unproductive, the ATF needs to remain focused on its critical mission of ensuring public safety. I believe that the agency is more than capable of doing this under the adept direction of Byron Todd Jones. I request that you favorably consider his nomination as permanent Director of the ATF.

Sincerely,

Sylvester "Sly" James
Mayor of Kansas City, Missouri

THE MINNESOTA
COUNTY ATTORNEYS
ASSOCIATION

February 25, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

I am honored to support the nomination of B. Todd Jones as Director for the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Mr. Jones has distinguished himself through a rich legal career, provided strong leadership in our justice system, and demonstrated the highest level of professionalism and integrity.

As the Executive Director for the Minnesota County Attorneys Association, I have had numerous opportunities to work with Mr. Jones during both of his appointments as U.S. Attorney for Minnesota. Despite his demanding schedule, he frequently attends our monthly Association Board of Directors meetings to update our leadership on current and future initiatives of the U.S. Attorney's Office and to solicit our feedback. Mr. Jones has worked closely with many of our offices to coordinate prosecutions, especially felons in possession and drug offenses.

His priority on gangs, drugs, and weapons in Indian Country has been critical to maintaining public safety. Mr. Jones has tirelessly worked closely with our County Attorneys to ensure a smooth transition of the Tribal Law and Order Act. Through his leadership, Minnesota will avoid any confusion or misunderstanding when the Act is implemented. A number of our offices have also partnered with the U.S. Attorney in the Project SAFE Neighborhoods with the goal of reducing gun violence.

Mr. Jones has run an efficient and responsive office. Both MCAA and our individual County Attorneys receive prompt attention to prosecution inquiries, as well as our training needs. I believe these skills will serve him well as Director of the ATF.

As a former Marine and a 30-year Army Reserve JAG officer, I would be remiss in not calling your attention to his service in the United States Marine Corps, where he served

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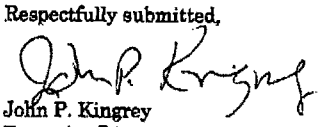
www.mcaa-mn.org

with distinction as trial defense counsel and prosecutor. The skills instilled in Marine Corps training – *Improvise, Adapt and Overcome* – are still evident in Mr. Jones today. Finally, the Marine Corps value of Semper Fidelis – Always Faithful – sums up his dedication and commitment to public service. We would be well served with Mr. Jones as the head of the AFT. He would make an outstanding Director. Thank you.

Respectfully submitted,



John P. Kingrey
Executive Director

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FOUNDED 1866

February 25, 2013

Sent Via Fax – 202-224-9516

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Nomination of B. Todd Jones as ATF Director**

Dear Chairman Leahy:

I am writing to support the nomination of B. Todd Jones as Director of ATF. I worked with Mr. Jones when he was the U.S. Attorney for Minnesota, and I served as U.S. Attorney in Chicago. Mr. Jones was a leader among the 93 U.S. Attorneys. He served on the Attorney General's Advisory Committee. He cares deeply about law enforcement issues.

Mr. Jones is very intelligent, but more importantly he has common sense. Under Mr. Jones, ATF will use its resources wisely. You need not fear that ATF will engage in any reckless programs under his watch.

We would be very fortunate to have Mr. Jones running ATF. Please call if you have any questions.

Very truly yours,

Scott R. Lassar

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Founded in 1852
by Sidney Davy Miller

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February 27, 2013

VIA FACSIMILE (202) 224-9516

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

I am writing in support of President Obama's nomination of B. Todd Jones to serve as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

I have known Todd Jones for fifteen years. I served as United States Attorney for the Eastern District of Michigan from 1993 until 2001, overlapping Todd's first stint as United States Attorney for the District of Minnesota. During that period, we faced many of the same issues of violent crime, particularly gun violence, that currently impact so many of our communities.

There were many opportunities for United States Attorneys to meet, collaborate and consult on the difficult public safety issues we faced in our respective districts. Todd was a leader among the 93 United States Attorneys based on his demonstrated diligence in attacking violent crime by focusing on armed violent offenders, career criminals, gun traffickers and gangs. The respect that I and our colleagues had for Todd was based not only on his outstanding experience as a line prosecutor and U.S. Attorney, but also the respect we had for his integrity, character and fairness. It was truly an honor to serve with him.

B. Todd Jones, while being respectful of the Second Amendment, will provide seasoned, reasoned direction to ATF and firm and aggressive enforcement against violent gun offenders. I wholeheartedly support Todd's nomination as Director of ATF.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: _____
Saul A. Green

SAG/slb

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KEITH ELLISON
5TH DISTRICT, MINNESOTA

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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

March 1, 2013

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

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

Dear Chairman Leahy and Senator Grassley:

We write to express our enthusiastic support for the nomination of Mr. B. Todd Jones to serve as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Mr. Jones is an outstanding candidate who has served Minnesotans and the American people with distinction throughout his career.

Mr. Jones has provided effective leadership to renew professionalism at ATF headquarters and field offices during his tenure as Acting Director. We believe Mr. Jones' constructive efforts should be sustained at ATF, especially as Congress works to prevent gun violence. Mr. Jones will provide leadership on this issue that will make our communities safer. Unfortunately, since 2006 they have been without a permanent director. We strongly support the Senate moving forward to ensure strong leadership and accountability within this important law enforcement agency.

Many of us have known Mr. Jones for years and we can attest to Mr. Jones' selfless commitment to our nation and excellence in public service. As a Marine, U.S. Attorney for Minnesota, and now Acting Director of the ATF, he has consistently proven himself an outstanding leader who is widely respected.

After graduating from the University of Minnesota Law School, Mr. Jones earned a commission in the U.S. Marine Corps. Rather than joining the JAG, he chose the infantry, serving as a weapons platoon commander and rifle company commander in Korea and Okinawa before returning to Camp Pendleton to be a judge advocate.

He later served under U.S. Attorney Tom Heffelfinger, an appointee of President George H.W. Bush. As Assistant U.S. Attorney in the District of Minnesota, Mr. Jones strengthened the prosecution team and worked with local and federal investigators to put drug dealers and money launderers behind bars. In 1998 President Clinton nominated him to serve as Minnesota's U.S. Attorney. Following Senate confirmation, he served in that role until January 2001.

President Obama appointed Mr. Jones as the U.S. Attorney for Minnesota in 2009. In this position he has strengthened ties with county attorneys and law enforcement officials throughout the state so they could deploy resources wisely. This collaboration has permitted the prosecution of violent offenders and tough cases involving terrorism, financial fraud, and white collar crime.

PRINTED ON RECYCLED PAPER

We can't think of a better candidate to serve as the Director of the Bureau of Alcohol, Tobacco and Firearms. Mr. Jones has demonstrated sound judgment and strong leadership and would be a distinguished Director of the Bureau of Alcohol, Tobacco and Firearms. We urge his swift confirmation.

Sincerely,

Keith Ellison
Member of Congress

Betty McCollum
Member of Congress

Timothy J. Walz
Member of Congress

Richard M. Nolan
Member of Congress

Fredrikson
& BYRON, P.A.

March 5, 2013

Via Fax: 202.224.9516

RECEIVED MAR 08 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman:

The purpose of this letter is to respectfully request your support for the appointment of B. Todd Jones as the Director of the Bureau of Alcohol, Tobacco and Firearms.

I am a senior attorney with the Minneapolis law firm of Fredrikson & Byron, P.A., having served as the firm's President and as Board Chair from 1997 through 2008. During my tenure as Board Chair, I became acquainted with B. Todd Jones when he was a partner at Robins Kaplan, Miller & Ciresi. Our two firms worked together with other Twin Cities law firms and corporate counsel to launch Twin Cities Diversity in Practice ("TCDIP"), a collaborative undertaking by Twin Cities law firms and corporate counsel to attract, recruit, retain and promote diverse attorneys within our Twin Cities legal community. Todd and I become early leaders of TCDIP, serving together on its Executive Committee for several years and also serving as co-chairs for a period of time prior to Todd's appointment as U.S. Attorney.

Todd and I together faced the challenges required to take TCDIP from conception to viability. Todd's leadership skills and leadership style, as well as his insight and personal touch, were essential to both the early survival of this organization as well as to its eventual emergence as an effective diversity champion in our legal community. Todd was instrumental in recruiting the first two Executive Directors, the second of whom still leads the organization. He was able to foster constructive and respectful discussion and creative solutions to many difficult and controversial issues. Most of all, he was practical. Multi-firm diversity organizations are prone to flounder or become marginalized due to the underlying competitiveness of their members and also because of deeply-held differences about the proper scope of "affirmative action" in general and about the systems and processes that are appropriate to achieve the objective of enhancing diversity. Todd was masterful in guiding TCDIP to steer around such controversies in order to identify and implement practical collaborative actions that could "move the dial" on diversity.

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Minneapolis, Minnesota
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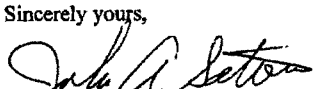
In conclusion, B. Todd Jones is an outstanding leader and deserves your support for Director of the Bureau of Alcohol, Tobacco and Firearms.

Sincerely yours,



John A. Satorius
Attorney at Law
Direct Dial: 612.492.7023
Email: jsatorius@fredlaw.com

March 6, 2013

Honorable The Senator Patrick Leahy
Chairman, Judiciary Committee
224 Dirksen Senate Office Building
Washington , D.C. 20510
Fax 202-224-9516

The Honorable Senator Chuck Grassley
Ranking Member, Judiciary Committee
224 Dirksen Senate Office Building
Washington , D.C. 20510
Fax 202-224-9102

The Honorable Amy Klobucher
United States Senator
302 Hart Senate Office Building
Washington , D.C. 20510
Fax 202-228-2186

The Honorable Al Franken
United States Senator
309 Hart Senate Office Building
Washington , D.C. 20510
Fax 202-224-0044

Re: Nomination of B. Todd Jones for Director ATFE

RECEIVED MAR 08 2013

Dear Chairman and members of Judiciary Committee;

I would like to offer my support for B. Todd Jones' appointment as the Director of Alcohol, Tobacco, Firearms and Explosives (ATFE). I am writing as a result of my experience working with Mr. Jones in his capacity as the United States Attorney for the District of Minnesota, where I served as Administrative Officer from January of 1981 until I retired in January of 2007. During my 26 years as the chief administrator in that office, I had the honor and distinction of working with 7 presidentially appointed United States Attorneys. I believe that Todd Jones was one of the finest U.S. Attorneys that served the District of Minnesota during my tenure.

Todd Jones distinguished himself in many aspects as U.S. Attorney for the District of Minnesota and I would like to relay just a few of those to you.

First, Todd was a master at developing a team-work approach to office management, ensuring that each person within the organization felt a vital role in their assigned responsibilities. Through his enthusiasm and skill at directing appropriate resources to assigned tasks, he created a very positive office atmosphere. He understood how people respond to different stimulus or deterrents and knew the best way to achieve desired results. The U.S. Attorney's Office is comprised of a variety of individuals, including highly successful prosecuting attorneys and distinguished civil attorneys as well as all the personnel that support the mission of the office, from the First Assistant U.S. Attorney to the student assistants. Todd had a gift for bringing out the best in people for the task at hand. He took an interest in each person and was never "too big or too important," realizing that everyone had a role to play in the mission of the office. Workers wanted to succeed and were very willing to go the extra mile to achieve the desired results sought by the organization.

Secondly, Todd was by far the most technologically progressive U.S. Attorney I had the pleasure to work with. In 1998 when Todd became the U.S. Attorney, we were in a period of time when great advancements were being made in office technology, cell

Phone and Internet communications and the use of image display for evidence in the courtroom. It was quite apparent that private law firms and defense attorneys who were our adversaries on many occasions had equipment and technological support that exceeded the government's resources. Private law firms had (at the time) cutting-edge, state-of-the-art cell phones compared to our outmoded and out-of-date communication devices. Furthermore, the government's courtroom presentations were being jeopardized by the private sector's latest technological displays. Todd quickly realized that this was detrimental to our mission of putting federal offenders away and to civilly protecting assets of the United States. He made a quick shift of emphasis in resources devoted to informational management. With additional increases in competent personnel and technology acquisitions, the U.S. Attorney's Office made great strides holding our own with adversaries in court and our office became one of the leading U.S. Attorney's Offices technologically.

Thirdly, Todd Jones demonstrated great leadership in dealing with a multitude of intergovernmental agencies throughout the State of Minnesota. Of the 94 U.S. District Attorney Offices, the District of Minnesota office is one of a few that represents an entire state, which makes it one of the larger geographic districts. It encompasses 87 counties, more than 800 municipalities, and a variety of governmental districts all with a paramount interest in providing proper protection and law enforcement for its citizens. Todd understood the role of the U.S. Attorney's Office as one of the chief legal law enforcement components for the state and made great efforts, both in and outside the office, to ensure that all participants of the statewide "law enforcement family" were connected and exchanged information and ideas. In the office, it was well understood that all entities of the statewide system were an integral part of law enforcement. Specific personnel were assigned to be contact points with other law enforcement agencies. Additionally, law enforcement coordinating meetings were periodically scheduled throughout the state, soliciting the input of law enforcement entities and individuals. Todd also was very involved in recognizing the individual efforts of law enforcement personnel, with the presentation of the U.S. Attorney's Law Enforcement Award given yearly to a law enforcement official for individual achievement. Through Todd's efforts, the U.S. Attorney's Office had a very effective relationship with law enforcement agencies throughout the state.

In closing, I would like to say that I think Todd Jones would be an exceptional choice as Director of ATFE. He can effectively deal with challenges relating to people, to technology, to organizations or any other obstacle put before him. He would continue to be a great dedicated servant of the public and would do honor to the position of Director of AFTE.

Sincerely,

Al Durand

Al Durand

[redacted]

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Amy Delp Byrd
Attorney & Counselor at Law
(1978-2009)

Holton Law Firm, PLLC

March 6, 2013

RECEIVED MAR 15 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing in support of confirmation for B. Todd Jones as Director of ATF. I served as U.S. Attorney for the Middle District of North Carolina from 1994 to 2001 and worked closely with Todd as a colleague. I observed and worked with Todd during his tenure as Vice Chair and Chair of the Attorney General's Advisory Committee and we worked closely on gun violence prevention efforts in Minneapolis and High Point, N.C., that proved very successful.

Todd was and is universally respected by his colleagues for his leadership skills, his commitment to excellence, and his moral compass. He is committed to enforcement of the law with enthusiasm and vigor, but also with complete respect for the constitutional rights of individuals. Todd has a deep appreciation and understanding for the independent roles of the legislative, judiciary and executive branches, and a good understanding of the appropriate interactions between the three branches.

Perhaps as important, Todd possesses good common sense and a sense of humor that commands loyalty and endears him to colleagues and those who work for him. I am not as familiar with Todd's military career, but I do note that his distinguished service in the armed forces serves to highlight the level of commitment that Todd has displayed to his country. I strongly and sincerely endorse his confirmation as Director and I encourage the Judiciary Committee and the Senate to do so.

Sincerely,

Walter C. Holton Jr.

Walter C. Holton, Jr.

WCH/kbs

RICHARD A. ROSSMAN

[redacted]

RECEIVED MAR 1 1 2013

March 8, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

I am writing in support of the nomination of B. Todd Jones as director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. I have known Mr. Jones and had professional contact with him for 15 years. I first met Mr. Jones when I served as the chief of staff of the Criminal Division at the Department of Justice (1998-1999). Mr. Jones was the United States Attorney for the District of Minnesota at the time. I have had continuing contact with him in my role as the executive director of the National Association of Former United States Attorneys (NAFUSA) and during my term (2009-2010) as president of NAFUSA. Mr. Jones has continued as a member of NAFUSA and has spoken at our national conferences on at least three occasions.

In my many contacts with Mr. Jones, I have always found him to be fully dedicated to the rule of law and to effective, fair and vigorous law enforcement. His record as the interim director of ATF has been exemplary. During these difficult times of conflicting views on how best to deal with gun issues, ATF needs a strong and able confirmed director, one who will be resolute in enforcing the laws passed by Congress. I am confident Todd Jones is the right person for that role.

NAFUSA is a nonpartisan and bipartisan organization of nearly 300 former United States Attorneys and presidentially appointed Justice Department officials from administrations as far back as President Kennedy. Although I write this letter of support in my individual capacity and not on behalf of the organization, I am confident you could reach out to NAFUSA members from both sides of the aisle and they would speak highly of Mr. Jones.

Sincerely yours,

Richard A. Rossman

Richard A. Rossman

Chief Deputy/Senior Attorney
Meredith A. Erickson

Assistant County Attorneys
Benjamin Bejar
Catherine M. Miller
Jennifer J. Nelson
Nathaniel J. Reitz
Tori K. Stewart
Terence J. Swihart
Thao N. Trinh

RICE COUNTY
ATTORNEY
G. PAUL BEAUMASTER

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Paralegal
Susan L. Duden

Victim Services Coordinator
Vanessa J. Eng

March 13, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Via Fax to 202-224-9516

RECEIVED MAR 14 2013

RE: Nomination of B. Todd Jones as ATF Director

Dear Chairman:

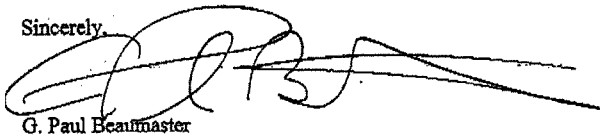
I write to express my unequivocal support for United States Attorney B. Todd Jones and his professional abilities as the chief federal prosecutor for the District of Minnesota. I currently serve as the Rice County Attorney and have served as the County Attorney since 1999. I also served as the immediate past president of the Minnesota County Attorney's Association and am a current member of the MCAA. I have known U.S. Attorney Jones both personally and professionally for several years, starting with his first stint as United States Attorney for the District of Minnesota.

My office and staff have worked closely with the U.S. Attorney's Office on several criminal matters during both of U.S. Attorney Jones's tenures as the Unites States Attorney between 1998 and 2001 and since 2009. The U.S. Attorney's Office, under Mr. Jones's leadership, has always adhered to the highest professional and ethical standards in prosecuting criminal matters. Most importantly, Mr. Jones and his staff have always diligently cooperated with and supported local law enforcement and state prosecutors. B. Todd Jones places a high priority on being respectful of the primacy of the state's role in concurrent jurisdiction matters—always putting justice for the citizens of Minnesota as the first and foremost goal. For example, the U.S. Attorney's Office consulted with my office on a recent child pornography case in which it was decided to prosecute the offender in both State and Federal court given the extensive nature of the charges and the crimes alleged. The U.S. Attorney's Office has also willingly assumed jurisdiction over a significant controlled substance crime case from my office that had broader implications in the federal criminal conspiracy context. Additionally, Mr. Jones's office counseled and reviewed a request for assistance in a recent assisted-suicide prosecution that implicated international boundaries and use of the Internet. In all these matters, our offices worked together to mutually

determine the best course of action to obtain justice and to hold those offenders involved accountable for their alleged crimes. U.S. Attorney Jones has also exemplified his and his office's support for local prosecutors by regularly attending and participating in MCAA Board meetings and by representation on the statutorily authorized Violent Crime Coordinating Council.

I recommend and support U.S. Attorney Jones without any reservation both in his current role as the United States Attorney for the District of Minnesota and for his nomination as head of the Federal Bureau of Alcohol, Tobacco, and Firearms. I have no doubt that U.S. Attorney Jones possesses the leadership abilities, management skills, and sound professional and work ethic to effectively and efficiently lead the ATF. B. Todd Jones offers the citizens of the United States the decisive, clear-thinking leader we need for the ATF.

Sincerely,



G. Paul Beaumaster
Rice County Attorney

GPB:sld

The Coca-Cola Company
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ATLANTA, GEORGIA

LEGAL DIVISION

Sharon J. Zealey
Direct Dial: (404) 676-3087
Facsimile: (404) 598-3087
szealey@coca-cola.com

ADDRESS REPLY TO
P. O. DRAWER 1734
ATLANTA, GA 30301
404 676-2121
OUR REFERENCE NO.

March 19, 2013

RECEIVED MAR 19 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510
Via Fax: 202-224-9516

Dear Chairman:

I am writing on behalf of Todd Jones, with whom I served in the Department of Justice for four years. Todd was very innovative yet tempered in his approach to law enforcement. He has the highest integrity and a depth of experience that is unmatched.

Todd would be an excellent leader of the Bureau of Alcohol, Tobacco and Firearms.

As an interesting sidenote, Todd and I used to say we were twins separated at birth. He was U.S. Attorney in Minnesota, where I was born, and I was U.S. Attorney in Southern Ohio, where he was born.

Sincerely,

Sharon J. Zealey

Sharon J. Zealey

RECEIVED APR 0 1 2013

OFFICE OF THE RAMSEY COUNTY ATTORNEY
John J. Choi

April 4, 2013

Letter Via Facsimile (202-224-9516) and US MAIL

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support of Nomination of B. Todd Jones as Director of ATF

Dear Mr. Chairman,

With great enthusiasm, I write this letter in strong support of President Obama's nomination of B. Todd Jones to become the Director of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").

In January 2011, I was sworn in as the Ramsey County Attorney. Minnesota law recognizes three levels of crime (misdemeanors, gross misdemeanors and felonies), with felonies being the most serious of these crimes. My many responsibilities as County Attorney include the prosecution of all adult felony criminal cases that are committed in Ramsey County, which includes the City of Saint Paul, and is the second most populous county in the State of Minnesota. In 2012, my office charged approximately 3,055 adult felony criminal cases.

Since becoming County Attorney, I have had the privilege and pleasure of working with Todd in his capacity as U.S. Attorney for the District of Minnesota on many matters related to public safety. For example, our respective offices have also worked very well together in strategic and supportive ways on important cases ranging from dangerous career criminals to human sexual trafficking. I also appreciate his office's willingness to utilize the Hobbs Act (18 U.S.C. § 1951) in appropriate armed robbery cases that resulted in meaningful public safety outcomes for my community.

Moreover, immediately upon my taking office, Todd graciously reached out to me with a genuine and much appreciated open-ended offer of professional assistance and a spirit of collaboration. I

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TELEPHONE: 651-266-3079 • FAX: 651-266-3015

John J. Choi, Ramsey County Attorney
50 West Kellogg Boulevard, Suite 315
St. Paul, MN 55102
Phone: 651-266-3079

have frequently accepted Todd's offer for which I am ever grateful since his support and wisdom have enriched my experience as the chief prosecutor for Ramsey County. I believe Todd has a great ability to work well with others in a collaborative fashion and with sincere intentions.

I am also comforted to know that with Todd I have a strong and trusted federal partner who understands and respects the roles of county attorneys. For example, the 87 county attorneys in the State of Minnesota are primarily responsible for the prosecution of felony crimes committed in the state. I particularly believe that crimes committed within our local communities by locally-based offenders should ideally be prosecuted by county attorneys, unless a compelling reason requires otherwise. I greatly appreciate and applaud Todd's recognition of this fact and his leadership around re-calibrating what cases are appropriate for federal prosecution in the context of the State's important role in enforcing its own criminal laws.

In conclusion, Todd has been a stalwart leader both in his commitment to public safety for the people of Minnesota and in his unwavering support of my county attorney colleagues throughout the state. His extraordinary leadership skills will well serve the needs and mission of a vitally important federal law enforcement agency like ATF. He is in my opinion a truly gifted public servant.

I wholeheartedly and respectfully urge the prompt consent of the U.S. Senate in the nomination of B. Todd Jones as Director of the ATF. Thank you.

Sincerely,

John J. Choi
Ramsey County Attorney

National District Attorneys Association
99 Canal Center Plaza, Suite 330, Alexandria, Virginia 22314
703.549.9222/703.836.3195Fax
www.ndaa.org

April 9, 2013

The Honorable Patrick Leahy
Chairman
The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Ranking Member Grassley:

On behalf of the National District Attorneys Association, the oldest and largest organization representing America's state and local prosecutors, we'd like to offer our full support for the nomination of B. Todd Jones to become the next Director of Alcohol, Tobacco, Firearms and Explosives (ATF) within the U.S. Department of Justice.

State and local prosecutors handle 95% of the criminal prosecutions nationally and issues related to alcohol, tobacco, and especially firearms directly impact cases we prosecute. Todd Jones is an experienced and highly-respected leader in the law enforcement community. As a former Marine officer he has demonstrated the highest character and commitment to protecting our communities. As a private attorney, Todd Jones provided effective and ethical representation to clients and was a leader in championing diversity within the private bar. As the United States Attorney for the District of Minnesota, he has been an innovative partner with local and state prosecutors to maximize penalties for violent criminals. As the Acting Director of the ATF, Todd Jones has focused the agency's mission and reached out to local and state partners to engage them in new strategies to combat gun violence.

The National District Attorneys Association believes that with Todd Jones's diverse and impressive life experiences and his stellar reputation in the criminal justice system, he will bring leadership and stability to ATF that has been lacking since 2006. We are happy to offer our full support for B. Todd Jones's nomination to serve as Director of Alcohol, Tobacco, Firearms and Explosives and encourage his swift confirmation by the Senate.

Sincerely,

Michael S. Wright
President

cc: Barack Obama, President of the United States
Eric Holder, United States Attorney General

To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People

RECEIVED MAY 07 2013

GEORGETOWN LAW

Julie Rose O'Sullivan
Professor of Law

May 7, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

I have the honor of submitting a letter in enthusiastic support of B. Todd Jones' confirmation as Director of the ATF. By way of background, I have been a professor at Georgetown University Law Center for 18 years, and just stepped down as the Associate Dean for the J.D. Program. Before joining academia, I served on the Whitewater Investigation in Little Rock, AR, was an Assistant U.S. Attorney in the U.S. Attorneys Office for the Southern District of New York, and was a defense lawyer at Davis Polk & Wardwell. My most relevant credential for present purposes is my service as the reporter for the U.S. Sentencing Commission's Ad Hoc Advisory Committee on the Organizational Sentencing Guidelines—a Committee which Todd Chaired.

Todd is—undeniably—an extraordinarily smart and thoughtful lawyer. It would be exceedingly difficult, if not impossible, to find another candidate with his breadth of experience and achievement. Perhaps more important, he is a truly gifted and effective leader and administrator.

The Ad Hoc Advisory Committee was made up of a very diverse and strong-willed group of professionals. Our membership included not only defense lawyers and prosecutors, but also ethics experts, compliance personnel, and academics. All were very accomplished, busy people with deeply-held, and often conflicting, views. We were tasked with reviewing the operation of the organizational sentencing guidelines over the ten years they had been in force and suggesting revisions. This was quite a wide-ranging task but, just after we commenced our work, the dot-com bubble burst and a variety of accounting scandals broke, meaning that our mission became a much more complicated and high-profile endeavor.

600 New Jersey Avenue, NW Washington, DC 20001-2075
PHONE 202-662-9394 FAX 202-662-9454
osullij1@law.georgetown.edu

Todd was a brilliant Chair—he "guided" us through our two years of work and, under his leadership, we timely delivered a lengthy report and detailed suggested revisions that were adopted, virtually verbatim, by the Sentencing Commission. Todd worked backwards from the goal to create a manageable schedule of fact-finding and hearings. He has a rare (for a lawyer) people sense and deftly and constantly brought us together to work civilly and constructively toward defined goals. We were buffeted by various interest groups, and consensus sometimes seemed impossible. But Todd always kept us on task, focused like a laser on finding the *right* answer—from a practical point of view as well as a matter of policy—regardless of outside pressures or lobbying. And people did rise to the challenge he presented. I used to tease him about his Marine Corps experience coming in handy in herding this particular group of cats, and he did use his command of the room to bring us back to task occasionally. But, now that I have had a turn in management, I recognize that his effectiveness principally sprang from his willingness to do pre-meeting personal outreaches, his definition of manageable goals for each gathering, and his extensive preparation for each call, each meeting, each hearing—in other words, all the hard work of effective management. Todd's personal charisma—and truly inspiring commitment to excellence—didn't hurt either.

In sum, Todd has both the professional background *and* the leadership and management skills to be an unqualified success as Director. Indeed, I cannot think of anyone I would recommend more highly for this position of trust.

Please feel free to contact me with any questions or concerns you may have.

Best regards,

Julie R. O'Sullivan
Professor
Georgetown Univ. Law Center

GEORGETOWN LAW

RECEIVED MAY 07 2013

Julie Rose O'Sullivan
Professor of Law

May 7, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

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osullij1@law.georgetown.edu

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Please feel free to contact me with any questions or concerns you may have.

Best regards,

Julie R. O'Sullivan
Professor
Georgetown Univ. Law Center

RECEIVED MAY 10 2013

BRIAN P. SHORT

Lexington Co.
Executive Offices
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(612) 332-4752 FAX (612) 332-4228
brian@lexington.com

May 8, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent via fax: 202-224-9516

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent via fax: 202-224-9102

Re: **Nomination of B. Todd Jones as ATF Director**

Dear Chairman Leahy and Senator Grassley:

I write in support of President Obama's nomination of B. Todd Jones, U.S. Attorney for the District of Minnesota, to be Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. By way of background, following graduation from law school, I clerked for the Chief Judge of the U.S. District Court for the District of Minnesota and then practiced law for some time in a small Minneapolis law firm. In 1980 I was appointed as a U.S. Magistrate for the District of Minnesota. I resigned as a Magistrate in 1984 and have served as the senior executive in a family-owned holding company with interests in transportation, community banking, real estate and agricultural production ever since. I occasionally serve as a legal mediator in disputes pending in the state and federal courts in Minnesota.

I have known Mr. Jones personally and professionally for almost 35 years. In 1978, when Mr. Jones was a student at Macalester College in St. Paul, Minnesota, I worked with him in my father's unsuccessful campaign for the U.S. Senate. Todd played an important role in that campaign and I have stayed close to him and his family ever since. As Todd approached graduation, I discussed with him the wisdom of going to law school. He applied to and was accepted at the University of Minnesota Law School, one of the finest law schools in the country. Following graduation, rather than accepting a position in one of the many law firms in Minnesota which would have been glad to have had him, he joined the U.S. Marine Corps. His initial service in the Corps was not as a lawyer but rather as a line infantry officer. I think that indicates the kind of man Todd is. If he is going to do anything, he learns how to do it from the ground level.

As he was making the decision to leave the Marine Corps, I once again had contact with him to discuss which of a number of opportunities he had with law firms in Minnesota would be the best for him and his family. At that time, I was serving as a U.S. Magistrate in Minnesota and had a pretty solid understanding of the law firm opportunities in Minnesota.

Todd was offered and accepted a position in one of the larger and most prestigious Minnesota law firms. His work with that firm was highly regarded, based on my conversations with friends and acquaintances who were senior partners in it. He later left that firm to join a smaller firm, where his work was also very highly thought of. He served two stints as an Assistant U.S. Attorney for this district and, based on my conversations with judges and lawyers in this community, he acquitted himself well.

In the early 2000s, a public company on whose board I serve was named as a defendant in a class action lawsuit. The lawsuit was very complicated and the company selected the Minneapolis law firm of Robins, Kaplan, Miller & Ciresi as its lead counsel. After years of discovery and pretrial motions, the case was on track to be tried in 2006. The company and its board were very concerned about who would be trying the case on behalf of the company. As a member of the board, I worked closely with the General Counsel, supervising the litigation. Late in the game, the Robins Kaplan firm and our General Counsel selected Todd Jones as a member of the trial team, whose main responsibilities would be to cross-examine some of the professional

witnesses representing the other side. This was going to be very challenging for Todd, coming late into the game in a terribly complicated, discovery-heavy lawsuit. Scores of thousands of documents had to be reviewed and the information contained in them assimilated. Todd performed masterfully, and the General Counsel and I had complete confidence in him and the entire Robins trial team. Because of their efforts and our confidence in them, the lawsuit was resolved favorably on the eve of trial.

In addition, I have served on two nonprofit boards with Todd. He is a committed board member who diligently provided service to the boards on which we served. One was a private educational institution and the other one of the largest social service providers in Minnesota. He brought a unique perspective to both.

Finally, my wife and I have had the privilege of knowing Todd, his wife Margaret and their children on a personal basis. They are proud of their kids and we are proud to have them as friends.

In conclusion, I urge your favorable consideration of President Obama's nomination of Todd Jones. He is a dedicated public servant who has served his country in the military and as a member of the Department of Justice. He is a skillful lawyer who has represented the interests of his clients successfully. He is an able administrator who will be able to handle the significant challenges he will face at ATF. Finally, he is a dedicated and committed father and husband. All of those qualifications will serve the country well in the future.

If you have any questions, please give me a call.

Sincerely,

Brian P. Short

BPS:nen

cc: The Honorable Amy Klobuchar
United States Senator
302 Hart Senate Office Building
Washington, DC 20510

Sent via fax: 202-228-2186

The Honorable Al Franken
United States Senator
309 Hart Senate Office Building
Washington, DC 20510

Sent via fax: 202-224-0044

RECEIVED MAY 30 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

29 May 2013

Re: Nomination of B. Todd Jones to be ATF Director

Dear Chairman Leahy:

Unequivocally, in my twenty years as a Marine officer with multiple combat tours, Todd Jones is one of the top five Marine officers with whom I have had the privilege to serve.

I have known Todd since 1985. At the time, then Captain Jones, was my company commander for a Marine infantry company. Although a lawyer, Todd could have very easily taken a much easier administrative assignment, but he volunteered to become an infantry officer and lead Marines. Todd was selected to become an infantry company commander, over several many seasoned officers, because of his superb leadership, organizational and management skills.

Todd was firm, fair and compassionate - we admired these attributes very much in our commanding officer. He balanced the needs of the Marine Corps while caring for HIS Marines and our families. Through his stellar leadership, he single handedly turned around a mediocre infantry company, where morale was bad, into the top unit within the battalion.

Todd is a person of great intellect and resolve - coupled with leading by example. Marines throughout the battalion respected Todd for his character and integrity. He never shied away from making the hard decisions. I personally observed him make many difficult decisions some of which were unpopular to some in the unit. But overtime they came to see how Todd always made a decision that was in the best interests of company morale, cohesion and readiness. These were decisions made in our best interests. Not in his.

Over the years I have remained in close contact with Todd and his wife, Margaret. After the Marine Corps, both of them could have easily picked a path to great fortune through the private sector, yet they chose public service. With over two decades of faithful public service, Todd epitomizes the strong character which we look for in our public servants and leaders.

During these challenging times, with public confidence waning in our government, we need people like Todd Jones in positions of high responsibility requiring the public's special trust and confidence. I can think of no better person to be nominated as the Director of ATF. I know firsthand that Todd will continue to earn our trust through stellar leadership, strong character and rock solid integrity.

Through a life of personal servitude, Todd has successfully proven that he can take on challenging assignments and manage large organizations - whether leading infantry Marines, upholding the laws of our nation as a US Attorney or as the acting director of the ATF.

I hope that you will confirm Todd Jones as the permanent Director.

Respectfully,

LtCol. Asad Khan, USMC (Ret.)

[redacted]

May 30, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: (202) 224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman Leahy:

I am writing in support of the nomination of Mr. Byron Todd Jones as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives. My name is V.J Smith, and I am both the National President of the MADDADS (which stands for Men Against Destruction Defending Against Drugs and Social-disorder)—an organization that is well-rooted, loved, and recognized as the "father figure" of Urban America— as well as the local Founder of the Minneapolis Chapter of MADDADS. MADDADS is a "Best Practice" organization that is well-invested in the areas of crime prevention and community building within low-income communities of color. We have a solid reputation for effective crime prevention and community building services and our successful model of crime prevention is in line with the community-based approach utilized by Mr. Byron Todd Jones while he has served as US Attorney here in Minnesota.

Being on the frontlines, I have witnessed countless community members who were violently slaughtered by criminals who had access to illegal guns. There was, and still is, a need to close the gaps between community members who are distrustful of law enforcement agencies and the various law enforcement agencies that are dedicated to preventing victimization in the community. It's bad enough that many of the community members are at odds against each other. To allow the possibility for further conflict within the community— between those who are sworn to protect the community and those who belong to the community – can be very damaging to the community as a whole. The law-abiding citizens that live in the community will feel as if they have nowhere to turn, while the criminals in the community who are destroying it will feel encouraged to continue to wreak havoc.

The ATF needs the consistent and accountable leadership of a permanent director. That permanent director should be Mr. Jones. Many communities are still recovering from the damage caused by gun-walking scandals such as Operation Fast and Furious, which allowed illegal guns to stay in the hands of violent criminals. The incidents of mass violence in Newtown and Aurora are daily occurrences in many low-income communities who suffer from excessive gang violence. B. Todd Jones' innovative and effective strategies have done measures to help the many concerned citizens of low-income communities of color (such as myself) find away to combat the senseless violence that is perpetuated at alarming rates due to the continuous flow of illegal guns into the neighborhoods.

Mr. Jones' community-based approaches are crucial in the war against gun violence. In my opinion, he has utilized this approach effectively on numerous occasions throughout his career. One example of this is the Young Somali-American Advisory Council, which utilized effective outreach methods to engage the large Somali population within the Minneapolis metropolitan area to prevent any potential disconnect between ethnic Somali-Americans and law enforcement agencies. Mr. Jones' approach to counter-terrorism is beneficial to the Twin Cities, as it promotes a sense of unity and solidarity between the different nationalities that occupy the same low-income areas and communities of color. I also commend Mr. Jones for his role in creating the Safe Streets Task Force, which unites the efforts of both local authorities and the FBI to curb gang violence in our urban communities.

I have personally worked with Mr. Jones on various crime prevention efforts in Minneapolis, St. Paul, Brooklyn Center and other areas within the Twin Cities metropolitan area during his time as US attorney in Minnesota. Mr. Jones has a history of civic engagement and community-based initiatives, as he has been on various boards—such as the St. Paul Chapter of the NAACP, Twin Cities RISE, Catholic Charities of Minneapolis/St. Paul, and the Jeremiah Project. He clearly has an understanding of community-related issues and concerns, as he has been consistently involved with community-building activities in the Twin Cities for more than two decades.

Being the National President of the MADDADS, as well as a local community leader who is heavily invested in the future of low-income communities of color, I feel it is absolutely imperative that Mr. Jones continue his good work in bridging the ever-widening disconnects between law enforcement agencies and community members. In order to achieve the above-mentioned task, we need more law enforcement executives like Mr. Jones, who are knowledgeable and experienced in community-based approaches to law enforcement and crime prevention. I pray that you consider my request to keep Mr. Byron Todd Jones as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives - the future of our community depends on it.

Sincerely,

VJ Smith

MADDADS National President/ Founder of Minneapolis Chapter of MADDADS

NATIONAL
FRATERNAL ORDER OF POLICE®

328 MASSACHUSETTS AVE., N.E.
WASHINGTON, DC 20002
PHONE 202-547-8189 • FAX 202-547-8190

CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

31 May 2013

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

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley,

I am writing on behalf of the members of the Fraternal Order of Police to express our strong support for the confirmation of B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). As Acting Director at ATF, Mr. Jones has provided the agency the leadership and vision which has been lacking in recent years. Mr. Jones has the requisite experience pursuing tough firearms and weapons cases and has demonstrated the ability to reset ATF after recent tumultuous investigations.

The ATF provides invaluable assistance to State and local law enforcement officers and agencies engaged in the ongoing battle against the violent criminal misuse of firearms. Firearms legislation notwithstanding, ATF requires the proper resources to enforce the laws already on the books and to accomplish that ATF needs a Director. As things stand now, ATF has been scraping by with a dwindling number of agents and other resources while ATF's mission has expanded. Frankly, this is unacceptable. We believe the confirmation of B. Todd Jones will greatly improve ATF and we will ensure that we have the leadership to make our nation safer. For too long we have denied ATF the proper resources and our nation and our children have paid the price.

Mr. Chairman and Ranking Member, I urge you to confirm Mr. Jones. On behalf of the more than 330,000 members of the Fraternal Order of Police, I ask for your serious consideration of Mr. Jones as Director of ATF. If I can be of any assistance, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—

Lisa A. Kuca
[redacted]

May 31, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Sent Via Fax: 202-224-9516

Re: Nomination of B. Todd Jones as ATF Director

Dear Chairman:

I write in support of Todd Jones' nomination as Director of the Bureau of Alcohol Tobacco and Firearms. I met Todd in 2002 when he served in the role of Chair of the U.S. Sentencing Commission's Ad Hoc Advisory Group on the Organizational Guidelines ("Ad Hoc Group"). I was a member of the group and we served together for approximately two years. I have witnessed Todd's leadership and decision making first hand and believe he would be an asset to the agency.

The composition of the Ad Hoc Group was very challenging. Generally speaking, half of the group were attorneys many who were, or previously served as, federal prosecutors. The other half were members of the academic community and ethicists. As a former U.S. Probation Officer I did not fit into either group. One thing we all had in common was our work histories relevant to the topic and strong personalities. Our task was to review the Sentencing Guidelines for Organizations and assess the contents relevancy in light of regulatory events at the time (mainly, Sarbanes-Oxley) and to propose necessary modifications and revisions.

As you can imagine, there was little to no agreement about the motivators for lawful corporate conduct and the "carrot or the stick" debate was ever present. Todd did a very good job of defusing any disagreement and ensured that different opinions were aired and contemplated. The thing that stood out most to me during the years we worked together was his ability to drive compromise. Todd did not approach things with an "all of nothing" strategy. He exercised a great deal of common sense and progress was achieved through both large and small accomplishments by all members of the group. Differences of opinions were thoroughly discussed and one demographic of the group did not prevail over the other. I believe the group's work product was very balanced and fair as a result.

I am not part of the Washington D.C. "rank and file". Further, Todd and I are not likely aligned on many political views. In fact, I am very opposed to the current Administration's position on

firearms and the associated activities to date. That said, I have confidence in Todd. The man I worked with demonstrated a keen sense of fairness and an ability to exercise common sense. I do not know him to be easily swayed by rhetoric and believe he is invested in thoroughly contemplated solutions. I can only hope he will maintain these qualities if appointed.

The "Beltway" has a way of bringing out the worst in people but I have faith that if Todd is given this opportunity he will listen to all the "stakeholders" impacted by his authority including the American people. I pray that Todd will not become the type of public official that earns the distain of the citizens he serves. He began his career as a Marine and I believe he is more service oriented than a politician. I very much believe that when it comes to the Second Amendment and the authority his position will have to impact that Constitutional right, Todd will work for Americans even if it is at the request of the President.

Respectfully Submitted,

Lisa A. Kuca

Lisa A. Kuca

June 10, 2013

The Honorable Patrick J. Leahy, Chairman, Judiciary Committee
The Honorable Charles E. Grassley, Ranking Minority Member
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of the Honorable B. Todd Jones as the Director of Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Senators Leahy and Grassley:

The undersigned Presidentially Appointed United States Attorneys ("U.S. Attorneys") of the Department of Justice write to strongly support the confirmation of B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").

In our roles as U.S. Attorneys, we are the chief federal law enforcement officials of our various Districts. As such, our responsibilities require enforcement of federal laws, assistance to our state and local partners in their law enforcement efforts, and implementation of policies of the Department of Justice. We are responsible for developing the strategies that will meet the needs of our Districts, including gun prosecution strategies and strategies for reducing violent crime in our communities. All of us are acutely aware of the urgent need for permanent leadership at ATF, and we believe that B. Todd Jones is highly qualified to lead the men and women of the agency.

During his tenure as Acting Director, Mr. Jones has made remarkable strides in refocusing the efforts of the ATF. He has been fully engaged, immersed himself in all aspects of the agency, and used his experience as a federal prosecutor to maximize the efforts of ATF's daily operations.

In addition to working with Mr. Jones in his role as Acting Director of ATF, we also have vast experience working with him in his roles as United States Attorney for the District of Minnesota and Chair of the Attorney General's Advisory Committee ("AGAC") of U.S. Attorneys. Mr. Jones was an effective Chair of the AGAC and was a strong voice for our community within the Department of Justice. This was to be expected as, throughout his tenure as U.S. Attorney for Minnesota, Mr. Jones has been a true leader within the broader United States

Attorney community. In fact, for many of us, not only has Mr. Jones been a respected colleague, he has also been a mentor.

Mr. Jones's commitment to federal law enforcement and the communities of our nation has been a priority throughout his life and career. He is a former Marine, Assistant U.S. Attorney, and twice appointed U.S. Attorney; the United States could not find an individual who is better suited or more qualified to lead this agency which is so vital to assisting U.S. Attorneys' Offices in carrying out our law enforcement duties.

We respectfully recommend that the Senate Judiciary Committee support the nomination of Mr. Jones to serve as the next Director of ATF. He is highly qualified for the position, has an unimpeachable reputation among his colleagues, and is committed to the citizens of this nation. Mr. Jones will effectively and efficiently lead the men and women of the ATF and ensure that the mission of reducing gun violence in our communities is a priority.

Thank you for your consideration in this matter.

Sincerely,

/s/

JOYCE WHITE VANCE ALABAMA, NORTHERN	BENJAMIN B. WAGNER CALIFORNIA, EASTERN	WIFREDO A. FERRER FLORIDA, SOUTHERN
KENYEN RAY BROWN ALABAMA, SOUTHERN	MELINDA L. HAAG CALIFORNIA, NORTHERN	MICHAEL J. MOORE GEORGIA, MIDDLE
KAREN L. LOEFFLER ALASKA	LAURA E. DUFFY CALIFORNIA, SOUTHERN	SALLY QUILLIAN YATES GEORGIA, NORTHERN
JOHN S. LEONARDO ARIZONA	JOHN F. WALSH COLORADO	EDWARD J. TARVER GEORGIA, SOUTHERN
CHRISTOPHER R. THYER ARKANSAS, EASTERN	CHARLES M. OBERLY DELAWARE	ALICIA A.G. LIMTIACO GUAM
CONNER ELDRIDGE ARKANSAS, WESTERN	RONALD C. MACHEN DISTRICT OF COLUMBIA	FLORENCE T. NAKAKUNI HAWAII
ANDRÉ BIROTTE, JR. CALIFORNIA, CENTRAL	PAMELA C. MARSH FLORIDA, NORTHERN	WENDY J. OLSON IDAHO

JAMES A. LEWIS
ILLINOIS, CENTRAL

STEPHEN R. WIGGINTON
ILLINOIS, SOUTHERN

DAVID A. CAPP
INDIANA, NORTHERN

JOSEPH H. HOGSETT
INDIANA, SOUTHERN

NICHOLAS A. KLINEFELDT
IOWA, SOUTHERN

BARRY R. GRISSOM
KANSAS

KERRY B. HARVEY
KENTUCKY, EASTERN

DONALD J. CAZAYOUX, JR
LOUISIANA, MIDDLE

STEPHANIE A. FINLEY
LOUISIANA, WESTERN

THOMAS E. DELAHANTY, II
MAINE

ROD J. ROSENSTEIN
MARYLAND

CARMEN MILAGROS ORTIZ
MASSACHUSETTS

BARBARA L. MCQUADE
MICHIGAN, EASTERN

PATRICK A. MILES, JR.
MICHIGAN, WESTERN

FELICIA ADAMS
MISSISSIPPI, NORTHERN

GREGORY K. DAVIS
MISSISSIPPI, SOUTHERN

RICHARD G. CALLAHAN
MISSOURI, EASTERN

TAMMY DICKINSON
MISSOURI, WESTERN

MICHAEL COTTER
MONTANA

DEBORAH K.R. GILG
NEBRASKA

DANIEL G. BOGDEN
NEVADA

JOHN P. KACAVAS
NEW HAMPSHIRE

PAUL J. FISHMAN
NEW JERSEY

LORETTA E. LYNCH
NEW YORK, EASTERN

RICHARD S. HARTUNIAN
NEW YORK, NORTHERN

PREET BHARARA
NEW YORK, SOUTHERN

WILLIAM J. HOCHUL, JR
NEW YORK, WESTERN

ANNE TOMPKINS
NORTH CAROLINA, WESTERN

THOMAS G. WALKER
NORTH CAROLINA, EASTERN

RIPLEY RAND
NORTH CAROLINA, MIDDLE

TIMOTHY Q. PURDON
NORTH DAKOTA

STEVEN M. DETTELBACH
OHIO, NORTHERN

CARTER M. STEWART
OHIO, SOUTHERN

MARK F. GREEN
OKLAHOMA, EASTERN

DANNY WILLIAMS
OKLAHOMA, NORTHERN

S. AMANDA MARSHALL
OREGON

ZANE D. MEMEGER
PENNSYLVANIA, EASTERN

PETER J. SMITH
PENNSYLVANIA, MIDDLE

DAVID J. HICKTON
PENNSYLVANIA, WESTERN

PETER F. NERONHA
RHODE ISLAND

WILLIAM N. NETTLES
SOUTH CAROLINA

BRENDAN V. JOHNSON
SOUTH DAKOTA

WILLIAM C. KILLIAN
TENNESSEE, EASTERN

EDWARD L. STANTON, III
TENNESSEE, WESTERN

JOHN MALCOLM BALES
TEXAS, EASTERN

SARAH R. SALDAÑA
TEXAS, NORTHERN

KENNETH MAGIDSON
TEXAS, SOUTHERN

ROBERT L. PITMAN
TEXAS, WESTERN

DAVID BARLOW
UTAH

TRISTRAM J. COFFIN
VERMONT

RONALD W. SHARPE
VIRGIN ISLANDS

NEIL H. MACBRIDE
VIRGINIA, EASTERN

TIMOTHY J. HEAPHY
VIRGINIA, WESTERN

MICHAEL ORMSBY
WASHINGTON, EASTERN

JENNY A. DURKAN
WASHINGTON, WESTERN

WILLIAM J. IHLENFELD, II
WEST VIRGINIA, NORTHERN

R. BOOTH GOODWIN, II
WEST VIRGINIA, SOUTHERN

JAMES SANTELLE
WISCONSIN, EASTERN

JOHN WILLIAM VAUDREUIL
WISCONSIN, WESTERN

CHRISTOPHER A. CROFTS
WYOMING

June 10, 2013

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Sen. Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

Re: Support for the Nomination of B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Majority Leader Reid and Leader McConnell:

As co-chairs of a coalition of over 975 mayors from across the country, we are deeply concerned about the need to reduce gun violence in the United States and the threat that illegal gun trafficking poses to our communities. We urge the United States Senate to confirm B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as soon as possible.

This critical public safety agency is in great need of an effective permanent director, after having been leaderless for seven years. During that time, some 80,000 Americans have been murdered with guns. The vacuum of permanent leadership at ATF has prevented the agency from more fully engaging in its oversight responsibilities and cracking down on traffickers who supply criminals with guns.

A 2009 report by the Government Accountability Office found that the enforcement of existing gun laws by federal agencies, including ATF, has been profoundly hampered by insufficient resources. Major law enforcement organizations such as the International Association of Chiefs of Police (IACP) have called for more resources to support ATF's enforcement programs. We believe Todd Jones will serve as an effective leader who will bring more resources to the agency while ensuring all current resources are utilized judiciously.

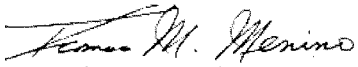
B. Todd Jones brings the right skills and experience for the job. He currently serves as the United States Attorney for the District of Minnesota, an office he has held since June 2009, and also held from 1998 until January 2001. From 1983 to 1989, Acting Director Jones served in the Marine Corps—as a prosecutor, a defense attorney, and a judge advocate— and he subsequently served in Operation Desert Storm. He also has worked as a lawyer in private practice and has served as an assistant U.S. Attorney. Jones has been the Acting Director of ATF since September 2011 and we have seen his commitment to reforms and to a renewed mission for the agency.

Given ATF's critical role in fighting crime, it is troubling that Congress has failed to give the agency the leader or resources it needs. One area we hope will improve under the leadership of Acting Director Jones is dealer inspections. Although ATF is permitted by law to inspect each

licensed firearms dealer once per year, the agency set a more modest goal of inspecting dealers once every five years. Even worse, due to limited resources, it has only succeeded in inspecting 58 percent of dealers within the five-year timeframe. In addition, we know that in 2011, inspections of 20 percent of licensed dealers revealed over 18,000 firearms missing from licensed dealers' inventories. We hope Mr. Jones is confirmed and given the resources he needs to help gun dealers better track lost and stolen guns from their inventory.

Without strong leadership, ATF will remain hamstrung by inadequate resources and weakened by the efforts of special interests to gut the agency. We urge the Senate to conduct a careful and swift review of Acting Director Jones' nomination. The American people cannot afford to wait any longer for federal leadership in the fight to keep our communities safe from gun violence.

Sincerely,



Thomas M. Menino
Mayor of Boston

Michael R. Bloomberg
Mayor of New York City

Cc: The Honorable Patrick Leahy, Chairman, Senate Judiciary Committee
The Honorable Charles Grassley, Ranking Member, Senate Judiciary Committee
Members of the U.S. Senate

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.noblenational.org

RECEIVED JUN 1 1 2013

June 11, 2013

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The National Organization of Black Law Enforcement Executives (NOBLE) is an organization of approximately 2,500 primarily African-American law enforcement CEOs and command level officials who are committed to improving the law enforcement service in this nation, writes this letter in support of the confirmation Mr. B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).
Since his appointment as acting director in August, 2011, Mr. Jones has brought stability to the ATF and that has allowed the bureau to focus on its mission, "to protect our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products".

It is disturbing that this agency has been without a permanent director for six years and that staffing for the bureau has been less than optimal. But despite these encumbrances, this former Marine marches on. Mr. Jones has made relationship building a priority and the agencies work with state and local agencies and in training and technical assistance is greatly appreciated. He has accomplished these things while still serving as US Attorney for the State of Minnesota.

Mr. Jones is a remarkable leader and the right person to lead the bureau. Throughout Mr. Jones career, he has proven to be an effective partner to law enforcement. With this experience, we believe him to be well-qualified to serve as the Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). We look forward to continuing to work with him as the permanent director on a broad range of law enforcement and public safety issues. It is our hope that the Senate will confirm Mr. Jones promptly to serve as the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF).

Sincerely,

Joseph Akers
Interim Executive Director

Ralph Boelter
[redacted]

June 25, 2013

The Honorable Patrick J. Leahy, Chairman, Judiciary Committee
The Honorable Charles E. Grassley, Ranking Minority Member
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of the Honorable B. Todd Jones as the Director of Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Senators Leahy and Grassley:

I am writing in support of the nomination of B. Todd Jones as the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF). I served as the Special Agent in Charge (SAC) of the FBI's Minneapolis Division from 2007 to 2011, the last 20 or so months of which Todd, as U.S Attorney, and I enjoyed a close and productive working relationship. During that time, Todd and I met on many occasions, often over coffee, to discuss the enforcement priorities of each of our offices and how best to align our efforts to enable us to achieve our critical objectives together. Todd was attentive to my views and often solicited my input on a broad range of work issues. Moreover, he was an outstanding partner for me and my division during critical periods, such as when a group of young Somali-American men traveled from the Minneapolis area to the Horn of Africa to join al Shabaab, an Al Qaeda affiliated extremist group hostile to the United States. He was a strong supporter of the FBI's investigative strategy in that matter and he actively led the prosecutive efforts as well as his office's public outreach during and after the investigation.

In addition, Todd's support was instrumental in my office's successful effort to stand up the Twin Cities Safe Streets Violent Crime Task Force in 2010.

As the FBI SAC in Minnesota, I have observed Todd interact with federal and local colleagues, and citizens, in numerous settings and I have never seen him engage in a manner that was not absolutely professional.

I believe, based on my substantial experience working with Todd, and my observations of him during my SAC tenure, that he be confirmed to serve as the Director of the ATF.

Respectfully Submitted,

Ralph S. Boelter

January 23, 2013

United States Attorney B Todd Jones
US Courthouse
300 S Fourth st.
Minneapolis, MN 55415

Dear Mr. Jones,

Congratulations on your appointment as the new Director of the ATF.

My name is Beth Hill. I'm not sure if you remember me, but I will never forget you. My son Otahl, his wife and 15 year-old daughter were murdered in a home invasion in St. Paul on March 23rd, 2007.

Our case lingered for two years, until you came back to lead the MN US Attorney's office in 2009. You reviewed our case and were courageous in your decision to indict Tyvarus Lindsey and Rashad Raleigh for their murders. For that I am forever grateful. Your office, along with numerous investigators did a fantastic job of prosecuting these men for this heinous crime – and justice prevailed.

In my son's keepsake box I have the hand written note that you sent me in response to my plea to you for justice for Otahl, Maria and Brittany. You didn't promise me anything but a commitment to review my case when you came into office. Your note gave me hope and the strength to continue to "fight" for justice for my children.

As a concerned citizen, homicide survivor and grieving mother – I wish you well and success in your new leadership role at the ATF. When the job feels like you can't go on and the odds seemed stacked against you, think about mothers like me who will rely on you to help stop senseless violence and move this country forward.

I am optimistic that President Obama will pass significant changes in gun control, and I will do my part as a citizen to support his efforts. We all know that gun control isn't the only answer and there are a number of social issues that also need to be addressed - but gun control is a significant first step.

Good luck and God bless you.

Beth Hill

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

June 10, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

In response to a June 10, 2013 letter from Senator Grassley, I am writing to provide additional information on the status of a prohibited personnel practice complaint that was filed on March 11, 2013, by an Assistant United States Attorney (AUSA) in the U.S. Attorney's Office, District of Minnesota.

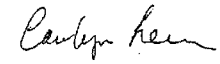
As stated in my June 5, 2013 correspondence to the Committee, the AUSA filed a prohibited personnel practice complaint with the Office of Special Counsel (OSC) alleging reprisal for whistleblowing and other protected activity under 5 U.S.C. § 2302(b)(8) and (b)(9). OSC's Complaints Examining Unit (CEU) referred the case for further investigation on April 12, 2013.

With limited exceptions, OSC assesses every case that is referred from CEU for possible resolution through mediation. OSC offered mediation to the parties, and both the complainant and Justice Department agreed to attempt to resolve the case through mediation. The reassignment of the case for mediation did not result in the matter being closed. OSC's investigation of the allegations was suspended pending the mediation, but the matter remains open. OSC is working with the parties to convene the mediation and is hopeful that the personnel issues can be addressed expeditiously through this process. If mediation is unsuccessful, the case would return to OSC's Investigation and Prosecution Division for further investigation.

I am unavailable to testify tomorrow about this matter. Moreover, it would not be appropriate for me to provide any additional information about a pending case, especially in light of the confidentiality requirements that provide a foundation for successful resolution of cases through mediation. Even if I were available to testify tomorrow, I would not have any additional information to provide beyond what is stated in this letter.

I hope the additional information on OSC's mediation process is useful to the Committee.

Sincerely,



Carolyn N. Lerner

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street N.W., Suite 218, Washington D.C. 20036-4505
www.osc.gov June 5, 2013

About ADR

Frequently asked questions

Question: Does mediation work?
Answer: While each case is unique, general statistics from a wide range of forums indicate that mediation resolves over 70% of disputes.

Question: Does OSC require the parties to participate in mediation?
Answer: No. Participation is strictly voluntary.

Question: What happens if one party declines OSC's invitation to mediate, or decides to terminate mediation before resolution of the complaint?
Answer: In either case, the complaint will be assigned to the Investigation and Prosecution Division, as it would have been had mediation not been offered to the parties.

Question: Who mediates OSC complaints?
Answer: OSC cases are conducted by mediators who are experienced and trained in mediation and federal personnel law. OSC maintains a roster of trained mediators on staff. All internal OSC mediators are neutral unbiased professionals with no stake in the outcome of the mediation process.

Question: Who attends the mediation session?
Answer: The complainant and a representative from the employing agency attend the mediation. While it is not necessary to have an attorney or other representative attend the session, either party may choose to do so. It is essential, however, that the individuals attending the mediation session have the authority necessary to resolve the dispute.

Question: How long does the mediation process take?
Answer: The length of the mediation session depends upon the complexity of the case and willingness of the parties to resolve the dispute. Most mediations are completed in eight hours or less. More complex cases may call for a second mediation session.

Question: What happens if the mediation does not result in resolution?
Answer: The parties risk nothing by participating in mediation. If resolution is not achieved, the complaint is assigned to the Investigation and Prosecution Division, as it would have been had the parties not tried mediation.

Question: Can a complaint that is already in the Investigation and Prosecution Division be mediated?
Answer: Yes. Mediation is an option at the investigation and prosecution stages in select cases.

Last Updated: 4/24/12

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street N.W., Suite 218, Washington D.C. 20036-4505
www.osc.gov June 5, 2013

The OSC Mediation Program

Alternative Dispute Resolution (ADR)

The Office of Special Counsel offers Alternative Dispute Resolution (ADR) to resolve selected complaints from Prohibited Personnel Practices and USERRA cases. In appropriate circumstances, ADR can yield results that are faster, less expensive and more tailored to the parties' needs than traditional legal routes. ADR is completely voluntary. ADR consists of several alternatives to litigation. Among the processes included under the umbrella of ADR are mediation, conciliation, neutral evaluation and assisted negotiation. To date, most of the ADR conducted at the Office of Special Counsel is mediation.

OSC mediators, who have extensive mediation training and experience in federal personnel law, conduct a mediation session at a mutually convenient time and location. If mediation results in resolution, the agreement is reduced to writing and becomes binding on both parties.

What is Mediation?

In mediation, a neutral third party assists the opposing parties in reaching a voluntary, negotiated resolution of the complaint. Mediation gives the parties the opportunity to discuss the issues raised in the complaint, clear up misunderstandings, find areas of agreement and ultimately incorporate those areas of agreement into a final resolution of the complaint. Mediation is different from other forms of dispute resolution in that the parties participate voluntarily, and the mediator has no authority to make a decision. The decision-making power rests in the hands of the parties.

How Does OSC's Mediation Process Work?

Participation in the OSC Mediation Program is voluntary. In selected cases that are slated for referral to OSC's Investigation and Prosecution Division, the OSC ADR Specialist contacts the complainant and the employing agency to invite them to participate in the mediation program. If both parties agree, OSC schedules a Mediation Session. OSC mediators*, who have extensive mediation training and experience in federal personnel law, conduct a mediation session at a mutually convenient time and location. If mediation results in resolution, the agreement is put into writing and becomes binding on both parties.

Mediation gives the parties the opportunity to discuss the issues raised in the complaint, clear up misunderstandings, find areas of agreement and, ultimately, to incorporate those areas of agreement into a final resolution of the complaint. The mediator focuses the attention of the parties upon their needs and interests in addition to their stated positions.

* Under a mediation pilot program during 2012, mediators from the Federal Mediation and Conciliation Service, who have been trained in federal personnel law, are mediating some OSC cases.

Last Updated: 4/26/12

NOT FOR PUBLIC RELEASE

The enclosed material is not for public release. It is being furnished solely at the request of the Ranking Member of the Senate Judiciary Committee, and is being provided only to the Chairman and the Ranking Member of the Committee.

The Office of Special Counsel (OSC) requests that the Committee safeguard the privacy interests of the individuals named in this material, as OSC would in response to requests for disclosure by the public or other agencies. Public disclosure of individuals' names or information could constitute an unwarranted invasion of personal privacy. Accordingly, OSC requests that the Chairman designate this information "Committee Confidential."

U.S. OFFICE OF SPECIAL COUNSEL
Form OSC-12

U.S. OFFICE OF
SPECIAL COUNSEL
WASHINGTON, D.C.

(202) 254-3640 / (800) 572-2249
OMB Control No. 3255-0002
Exp. Date: 2/28/14

2010 MAR 17 PM 2: 04

INFORMATION ABOUT FILING A WHISTLEBLOWER DISCLOSURE WITH THE OFFICE OF SPECIAL COUNSEL

IMPORTANT

Before filling out this Office of Special Counsel (OSC) Disclosure of Information form, please read the following sections about limitations on OSC's jurisdiction over whistleblower disclosures. Only the most frequently occurring impediments to OSC jurisdiction are described. OSC may not have jurisdiction over you or your disclosure for other reasons not discussed below.

COMPLETED DISCLOSURE FORMS CAN BE SENT TO OSC BY MAIL, AT: DISCLOSURE UNIT, OFFICE OF SPECIAL COUNSEL, 1730 M STREET, N.W. (SUITE 218), WASHINGTON, DC 20036-4505. OR BY FAX: 202-254-3711

PLEASE KEEP A COPY OF DISCLOSURE MATERIALS PROVIDED TO OSC. REPRODUCTION CHARGES UNDER THE FREEDOM OF INFORMATION ACT MAY APPLY TO REQUESTS PROCESSED BY OSC FOR COPYING OF COPIES OF MATERIALS IN OSC FILES.

OSC WHISTLEBLOWER DISCLOSURE CHANNEL

The OSC Disclosure Unit serves as a secure channel that can be used to disclose -

- a violation of law, rule or regulation;
- gross mismanagement;
- gross waste of funds;
- abuse of authority, or
- substantial and specific danger to public health or safety.

OSC does **not** have authority to investigate the disclosures that it receives. The law provides that OSC will (a) refer protected disclosures that establish a substantial likelihood of wrongdoing to the appropriate agency head, and (b) require the agency head to conduct an investigation, and submit a written report on the findings of the investigation to the Special Counsel.

If OSC finds no substantial likelihood that the information discloses one or more of the categories of wrongdoing, the Special Counsel must: (a) inform the whistleblower of the reasons why the disclosure may not be acted on further; and (b) direct the whistleblower to other offices available for receiving disclosures.

OSC JURISDICTION

The Disclosure Unit has jurisdiction over federal employees, former federal employees, and applicants for federal employment. It is important to note that a disclosure must be related to an event that occurred in connection with the performance of an employee's duties and responsibilities. The Disclosure Unit has ***no jurisdiction*** over disclosures filed by:

VISIT *HTTP://WWW.OSC.GOV* FOR MORE INFORMATION ABOUT
OSC JURISDICTION AND DISCLOSURE PROCEDURES

INFORMATION ABOUT FILING A WHISTLEBLOWER DISCLOSURE WITH THE OSC *(cont'd)*

- employees of the U.S. Postal Service and the Postal Rate Commission;
- members of the armed forces of the United States (i.e., non-civilian military employees);
- state employees operating under federal grants; and
- employees of federal contractors.

FIRST-HAND INFORMATION REQUIRED

In order to make a "substantial likelihood" finding (*see previous page*), OSC must be in possession of reliable, first-hand information. OSC cannot request an agency head to conduct an investigation based on an employee's (or applicant's) second-hand knowledge of agency wrongdoing. This includes information received from another person, such as when a fellow employee informs you that he/she witnessed some type of wrongdoing. (Anyone with first-hand knowledge of the allegations you want to report may file a disclosure in writing directly with OSC.) Similarly, speculation about the existence of misconduct does not provide OSC with a sufficient legal basis upon which to send a matter to the head of an agency. If you think that wrongdoing took place, but can provide nothing more than unsubstantiated assertions, OSC will not be able to go forward with the matter.

DE MINIMIS ALLEGATIONS

While an allegation might technically constitute a disclosure, OSC will not review or refer *de minimis* or trivial matters.

ANONYMOUS SOURCES

While OSC will protect the identity of persons who make disclosures, it will not consider anonymous disclosures. If a disclosure is filed by an anonymous source, the disclosure will be referred to the Office of Inspector General in the appropriate agency. OSC will take no further action.

MATTERS INVESTIGATED BY AN OFFICE OF INSPECTOR GENERAL

It is the general policy of OSC not to transmit allegations of wrongdoing to the head of the agency involved if the agency's Office of Inspector General has fully investigated, or is currently investigating, the same allegations.

U.S. OFFICE OF SPECIAL COUNSEL (202) 254-3640 · (800) 572-2249

DISCLOSURE OF INFORMATION

(Please print legibly or type and complete all pertinent items. Enter "N/A" (Not Applicable) or "Unknown" where appropriate.)

PART I: BACKGROUND INFORMATION

1. Name of person seeking OSC action ("Complainant"): Mr. (☒) Ms. (☐) Mrs. (☐) Miss (☐)

Jeffrey S. Paulsen

2. Status:

Current Federal employee (☒) Applicant for Federal employment (☐)

Former Federal employee (☐) Other *(please specify)*:

3. Contact Information:

Home or mailing address: [redacted]

Telephone number(s): ([redacted]) [redacted] (Home)

([redacted]) [redacted] (Office) Ext.

([redacted]) [redacted] (Cell)

Fax number: ( )

E-mail address: [redacted]

4. Current position, title, series, and grade:

Assistant United States Attorney

5. Agency Name: U.S. Attorney's Office, District of Minnesota

6. Agency Address:

600 U.S. Courthouse

300 South 4th Street, Minneapolis, MN 55415

7. How did you first become aware that you could file a disclosure with OSC?

OSC brochure (☐) OSC poster (☐) OSC speaker (☐) OSC web site (☒)

Agency personnel office (☐) Union (☐) Co-worker (☐) News story (☐)

Other *(please describe)*:

Date *(approximate)*: October 2012

8. If you are filing this complaint as a legal or other representative of the person making a disclosure, please supply the following information:

Name / title of filer: Mr. (☐) Ms. (☐) Mrs. (☐) Miss (☐)

N/A

9. Contact Information:

Home or mailing address:

Telephone number(s): ( ) (Home)

( ) (Office) Ext.

Fax number: ( )

E-mail address:

PART 2: DETAILS OF YOUR DISCLOSURE

1. I know about the information I am disclosing here based on (*check all that apply*):

I have personal and/or direct knowledge of events or records involved (☒)

Other employees have told me about events or records involved (☒)

Other source(s) (☒)

(please explain): Numerous law enforcement agents have provided information relevant to this complaint

2. Please identify the U.S. government department or agency involved in your disclosure:

U.S. Attorney's Office, District of Minnesota

3. Please identify the organizational unit of the department or agency involved:

U.S. Attorney B. Todd Jones; Narcotics Section Chief AUSA #1

4. Address of the organizational unit:

600 U.S. Courthouse, 300 South 4th Street, Minneapolis, MN 55415

5. Please identify the type of agency wrongdoing that you are alleging (*check all that apply*). If you check "violation of law, rule, or regulation," please provide, if you can, the particular law, rule or regulation violated (by name, subject, and/or citation).

Violation of law, rule, or regulation (☐) (*please specify*):

Gross mismanagement (☒) Gross waste of funds (☐) Abuse of authority (☒)

Substantial and specific danger to public health (☐)

Substantial and specific danger to public safety (☐)

6. Please describe the agency wrongdoing that you are disclosing, indicating how the agency's actions fit within the type(s) of wrongdoing that you checked in item 5. *(Be as specific as possible about dates, locations and the identities and positions of all persons named. Also, please attach any documents that might support your disclosure. Continue on a separate sheet of paper if you need more space.)*

See attached.

PART 3: OTHER ACTIONS YOU ARE TAKING ON YOUR DISCLOSURE

1. I have previously disclosed (or am disclosing) the violations alleged here to (*complete all that apply*):

(☐)	Inspector General of department / agency involved	Date: ☐/☐/☐
(☐)	Other office of department / agency involved (*please specify*):	Date: ☐/☐/☐
(☑)	Department of Justice	Date: 12/10/12
(☐)	Other Executive Branch / department / agency (*please specify*):	Date: ☐/☐/☐
(☐)	General Accounting Office (GAO)	Date: ☐/☐/☐
(☐)	Congress or congressional committee (*please specify member or committee*):	Date: ☐/☐/☐
(☐)	Press / media (newspaper, television, other) (*please specify*):	Date: ☐/☐/☐

2. If you disclosed the information reported here through any other channel described in question 1, above, what is the current status of the matter?

The Executive Office for U.S. Attorneys declined to consider the whistleblower allegations.

PART 4: CONSENT, CERTIFICATION, AND SIGNATURE

Do you consent to the disclosure of your name to others outside the Office of Special Counsel if it becomes necessary in taking further action on this matter?

I **consent** to disclosure of my name:

Jeffrey D. Paulson — March 6, 2013
Signature — Date

I **do not consent** to disclosure of my name:

Signature — Date

I certify that all of the statements made in this complaint (including any continuation pages) are true, complete, and correct to the best of my knowledge and belief. I understand that a false statement or concealment of a material fact is a criminal offense punishable by a fine of up to $10,000, imprisonment for up to five years, or both. 18 U.S.C. § 1001.

Jeffrey S. Paulsen — March 6, 2013

Signature — Date

PART 5: PRIVACY ACT / PAPERWORK REDUCTION ACT STATEMENTS

Routine Uses. Limited disclosure of information from OSC files is needed to fulfill OSC's investigative, prosecutorial and related responsibilities. OSC has described 18 routine uses for information in its files in the *Federal Register* (F.R.), at 66 F.R. 36611 (July 12, 2001), and 66 F.R. 51095 (October 5, 2001). A copy of the routine uses is available from OSC on request. A summary of the routine uses appears below.

OSC may disclose information from its files in the following circumstances:

1. to disclose that an allegation of prohibited personnel practices or other prohibited activity has been filed;
2. to disclose information needed by the Office of Personnel Management (OPM) for inquiries involving civil service laws, rules or regulations, or to obtain an advisory opinion;
3. to disclose information about allegations or complaints of discrimination to entities concerned with enforcement of anti-discrimination laws;
4. to the MSPB or the President, when seeking disciplinary action;
5. to the involved agency, MSPB, OPM, or the President when OSC has reason to believe that a prohibited personnel practice has occurred, exists or is to be taken;
6. to disclose information to Congress in OSC's annual report;
7. to disclose information to third parties (without identifying the complainant unless OSC has the complainant's consent) as needed to conduct an investigation; obtain an agency investigation and report on information disclosed to the OSC whistleblower disclosure channel; or to give notice of the status or outcome of the investigation;
8. to disclose information as needed to obtain information about hiring or retention of an employee; issuance of a security clearance; conduct of a security or suitability investigation; award of a contract; or issuance of a license, grant, or other benefit;
9. to the Office of Management and Budget (OMB) for certain legislative coordination and clearance purposes;

10. to provide information from an individual's record to a congressional office acting pursuant to the individual's request;
11. to furnish information to the National Archives and Records Administration for records management purposes;
12. to produce summary statistics and work force or other studies;
13. to provide information needed by the Department of Justice for certain litigation purposes;
14. to provide information needed by courts or adjudicative bodies for certain litigation purposes;
15. to disclose information to the MSPB as needed in special studies authorized by law;
16. for coordination with an agency's Office of Inspector General or comparable entity, to facilitate the coordination and conduct of investigations and review of allegations;
17. to news media or the public in certain circumstances (except when the Special Counsel determines that disclosure in a particular case would be an unwarranted invasion of personal privacy); and
18. to the Department of Labor and others as needed to implement the Uniformed Services Employment and Reemployment Rights Act of 1994, and the Veterans' Employment Opportunities Act of 1998.

Purposes, Burdens, and Other Information. An agency may not conduct or sponsor a collection of information, and persons may not be required to respond to a collection of information, unless it (a) has been approved by OMB, and (b) displays a currently valid OMB control number. The information in this form is collected pursuant to OSC's legal responsibility (at 5 U.S.C. § 1213) to receive disclosures from current or former federal employees, or applicants for federal employment, alleging possible wrongdoing by federal agencies. The information will be used by OSC to determine whether the facts establish that: (a) OSC has jurisdiction over the subject of the disclosure; (b) there is a substantial likelihood that the facts indicate a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority: or a substantial and specific danger to public health or safety; and (c) referral for investigation by the agency involved, or other appropriate action is warranted. The reporting burden for this collection of information is estimated to be an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the form.

Please send any comments about this burden estimate, and suggestions for reducing the burden, to the U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W. (Suite 201), Washington, DC 20036-4505. Use of this form to report disclosures of information is not mandatory. As indicated in part 4 of the form, filers may request that OSC maintain their name in confidence.

Question 6:

I have been an Assistant United States Attorney for the District of Minnesota for 24 years. I have nearly 30 years of federal service, including a two-year judicial clerkship and four years with the Federal Programs Branch at Main Justice. I have served in various leadership positions in the U.S. Attorney's Office, including OCDETF coordinator, Chief of the Narcotics Section, and Chief of the Criminal Division. I have been fortunate to receive many Departmental awards over the years, including most recently the Assistant Attorney General's Distinguished Achievement Award (2012). I am submitting this complaint as a last resort, having exhausted all internal and Departmental remedies. Much of the information below is based on personal knowledge. The rest is based on numerous reports to me from law enforcement agents and others who have been adversely affected by the improper actions of current Chief of the Narcotics and Violent Crimes Section AUSA #1 and by U.S. Attorney B. Todd Jones' refusal to do anything to correct the situation.

B. Todd Jones became United States Attorney for the District of Minnesota in August 2009. One of his first acts was to demote AUSA AUSA #2 as Chief of the Narcotics Section and replace him with AUSA AUSA #1 AUSA #2 is a senior AUSA with over 30 years of federal service, including 10 years with the U.S. Attorney's Office for the District of Minnesota. Prior to that, he served as an AUSA in the Eastern District of Virginia, where he also headed the Narcotics Section. AUSA #1 in contrast, was new to the office, having transferred from another District in 2008. She had no prior management experience. She was, however, the daughter of [redacted], a senior partner at the law firm ([redacted]) where Mr. Jones was employed at the time he became U.S. Attorney. According to recent media accounts, [redacted] also is a major contributor to Democratic political candidates. Attachment 1 at 2-4; see also Attachment 2 at 2-3. It was widely understood in 2009 that AUSA #1 was promoted because of Mr. Jones' connection to her father.

Since becoming Chief of the Narcotics section, which is now known as the Narcotics and Violent Crime Section, AUSA #1 has thoroughly alienated the client agencies she is supposed to serve through her improper behavior. Agents report that she is rude and belittling toward them. She frequently accuses them of wrongdoing without any factual basis. She has declined several worthwhile federal cases for no apparent reason other than that she did not like the agent who presented the case. On more than one occasion, she has later misrepresented the facts surrounding such declinations, falsely claiming that the agent never presented the case, or that if he or she did, the agent "undersold" the case and caused her to decline it.

AUSA #1 is intensely disliked at the DEA, her main client agency. Agents describe her as abusive, vindictive, and a liar. These opinions are held not only by line agents, but also by DEA supervisory personnel. DEA will not even allow her to attend their agency gatherings,

such as going away parties and the annual Christmas party. AUSA #1 is also held in low esteem at the other client agencies she is supposed to serve, such as FBI, ATF, and the Minnesota Bureau of Criminal Apprehension. This is unprecedented. Prior to AUSA #1's tenure as Narcotics Chief, the U.S. Attorney's Office always enjoyed good relationships with these client agencies. Now, agents and supervisors at DEA and the other agencies report that relations have never been worse, and they blame it on AUSA #1.

Things have gotten so bad under AUSA #1's tenure as Narcotics and Violent Crime Section Chief that many agents no longer will submit their cases for federal prosecution because it means dealing with AUSA #1, who is in charge of intake for drug, gun, and violent crime cases. Instead they take their cases to the various County Attorney's Offices for state prosecution. This is adversely affecting the public interest as penalties for drug and gun crimes tend to be lower in state court than in federal court. It is also severely affecting office productivity. The number of charged defendants in the fiscal year ending September 30, 2012 was down 40 percent from FY 2011. (Attachment 3.) Most of this drop was in drug and violent crime cases, the two areas where AUSA #1 is responsible for case intake. Id. The number of drug defendants charged in FY 2012 dropped 42 percent. Id. The number of violent crime defendants was down 36 percent. Id.

AUSA #1 also has a very poor reputation with the bench. She is perceived as haughty, arrogant, and even cowardly. This stems in part from her frequent behavior in vetoing reasonable plea offers proposed by line prosecutors and insisting that they seek more severe punishment. When judges express concern or even anger about the Office's sentencing recommendation, AUSA #1 typically will not back up the line attorney or otherwise take responsibility for the decision. She lets the line attorney take the heat. The Judges have become aware of this and some have begun making a record at the time of sentencing about AUSA #1's role in the process.

AUSA #1 has treated many of the attorneys in her section as poorly as she treats the client agencies. One AUSA was harassed by AUSA #1 to the point that he requested a transfer to another section. He subsequently left the office [redacted]. This senior AUSA, [redacted] was one of the best prosecutors in the office and one of the most productive. He has stated that he loved being a federal prosecutor and never would have applied [redacted] but for the mistreatment he suffered at the hands of [redacted] AUSA #1 and certain other managers who backed her up. At least three other senior AUSAs in the office who have reported at times to AUSA #1 also are considering leaving the office due to their mistreatment by her, including the undersigned.

U.S. Attorney Jones is well aware of these problems with AUSA #1's performance, but refuses to do anything about it. When agency supervisors have complained to Mr. Jones about AUSA #1, he reportedly has been abusive and even threatening towards them. At least two of

the federal judges reportedly have tried to talk to Mr. Jones about the situation only to be rebuffed.

Last October, I sent a memorandum to Mr. Jones at his express invitation and after he assured me that I could speak freely. I told Mr. Jones he ought to replace AUSA #1 as head of the Narcotics and Violent Crime Section for the good of the office. Attachment 4. A short time later, Mr. Jones suspended me for five days without pay and involuntarily transferred me to a non-prosecutorial position in the appellate section, where I remain today. These disciplinary actions are the subject of a whistleblower reprisal claim, which I am filing separately with your agency.

Given Mr. Jones' refusal to do anything about AUSA #1's gross mismanagement and abuse of her authority, the former Special Agent in Charge of the local FBI Office, Donald Oswald, recently sent a letter to the Senate Judiciary Committee informing that committee of the problems caused by AUSA #1. Attachment 2. In his detailed, 10-page letter, Mr. Oswald stated that "AUSA #1 is single-handedly responsible for the disenfranchisement and destruction of relationships between the USAO [United States Attorney's Office] and the federal agencies involved with guns and drugs." Attachment 2 at 2. He also described how Mr. Jones always would "vehemently defend" AUSA #1 even when presented with "alarming" facts about her behavior. Id. He described how other law enforcement leaders have been deterred from speaking out publicly about AUSA #1 due to "fear of retaliation or retribution from [Mr. Jones]." Id. at 1.

This letter received widespread coverage in the local media, including a front-page article in the Minneapolis Star Tribune. Attachment 1. The article confirmed that Mr. Oswald is not the only law enforcement officer who is critical of Mr. Jones and AUSA #1. Respected reporter Dan Browning, who covers the federal courts, and Paul McEnroe, an investigative reporter, wrote that "a number of state and federal law enforcement officers have complained privately for at least a year about the handling of drug, gun and violent crime cases by the U.S. attorney's office in Minnesota." Attachment 1 at 2.

Since the Star Tribune article appeared, the local head of one of the affected federal agencies personally confirmed to me that he and the other agency leaders involved in drug and violent crime investigations all agree with Mr. Oswald's assessment of AUSA #1's performance. He also confirmed that they do not dare say so publically for fear of risking their positions by angering U.S. Attorney Jones.

The reluctance of other law enforcement personnel to criticize AUSA #1 and Mr. Jones publicly may be due to Mr. Jones' attitude toward whistleblowers, which was revealed in a video he made in his capacity as Acting Director of ATF that became public last summer. In the video, Mr. Jones addressed ATF employees and sternly warned them that, "[i]f you don't respect the chain of command, if you don't find the appropriate way to raise your concerns to your

leadership, there will be consequences because we cannot tolerate an undisciplined organization." (A link to this video accompanied the recent Star Tribune article; the video also is available on YouTube.) According to published news reports, when this video became public, a United States Senator and a Congressman wrote Mr. Jones expressing their concern that his comments were designed to chill the reporting of agency wrongdoing by whistleblowers.

More than a month has passed since the Star Tribune article reporting AUSA #1 's gross mismanagement and abuse of her authority. Despite the publicity, the U.S. Attorney has done nothing to address the situation. AUSA #1 still is head of the Narcotics and Violent Crime Section and there have been no announced plans for any change.

Meanwhile, statistics for the first quarter of FY 2013 demonstrate a continued decline in the number of drug cases being prosecuted in the District of Minnesota. Based on first quarter data, the total number of drug defendants in FY 2013 is expected to drop another 8 percent on top of last year's 42 percent decline. The sub-category of OCDETF (Organized Crime Drug Enforcement Task Force) drug defendants – which comprises the highest level dealers – is expected to drop another 34 percent on top of last year's 25 percent decline.

While U.S. Attorney Jones has attempted to explain away the decline in drug and violent crime prosecutions as simply reflecting a change in office priorities, an investigation will reveal this not to be the case. There has been no corresponding increase in prosecution numbers in any other area, such as white collar crime or terrorism. To the contrary, white collar crime prosecutions were down 31 percent in FY 2012 and are projected to remain nearly that low in FY 2013. Terrorism cases peaked in FY 2009 (before Mr. Jones became U.S. Attorney) with 15 defendants, and have steadily decreased since then. There were only two such defendants in FY 2012, and none so far in FY 2013. An investigation will confirm that the real reason for the dramatic drop in drug and violent crime prosecutions in the District of Minnesota is Section Chief AUSA #1 's gross mismanagement and abuse of her authority, combined with U.S. Attorney Jones' refusal to do anything about it.

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Former Minneapolis FBI director attacks Jones' ATF nomination

Article by: DAN BROWNING and PAUL MCENROE , Star Tribune staff writers | Updated: January 31, 2013 - 10:20 PM

Former head of local FBI office, in letter to Senate panel, denounced work of U.S. attorney.

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A former director of the Minneapolis FBI office sent a letter this week to members of the U.S. Senate Judiciary Committee denouncing B. Todd Jones' performance as U.S. attorney in Minnesota as they prepare to consider his nomination to director of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

Donald E. Oswald, 54, a self-declared Democrat and supporter of President Obama, said he felt "morally compelled" to alert the committee about what he describes as Jones' "atrocious professional reputation within the federal law enforcement community" in Minnesota.

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"He was, and still remains, a significant impediment for federal law enforcement to effectively protect the citizens of Minnesota from violent gang, drug and gun activities," Oswald wrote in an eight-page, single-spaced letter.

Oswald said he decided to go public with his concerns because active law enforcement officers in Minnesota are afraid to do so. "What I hope would happen is that the Senate would subpoena some of these people to come in and talk," Oswald said in a telephone interview from his home in Fort Lauderdale, Fla.

Jones declined a request for comment Thursday.

Minnesota's U.S. senators, Amy Klobuchar and Al Franken, both sit on the Judiciary Committee and said that they would review Jones' record and all information provided to it during the nomination process.

"As a former prosecutor, Sen. Klobuchar takes enforcement of violent crimes very seriously. She had a positive working relationship with Mr. Jones on those issues when she was Hennepin County attorney and knows they are important to him as well," said Brigit Helgen, her spokeswoman.

Sen. Chuck Grassley, R-Iowa, said in a statement that "Mr. Oswald provides some very disturbing allegations in his letter that we'll be looking into. I hope others, who Mr. Oswald mentioned, will not be intimidated to talk with us about [Jones'] leadership skills and his ability to run an agency that is in disarray."

Asked Thursday about Jones' leadership, Hennepin County Attorney Mike Freeman gave a positive review. "My dealings with him have been first rate," he said. "He's treated us fairly."

Office decisions questioned

A number of state and federal law enforcement officers have complained privately for at least a year about the handling of drug, gun and violent crime cases by the U.S. attorney's office in Minnesota.

Oswald oversaw FBI operations in Minnesota and the Dakotas as special agent in charge of the Minneapolis Division from May 2011 through May 2012, when he retired to practice law in Florida.

In an interview in December, however, Jones characterized the complaints as a reaction to his decision to shift priorities away from street-level crimes to more complex crimes involving drug cartels and to time-consuming white-collar crimes and terrorism cases.

Oswald disputed that in his letter to the committee and included charts that he said showed "Mr. Jones' statistical accomplishments for FY 2012 are down in every category."

Jeanne Cooney, a spokeswoman for the U.S. attorney's office in Minnesota, responded with a chart that she says shows prosecutors in the office working longer hours.

"So while the number of defendants has gone down, work years have gone up substantially," she said. "Less easy cases, more harder cases."

Oswald's letter further criticizes Jones for his support of Assistant U.S. Attorney [redacted] the daughter of one of his mentors at the Minneapolis law firm of [redacted] where Jones had been a partner, and a major financial contributor to Democratic politicians. [redacted] came to the office in 2008 from the U.S. attorney's office in Atlanta.

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Jones appointed [redacted] as head of the violent crime and drug section after she worked in the office for less than a year, Oswald said. He said she lacked management experience and while he was running the FBI's office in Minneapolis, he received numerous complaints about her "abrasive interactions" with agents and their supervisors, who described her as antagonistic and inconsistent in her reasons for rejecting cases.

"I've come to believe that [redacted] is single-handedly responsible for the disenfranchisement and destruction of relationships between the [U.S. attorney's office] and the federal agencies involved with guns and drugs," Oswald's letter says.

He said that he and his counterparts in other federal agencies complained to Jones at their monthly meetings, but Jones reacted defensively and "vehemently" defended [redacted]

Oswald concluded that Jones did so because he was close to her father, [redacted], 75. Campaign finance records on file with OpenSecrets.org show that [redacted] and his family members have given more than $352,500 to Democrats since 1990.

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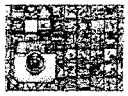

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Continued: Former Minneapolis FBI director attacks Jones' ATF nomination

Article by: DAN BROWNING and PAUL McENROE , Star Tribune staff writers | Last Update: January 31, 2013 - 10:20 PM

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[redacted] and his wife [redacted] have given more than $17,000 to Obama and Vice President Joe Biden. They gave $14,464 to Klobuchar between 2006 and 2011, and $1,000 to Franken in 2012. [redacted] gave $340 to Obama in 2011. "It's evident that Jones protects [redacted] at all cost to ingratiate favor with others in the Democratic Party," Oswald wrote.

The U.S. attorney's office declined to make [redacted] available for comment.

[redacted], a former managing partner at [redacted], said Thursday he had no knowledge of the complaints about Jones or his daughter. But he said he's known Jones for 10 years and considers him the right kind of person to run the U.S. attorney's office or the ATF.

"I've seen Todd in very difficult situations. He handles them beautifully," [redacted] said.

He said his political contributions had nothing to do with Jones being appointed U.S. attorney and noted that his daughter was already working in the office when Jones was sworn in for his second stint at U.S. attorney.

[redacted] said Oswald's remarks about his daughter were offensive. [redacted] said his daughter was one of five people who made the final cut for a federal magistrate judge position in Atlanta. "I think that's pretty impressive. I'm very proud."

Big cases rejected?

Oswald's letter supports complaints by a number of law enforcement sources that Jones and [redacted] refused to prosecute criminal operations over the past two years despite wiretap evidence and seizures of drugs, recovered firearms and large amounts of cash.

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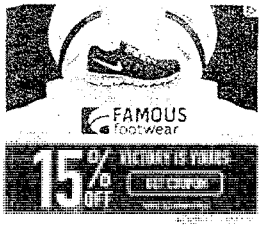

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Since the FBI Safe Streets Task Force was formed about two years ago, agents and local law enforcement have brought at least 10 large conspiracy cases to the office and then had them turned down for federal prosecution, according to people with direct knowledge of those cases.

Jones said in an earlier interview that some cases were rejected for further investigation. Cooney said the task force has had problems recognized by an independent review.

At least three of the rejected cases involved widespread gang activity in St. Paul.

Oswald's letter cites one case in which starting in 2010 investigators bought more than 16 pounds of methamphetamine, recovered at least $500,000 and proved the connection to the La Familia Michoacan. The case was prosecuted in October by the Hennepin County attorney's office, and Pedro Ayala was sentenced in December to 30 years in state prison, the longest drug sentence in state history. The remaining 19 defendants are being tried by the county attorney.

The case left agents and attorneys bitter and mistrustful when Jones and [redacted] reportedly defended their actions by saying investigators had originally "undersold" the case, according to Oswald and other investigators.

Cooney, at the U.S. attorney's office, said the investigators firmed up their investigation before taking it to Hennepin County. The case might well have been accepted had they referred it again for federal prosecution, she said.

Freeman acknowledged that his office has taken on some of those cases, "but I understand offices have their own priorities."

He noted that Jones made a priority of the $3.65 billion fraud case against Tom Petters and other big white-collar crime cases.

"I can't argue with his priorities," he said.

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January 29, 2013

Honorable Patrick J. Leahy
United States Senator
Chairman, Senate Judiciary Committee
437 Russell Senate Bldg
Washington, DC 20510

Re: Byron "B" Todd Jones,
Nominee for Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives

Dear Senator Leahy:

I'm writing you and the other members of the Senate Judiciary Committee to provide information for your consideration regarding the potential confirmation of B. Todd Jones, recently nominated by President Obama for Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I recently retired from the Federal Bureau of Investigation (FBI) as the Special Agent-in-Charge (SAC) of the Minneapolis Division, where I was responsible for the FBI's investigative activities in Minnesota, North Dakota, and South Dakota. During my tenure as the SAC, my responsibilities included coordinating the FBI's investigative efforts with the three U.S. Attorneys (USAs) within the division's large territory. My personal interactions with USAs Timothy Q. Purdon (ND) and Branden V. Johnson (SD) were always congenial and productive, and their respective offices diligently worked to support the FBI with ongoing investigations and assertively prosecute cases. However, my experience with Mr. Jones, in his capacity as the USA for the District of Minnesota, was completely opposite- unproductive; so much so, I feel morally compelled to make your committee aware of Mr. Jones' atrocious professional reputation within the federal law enforcement community in Minnesota's Twin Cities area. As a retired FBI senior executive, I am one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him. He was, and still remains, a significant impediment for federal law enforcement to effectively protect the citizens of Minnesota from violent gang, drug, and gun activities. I intend to provide compelling and verifiable facts in this letter which will expose Mr. Jones for his lack of team work and poor leadership. I, and many others, have concluded B. Todd Jones is substantially motivated by personal political gain and not by doing what's in the best interest of the citizens he is sworn to protect.

By way of background, I served as the FBI's SAC-Minneapolis from May 2, 2011 through May 2, 2012, after which I retired in good standing and relocated back to south Florida. During my tenure in Minneapolis, the ineffective support provided to the FBI by Mr. Jones and his office on violent crime, gang, and drug matters was a constant cause of complaints from hard working Special Agents and mid-level managers in my office. The morale of many Special Agents was negatively impacted by the constant inaction of the US Attorney's Office (USAO) under Jones' leadership.

I quickly learned the other federal law enforcement agencies in Minneapolis-Saint Paul were having the same issues with Mr. Jones and his office. All of us were very frustrated with Mr. Jones' ineffective leadership and his lack of concern about matters and issues brought to his attention by each of us. Our common dissatisfaction with Jones' poor leadership, pathetic interaction, and insufficient prosecution support was the theme of many discussions during my tenure. The reaction to our combined frustration is evidenced by the increase in significant gang and drug cases being referred by federal agencies to Dakota, Hennepin, and Ramsey counties for prosecution in state court. This trend is indicative of Mr. Jones' low-level support to federal law enforcement in the violent crime, gang, and drug arenas, and our frustration with the constant obstacles placed upon us by certain inefficient personnel in his office. The only time I reached a palatable solution to a problem was when I met with First AUSA [redacted], a man of integrity, and one who follows through on his word. Unfortunately, [redacted], being true to his Marine Corp heritage, followed the orders of his boss and could only do so much.

The local federal law enforcement agency heads met with Mr. Jones as a group or alone on almost a monthly basis, during which our common issues of dissatisfaction were usually brought to his attention. He consistently reacted defensively and often spoke to us disrespectfully, and occasionally with disdain. For example, I recall one meeting at which I and another agency SAC expressed our concern regarding Assistant United States Attorney (AUSA) [redacted], Mr. Jones' chief of the violent crime and drug section, who consistently declined to file federal charges in armed bank robbery cases and significant violent gang investigations impacting the safety and welfare of the citizens in the Twin Cities metropolitan area. I received constant complaints from Special Agents and managers in my office about [redacted]'s abrasive interactions with the Agents and supervisors, who often described her as antagonistic, and claimed her rationales for not filing cases were inconsistent. After many discussions with my federal counterparts about their significant frustration caused by [redacted]'s in-actions impacting Agents investigating violent crime, gang, and drug matters, I've come to believe [redacted] is single-handedly responsible for the disenfranchisement and destruction of relationships between the USAO and the federal agencies involved with guns and drugs.

It was unfathomable to me why Mr. Jones would always vehemently defend the actions of [redacted], even when the facts presented to him were clearly alarming and would cause concern for any judicious executive manager. While researching [redacted]'s history with the USAO, I learned that immediately upon Jones taking office, he promoted [redacted] to chief of the violent crime and drug section, when she had less

than a year in the office and had no previous management experience. I further learned, coincidentally, but not surprisingly, [redacted] is the daughter of [redacted], a close friend of Mr. Jones, and Partner at Jones' previous employer, the law firm of [redacted]. According to public records, [redacted] is a huge financial contributor to the Democratic Party. Suddenly it became clear to me that Mr. Jones is motivated by personal political gain and not by advancing the safety and welfare of the citizens of the State of Minnesota. It's evident that Jones protects [redacted] at all cost to ingratiate favor with others within the Democratic Party.

During my tenure as SAC, I also met many times with the Police Chiefs of significant local law enforcement partners to discuss the lack of federal prosecutions and support provided by the USAO on significant violent gang cases being investigated jointly by the Safe Streets Violent Crimes Task Force (SSVCTF). We all agreed that the U.S. Attorney's Office, under Mr. Jones' leadership, was incapable of producing the required results for our needs and we decided to refer certain cases for prosecution to state court. For example, I and other members of the SSVCTF executive committee authorized a significant drug/gang investigation involving a Hmong gang importing and distributing methamphetamine in the Twin Cities area to the Hennepin County Attorney's Office (HCAO). The HCAO provided great support to this investigation and is successfully prosecuting the case, which became one of the largest drug cases ever prosecuted in Hennepin County. The case netted 16.1 lbs of methamphetamine, the seizure of two hand guns and approximately half a million dollars in cash. This was certainly not a "street level" case of low importance to the community. To date, eleven defendants have pleaded guilty and seven more are set for trial. When media and others inquired with the USAO as to why the case was not taken federally, their reply was that the case had been "undersold" when it was presented by the case Agent and Supervisory Special Agent to AUSA [redacted] The USAO response could not be further from the truth. This is just one example of [redacted]'s poor judgment when assessing cases for federal prosecution. I personally spoke to Mr. Jones about this matter, in the presence of another local agency head, and was told that if our Agents didn't like his prosecution guidelines, "tough shit."

The RICO prosecution in state court by Hennepin County of the [redacted] for their involvement in homicides, home invasions, extortion, drugs and gun violence is another example of an FBI case "passed" on by the USAO, yet successfully prosecuted by Hennepin County Attorney [redacted] in state court. These decisions by Mr. Jones and his "protected few" to decline the prosecution of dangerous criminals in the federal court system are inexcusable.

In a recent newspaper article in the Minneapolis *Star Tribune*, dated December 31, 2012, it was noted,

> *[c]riminal prosecutions have dropped dramatically at the U.S. Attorney's office in Minneapolis under the leadership of B. Todd Jones, rankling some in law enforcement."*

My experiences with Mr. Jones absolutely concur with this statement. The article continues,

> *"[a] Star Tribune analysis of federal prosecutions in Minnesota in the past six fiscal years shows that significantly fewer people are being charged – especially those involved in drug crimes."*
> *Jones acknowledges that his prosecutors are rejecting some "street-level" cases they might have taken in the past, leaving them to county attorneys.*
> Federal prosecutors are focusing on labor-intensive cases involving criminal organizations, complex white-collar crimes and international terrorism, as well as crimes that have exclusive federal jurisdiction such as bank robberies, Indian Country crimes and securities law violations. "If some elements in law enforcement disagree with that prosecutorial decision ... then I'm sorry," Jones said. "The worlds changed, and we have different priorities."

I obtained statistics from the official US Department of Justice (DOJ) website for the Minneapolis USAO which establishes the excuses Jones provided to *Star Tribune* reporter Dan Browning are completely disingenuous. The DOJ maintains statistical accomplishments for every USAO, in every criminal category, for each fiscal year (FY). I have charted relevant stats below for the Minnesota USAO during Mr. Jones' tenure and added some analysis and comment. Mr. Jones assumed office as USA for his second term in August 2009. The first chart depicts the number of defendants charged overall during each FY. Note the significant reduction overall in FY 2012 from FY 2011.

Defendants Charged by Minneapolis USAO	
FY 99	475
FY 00	525
FY 01	485
FY 02	516
FY 03	512
FY 04	637
FY 05	525
FY 06	649
FY 07	668
FY 08	653
FY 09	531
FY 10	482
FY 11	546
FY 12	329 ***(Down 40% from FY 2011)***

Note: By comparison, in FY 1999 the office had approximately 1/3 fewer AUSAs than it did in FY 2012. As each chart below shows, Mr. Jones' statistical accomplishments for FY 2012 are significantly down in every category.

The remaining charts show the number of defendants charged in each category:

Counter-Terrorism	
FY 09	15
FY 10	13
FY 11	2
FY 12	2 ***(No Change from FY 2011)***

In the referenced newspaper article, Mr. Jones claimed his new priority is focusing USAO resources on certain complex crimes, including terrorism cases. However, more accurately he has only two of approximately 54 AUSAs assigned to work full time on national security matters, which include counterterrorism, domestic terrorism, and foreign counterintelligence matters. Moreover, in April 2012, at the conclusion of a long term joint FBI / ATF undercover domestic terrorism investigation entitled "Operation Wrong Reich," Mr. Jones' office failed to charge one defendant claiming resource concerns. This investigation focused on a white supremacist group, who among other things, discussed plans to bomb the Mexican Consulate in Saint Paul. Defendant [redacted], along with her husband, [redacted] a convicted felon, and [redacted], also a convicted felon, were arrested on a multitude of federal charges. But suddenly, without concurrence from the FBI or ATF, Mr. Jones' office declined to pursue legitimate federal charges against [redacted] for an illegal straw purchase of a firearm, conspiracy to illegally transfer a firearm, and making false statements to federal law enforcement officials, claiming resource issues. Mr. Jones can't have it both ways- that is to say- he can't claim to be focusing USAO resources on terrorism matters, but fail to pursue established felony firearm charges against a domestic terrorism defendant.

Drugs	
FY 11	211
FY 12	122 ***(Down 42.2% from FY 2011)***

Organized Crime Drug Enforcement Task Forces (OCDETF)	
FY 11	124
FY 12	92 ***(Down 25.8 % from FY 2011)***

Non-OCDETF Drugs	
FY 11	87
FY 12	30 ***(Down 65.5% from FY 2011)***

Guns and Violent Crimes	
FY 11	125
FY 12	80 ***(Down 36% from FY 2011)***

Public Corruption	
FY 11	4
FY 12	0 ***(Down 100% from FY 2011)***

Civil Rights	
FY 11	4
FY 12	1 ***(Down 75% from FY 2011)***

Government Regulatory Offenses	
FY 11	19
FY 12	10 ***(Down 47% from FY 2011)***

Immigration Matters	
FY 11	37
FY 12	26 ***(Down 30% from FY 2011)***

Thefts	
FY 11	14
FY 12	02 ***(Down 85.7% from FY 2011)***

White-Collar Crimes	
FY 07	94
FY 08	100
FY 09	68
FY 10	116
FY 11	125
FY 12	86 ***(Down 31.2% from FY 2011)***

General Crimes	
FY 11	4
FY 12	0 ***(Down 100% from FY 2011)***

In conclusion, I have no personal or political agenda for sending this letter other than speaking the truth. Ironically, I am a long-time registered Democrat and have supported President Obama in both elections. But I feel obligated to provide this information to your committee on behalf of many law enforcement professionals in the Twin Cities area unable to speak "on the record" out of fear of retaliation and retribution. The American public deserves the right to know the truth about the character traits of this nominee. I strongly believe Mr. Jones is neither a team player nor an effective law enforcement leader, but rather an individual who has used his power and influence for personal political gain. The only good that will come from his confirmation is the people of the State of Minnesota may get a new USA who will adequately fight violent crime in their state and support federal law enforcement to protect the safety and welfare of the citizens they are sworn to protect. I have many more examples of Mr. Jones' ineffective leadership and support, but will spare the readers of this letter any more pages to read. I urge your staff or the media to look into these concerns thoroughly. I have enclosed a copy of the FBI's news release when I was selected as the SAC, which summarizes my professional background and experience for your review. If I can be of any assistance to you or your committee, please do not hesitate to contact me.

Yours truly,

Donald E. Oswald, Esq.

CC: Members of the Senate Judiciary Committee
1-Senator Chuck Grassley
1-Senator Dianne Feinstein
1-Senator Orin B. Hatch

1-Senator Chuck Schumer
1-Senator Jeff Sessions
1-Senator Dick Durbin
1-Senator Lindsay Graham
1-Senator Sheldon Whitehouse
1-Senator John Cornyn
1-Senator Amy Klobuchar
1-Senator Al Franken
1-Senator Michael S. Lee
1-Senator Christopher Coons
1-Senator Tom Coburn
1-Senator Richard Blumenthal

MEDIA:
Dan Browning, Minneapolis *Star Tribune*
Amy Forliti, Associated Press

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

FOR IMMEDIATE RELEASE
March XX, 2011

NATIONAL PRESS OFFICE
(202) 324-3691
www.fbi.gov

Donald E. Oswald Named as Special Agent in Charge of FBI's Minneapolis Division

Director Robert S. Mueller, III appointed Donald E. Oswald the special agent in charge of the Minneapolis Division. In this role, he will oversee the FBI's operations in Minnesota and North and South Dakota. He most recently served as the chief inspector in the Office of Inspections.

Mr. Oswald entered on duty as a special agent in May 1992. He served in the Los Angeles Division and investigated bank robberies and street gang activities and also served as a division legal advisor. In 1994, he transferred to the New York Division, where he investigated complex multi-agency public corruption matters. Mr. Oswald also served for more than three years as associate division counsel in the New York Division.

Mr. Oswald was promoted in February 2000 to supervisory special agent in the Office of the General Counsel at FBI Headquarters and was assigned to the Investigative Law Unit. There, he provided advice and counsel concerning investigative operations and proposed undercover operations. Mr. Oswald's tour at FBI Headquarters also included an assignment as assistant inspector in the Office of Inspections.

In July 2003, Mr. Oswald was transferred to the Miami Division as a field supervisor for the South Florida Joint Terrorism Task Force squad, which was responsible for investigating matters related to state sponsors of terrorism. He also served as the division's International Terrorism Program Coordinator and was responsible for assisting with evaluating resource utilization and progress toward the goals and objectives of seven counterterrorism squads.

Mr. Oswald was promoted in December 2005 to assistant special agent in charge of the Miami Division's Field Intelligence Group, which included surveillance operations. Mr. Oswald also served as the chairman of the Southeast Florida Regional Domestic Security Task Force's Investigations and Intelligence Committee, and is distinguished as the first federal official to serve in such a capacity in the state of Florida.

During 2008, Mr. Oswald served on the FBI's Strategic Execution Team (SET), developing plans for the phased implementation of the Intelligence Operations portion of the SET mission, for which he received a Director's Award for Excellence in Intelligence Analysis.

In December 2008, Mr. Oswald was promoted into the FBI's senior executive service in the Inspection Division.

Mr. Oswald was born in Brick Township, New Jersey. He served in the U.S. Air Force and New Jersey Air National Guard and received his bachelor of science degree in criminal justice from Trenton State College in New Jersey. Later, he earned a juris doctorate degree from Nova University Law School and became a member of the Florida bar.

Before joining the FBI, he served as a police officer and detective in Brick Township and as a deputy sheriff and detective in Broward County, Florida. After graduating from law school, he practiced law and was appointed as a traffic magistrate for Broward County, where he presided in traffic court.

###

ATTACHMENT 3

United States Attorneys – Criminal Caseload Statistics*
District of Minnesota
Standard Matter and Case Counts
All Criminal

Matters & Defendants – Received, Pending, & Terminated

Fiscal Year**	Matters Received	Percent Change	Defendants Received	Percent Change	Average # of Defendants Per Matter Received	Matters Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Matter Pending	Matters Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Matter Terminated
1999	475		722		1.52	363		570		1.48	202		305		1.51
2000	532	12.0%	761	5.4%	1.43	372	-5.3%	508	-10.9%	1.37	214	5.9%	290	-4.9%	1.36
2001	513	-3.6%	696	-8.3%	1.36	361	-3.0%	432	-15.0%	1.20	190	-11.2%	275	-5.2%	1.45
2002	495	-3.5%	740	6.0%	1.49	381	5.5%	477	10.4%	1.25	149	-21.6%	172	-37.5%	1.15
2003	507	2.4%	726	-1.9%	1.43	399	4.7%	518	8.6%	1.30	129	-13.4%	166	-3.5%	1.29
2004	587	15.8%	889	19.7%	1.48	438	9.8%	575	11.0%	1.31	122	-5.4%	167	0.6%	1.37
2005	535	-8.9%	782	-12.3%	1.42	501	14.4%	670	16.5%	1.34	110	-9.8%	139	-16.8%	1.26
2006	532	-0.6%	812	6.6%	1.53	520	3.8%	700	4.5%	1.35	108	-1.8%	122	-12.2%	1.13
2007	599	12.6%	1,017	25.2%	1.70	600	15.4%	850	21.4%	1.42	153	41.7%	186	52.5%	1.22
2008	458	-23.5%	828	-18.6%	1.81	609	1.5%	866	1.8%	1.42	101	-34.0%	137	-26.3%	1.36
2009	453	-1.7%	730	-11.8%	1.62	583	-4.3%	826	-4.6%	1.42	163	61.4%	221	61.3%	1.36
2010	475	5.6%	746	2.2%	1.57	504	-13.6%	695	-15.9%	1.38	265	62.6%	376	70.1%	1.42
2011	503	5.9%	774	3.8%	1.54	493	-2.8%	637	-8.3%	1.30	199	-24.9%	260	-30.9%	1.31
2012	370	-26.4%	533	-31.1%	1.44	523	6.7%	670	5.2%	1.28	115	-42.2%	154	-40.8%	1.34
Average	502	-1.1%	766	-1.2%	1.52	477	3.5%	642	1.9%	1.34	159	0.6%	212	0.5%	1.32

Cases & Defendants – Filed, Pending, & Terminated

Fiscal Year**	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
1999	301		475		1.58	279		433		1.55	330		543		1.65
2000	332	10.3%	525	10.5%	1.58	304	9.0%	481	11.1%	1.58	303	-8.2%	470	-13.4%	1.55
2001	325	-2.1%	485	-7.6%	1.49	317	4.3%	470	-2.3%	1.48	308	2.0%	490	4.3%	1.59
2002	328	0.9%	518	6.4%	1.57	366	15.5%	547	16.4%	1.49	277	-10.4%	436	-11.0%	1.57
2003	358	9.1%	512	-0.8%	1.43	390	6.6%	550	0.5%	1.41	328	18.4%	501	14.9%	1.53
2004	429	19.8%	637	24.4%	1.48	516	32.3%	745	35.5%	1.44	302	-7.9%	436	-13.0%	1.44
2005	362	-15.6%	525	-17.6%	1.45	510	-1.2%	730	-2.0%	1.43	382	26.5%	555	27.3%	1.45
2006	408	12.7%	649	23.6%	1.59	499	-2.2%	746	2.2%	1.49	430	12.6%	647	16.6%	1.50
2007	372	-8.8%	668	2.9%	1.80	508	1.8%	869	16.5%	1.71	369	-14.2%	553	-14.6%	1.50
2008	344	-7.5%	653	-2.2%	1.90	484	-4.7%	883	1.6%	1.82	376	1.9%	646	16.8%	1.72
2009	320	-7.0%	531	-18.7%	1.66	448	-7.4%	753	-14.7%	1.68	362	-3.7%	674	4.3%	1.86
2010	294	-8.1%	482	-9.2%	1.64	430	-4.0%	679	-9.8%	1.58	306	-15.5%	540	-19.9%	1.76
2011	317	7.8%	546	13.3%	1.72	431	0.2%	712	4.9%	1.65	315	2.9%	511	-5.4%	1.62
2012	222	-30.0%	329	-39.7%	1.48	396	-8.1%	621	-12.8%	1.57	256	-18.7%	417	-18.4%	1.63
Average	337	-1.4%	538	-1.1%	1.60	420	3.2%	656	3.6%	1.56	332	-1.1%	530	-0.9%	1.60

EOUSA/DATA ANALYSIS STAFF/CRIMINAL/FORM A

* Caseload data extracted from the United States Attorneys' Case Management System.
** FY 2012 numbers are actual data through the end of September 2012. FY 2006 and 2007 data may reflect a slight decrease in pending counts due to LYNDS semiUpgrade.

4-Oct-2012 MN

United States Attorneys – Criminal Caseload Statistics*
District of Minnesota
Standard Matter and Case Counts
All Drugs**

Matters & Defendants – Received, Pending, & Terminated

Fiscal Year***	Matters Received	Percent Change	Defendants Received	Percent Change	Average # of Defendants Per Matter Received	Matters Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Matter Pending	Matters Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Matter Terminated
1999	117		273		2.33	53		107		2.02	27		86		3.19
2000	116	-0.9%	236	-13.6%	2.03	52	-1.9%	91	-15.0%	1.75	17	-37.0%	40	-53.5%	2.35
2001	141	21.6%	252	6.8%	1.79	58	11.5%	84	-7.7%	1.45	21	23.5%	44	10.0%	2.10
2002	147	4.3%	280	11.1%	1.90	54	-8.9%	78	-7.1%	1.44	18	-23.8%	23	-47.7%	1.44
2003	155	5.4%	277	-1.1%	1.79	45	-16.7%	70	-10.3%	1.56	17	6.3%	26	13.0%	1.53
2004	189	28.4%	355	28.2%	1.78	64	42.2%	89	41.4%	1.55	12	-29.4%	18	-26.9%	1.58
2005	180	-9.5%	320	-9.9%	1.78	73	14.1%	110	11.1%	1.51	10	-16.7%	19	5.0%	1.90
2006	194	7.8%	391	22.2%	2.02	69	-5.5%	98	-10.9%	1.42	6	-40.0%	8	-57.9%	1.33
2007	168	-13.4%	446	14.1%	2.65	80	15.9%	162	65.3%	2.03	15	150.0%	21	162.5%	1.40
2008	126	-25.0%	385	-13.7%	3.06	67	-16.3%	154	-4.9%	2.30	25	66.7%	45	114.3%	1.80
2009	139	10.3%	352	-8.6%	2.53	72	7.5%	161	4.5%	2.24	30	20.0%	50	11.1%	1.67
2010	92	-33.8%	237	-32.7%	2.58	61	-15.3%	117	-27.3%	1.92	38	26.7%	86	72.0%	2.26
2011	84	-8.7%	235	-0.8%	2.80	44	-27.9%	79	-32.5%	1.80	35	-7.9%	58	-32.6%	1.66
2012	73	-13.1%	153	-34.9%	2.10	45	2.3%	66	-16.5%	1.47	22	-37.1%	38	-34.5%	1.73
Average	138	-2.9%	299	-2.5%	2.22	59	0.2%	105	-6.8%	1.78	21	7.8%	40	16.0%	1.85

Cases & Defendants – Filed, Pending, & Terminated

Fiscal Year***	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
1999	108		233		2.16	174		247		1.99	114		270		2.37
2000	97	-10.2%	209	-10.3%	2.15	114	-0.1%	216	-12.6%	1.89	104	-8.8%	234	-13.3%	2.25
2001	112	15.5%	214	2.4%	1.91	144	26.3%	242	12.0%	1.68	80	-23.1%	186	-20.5%	2.33
2002	136	21.4%	262	22.4%	1.93	180	25.0%	290	19.8%	1.61	99	23.8%	212	14.0%	2.14
2003	144	5.9%	254	-3.1%	1.76	193	7.2%	296	2.1%	1.53	128	29.3%	246	16.0%	1.92
2004	172	19.4%	305	20.1%	1.77	239	23.8%	364	25.7%	1.61	120	-6.3%	210	-14.8%	1.75
2005	160	-7.0%	289	5.2%	1.81	246	2.9%	398	3.6%	1.62	161	34.2%	284	35.2%	1.76
2006	195	21.9%	389	34.6%	1.99	260	5.7%	440	10.6%	1.69	188	16.8%	355	25.0%	1.89
2007	141	-27.7%	355	-8.7%	2.52	258	-1.5%	511	16.1%	2.00	152	-19.1%	293	-17.5%	1.93
2008	114	-19.1%	338	-4.8%	2.96	221	-13.7%	506	-1.0%	2.29	148	-2.6%	345	17.7%	2.33
2009	106	-7.0%	293	-13.3%	2.76	206	-6.8%	451	-10.9%	2.19	118	-20.3%	346	0.3%	2.93
2010	67	-36.8%	182	-37.9%	2.72	163	-20.9%	304	-32.6%	1.87	105	-11.0%	317	-8.4%	3.02
2011	65	-3.0%	211	16.0%	3.25	162	-0.6%	323	6.3%	1.99	64	-39.0%	189	-40.4%	2.95
2012	48	-26.2%	122	-42.2%	2.54	147	-9.3%	282	-13.3%	1.90	58	-9.4%	157	-16.9%	2.71
Average	119	-4.1%	261	-2.3%	2.30	190	2.3%	349	2.3%	1.85	117	-2.7%	260	-1.8%	2.31

EOUSA/DATA ANALYSIS STAF/CRIMINAL/DRUGS

* Caseload data extracted from the United States Attorneys' Case Management System.
** For FYs 1999-2003, this chart summarizes the following categories: OCDETF, Non-OCDETF Drug Dealing, and Drug Possession, and those drug cases classified under the Government Regulatory/Money Laundering program category, and those drug cases EOUSA reclassified as Violent Crime. Beginning in FY 2004, this chart no longer includes those cases EOUSA reclassified as Violent Crime.
*** FY 2012 numbers are actual data through the end of September 2012. FY 2006 and 2007 data may reflect a slight decrease in pending counts due to LIONS consolidation.

4-Oct-2012 MN

United States Attorneys -- Criminal Caseload Statistics*
District of Minnesota
Standard Matter and Case Counts
All OCDETF**

Matters & Defendants -- Received, Pending, & Terminated

Fiscal Year***	Matters Received	Percent Change	Defendants Received	Percent Change	Average # of Defendants Per Matter Received	Matters Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Matter Pending	Matters Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Matter Terminated
1999	25		94		3.76	16		39		2.44	1		17		17.00
2000	28	12.0%	71	-24.5%	2.54	21	31.3%	37	-5.1%	1.76	2	100.0%	10	-41.2%	5.00
2001	31	10.7%	60	-15.5%	1.94	24	14.3%	35	-5.4%	1.46	4	100.0%	13	30.0%	3.25
2002	21	-32.3%	52	-13.3%	2.48	18	-25.0%	25	-28.6%	1.39	5	25.0%	9	-30.8%	1.80
2003	28	33.3%	45	-13.5%	1.61	18	0.0%	27	8.0%	1.50	7	40.0%	8	-11.1%	1.14
2004	40	42.9%	70	55.6%	1.75	21	16.7%	28	3.7%	1.33	5	-28.6%	6	-25.0%	1.20
2005	35	-12.5%	71	1.4%	2.03	20	-4.8%	25	-10.7%	1.25	2	-60.0%	4	-33.3%	2.00
2006	47	34.3%	136	91.5%	2.89	22	10.0%	30	20.0%	1.36	0	-100.0%	0	-100.0%	
2007	27	-42.6%	114	-16.2%	4.22	23	4.5%	43	43.3%	1.87	0		0		
2008	36	33.3%	187	64.0%	5.19	23	0.0%	71	65.1%	3.09	6		8		1.33
2009	57	58.3%	205	9.6%	3.60	33	43.5%	85	19.7%	2.58	6	0.0%	15	87.5%	2.50
2010	43	-24.6%	129	-37.1%	3.00	32	-3.0%	49	-42.4%	1.53	10	66.7%	45	200.0%	4.50
2011	39	-9.3%	138	7.0%	3.54	24	-25.0%	35	-28.6%	1.46	14	40.0%	26	-42.2%	1.86
2012	30	-23.1%	90	-34.8%	3.00	14	-41.7%	21	-40.0%	1.50	6	-57.1%	10	-61.5%	1.67
Average	35	6.2%	104	5.7%	2.97	22	1.8%	39	-6.1%	1.75	5	11.8%	12	-2.5%	3.60

Cases & Defendants -- Filed, Pending, & Terminated

Fiscal Year***	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
1999	13		67		5.15	18		78		4.33	11		59		5.36
2000	18	38.5%	63	-6.0%	3.50	21	16.7%	73	-6.4%	3.48	15	36.4%	66	11.9%	4.40
2001	33	37.8%	49	-22.2%	2.13	32	52.4%	64	-12.3%	2.00	12	-20.0%	57	-13.6%	4.75
2002	22	-4.3%	55	12.2%	2.50	39	21.9%	68	6.3%	1.74	15	25.0%	51	-10.5%	3.40
2003	22	0.0%	36	-34.5%	1.64	33	-15.4%	51	-25.0%	1.55	27	80.0%	53	3.9%	1.96
2004	34	54.5%	63	75.0%	1.85	45	36.4%	81	58.8%	1.80	31	14.8%	63	18.9%	2.03
2005	34	0.0%	70	11.1%	2.06	47	4.4%	91	12.3%	1.94	38	22.6%	69	9.5%	1.82
2006	48	41.2%	134	91.4%	2.79	58	23.4%	140	53.8%	2.41	37	-2.6%	85	23.2%	2.30
2007	25	-47.9%	99	-26.1%	3.96	56	-3.4%	167	19.3%	2.98	26	-29.7%	69	-18.8%	2.65
2008	32	28.0%	154	55.6%	4.81	59	5.4%	221	32.3%	3.75	29	11.5%	103	49.3%	3.55
2009	45	40.6%	179	16.2%	3.98	75	27.1%	261	18.1%	3.48	31	6.9%	163	58.3%	5.26
2010	36	-20.0%	116	-35.2%	3.22	63	-16.0%	172	-34.1%	2.73	50	61.3%	213	30.7%	4.26
2011	30	-16.7%	124	6.9%	4.13	66	4.8%	175	1.7%	2.65	27	-46.0%	120	-43.7%	4.44
2012	33	10.0%	92	-25.8%	2.79	65	-1.5%	154	-12.0%	2.37	36	33.3%	114	-5.0%	3.17
Average	30	11.7%	93	9.1%	3.18	48	12.0%	128	8.7%	2.66	28	14.9%	92	8.8%	3.52

ECUSA/DATA ANALYSIS STAFF/CRIMINAL/DRUGS

* Caseload data extracted from the United States Attorneys' Case Management System.
** For FYs 1999-2003, this chart summarizes the following categories: OCDETF, and those OCDETF cases EOUSA reclassified as Violent Crime.
Beginning in FY 2004, this chart no longer includes those OCDETF cases EOUSA reclassified as Violent Crime.
*** FY 2012 numbers are actual data through the end of September 2012. FY 2006 and 2007 data may reflect a slight decrease in pending counts due to LIONS consolidation.

4-Oct-2012 MN

United States Attorneys – Criminal Caseload Statistics*
District of Minnesota
Standard Matter and Case Counts
Violent Crime**

Matters & Defendants – Received, Pending, & Terminated

Fiscal Year***	Matters Received	Percent Change	Defendants Received	Percent Change	Average # of Defendants Per Matter Received	Matters Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Matter Pending	Matters Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Matter Terminated
1999	111		137		1.23	45		58		1.28	33		38		1.15
2000	124	11.7%	149	8.8%	1.20	52	13.0%	69	16.9%	1.33	31	-6.1%	35	-7.9%	1.13
2001	133	7.3%	155	4.0%	1.17	44	-15.4%	49	-29.0%	1.11	39	25.8%	54	54.3%	1.38
2002	97	-27.1%	117	-24.5%	1.21	40	-9.1%	45	-8.2%	1.13	32	-17.9%	38	-29.6%	1.19
2003	109	12.4%	126	7.7%	1.16	47	17.5%	60	33.3%	1.28	22	-31.3%	24	-36.8%	1.09
2004	115	5.5%	149	18.3%	1.30	32	-31.9%	44	-26.7%	1.38	7	-68.2%	16	-33.3%	2.29
2005	101	-12.2%	106	-28.9%	1.05	56	75.0%	67	52.3%	1.20	18	157.1%	19	18.8%	1.06
2006	99	-2.0%	109	2.8%	1.10	50	-10.7%	63	-6.0%	1.26	16	-11.1%	17	-10.5%	1.06
2007	141	42.4%	152	39.4%	1.08	89	78.0%	102	61.9%	1.15	14	-12.5%	16	-5.9%	1.14
2008	91	-35.5%	93	-38.8%	1.02	76	-14.6%	84	-17.6%	1.11	16	28.6%	21	31.3%	1.17
2009	113	24.2%	123	32.3%	1.09	80	5.3%	90	7.1%	1.13	29	61.1%	33	57.1%	1.14
2010	148	31.0%	171	39.0%	1.15	95	18.8%	118	31.1%	1.24	48	65.5%	50	51.5%	1.04
2011	157	6.1%	190	11.1%	1.21	100	5.3%	122	3.4%	1.22	54	12.5%	63	26.0%	1.17
2012	122	-22.3%	140	-26.3%	1.15	101	1.0%	123	0.8%	1.22	50	-7.4%	57	-9.5%	1.14
Average	119	3.2%	137	3.5%	1.15	65	10.2%	78	9.2%	1.22	29	15.1%	34	6.1%	1.22

Cases & Defendants – Filed, Pending, & Terminated

Fiscal Year***	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
1999	78		90		1.18	63		72		1.14	92		109		1.18
2000	87	14.5%	103	14.4%	1.18	67	6.3%	78	8.3%	1.16	82	-10.9%	95	-12.8%	1.16
2001	103	18.4%	119	14.6%	1.15	76	13.4%	88	8.3%	1.13	93	13.4%	110	15.8%	1.18
2002	69	-33.0%	83	-29.7%	1.20	63	-17.1%	74	-14.0%	1.17	81	-12.9%	94	-14.5%	1.16
2003	80	15.9%	87	4.8%	1.09	69	9.5%	74	0.0%	1.07	72	-11.1%	85	-9.6%	1.18
2004	104	30.0%	124	42.5%	1.19	100	44.9%	119	60.8%	1.19	66	-8.3%	71	-16.5%	1.08
2005	65	-37.5%	69	-44.4%	1.06	76	-24.0%	88	-26.1%	1.16	92	39.4%	103	45.1%	1.12
2006	88	35.4%	95	37.7%	1.08	90	18.4%	96	11.4%	1.09	76	-17.4%	88	-14.6%	1.16
2007	104	18.2%	112	17.9%	1.08	103	14.4%	113	15.3%	1.10	92	21.1%	98	11.4%	1.07
2008	86	-17.3%	90	-19.6%	1.05	84	-18.4%	85	-24.8%	1.01	114	23.9%	127	29.6%	1.11
2009	82	-4.7%	84	-6.7%	1.02	83	-1.2%	85	0.0%	1.02	88	-22.8%	89	-29.9%	1.01
2010	84	2.4%	92	9.5%	1.10	86	3.6%	93	9.4%	1.08	93	-5.7%	86	-3.4%	1.04
2011	100	19.0%	125	35.9%	1.25	88	2.3%	104	11.8%	1.18	103	24.1%	119	38.4%	1.16
2012	70	-30.0%	80	-36.0%	1.14	82	-6.8%	95	-8.7%	1.16	80	-22.3%	94	-21.0%	1.18
Average	86	2.4%	97	3.1%	1.13	81	3.5%	90	4.1%	1.12	87	0.8%	98	1.4%	1.13

EDUSA\DATA ANALYSIS STAFF\CRIMINAL\FORM A

* Caseload data extracted from the United States Attorneys' Case Management System.

** For FYs 1999-2003, this chart summarizes the following categories: Firearms, Violent Crimes in Indian Country, and Other Violent Crime. Other Violent Crime includes cases with a lead charge of Violent Crime which would otherwise fall into another program category. Also these Drug and Organized Crime cases classified under the Violent Crimes program category are included. Beginning in FY 2004, Violent Crime includes those cases classified under the following program category codes: Firearms (053); Project Safe Childhood (090); Bank Robbery (082); Domestic Violence (091); Violent Crime in Indian Country (092); and All Other Violent Crime (093).

*** FY 2012 numbers are actual data through the end of September 2012. FY 2006 and 2007 data may reflect a slight decrease in pending counts due to LIONS centralization.

4-Oct-2012 MN

ATTACHMENT 4

Paulsen, Jeff (USAMN)

From: Paulsen, Jeff (USAMN)
Sent: Tuesday, September 04, 2012 7:29 PM
To: Jones, B Todd (USAMN)
Subject: Following up on our conversation

ToddJones.mem...

To: Todd Jones, U.S. Attorney
From: Jeff Paulsen, AUSA
Date: September 4, 2012
Re: Office Situation

A few weeks ago you stopped by my office and we discussed my unhappiness with the way I have been treated by certain managers in the office. You asked for my thoughts on how to improve the situation and I gave you some orally. I also told you I would follow up with something in writing after I finished the [redacted] trial and filed our Eighth Circuit brief in the triple murder case. I appreciate your interest and the opportunity to expand on my earlier comments.

As we discussed, I believe I have been the victim of unwarranted discipline and retaliation by managers in this office for over two years now. As I stated orally, the first steps toward rectifying the situation are for you as U.S. Attorney to clean up my record and to no longer require me to report to AUSA #1.

Four incidents of unwarranted discipline need to be removed from my record before there is any hope for improvement in the current office situation. They are:

- August 16, 2010 oral reprimand for privately giving my candid views to then-Criminal Chief AUSA #3 about the new annual leave policy. This violated my First Amendment rights.

- April 12, 2011 written memorandum from AUSA #4 accusing me of "conduct unbecoming an AUSA" after I refused to insert erroneous and fatal language into an indictment at the direction of AUSA #5.[1]

- September 16, 2011 Letter of Reprimand after defense counsel Defense Counsel #1 complained to Judge Doty when I was forced by my supervisors AUSA #5 and AUSA #6 to withdraw a conditional plea offer in the [redacted] child pornography case.[2]

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[1] Although this memorandum supposedly was "unofficial," it was later used to justify enhanced punishment in the September 2011 Letter of Reprimand.

[2] Among other things, this Letter of Reprimand accused me of failing to follow the law in the plea agreement, which was untrue. Ironically, after the case was taken away from me, AUSA #5 entered into a substitute plea agreement, presumably approved by AUSA #6, that clearly did fail to follow the law in that it promised the defendant a 60-month downward departure pursuant to Guideline Section 5K1.1 based on the defendant's cooperation against himself.

- February 2012 Performance Evaluation for 2011 where AUSA #1 downgraded me from "Outstanding" to "Successful" in the category of case handling and in the overall rating in retaliation for my protected conduct in filing a grievance over the Letter of Reprimand.

I would like the first three items need to be removed from my Official Personnel File or any unofficial file being kept on me nunc pro tunc, as if they had never existed. In addition, I request your assurance that they can never be resurrected for any future purpose. With respect to the final item, my 2011 Performance Evaluation should be corrected retroactively to reflect the "Outstanding" rating I earned in the case handling category in 2011, and to consequently reflect an overall rating of "Outstanding."

In addition to cleaning up my record, I would like nothing further to do with AUSA #1. The relationship is beyond repair. I have no respect for her as a manager and I do not trust her in the least. She has lied about me to my detriment. I have been told by numerous trustworthy sources inside and outside the office that she has lied about them. I know she is keeping a file on me for the likely purpose of again retaliating against me with another poor performance evaluation. In the recent mid-year review process, her conduct was nothing short of harassing. As I told you during our meeting, she is such a liability to the office that she ought to be removed from her management position immediately.

In the event AUSA #1 remains as a supervisor, then I at least request no longer to report to her or to be rated by her as part of my performance evaluation. This does NOT mean I am requesting to be transferred to a different section. I am not. My expertise is in the area of drugs, gangs, guns, and violent crimes. I should not have to give up doing the types of cases I have handled successfully for nearly 24 years in order to remedy an untenable personnel situation that is not of my making.

I appreciate your concern and your offer to try to find a way to improve the current office situation. If you need more information about any of the above requests, please let me know.

Justice Department must resolve Reno dispute now
Purchase Image Filed Under Voices Editorials
Dec 10 rgj.com

SNAPSHOT

ISSUE: ATF, U.S. Attorney rift
OUR VIEW: The failure of the two law enforcement agencies to meet their responsibilities is putting Northern Nevadans at risk. Congress should demand a resolution.

The ongoing dispute between the Reno offices of the U.S. Attorney and the Bureau of Alcohol, Tobacco, Firearms and Explosives — a dispute that should have been resolved months ago in the interest of effective law enforcement — has gone from the absurd to the downright dangerous.

The rift, more than a year old, already has resulted in the near decimation of the Reno ATF office, with five of six agents transferring to other offices, the Reno Gazette-Journal's Martha Bellisle has reported, when the U.S. Attorney's office refused to prosecute cases prepared by the ATF. In at least one case, the Washoe County District Attorney's Office has stepped in to prosecute.

On Sunday, Bellisle reported the ATF is no longer picking up weapons purchased by nearly three dozen people who failed to pass a background check required by federal law. The ATF doesn't have sufficient personnel to meet its most basic responsibilities, leaving guns in the hands of people who aren't allowed to have them, most often because they've been convicted of felonies.

How many illegal handguns might still be on the streets because of the dispute is unknown, but it seems certain that the failure of the ATF to do its job has made things that much more dangerous for Northern Nevada citizens.

The Department of Justice, which oversees both agencies (ATF was transferred to Justice after the terrorism attacks of Sept. 11, 2001), must get this ridiculous dispute resolved and ensure that the Reno ATF office is doing the job that citizens have a right to expect of it.

Unfortunately, there doesn't appear to be good reason for optimism.

Since Bellisle first revealed the rift and its impacts in September, the Justice Department and the two agencies have refused to answer questions — either from Bellisle or from congressional committees looking into the matter. Inquiries from U.S. Sen. Charles Grassley, R-Iowa, a member of the Senate Judiciary Committee, sent letters demanding answers from the ATF; the request went unanswered. Similar requests of the acting director of the ATF and Attorney General Eric Holder also have not been answered. The Justice Department reportedly has begun an investigation, but it has not revealed the results.

The ATF already is enmeshed in political controversy, of course. It has been under fire in Congress for a failed operation that allowed illegally purchased weapons to be shipped to criminals in Mexico in hopes that agents would be led to the gang kingpins. The ATF's Phoenix

office lost track of the weapons and, at least, is believed to have been used in a shoot-out that resulted in the death of a U.S. agent.

The bureau has been without a permanent director since 2006, and the lack of firm leadership of such an important agency appears to be having a negative impact on its ability to do its job.

For a dispute between two agencies to put the citizens of this community in jeopardy is simply unacceptable.

Northern Nevadans have a right to expect better from the Department of Justice. Nevada's congressional delegation should demand better.

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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RITA LARI JOCHUM, Republican Deputy Staff Director

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 10, 2013

Via Electronic Transmission

Carolyn Lerner, Special Counsel
Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Dear Ms. Lerner:

On June 5, 2013, you provided to me and Senator Leahy an update on OSC's review of cases discussed in your April 12, 2013 correspondence. The first case is the prohibited personnel practice complaint, alleging reprisal for protected whistleblowing or other protected activity. You indicated that the complainant and the Justice Department had "agreed to attempt to resolve the case through mediation." Moreover, you noted that "if mediation is unsuccessful, the case would return to OSC's Investigation and Prosecution Division for further investigation."

Notwithstanding your letter, there appears to remain some confusion as to the status of the investigation. The Chairman has indicated to me that your office advised the investigation is now closed and OSC has reached a resolution on the allegations made against B. Todd Jones, and that there is, therefore, no longer a reason to defer the proceedings. Accordingly, Chairman Leahy has scheduled a hearing on the nomination of Mr. Jones for tomorrow, June 11, 2013 at 9:30 a.m. despite my understanding from your office that matter is still pending. In order for Judiciary Committee Members to be as informed as possible, I would look forward to hearing your testimony before the Committee. It would be helpful if you could clarify the status of the investigation, and if it is in fact closed, to provide the Committee with a description of how it was resolved.

Please let me know of your availability to provide the requested testimony before the Committee. If, for any reason, you are unable to testify in person, please respond in writing with clarification regarding the reasons for your unavailability, as well as the status of the investigation.

Sincerely,

Charles E. Grassley, Ranking Member
United States Senate Judiciary Committee

cc: The Hon. Patrick J. Leahy

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 7, 2013

VIA ELECTRONIC TRANSMISSION

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner,

In response to my request for information on any pending matters at the U.S. Office of Special Counsel (OSC) involving United States Attorney for the District of Minnesota B. Todd Jones, you reported on April 12, 2013, that an Assistant United States Attorney (AUSA) filed a whistleblower disclosure under 5 U.S.C. § 1213. The AUSA alleged gross mismanagement and abuses of authority in the Narcotics and Violent Crime Section of the U.S. Attorney's Office for the District of Minnesota.

On June 5, 2013, you provided an update regarding your review of the protected disclosure and a separate matter related to allegations of whistleblower retaliation. You indicated that the whistleblower retaliation allegations were still pending and the subject of impending mediation proceedings. You also indicated that although the separate whistleblower disclosure filing constituted an allegation of a possible violation of a law, rule, or regulation, there was insufficient information in the disclosure to determine with a substantial likelihood that gross mismanagement, an abuse of authority, or a violation of a law, rule, or regulation had occurred.

Given Mr. Jones' pending nomination as permanent Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives, this Committee has a strong interest in any information which may corroborate allegations from other sources regarding mismanagement in the U.S. Attorney's Office for the District of Minnesota. As you may know, the Committee received such allegations from a former FBI Special Agent in Charge (SAC) on January 29, 2013.[1]

[1] Letter from Donald E. Oswald to Patrick J. Leahy (Jan. 29, 2013).

Therefore, I respectfully request that you provide a copy of the above-referenced whistleblower disclosure to the Committee to be considered and evaluated in connection with the submission by the former FBI SAC. Given that the OSC has an obligation to protect the confidentiality of whistleblowers who make disclosures, please feel free to redact the whistleblower's name and any other personal identifying information. In addition, please convey to the whistleblower my request to discuss these matters directly and confidentially, as well as my personal assurance that I would do everything I can to ensure that supervisors could not retaliate for cooperating with Congress.

I would appreciate receiving a copy of the disclosure as soon as possible, but no later than 5:00 pm on Monday, June 10, as the Committee is set to consider Mr. Jones' nomination the next day. Thank you in advance for your cooperation and attention to this matter.

Sincerely,

Charles E. Grassley
Ranking Member
Committee on the Judiciary

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 4, 2013

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

Dear Senator Grassley:

This responds to your letter dated April 10, 2013, to B. Todd Jones, the Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), regarding the opportunity to question him about ATF's Operation Fast and Furious and certain other matters.

Mr. Jones looks forward to answering your questions about these matters during his nominations hearing before the Senate Judiciary Committee, currently scheduled for June 11, 2013. He will also respond promptly to Questions for the Record following the hearing.

We hope that this information is helpful. Please do not hesitate to contact us if we may provide further assistance on this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

Congress of the United States

Washington, DC 20510

May 10, 2013

The Honorable B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue NE
Washington, D.C. 20226

Dear Mr. Jones:

On April 15, 2013, staff from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) briefed our offices on Operation Fearless, an undercover operation run out of Milwaukee, Wisconsin. The Department of Justice sent a letter on April 30, 2013, to follow up on the ATF briefing.[1] Both the briefing and the letter came as a result of letters we wrote to you on January 31, 2013 and April 3, 2013. The April 15, 2013 briefing substantiated allegations first raised by the *Milwaukee Journal Sentinel:* Operation Fearless was a spectacular failure. ATF's April 15 briefing also revealed a variety of other previously unknown problems.

First, we were surprised to learn that, after its initial involvement for approximately two months, the Federal Bureau of Investigation (FBI) withdrew from the case in March 2012 due to concerns about the operation's proposed uses of intelligence, operational security and staffing. Although the FBI apparently did not communicate all of those concerns to ATF at the time they withdrew from the case, the problems the FBI identified underscore ATF's inadequate policies and procedures for undercover storefront operations. Indeed, as your staff mentioned in the briefing, ATF does not have a written manual with agency-wide procedures for undercover storefront operations.

Second, it is difficult to understand how the failures of Operation Fearless took place even after the basic facts about the failures of Operation Fast and Furious had been widely publicized. Operation Fearless was part of the Monitored Case Program, which was created in the wake of Fast and Furious and "designed to ensure close investigative, operational and strategic coordination between the field and relevant

[1] Letter from Peter J. Kadzik, Principal Deputy Asst. Att'y Gen., U.S. Dep't of Justice, to Hon. Bob Goodlatte, Chairman, H. Comm. on Judiciary, et al. (Apr. 30, 2013) [Attachment].

headquarters personnel" for the purpose of "enhanced oversight."[2] Yet, somehow, oversight of Operation Fearless slipped through the cracks.

ATF's Undercover Review Committee evaluated Operation Fearless. The Deputy Assistant Director for Field Operations, who was briefed a total of nine times about the investigation, approved it. Still, ATF's plan for Operation Fearless apparently called for only two or three undercover law enforcement officers in the storefront, supported by four or five officers on a cover team located within a back room of the store. A subsequent investigation by ATF's Office of Professional Responsibility and Security Operations (OPRSO) found that this was an insufficient commitment of human resources—something that should have been obvious in the planning stages of the operation.

Operation Fearless did not have a counter-surveillance team assigned to conduct additional surveillance after individuals left the storefront. Further, apparently no one in ATF considered what might happen if local law enforcement mistook ATF's storefront for an actual illegal operation. OPRSO's investigation found that this officer safety issue could have led to a "blue-on-blue" scenario. The problems OPRSO characterized as the result of poor judgment and planning should have been flagged before the Undercover Review Committee and the Deputy Assistant Director for Field Operations signed off on the operation.

Third, ATF's briefers noted that the problems with Operation Fearless began almost immediately after its inception. The proposed location of the storefront briefed to and authorized by the Undercover Review Committee *was not* the location used when the storefront was opened on February 8, 2012. The actual location had a faulty alarm system, which the case agent never checked. On one occasion in July 2012, ATF agents failed to take immediate action to interdict or even surveil an armed target who told ATF undercover agents that he was going to use a firearm in his possession to take retaliatory action against another individual. An additional failure to interdict occurred when an individual sold one of the three stolen ATF firearms back to the store. Again, this individual was not immediately apprehended or surveiled. As arrests were finally being made in the case, not three but four individuals were mistakenly identified as targets in the case, resulting in the mistaken arrest of the fourth individual on November 28, 2012. ATF briefers stated that overall, the case was characterized by a lack of consistent, permanent supervision.

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[2] Letter from Hon. James M. Cole, Deputy Att'y Gen., U.S. Dep't of Justice, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, et al. (Jan. 27, 2012), at 3.

Fourth, it appears as though information from the briefing contradicted various pieces of information that ATF's Office of Public and Governmental Affairs had provided both Congress and the public. For instance, on January 31, 2013, the *Dallas Morning News* reported on information provided by Richard Marianos, now ATF's Assistant Director for Public and Governmental Affairs:

> Marianos didn't call to . . . dismiss every detail of the *Milwaukee Journal Sentinel* investigative piece on Fearless Distributing, although he did take issue with many characterizations in that report. **For instance, the ATF agent whose vehicle was burglarized, causing the loss of a fully automatic rifle, wasn't even part of the sting** and was only helping some fellow agents.[3]

According to ATF's briefing, however, the ATF agent who lost three ATF firearms when his vehicle was burglarized was the ***primary undercover agent*** in the sting. This basic fact about the case should have been easy for ATF headquarters to ascertain. Similarly, at a Congressional briefing on February 8, 2013, ATF staff told Congressional staff that Operation Fearless was not part of ATF's Monitored Case Program. At the most recent briefing, staff learned that the case was in fact a part of the program.

It is troubling that ATF staff would make representations without first checking on the accuracy of the information provided. This was one of the chief problems with the initial response from ATF and the Justice Department to Operation Fast and Furious. Perhaps more troubling is the fact that ATF did not even begin its internal review of Operation Fearless until *after receiving our first letter on January 31, 2013*. In other words, after a comprehensive news article in the *Milwaukee Journal-Sentinel*, it appears as though ATF attempted to downplay the problems with Operation Fearless. Not until Congress conducted oversight of the matter did ATF take the problem seriously. Such a pattern has become all too familiar with ATF's response to scandal. It reflects poorly on the thousands of ATF agents who risk their lives in the line of duty each day to protect our citizens.

Therefore, in order to ensure accountability, we request that you provide a complete, unredacted copy of the report on Operation Fearless prepared by the Office of Professional Responsibility and Security Operations as soon as possible, but by no later than May 23, 2013.

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[3] Mike Hashimoto, *D.C. official says ATF changed from Fast and Furious era*, DALLAS MORNING NEWS, Jan. 31, 2013, *available at* http://dallasmorningviewsblog.dallasnews.com/2013/01/d-c-official-says-atf-changed-from-fast-and-furious-era.html (emphasis added).

Should you have any questions regarding this letter, please contact Tristan Leavitt of Ranking Member Grassley's staff at (202) 224-5225; Carlton Davis of Chairman Issa's staff at (202) 225-5074; or Jason Cervenak of the House Judiciary staff at (202) 225-3951.

Sincerely,

Darrell E. Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Bob Goodlatte, Chairman
Committee on the Judiciary
U.S. House of Representatives

F. James Sensenbrenner, Jr., Chairman
Subcommittee on Crime, Terrorism
Homeland Security, and Investigations
U.S. House of Representatives

cc: The Honorable Eric H. Holder, Jr., Attorney General
U.S. Department of Justice

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary, U.S. Senate

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable John Conyers, Jr., Ranking Member
Committee on the Judiciary, U.S. House of Representatives

The Honorable Robert C. Scott, Ranking Member
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations,
Committee on the Judiciary, U.S. House of Representatives

[illegible]

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC [illegible]

April 10, 2013

Via Electronic Transmission

The Honorable B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

For well over a year now, my staff has been requesting the opportunity to interview you in connection with Operation Fast and Furious. Any hearing on your nomination to become permanent Director of the ATF prior to such an interview would be premature.

As part of the joint investigation I conducted with Chairman Darrell Issa into Operation Fast and Furious, we requested on October 7, 2011, that you make yourself available for a transcribed interview. Subsequently, House staff made multiple additional requests from October 2011 to January 2012. At the same time you refused to speak to Congress, you granted the *Washington Post* an interview for an October 6, 2011 article on Fast and Furious. In addition, my staff reiterated the requests for an interview with you to ATF's Office of Legislative Affairs. On January 31, 2012, Chairman Issa met with you, and I understand that he asked you personally to provide an interview. Despite these multiple requests you chose not to cooperate voluntarily.

On March 9, 2013, you participated in a transcribed interview about your involvement in the decision to decline to intervene in two false claims act cases and the connection between that decision and an unrelated case: *Magner v. Gallagher*. However, you only participated in that interview on the condition that no other topics would be covered.

There are significant reasons to interview you regarding Fast and Furious. You were the Chair of the Attorney General's Advisory Committee from 2009 to 2011, the period when Fast and Furious was an active ATF investigation. In that capacity, you were invited to participate in the Justice Department's Southwest Border Strategy Group, which discussed and adopted in October 2009 the "Strategy for Combating the Mexican Cartels." Phoenix ATF personnel cited that strategy as justifying the approach they took in Fast and Furious, which was opened just weeks later. In that same timeframe, you were joined on the Attorney General's Advisory Committee by U.S.

Attorney for the District of Arizona Dennis Burke, whose office was closely involved with ATF in implementing the "Strategy for Combating the Mexican Cartels" through Fast and Furious. Mr. Burke later resigned in connection with the controversy over Fast and Furious.

As the head of ATF during the bulk of the Congressional and Inspector General investigations into Fast and Furious, you are also in a position to answer questions about ATF management's response to those investigations. In particular, there is a need to discuss the disciplinary steps ATF took, or failed to take, in response to the Fast and Furious Congressional and Inspector General reports. There are also questions regarding your treatment of whistleblowers at ATF.

In addition, I have written you recent letters regarding two additional matters which my staff would like to discuss with you. On September 17, 2012, I wrote you regarding troubling allegations that the U.S. Attorney's Office for the District of Nevada had refused to accept cases from ATF's Reno Field Office for almost a year, leading ATF headquarters to transfer four agents out of the Reno Field Office in the spring of 2012. I inquired regarding the cost of transferring agents out of Reno and requested more information about when ATF management became aware of the problems in Reno. When you failed to provide any response regarding the substance of my questions, I sent you a second letter on December 18, 2012, along with Senator Dean Heller and Representative Mark Amodei. As of today, that letter remains unanswered.

On January 31, 2013, I joined Chairman Darrell Issa, Chairman Bob Goodlatte, and Chairman James Sensenbrenner in writing you regarding an ATF operation conducted out of Milwaukee, Wisconsin from January 2012 until late fall 2012. The operation reportedly involved a phony storefront created by ATF named Fearless Distributing. It resulted in agents overpaying for guns with taxpayer dollars, guns and property being stolen from the storefront and from an ATF vehicle, and in agents charging the wrong person on at least three occasions.[1] As Justice Department Inspector General Michael Horowitz recently acknowledged, the operation "raise[s] significant management issues relating to the oversight and management of the ATF field office and ATF Headquarters."[2] This lack of oversight in ATF undercover operations is one of the main problems that plagued Fast and Furious. However, you have yet to respond to our January 31 letter. We recently sent you a second letter on this subject on April 3, 2013, due to your failure to respond to our first letter.

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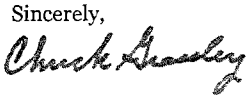
[1] John Diedrich & Raquel Rutledge, *ATF's Milwaukee sting operation marred by mistakes, failures*, MILWAUKEE J. SENTINEL, Jan. 29, 2013, *available at* http://www.jsonline.com/watchdog/watchdogreports/atfs-milwaukee-sting-operation-marred-by-mistakes-failures-mu8akpj-188952581.html.

[2] Letter from Inspector Gen. Michael Horowitz, U.S. Dep't of Justice, to Rep. Bob Goodlatte, Chairman, Comm. on the Judiciary, U.S. House of Reps., & Rep. F. James Sensenbrenner, Jr., Chairman, Subcomm. on Crime, Terrorism, Homeland Security, & Investigations, Comm. on the Judiciary, U.S. House of Reps. (Mar. 22, 2013).

These issues in Reno and Milwaukee developed under your watch. Together with the questions regarding Operation Fast and Furious, it is imperative that my staff have the opportunity to question you on these matters. Please contact Jason Foster of my Committee staff at (202) 224-5225 to set up a time for an interview. In addition, by April 17, 2013, please provide my staff with any personal notes from the Attorney General's Advisory Committee that you may have taken regarding Operation Fast and Furious.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick J. Leahy, Chairman
U.S. Senate, Committee on the Judiciary

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

April 12, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On April 8, 2013, the U.S. Office of Special Counsel (OSC) received a letter from Ranking Member Grassley requesting information about an anonymous letter sent to OSC. The anonymous letter was dated July 20, 2012, and was signed by "Employees of the U.S. Attorney's Office, District of Minnesota." The anonymous letter made various allegations about U.S. Attorney B. Todd Jones. The April 8 letter from Senator Grassley requested answers to the following questions:

1. What investigative steps has the U.S. Office of Special Counsel initiated regarding allegations involving Mr. Jones or his office on this or any other matter?

2. Are there any pending matters at OSC involving Mr. Jones or his office? If so, what is the status of these matters?

With regard to the anonymous letter, upon receipt OSC docketed the letter as a prohibited personnel practice complaint. The case was assigned to an OSC analyst on August 3, 2012. The case was closed on August 30, 2012, because OSC did not have enough information to initiate a substantive inquiry into the concerns raised by the letter. OSC made no investigative findings or conclusions prior to closing the complaint.

In addition, OSC currently has two pending matters involving the U.S. Attorney's Office, District of Minnesota. Both cases were filed by one Assistant U.S. Attorney (AUSA) on March 11, 2013, and are described below.

The first matter is a prohibited personnel practice complaint alleging reprisal for whistleblowing and other protected activity under 5 U.S.C. § 2302(b)(8) and (b)(9). The AUSA alleges that personnel actions, including a suspension and a lowered performance appraisal, were taken in retaliation for protected whistleblowing or other protected activity. After an initial review, OSC's Complaints Examining Unit referred the case for further investigation on April 12, 2013. OSC's Investigation and Prosecution Division will conduct an investigation into the allegations in the complaint.

The second matter is a whistleblower disclosure brought by the AUSA under 5 U.S.C. § 1213. The employee alleges gross mismanagement and abuses of authority in the Narcotics and Violent Crime Section of the U.S. Attorney's Office, District of Minnesota. OSC's Disclosure Unit is actively reviewing the allegations. No determination has been made whether to refer the case for investigation by the Department of Justice under section 1213(c).

OSC will make every effort to complete its review in a timely manner, and will keep the Committee apprised of any significant developments.

Sincerely,

Carolyn N. Lerner

July 20, 2012 12 AUG -2 PM 4:34

To: The Office of Special Council

From: Employees of the United States Attorneys Office
For the District of Minnesota

Dear Sir or Madam,

Several times over the last years we have contacted your office with a request that there be a review of the patterns, practices, treatment, and abuse that we have suffered as employees of the U.S. Attorneys Office here in Minnesota. In large part, the management which we have had to suffer has been endured under the administration of and by U.S. Attorney B. Todd Jones.

We saw today a video of the statements made by B. Todd Jones, in his capacity as acting director of ATF, and felt for the employees of ATF as we too have had the same types of statements made to us.

Since he became U.S. Attorney here in Minnesota, he has instituted a climate of fear, has pushed employees out of the office, dismissed employees wrongly, violated the hiring practices of the EEOC, and put in place an Orwellian style of management that continues to polarize the office. You need only look at the number of talented and skilled attorneys and support staff who have either been pushed out of the office, threatened, and terminated, to see that the statements he made during his ATF video are not isolated. He uses this style of management everyday here in our office, in a militaristic style that is not conducive of a healthy work environment.

We again ask that you please come to this office and investigate the actions of not only B. Todd Jones, but those who he has put in positions that further his dictator style and created this atmosphere of fear among us.

Just as the video was submitted anonymously, we can not come forward and identify ourselves because we will be terminated by B. Todd Jones and his current administration. However, we are certain that if you come to investigate you will see that there are actions taken by this administration that violate our rights to work in a non-hostile environment.

Yours Truly,
Employees of the U.S. Attorney's Office
District of Minnesota

cc: Sen. Charles Grassley; Rep. Darrell Issa

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510–6275

April 8, 2013

VIA ELECTRONIC TRANSMISSION

The Honorable Carolyn Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street NW, Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner,

I am writing today in regards to an anonymous letter sent to your office, dated July 20, 2012. The letter, signed "Employees of the U.S. Attorney's Office, District of Minnesota," alleges mismanagement and misconduct by U.S. Attorney B. Todd Jones, resulting in a hostile and threating work environment.

I have enclosed a copy of this letter for your review. So that I may better understand the actions your office has taken regarding these allegations, please provide answers to the following questions:

1. What investigative steps has the U.S. Office of Special Counsel (OSC) initiated regarding allegations involving Mr. Jones or his office on this or any other matter?

2. Are there any pending matters at OSC involving Mr. Jones or his office? If so, what is the status of these matters?

Thank you in advance for you cooperation and attention in this matter. I would appreciate a response no later than April 12, 2013. If you have any questions regarding this letter, please contact Tristan Leavitt of my staff at 202-224-5225.

Sincerely,

Chuck Grassley

Charles E. Grassley
Ranking Member

ATTACHMENT

Congress of the United States
Washington, DC 20515

April 3, 2013

The Honorable B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Mr. Jones:

On January 31, 2013, we wrote you a letter requesting documents and information about an undercover operation that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) ran in Milwaukee, Wisconsin. Not only have you yet to provide us with any information or documents about this operation, but, months after ATF shut down the operation, you have refused to respond at all.

According to media reports, ATF initiated this undercover operation in Milwaukee's Riverwest neighborhood in January 2012—five months after the President appointed you Acting Director. During the operation, ATF agents bought and sold guns and drugs using a fake storefront called "Fearless Distributing" in an attempt to disrupt criminal operations in the city.[1] From the start, Fearless Distributing was plagued with problems stemming from lack of security and oversight. Agents overpaid for guns with taxpayer dollars, guns were stolen from an ATF vehicle, more property was stolen from ATF's fake storefront, and agents charged the wrong person on at least three occasions.[2] Further, ATF failed to dismantle any criminal operations or apprehend any major criminals. Most of the defendants in the case were subject to low-level charges.[3]

Two weeks ago, Justice Department Inspector General Michael Horowitz acknowledged that the Milwaukee operation "raise[s] significant management issues relating to the oversight and management of the ATF field office and ATF Headquarters."[4] IG Horowitz was especially concerned about the Milwaukee operation

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[1] John Diedrich & Raquel Rutledge, *ATF's Milwaukee sting operation marred by mistakes, failures*, MILWAUKEE J. SENTINEL, Jan. 29, 2013, *available at* http://www.jsonline.com/watchdog/watchdogreports/atfs-milwaukee-sting-operation-marred-by-mistakes-failures-mu8akpj-188952581.html.
[2] *Id.*
[3] *Id.*
[4] Letter from Inspector Gen. Michael Horowitz, U.S. Dep't of Justice, to Rep. Bob Goodlatte, Chairman, Comm. on the Judiciary, U.S. House of Reps., & Rep. F. James Sensenbrenner, Jr., Chairman, Subcomm.

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in light of his recent report on Operation Fast and Furious which offered several recommendations to help ATF avoid making the same mistakes in future operations. He stated that the Milwaukee operation "highlight[s] the importance" of those recommendations, especially for ATF to "review its internal procedures to ensure that matters involving 'sensitive circumstances,' 'special requirements,' and 'illegal activity' are sufficiently evaluated."[5] Even the federal prosecutor assigned to the cases stemming from this operation stated that Fearless Distributing "wasn't the best use of law enforcement resources."[6] The prosecutor further criticized the operation for not actually catching the violent offenders the operation was designed to target.[7]

Such rare comments from a federal prosecutor—combined with the acknowledgement from Inspector General Horowitz that problems existed in the Fearless Distributing operation—make your decision to ignore our January 31, 2013, letter all the more puzzling. Congressional oversight of a clearly botched operation is necessary. Instead of welcoming the opportunity to get to the bottom of this matter and solve the problems within the bureau that led to it, you have instead chosen to ignore our oversight request and attempt to handle the matter internally without any openness or transparency. A similar course of action resulted in media and Congressional scrutiny of Operation Fast and Furious for nearly two years.

When the President appointed you Acting Director of ATF, you were excited to "rebuild the agency's morale."[8] At the time, you further stated that ATF is "good at what they do and they need to hear that from somebody who's coming straight from the field."[9] Even more, ATF needs a top-down culture change that emphasizes robust oversight and hands-on management. ATF needs strong leadership. Your failure to respond to our request for information about the Fearless Distributing operation raises serious concerns about your willingness and ability to provide such leadership.

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on Crime, Terrorism, Homeland Security, & Investigations, Comm. on the Judiciary, U.S. House of Reps. (Mar. 22, 2013).

[5] Letter from Inspector Gen. Michael Horowitz, Dept. of Justice, to Rep. Bob Goodlatte and Rep. F. James Sensenbrenner, Jr. (Mar. 22, 2013).

[6] John Diedrich, *Prosecutor: ATF's flawed Milwaukee sting not best use of resources*, MILWAUKEE J. SENTINEL, Mar. 14, 2013, *available at* http://www.jsonline.com/watchdog/watchdogreports/prosecutor-atfs-flawed-milwaukee-sting-not-best-use-of-resources-vg95krf-198351001.html.

[7] *Id.*

[8] Sari Horwitz, *New ATF chief B. Todd Jones joins an agency shaken by guns scandal*, WASH. POST, Sept. 1, 2011, *available at* http://articles.washingtonpost.com/2011-09-01/politics/35273915_1_atf-director-top-atf-officials-kenneth-melson.

[9] *Id.*

Please respond to our January 31, 2013, letter as soon as possible, but by no later than April 10, 2013. Additionally, please contact James Donahue of Ranking Member Grassley's staff at (202) 224-5225; Carlton Davis of the Oversight and Government Reform staff at (202) 225-5074; or Jason Cervenak of the House Judiciary staff at (202) 225-3951 by no later than April 10, 2013, to schedule a briefing on this matter.

Sincerely,

Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Robert W. Goodlatte, Chairman
Committee on the Judiciary
U.S. House of Representatives

F. James Sensenbrenner, Jr., Chairman
Subcommittee on Crime, Terrorism
Homeland Security, and Investigations
U.S. House of Representatives

cc: The Honorable Eric H. Holder, Jr., Attorney General
U.S. Department of Justice

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary, U.S. Senate

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable John Conyers, Jr., Ranking Member
Committee on the Judiciary, U.S. House of Representatives

The Honorable Robert C. Scott, Ranking Member
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary, U.S. House of Representatives

Congress of the United States
Washington, DC 20515

January 31, 2013

Via Electronic Transmission

The Honorable B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

In 2004, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) launched its first Violent Crime Impact Teams under an initiative designed to target "hot spots" of criminal activity and go after the "worst of the worst" violent criminals.[1] A 2006 Department of Justice (DOJ) Office of Inspector General (OIG) report cited "ineffective oversight" of the Impact Teams and found no evidence showing firearm crimes were actually reduced in the "hot spots" where they performed.[2] Yet, it is our understanding that these Teams have continued to conduct operations in cities across America. Milwaukee, Wisconsin, is one city where Violent Crime Impact Teams still exist.

This week, the *Milwaukee Journal Sentinel* reported on a disturbing ATF undercover operation that, similar to Operation Fast and Furious, appears to have had many problems with limited successes.[3] According to the *Journal Sentinel*, this undercover operation began under your leadership in January 2012 when an ATF Violent Crime Impact Team opened a storefront in a Milwaukee neighborhood – a neighborhood where aggravated assaults were decreasing and homicide numbers were far fewer than other sections of Milwaukee. Similar to Operation Fast and Furious, the U.S. Attorney for the Eastern District of Wisconsin was reportedly briefed on this undercover operation and allowed it to proceed.[4]

ATF created a phony storefront, named it Fearless Distributing, and staffed it with undercover ATF agents, who set up a Facebook page and attracted people to the property by selling clothes, shoes, and drug paraphernalia. According to the *Journal Sentinel*, ATF agents handed out business cards emblazoned with the movie logo from "The Expendables" and the words "Buy, sell, or trade" on them. Agents "spread the

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[1] ATF Fact Sheet, "Violent Crime Impact Teams (VCIT) Initiative" (March 2010). Available at http://www.atf.gov/publications/factsheets/factsheet-violent-crime-impact-teams.html.
[2] Review of the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Violent Crime Impact Team Initiative, Dep't of Justice Office of the Inspector General (May 2006). Available at http://www.justice.gov/oig/reports/ATF/e0605/final.pdf.
[3] John Diedrich and Raquel Rutledge, ATF's Milwaukee sting operation marred by mistakes, failures, MILWAUKEE JOURNAL SENTINEL (Jan. 29, 2013). Available at http://www.isonline.com/watchdog/watchdogreports/atfs-milwaukee-sting-operation-marred-by-mistakes-failures-mu8akpj-188952581.html.
[4] *Id.*

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word" that Fearless Distributing was willing to buy guns and drugs, as the goal of the operation was to bust criminal operations in the city "by purchasing drugs and guns from felons." These drugs included marijuana, cocaine, and heroin.[5] A retired ATF agent who supervised undercover operations, however, noted that "a number of mistakes [were] made during the operation."[6] According to the *Journal Sentinel*, these mistakes "suggest a lack of planning and oversight."[7]

Although local residents and the landlord from whom ATF rented the storefront property did not know the true nature of the sham company Fearless Distributing, by March 2012 undercover ATF agents at the store were buying and selling guns. Using taxpayer dollars, these ATF agents paid a premium for the guns. According to the *Journal Sentinel*, in one instance, ATF agents paid $1,250 for a gun that usually sells for $400 to $700. In fact, some suspects bought guns from stores and then re-sold them to undercover ATF agents at Fearless Distributing for a quick profit.[8]

According to the *Journal Sentinel*, on September 13, 2012, three weapons were allegedly stolen from an ATF Ford Explorer parked near the storefront. The weapons included a Smith & Wesson 9mm handgun, a Sig Sauer .40-caliber pistol and an M-4 automatic rifle. The very next day, an individual sold the stolen Sig Sauer, and another unrelated weapon, back to ATF agents at Fearless Distributing – for $1,400. ATF agents failed to arrest that individual for two months. The M-4 machine gun and Smith & Wesson 9mm have yet to be recovered. Retired ATF agent Gerald Nunziato lamented, "[T]hat bothers me the most. The last thing you want to have is a gun stolen. If that gun is used to shoot someone, that is so personal."[9]

The Fearless Distributing storefront operation was plagued with other fundamental problems. For example, according to the *Journal Sentinel*, ATF failed to hook up an alarm to the property and, in October 2012, Fearless Distributing was burglarized. Merchandise worth $35,000 was stolen from the property, including jewelry, clothing, auto parts, shoes and other undisclosed items. One resident who lives near the storefront commented after this series of events that it "does not help to have your own government planting crime here . . . It's like, 'Thanks.'"[10] ATF closed the storefront shortly after the burglary.

ATF's mistakes, however, did not end with the closing of the storefront. During a roundup of suspects in a November 2012 sting, ATF agents charged the wrong person on at least three occasions. ATF charged one individual for selling drugs to agents even though he was in prison during the time of the operation. Agents participating in the sting also "left behind a sensitive document that listed names, vehicles, and phone numbers of undercover agents."[11]

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[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*

In December 2012, the owner of the property where Fearless Distributing was located asked ATF to pay him $15,000 for damage to walls, doors and carpeting, including a month of lost rent and an overuse of utilities during Fearless Distributing's operation. According to the *Journal Sentinel*, despite the property owner having met with an ATF supervisor about the burglary and the supervisor assuring the landlord that "they would take care of everything," an ATF attorney reportedly used bully tactics, threatening the landlord with harassment of a federal official.[12]

In light of these reports, we remain extremely concerned about your ability to manage ATF. ATF needs strong leadership from its Director and senior management. If these reports are accurate, your ability to provide this leadership is in serious doubt. You promised to "hit the reset button" when you became Acting Director.[13] Instead, it appears as though you have hit the "repeat" button, as the Fearless Distributing sting was created and conducted entirely under your stewardship.

More than six years have passed since a DOJ OIG report indicated there was "ineffective oversight" of the Violent Crime Impact Teams. You have had seventeen months to right the ship at ATF, yet reports about the Fearless Distributing operation indicate that this "ineffective oversight" has continued during your tenure.

The Fearless Distributing sting is exactly the type of operation where strong management controls must be in place. Given its history over the past 20 years, ATF is not an agency that Congress can trust regarding out-of-the-box or novel investigative techniques. Consequently, ATF must have rigorous oversight plans to ensure that these operations are conducted carefully. Such management controls and rigorous oversight plans appear to have been absent during the botched Fearless Distributing case. Although not surprising, it is unacceptable.

Please provide responses to the following questions:

1) When was the undercover operation involving Fearless Distributing initiated and terminated?

2) What were the names of the case agent and supervisory agent over the undercover operation involving Fearless Distributing?

3) Did you authorize the undercover operation involving Fearless Distributing? If not, why not, and who in the ATF chain of command did authorize the operation? Please identify by name and position each individual involved in the authorization above the first-line supervisor.

---

[12] *Id.*

[13] MJ Lee, Embattled ATF shakes up staff, POLITICO (Oct. 6, 2011). Available at http://www.politico.com/news/stories/1011/65299.html.

4) When did you first become aware of the undercover operation involving Fearless Distributing? How did you become aware of the operation?

5) Were you ever briefed on the operation involving Fearless Distributing? If so, how many times were you briefed? Did you ever call any aspects of this case into question? If so, please provide documentation.

6) What law enforcement partners, if any, did the ATF work with in the undercover operation involving Fearless Distributing? Please list them and the number of personnel assigned from each.

7) What methodology was used to determine the placement of the undercover business, Fearless Distributing?

8) What United States government property, including law enforcement sensitive paperwork, was left on the premises of Fearless Distributing once the undercover operation ended?

9) What methodology was used to determine the price to be paid for weapons or drugs bought in the undercover operation involving Fearless Distributing?

10) What were the sources of cash for the undercover operation involving Fearless Distributing, including the breakdown between (a) funds provided by the ATF, (b) project generated income (PGI), and (c) interest income?

11) What were the operational costs for the undercover operation involving Fearless Distributing, including the breakdown between (a) total operational costs, (b) unused PGI remitted back to the Treasury, if any, and (c) interest income remitted?

12) What was the total cost of the undercover operation involving Fearless Distributing?

13) How many indictments, leads and arrests were garnered through the undercover operation involving Fearless Distributing?

14) What information, including reports of investigation, was used in obtaining probable cause for the arrest of Adrienne Jones, who was allegedly falsely accused?

15) How many civil claims were filed against ATF or employees of ATF relative to this undercover operation involving Fearless Distributing?

16) How many weapons were sold by the ATF during the undercover operation involving Fearless Distributing and what are the locations of those weapons now?

17) If weapons were sold, who approved the plan to conduct these sales?

18) What steps, if any, were taken to retrieve the weapons and prevent their use in illegal activity or transmittal to prohibited purchasers, and how successful were those precautions?

19) List all property stolen from the unattended ATF vehicle and Fearless Distributing store during their respective burglaries.

20) Was the agent whose car was broken into (and from which weapons were reportedly stolen) working on the undercover operation involving Fearless Distributing? What personnel action(s), if any, have been taken regarding this incident?

21) Were the weapons reportedly stolen from the unattended vehicle secured with any type of safety device/trigger lock?

22) What is the status of the reportedly stolen weapons/ammunition, including the M-4 automatic rifle?

Please also provide the following documents:

1) All ATF Operational Plans (including ATF Form 3210.7) for the undercover operation involving Fearless Distributing.

2) All reports of investigation (ROIs) relative to the undercover operation involving Fearless Distributing.

3) Any documentation authorizing ATF to sell weapons as part of the undercover operation involving Fearless Distributing.

4) The ATF policy for storage of firearms in unattended vehicles.

5) The ATF policy for conducting undercover operations out of store fronts.

Thank you in advance for ensuring your response arrives by no later than February 14, 2013. Please also contact Brian Downey or James Donahue of Ranking Member Grassley's staff at (202) 224-5225, Carlton Davis of Chairman Issa's staff at (202) 225-5074, or Jason Cervenak of the House Judiciary staff at (202) 225-3951 by February 5, 2013, to schedule a briefing on this matter.

Sincerely,

Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate

Darrell E. Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

Robert W. Goodlatte, Chairman
Committee on the Judiciary
U.S. House of Representatives

F. James Sensenbrenner, Jr., Chairman
Subcommittee on Crime, Terrorism,
Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives

cc: The Honorable Eric H. Holder, Jr., Attorney General
U.S. Department of Justice

The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

The Honorable Patrick J. Leahy, Chairman
U.S. Senate, Committee on the Judiciary

The Honorable Elijah E. Cummings, Ranking Member
U.S. House of Representatives, Committee on Oversight and Government Reform

The Honorable John Conyers, Jr., Ranking Member
U.S. House of Representatives, Committee on the Judiciary

The Honorable Robert C. Scott, Ranking Member
U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

LAW OFFICES
OF
DONALD E. OSWALD, P.A.
ATTORNEY AND COUNSELOR AT LAW
721 N.E. 3RD AVENUE
FORT LAUDERDALE, FL 33304
(954) 463-3777

January 29, 2013

Honorable Patrick J. Leahy
United States Senator
Chairman, Senate Judiciary Committee
437 Russell Senate Bldg
Washington, DC 20510

Re: Byron "B" Todd Jones,
Nominee for Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives

Dear Senator Leahy:

I'm writing you and the other members of the Senate Judiciary Committee to provide information for your consideration regarding the potential confirmation of B. Todd Jones, recently nominated by President Obama for Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I recently retired from the Federal Bureau of Investigation (FBI) as the Special Agent-in-Charge (SAC) of the Minneapolis Division, where I was responsible for the FBI's investigative activities in Minnesota, North Dakota, and South Dakota. During my tenure as the SAC, my responsibilities included coordinating the FBI's investigative efforts with the three U.S. Attorneys (USAs) within the division's large territory. My personal interactions with USAs Timothy Q. Purdon (ND) and Branden V. Johnson (SD) were always congenial and productive, and their respective offices diligently worked to support the FBI with ongoing investigations and assertively prosecute cases. However, my experience with Mr. Jones, in his capacity as the USA for the District of Minnesota, was completely opposite- unproductive; so much so, I feel morally compelled to make your committee aware of Mr. Jones' atrocious professional reputation within the federal law enforcement community in Minnesota's Twin Cities area. As a retired FBI senior executive, I am one of the few voices able to publicly express our complete discontent with Mr. Jones' ineffective leadership and poor service provided to the federal law enforcement community without fear of retaliation or retribution from him. He was, and still remains, a significant impediment for federal law enforcement to effectively protect the citizens of Minnesota from violent gang, drug, and gun activities. I intend to provide compelling and verifiable facts in this letter which will expose Mr. Jones for his lack of team work and poor leadership. I, and many others, have concluded B. Todd Jones is substantially motivated by personal political gain and not by doing what's in the best interest of the citizens he is sworn to protect.

By way of background, I served as the FBI's SAC-Minneapolis from May 2, 2011 through May 2, 2012, after which I retired in good standing and relocated back to south Florida. During my tenure in Minneapolis, the ineffective support provided to the FBI by Mr. Jones and his office on violent crime, gang, and drug matters was a constant cause of complaints from hard working Special Agents and mid-level managers in my office. The morale of many Special Agents was negatively impacted by the constant inaction of the US Attorney's Office (USAO) under Jones' leadership.

I quickly learned the other federal law enforcement agencies in Minneapolis-Saint Paul were having the same issues with Mr. Jones and his office. All of us were very frustrated with Mr. Jones' ineffective leadership and his lack of concern about matters and issues brought to his attention by each of us. Our common dissatisfaction with Jones' poor leadership, pathetic interaction, and insufficient prosecution support was the theme of many discussions during my tenure. The reaction to our combined frustration is evidenced by the increase in significant gang and drug cases being referred by federal agencies to Dakota, Hennepin, and Ramsey counties for prosecution in state court. This trend is indicative of Mr. Jones' low-level support to federal law enforcement in the violent crime, gang, and drug arenas, and our frustration with the constant obstacles placed upon us by certain inefficient personnel in his office. The only time I reached a palatable solution to a problem was when I met with First AUSA John Marti, a man of integrity, and one who follows through on his word. Unfortunately, Mr. Marti, being true to his Marine Corp heritage, followed the orders of his boss and could only do so much.

The local federal law enforcement agency heads met with Mr. Jones as a group or alone on almost a monthly basis, during which our common issues of dissatisfaction were usually brought to his attention. He consistently reacted defensively and often spoke to us disrespectfully, and occasionally with disdain. For example, I recall one meeting at which I and another agency SAC expressed our concern regarding Assistant United States Attorney (AUSA) Carol M. Kayser, Mr. Jones' chief of the violent crime and drug section, who consistently declined to file federal charges in armed bank robbery cases and significant violent gang investigations impacting the safety and welfare of the citizens in the Twin Cities metropolitan area. I received constant complaints from Special Agents and managers in my office about Ms. Kayser's abrasive interactions with the Agents and supervisors, who often described her as antagonistic, and claimed her rationales for not filing cases were inconsistent. After many discussions with my federal counterparts about their significant frustration caused by Ms. Kayser's in-actions impacting Agents investigating violent crime, gang, and drug matters, I've come to believe Ms. Kayser is single-handedly responsible for the disenfranchisement and destruction of relationships between the USAO and the federal agencies involved with guns and drugs.

It was unfathomable to me why Mr. Jones would always vehemently defend the actions of Ms. Kayser, even when the facts presented to him were clearly alarming and would cause concern for any judicious executive manager. While researching Ms. Kayser's history with the USAO, I learned that immediately upon Jones taking office, he promoted Ms. Kayser to chief of the violent crime and drug section, when she had less

than a year in the office and had no previous management experience. I further learned, coincidentally, but not surprisingly, Ms. Kayser is the daughter of Thomas C. Kayser, a close friend of Mr. Jones, and Partner at Jones' previous employer, the law firm of Robins, Kaplan, Miller, and Ciresi. According to public records, Mr. Kayser is a huge financial contributor to the Democratic Party. Suddenly it became clear to me that Mr. Jones is motivated by personal political gain and not by advancing the safety and welfare of the citizens of the State of Minnesota. It's evident that Jones protects Ms. Kayser at all cost to ingratiate favor with others within the Democratic Party.

During my tenure as SAC, I also met many times with the Police Chiefs of significant local law enforcement partners to discuss the lack of federal prosecutions and support provided by the USAO on significant violent gang cases being investigated jointly by the Safe Streets Violent Crimes Task Force (SSVCTF). We all agreed that the U.S. Attorney's Office, under Mr. Jones' leadership, was incapable of producing the required results for our needs and we decided to refer certain cases for prosecution to state court. For example, I and other members of the SSVCTF executive committee authorized a significant drug/gang investigation involving a Hmong gang importing and distributing methamphetamine in the Twin Cities area to the Hennepin County Attorney's Office (HCAO). The HCAO provided great support to this investigation and is successfully prosecuting the case, which became one of the largest drug cases ever prosecuted in Hennepin County. The case netted 16.1 lbs of methamphetamine, the seizure of two hand guns and approximately half a million dollars in cash. This was certainly not a "street level" case of low importance to the community. To date, eleven defendants have pleaded guilty and seven more are set for trial. When media and others inquired with the USAO as to why the case was not taken federally, their reply was that the case had been "undersold" when it was presented by the case Agent and Supervisory Special Agent to AUSA Carol Kayser. The USAO response could not be further from the truth. This is just one example of Ms. Kayser's poor judgment when assessing cases for federal prosecution. I personally spoke to Mr. Jones about this matter, in the presence of another local agency head, and was told that if our Agents didn't like his prosecution guidelines, "tough shit."

The RICO prosecution in state court by Hennepin County of the Gustafson father and son team for their involvement in homicides, home invasions, extortion, drugs and gun violence is another example of an FBI case "passed" on by the USAO, yet successfully prosecuted by Hennepin County Attorney Michael Freeman in state court. These decisions by Mr. Jones and his "protected few" to decline the prosecution of dangerous criminals in the federal court system are inexcusable.

In a recent newspaper article in the Minneapolis *Star Tribune*, dated December 31, 2012, it was noted,

> *[c]riminal prosecutions have dropped dramatically at the U.S. Attorney's office in Minneapolis under the leadership of B. Todd Jones, rankling some in law enforcement."*

My experiences with Mr. Jones absolutely concur with this statement. The article continues,

> *"[a] Star Tribune analysis of federal prosecutions in Minnesota in the past six fiscal years shows that significantly fewer people are being charged – especially those involved in drug crimes."*
> ***Jones acknowledges that his prosecutors are rejecting some "street-level" cases they might have taken in the past, leaving them to county attorneys.***
> Federal prosecutors are focusing on labor-intensive cases involving criminal organizations, complex white-collar crimes and international terrorism, as well as crimes that have exclusive federal jurisdiction such as bank robberies, Indian Country crimes and securities law violations. "If some elements in law enforcement disagree with that prosecutorial decision ... then I'm sorry," Jones said. "The worlds changed, and we have different priorities."

I obtained statistics from the official US Department of Justice (DOJ) website for the Minneapolis USAO which establishes the excuses Jones provided to *Star Tribune* reporter Dan Browning are completely disingenuous. The DOJ maintains statistical accomplishments for every USAO, in every criminal category, for each fiscal year (FY). I have charted relevant stats below for the Minnesota USAO during Mr. Jones' tenure and added some analysis and comment. Mr. Jones assumed office as USA for his second term in August 2009. The first chart depicts the number of defendants charged overall during each FY. Note the significant reduction overall in FY 2012 from FY 2011.

Defendants Charged by Minneapolis USAO	
FY 99	475
FY 00	525
FY 01	485
FY 02	516
FY 03	512
FY 04	637
FY 05	525
FY 06	649
FY 07	668
FY 08	653
FY 09	531
FY 10	482
FY 11	546
FY 12	329 ***(Down 40% from FY 2011)***

Note: By comparison, in FY 1999 the office had approximately 1/3 fewer AUSAs than it did in FY 2012. As each chart below shows, Mr. Jones' statistical accomplishments for FY 2012 are significantly down in every category.

The remaining charts show the number of defendants charged in each category:

Counter-Terrorism	
FY 09	15
FY 10	13
FY 11	2
FY 12	2 ***(No Change from FY 2011)***

In the referenced newspaper article, Mr. Jones claimed his new priority is focusing USAO resources on certain complex crimes, including terrorism cases. However, more accurately he has only two of approximately 54 AUSAs assigned to work full time on national security matters, which include counterterrorism, domestic terrorism, and foreign counterintelligence matters. Moreover, in April 2012, at the conclusion of a long term joint FBI / ATF undercover domestic terrorism investigation entitled "Operation Wrong Reich," Mr. Jones' office failed to charge one defendant claiming resource concerns. This investigation focused on a white supremacist group, who among other things, discussed plans to bomb the Mexican Consulate in Saint Paul. Defendant Teresa White, along with her husband, Sam Johnson- a convicted felon, and Joseph Thomas, also a convicted felon, were arrested on a multitude of federal charges. But suddenly, without concurrence from the FBI or ATF, Mr. Jones' office declined to pursue legitimate federal charges against Teresa White for an illegal straw purchase of a firearm, conspiracy to illegally transfer a firearm, and making false statements to federal law enforcement officials, claiming resource issues. Mr. Jones can't have it both ways- that is to say- he can't claim to be focusing USAO resources on terrorism matters, but fail to pursue established felony firearm charges against a domestic terrorism defendant.

Drugs	
FY 11	211
FY 12	122 ***(Down 42.2% from FY 2011)***

Organized Crime Drug Enforcement Task Forces (OCDETF)	
FY 11	124
FY 12	92 ***(Down 25.8 % from FY 2011)***

Non-OCDETF Drugs	
FY 11	87
FY 12	30 *(Down 65.5% from FY 2011)*

Guns and Violent Crimes	
FY 11	125
FY 12	80 *(Down 36% from FY 2011)*

Public Corruption	
FY 11	4
FY 12	0 *(Down 100% from FY 2011)*

Civil Rights	
FY 11	4
FY 12	1 *(Down 75% from FY 2011)*

Government Regulatory Offenses	
FY 11	19
FY 12	10 *(Down 47% from FY 2011)*

Immigration Matters	
FY 11	37
FY 12	26 *(Down 30% from FY 2011)*

Thefts	
FY 11	14
FY 12	02 *(Down 85.7% from FY 2011)*

White-Collar Crimes	
FY 07	94
FY 08	100
FY 09	68
FY 10	116
FY 11	125
FY 12	86 ***(Down 31.2% from FY 2011)***

General Crimes	
FY 11	4
FY 12	0 ***(Down 100% from FY 2011)***

In conclusion, I have no personal or political agenda for sending this letter other than speaking the truth. Ironically, I am a long-time registered Democrat and have supported President Obama in both elections. But I feel obligated to provide this information to your committee on behalf of many law enforcement professionals in the Twin Cities area unable to speak "on the record" out of fear of retaliation and retribution. The American public deserves the right to know the truth about the character traits of this nominee. I strongly believe Mr. Jones is neither a team player nor an effective law enforcement leader, but rather an individual who has used his power and influence for personal political gain. The only good that will come from his confirmation is the people of the State of Minnesota may get a new USA who will adequately fight violent crime in their state and support federal law enforcement to protect the safety and welfare of the citizens they are sworn to protect. I have many more examples of Mr. Jones' ineffective leadership and support, but will spare the readers of this letter any more pages to read. I urge your staff or the media to look into these concerns thoroughly. I have enclosed a copy of the FBI's news release when I was selected as the SAC, which summarizes my professional background and experience for your review. If I can be of any assistance to you or your committee, please do not hesitate to contact me.

Yours truly,

Donald E. Oswald, Esq.

CC: Members of the Senate Judiciary Committee
1-Senator Chuck Grassley
1-Senator Dianne Feinstein
1-Senator Orin B. Hatch

1-Senator Chuck Schumer
1-Senator Jeff Sessions
1-Senator Dick Durbin
1-Senator Lindsay Graham
1-Senator Sheldon Whitehouse
1-Senator John Cornyn
1-Senator Amy Klobuchar
1-Senator Al Franken
1-Senator Michael S. Lee
1-Senator Christopher Coons
1-Senator Tom Coburn
1-Senator Richard Blumenthal

MEDIA:
Dan Browning, Minneapolis *Star Tribune*
Amy Forliti, Associated Press

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TOM COBURN, OKLAHOMA

BRUCE A. COHEN, Chief Counsel and Staff Director
KOLAN L. DAVIS, Republican Chief Counsel and Staff Director

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 17, 2012

Via Electronic Transmission

Mr. B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
U.S. Department of Justice
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

It has come to my attention that a "breakdown" in relations has occurred between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Reno, Nevada Field Office (Reno ATF) and the U.S. Attorney's Office for the District of Nevada (USAONV). My office has been alerted to a variety of serious issues that allegedly continue to hamper the ability of agents at Reno ATF from performing their duties.

The attached declination memorandum, signed by the U.S. Attorney, indicates that as of September 29, 2011, the USAONV categorically refuses to accept *any cases* submitted by Reno ATF. Due to an alleged failure of management in ATF's San Francisco Field Division, which oversees Reno ATF, the situation has still not been resolved over the last 12 months. As a result, the Reno ATF office has effectively been idled. It allegedly has no supervision, no cases, and no investigative resources.

Although Reno ATF once had around six full-time agents, that number dwindled down to two. The other four ATF agents allegedly requested to be transferred due to the lack of work stemming from the office's breakdown in relations with the USAONV. These serious issues have reportedly been brought to the attention of ATF Headquarters, but little has been done to correct the problem.

To help better understand the circumstances surrounding these issues at Reno ATF, please provide the answers and documents to the following requests by no later than October 1, 2012:

1) Is ATF Headquarters aware of the alleged problems between Reno ATF and the USAONV?

2) When did ATF's San Francisco Field Division become aware of the problems between Reno ATF and the USAONV? What actions were taken to resolve these issues?

3) When did ATF Headquarters become aware of the problems between Reno ATF and the USAONV? What actions were taken to resolve these issues?

4) How many ATF agents are currently assigned to Reno ATF? How many ATF agents were assigned to Reno ATF between 2006 and 2011? Provide a breakdown for each year.

5) How many cases has Reno ATF initiated to date in the year 2012? How many cases did Reno ATF initiate between 2006 to 2011? Provide a breakdown for each year.

6) Provide all transfer request memorandums written by Reno ATF agents which were vetted through ATF's San Francisco Field Division. Please describe the reasons why these ATF agents wanted to be transferred out of Reno ATF.

7) What was the total cost to transfer agents out of Reno ATF?

I am also requesting that ATF make available the individuals most familiar with this situation and provide a briefing to my office by no later than September 26, 2012. If you have any questions concerning this matter, please contact Brian Downey or Tristan Leavitt of my Committee staff at (202) 224-5225.

Sincerely,

Charles E. Grassley
Ranking Member

cc: The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

Attachment

U.S. Department of Justice

United States Attorney
District of [redacted]

[redacted]

September 29, 2011

Special Agent [redacted]
Bureau of Alcohol, Tobacco and Firearms
[redacted]

Re: [redacted]

Dear Special Agent [redacted]

We are in receipt of the report you prepared on the aforementioned case. I am returning the report to you. At this time, we are not accepting any cases submitted by your office. We are willing to consider your cases again when your management addresses and resolves the issues at hand.

Sincerely,

[redacted]
United States Attorney
[redacted]
Assistant United States Attorney

Congress of the United States
Washington, DC 20510

December 18, 2012

VIA ELECTRONIC TRANSMISSION

The Honorable B. Todd Jones
Acting Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
U.S. Department of Justice
99 New York Avenue, NE
Washington, DC 20226

Dear Acting Director Jones:

On October 15, 2012, we wrote Attorney General Eric Holder asking about the rift between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and the U.S. Attorney's Office for the District of Nevada (USAONV) in Reno. We recently received a response from the Department of Justice informing us that a prosecutor from outside the District of Nevada is independently reviewing the ATF cases that USAONV had declined or dismissed as a result of the rift. We are pleased that the Justice Department has taken this matter seriously.

However, we still have questions about how the situation was allowed to deteriorate to the point that it did. An editorial last month in the Reno Gazette-Journal that described the situation noted: "U.S. Senator Charles Grassley . . . sent letters demanding answers from ATF; the request went unanswered."[1] Senator Grassley's first letter to you on this matter was sent over 13 weeks ago on September 17, 2012. Similarly, Senator Heller sent you a letter on September 26, 2012, asking for a copy of your answers to the same questions. Among other things, the Senators asked you to describe the reasons ATF agents had wanted to be transferred out of ATF's Reno Field Office. They also requested that you provide all transfer request memoranda written by Reno ATF agents.

We have since obtained copies of the transfer request memos, which we attach to this letter. The memos are from four different ATF agents, one the former Resident Agent in Charge. All are dated from April 2012.

According to one of the special agents' memos, "If proper action had been taken by ATF San Francisco Field Division management when they were first notified of potential issues with the USAO, this would have likely been resolved long ago." Similarly, another special agent wrote: "I feel that if proper action had been initially taken by ATF San Francisco Field Division management dating back to August of 2011,

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[1] Editorial, *Justice Department must resolve Reno dispute now*, RENO GAZETTE-JOURNAL (Nov. 19, 2012), *available at* http://www.rgj.com/article/20121120/oped01/311200033/justice-department-must-resolve-reno-dispute-now.

then this would have been resolved long ago." A third special agent wrote: "This lack of action by ATF management has seriously and gravely tarnished my reputation as an ATF agent . . . ."

Each one of the memos indicated that it was written as a result of a meeting with Ronald Turk, ATF Assistant Director for Field Operations. Clearly ATF leadership was aware of the problems in Reno at least as early as April 2012, and yet apparently took no action to resolve the issues. Instead, the agents in Reno were simply told to submit transfer requests—all of which were honored, leaving the ATF Reno office with only two agents to cover one of the largest field office areas in the country.

In addition to requesting the transfer memos, Senator Grassley's September 17, 2012, letter also asked a series of questions to which you have thus far failed to respond, despite Senator Heller asking on September 26, 2012, for your answers to the same questions. Therefore, we respectfully request that you provide full and complete answers to those questions, which follow:

1) When did ATF's San Francisco Field Division first become aware of the problems between Reno ATF and the USAONV? What actions were taken to resolve these issues at that time?

2) When did ATF Headquarters first become aware of the problems between Reno ATF and the USAONV? What actions were taken to resolve these issues at that time?

3) How many ATF agents are currently assigned to Reno ATF? How many ATF agents were assigned to Reno ATF between 2006 and 2011? Provide a breakdown for each year.

4) How many cases has Reno ATF initiated to date in the year 2012? How many cases did Reno ATF initiate between 2006 and 2011? Provide a breakdown for each year.

5) What was the total cost to transfer agents out of Reno ATF?

Please also answer the following additional questions:

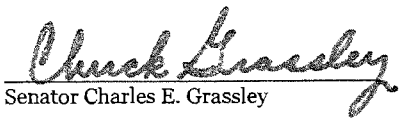
6) Is ATF considering transferring additional agents back into Reno? If so, what would the approximate cost be of transferring agents to Reno?

7) What steps, if any, did ATF leadership take to inform Justice Department headquarters of these issues when first learning of them?

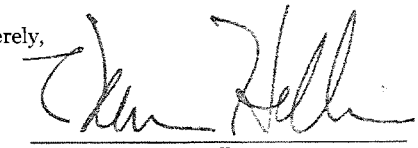
8) Why was ATF leadership more willing to incur the cost of moving these agents than it was to attempt to resolve the underlying issues with the USAONV?

We would appreciate a response to this letter no later than January 2, 2013. If you have any questions concerning this matter, please contact Tristan Leavitt of Senator Grassley's staff at (202) 224-5225, Hayley Douglas of Senator Heller's staff at (202) 224-6244, or Candice Hance of Representative Amodei's staff at (202) 225-6155.

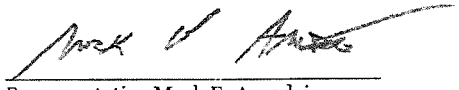
Sincerely,



Senator Charles E. Grassley



Senator Dean A. Heller



Representative Mark E. Amodei

Attachments

cc: The Honorable Michael E. Horowitz, Inspector General
U.S. Department of Justice

The Honorable Daniel G. Bogden, U.S. Attorney for the District of Nevada
U.S. Department of Justice

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

200 S. Virginia St. – Suite 600
Reno, NV 89501

www.atf.gov

April 3, 2012

786030:SMC

MEMORANDUM TO: Acting Special Agent in Charge, Scot Thomasson
San Francisco Field Division

THRU: Resident Agent in Charge, [redacted]
Reno Field Office

FROM: Special Agent [redacted]
Reno Field Office

SUBJECT: Request for Transfer

Per our meeting with Assistant Director Ronald Turk, I am formally requesting an immediate transfer to the Tucson Field Office, Phoenix Field Division. The current situation between the United States Attorney's Office in Reno, Nevada (USAO) and the ATF Reno Field Office has progressively deteriorated over the last eight months. If proper action had been taken by ATF San Francisco Field Division management when they were first notified of potential issues with the USAO, this would have likely been resolved long ago. Unfortunately, this did not occur and the USAO's eagerness to poison ATF's relationships with federal, state and local agencies without refute has caused irreparable damage to the Reno Field Office and professional reputation of its assigned agents.

At this point, I am unable to work in the state of Nevada, per USAO and ATF management. My only goal is to return to working significant cases as I had been accustomed to prior to this unfortunate circumstance. I feel that my only option is to relocate outside of the Judicial District of Nevada in order to begin working again.

I recognize that it is the USAO's responsibility to hold its own personnel accountable for their improper actions, however I do expect a vigorous defense from ATF counsel should the USAO neglect to fulfill its role in this matter and their personnel attempt to perpetuate their unfounded, unprofessional and improper dialogue with their peers in other judicial districts.

Respectfully submitted,

[redacted]

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

200 S. Virginia St. – Suite 600
Reno, NV 89501

www.atf.gov

April 3, 2012

786030:JBD

MEMORANDUM TO: Acting Special Agent in Charge, Scot Thomasson
San Francisco Field Division

THRU: Resident Agent in Charge, [redacted]
Reno Field Office

FROM: Special Agent [redacted]
Reno Field Office

SUBJECT: Request for PCS Transfer

Based on our meeting last week with Assistant Director Ronald Turk, it has become apparent that the ATF Reno Field Office issues with the Reno United States Attorney's Office (USAO) will not be resolved anytime soon, and that continuing to work in the Reno Field Office could jeopardize several of our careers based on AUSA Sue Fahami's unprofessional behavior and actions over the past eight months. The current situation between the Reno Field Office and the Reno USAO has progressively gotten worse, and the damage that has been caused by the USAO to my career locally is irreparable. I feel that if proper action had been initially taken by ATF San Francisco Field Division management dating back to August of 2011, then this would have likely been resolved long ago. Unfortunately, this did not occur, and the situation has only continued to deteriorate. There has been no indication that anyone within DOJ is going to hold AUSA Fahami or anyone from the Reno USAO accountable for their intentional misrepresentation and slanderous allegations against agents from the ATF Reno Field Office. For the past several months, I have been unable to work in the entire state of Nevada, per the USAO and ATF management. Per Assistant Director Turk's direction, I respectfully submit the following field offices that I am willing to relocate to within the Los Angeles Field Division;

Preference #1: Long Beach (CA) Field Office
Preference #2: Santa Ana (CA) Field Office

There are several benefits to relocating to either field office. [redacted]

Special Agent in Charge
San Francisco Field Division

[redacted] I believe that I will be able to quickly forge successful working relationships with local law enforcement officers and detectives assigned to investigate firearms trafficking, gang activity, and other types of violent crime. [redacted] I believe that I will be able to have an immediate impact on ATF's mission of combating violent crime by means of cultivating informants, participating in UC deals, and generating a variety of cases involving firearms trafficking and other violent crime. [redacted]

My seven years here in the Reno Field Office have been very rewarding, and I have been fortunate enough to work with hard working agents on a variety of successful long term, proactive cases. I believe my experience working as the case agent or a UC during such complex investigations will be an asset to the Long Beach or Santa Ana field offices.

Respectfully submitted,

[redacted]

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

200 S. Virginia St. – Suite 600
Reno, NV 89501

www.atf.gov

April 3, 2012

786030:TRW

MEMORANDUM TO: Acting Special Agent in Charge, Scot Thomasson
San Francisco Field Division

THRU: Resident Agent in Charge, [redacted]
Reno Field Office

FROM: Special Agent [redacted]
Reno Field Office

SUBJECT: Request for PCS Transfer

Based on our meeting last week with Assistant Director Ronald Turk, it has become apparent that issues with the Reno United States Attorney's Office (USAO) will not be fixed anytime soon, and that continuing to work in the Reno Field Office could further jeopardize my career with ATF. The current situation between the Reno Field Office and the Reno USAO has progressively gotten worse, and the damage that has been caused by the USAO to my career locally is irreparable. There has been no indication that anybody within DOJ is going to hold AUSA Fahami or anybody from the USAO accountable for their intentional misrepresentation and slanderous allegations against agents from the ATF Reno Field Office. Furthermore, there has been no attempt by ATF management to reach out to our local Reno area law enforcement counterparts to inform these agencies that what is being submitted by the USAO as fact is absolutely inaccurate and false. This lack of action by ATF management has seriously and gravely tarnished my reputation as an ATF agent, a reputation I have spent my past 11 years building and maintaining to better my career. For the past several months, I have been unable to work in the entire state of Nevada, per the USAO and ATF management. Per Assistant Director Turk's request, I respectfully request an immediate transfer to the Stockton Field Office, San Francisco Field Division.

Respectfully submitted,

[redacted]

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives
5601 Arnold Road, Suite 400
Dublin, California 94568

April 10, 2012

www.atf.gov

786030: ED

MEMORANDUM TO: Acting Special Agent in Charge, Scot Thomasson
San Francisco Field Division

FROM: Resident Agent in Charge, [redacted]
Reno Field Office

SUBJECT: Request for PCS Transfer

Per ATF Assistant Director Ronald Turk's meeting (AD Turk), I respectfully request a transfer to the Stockton Field Office, San Francisco Field Division, upon the departure of the current RAC when he reports to his new post of duty. On March 27, 2012, AD Turk met with agents of the ATF Reno Field Office concerning the unresolved issues with the Reno, Nevada United States Attorney's Office (USAO). As a result of this meeting and a subsequent meeting AD Turk had with United States Attorney for the District of Nevada, Daniel Bogden, it is apparent that the USAO in Reno is unwilling to resolve any issues they allegedly have with ATF Reno agents, to include myself.

Upon reporting to Reno as the RAC in mid January 2012, I have made numerous efforts to meet with local and federal counterparts to address any concerns they may have with ATF in Reno. Every single agency representative I met with stated that neither they nor their agency have any issues or problems with ATF, but were aware of issues between ATF and the USAO in Reno. Several individuals stated that they had heard of these issues directly from Assistant United States Attorney Sue Fahami. Over the course of the last several months, it has become apparent that AUSA Fahami has intentionally misrepresented numerous issues regarding ATF agents in Reno to numerous law enforcement agencies in Washoe County as well as the District Attorney's Office. These inaccurate, false and slanderous allegations made by AUSA Fahami have had a devastating effect on ATF agents' careers in Reno. Agents' integrity, honesty, and professionalism have come into question to the point where the USAO and the local DA's office will not accept any ATF cases for prosecution, and other law enforcement agencies have elected not to work with ATF agents in Reno until the alleged issues are resolved between ATF and the USAO.

I recently received information from a local FBI agent in Reno who informed me that five weeks ago, their ASAC from Las Vegas met with the FBI Reno agents and directed them not to work with ATF Reno agents until the issues are resolved between ATF and the USAO. The agent

stated that the ASAC did not provide any further information; however, he stated that AUSA Fahami personally told him that she was "disappointed" in RAC Diaz.

Prior to becoming the RAC in Reno and serving a period of time in ATF Headquarters, I was an agent in Reno for twelve years and worked closely with fellow law enforcement agencies in Northern Nevada. Unfortunately, due to this current situation I have not been able to effectively supervise the Reno Field Office nor learn and grow as a first-line supervisor. The alleged issues with the USAO in Reno do not appear that they will be resolved in the near future, and I feel myself and the other agents in the office are put at risk for potential civil and criminal exposure as long as this problem continues. I do not own a home and am currently renting so I will not be required to sell a residence.

Respectfully submitted

[redacted]

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Star Tribune (Minneapolis, MN)

December 31, 2012 Monday
METRO EDITION

SECTION: NEWS; Pg. 1A

LENGTH: 901 words

HEADLINE: Drugs and thugs slide down priority scale

BYLINE: DAN BROWNING; STAFF WRITER, STAR TRIBUNE (Mpls.-St. Paul)

HIGHLIGHT:

U.S. Attorney says office is focused on bigger, more time-consuming crimes.

BODY:

Criminal prosecutions have dropped dramatically at the U.S. Attorney's office in Minneapolis under the leadership of B. Todd Jones, rankling some in law enforcement.

A Star Tribune analysis of federal prosecutions in Minnesota in the past six fiscal years shows that significantly fewer people are being charged -- especially those involved in drug crimes.

Drug suspects made up 60 percent of the defendants charged under former U.S. Attorneys Thomas Heffelfinger and Rachel Paulose in 2006. Under Jones they account for just 36 percent, and illustrate a major shift in the office's priorities.

Several federal and state law enforcement sources said that the U.S. Attorney's office refused to prosecute drug and violent crime cases that would have been snapped up by Jones' predecessors. None agreed to be quoted, saying they must maintain a relationship with the U.S. Attorney's office.

Jones said in an interview that he's not surprised by the grumbling. He spoke by phone from Washington, D.C., where he's working a dual job as acting head of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

He said some of it reflects a "hangover" of bad feeling between federal prosecutors and local law enforcement over an investigation of the now-disbanded Metro Gang Strike Force. Some result from decisions he's made to deal with a two-year budget freeze.

Jones acknowledges that his prosecutors are rejecting some "street-level" cases they might have taken in the past, leaving them to county attorneys.

Federal prosecutors are focusing on labor-intensive cases involving criminal organizations, complex white-collar crimes and international terrorism, as well as crimes that have exclusive federal jurisdiction such as bank robberies, Indian Country crimes and securities law violations.

"If some elements in law enforcement disagree with that prosecutorial decision ... then I'm sorry," Jones said. "The world's changed, and we have different priorities."

Behind the numbers

The number of defendants charged federally in Minnesota peaked at 668 in 2007 under Paulose, who resigned that year amid a staff revolt over her management style. On Jones' watch, 343 defendants were charged in fiscal 2012 -- a drop of 49 percent from the peak.

More than nine out of 10 defendants charged federally plead guilty, and nearly all who go to trial also are convicted.

The number of defendants pleading guilty peaked in fiscal 2009, resolving charges from the terms of Heffelfinger, Paulose and her temporary replacement, Frank Magill.

Since Jones took over in September 2009, the number of defendants found guilty through pleas and trials has steadily declined, falling to 463 in 2012, a 36 percent drop.

The number of trials also has dropped. Forty-eight defendants went to trial in 2006. In 2012, half that number were tried.

Jones, who was hired by Heffelfinger as an assistant U.S. attorney, said "the high-volume, we're-going-to-trial kind of numbers" from 2006 are easy to explain.

"It's one thing to do 48 cases that are street-level drug dealers ... high-volume gun cases or bank robbery cases. I did the job and so I know," Jones said.

"Tom was all about guns and drugs. We could do that all day, but we've chosen not to because that's not the best use of our resources."

Jeanne Cooney, who prepares the annual reports for the U.S. Attorney's office in Minnesota as director of community relations, said the office began turning away routine drug cases in 2010, but never stopped pursuing drug cartels.

"We had to pull back in drugs, an area county attorneys can handle just fine," she said. "That allowed us to start working more sophisticated white-collar cases."

The U.S. Attorney's office has about 55 trial attorneys, about three dozen of whom work criminal cases. But a dozen of the attorneys were hired just before the Justice Department imposed a freeze in January 2011. "We've got a lot of new people who are getting their sea legs," Jones said.

Even so, he said, internal tracking data show that the prosecutors are working harder than ever. Attorney work years -- a measure of the number of hours worked -- went way up as the office tackled increasingly complex cases. He cited Ponzi schemes run by Tom Petters and Trevor Cook, and recruitment of Twin Cities men into a Somali terror group, as examples.

Federal prosecutors in Minnesota took heat for declining a case alleging that Somali gang members were trafficking young girls from the Twin Cities in an interstate prostitution ring. The U.S. Attorney's office in Nashville charged 29 defendants in that case in January 2011.

Jones said the decision predated his term, but he thinks the staff made a good call. Just three defendants were found guilty, and last week a federal judge in Tennessee overturned those convictions. Nine were acquitted, and charges were dismissed against three others. (The remaining cases are unresolved.) "I think to a certain degree, they got sold a pig in a poke" in Tennessee, Jones said.

Cooney said the sentencing figures in 2012 reflect the priority Jones set to go after the worst offenders. In 2012, a record 41 percent of defendants sent to prison got more than five years, compared to 6.3 percent in 2006. She attributed the lengthy terms to prosecutions of child pornography, certain gun cases and conspiracies.

"We can't be taking on smaller cases," Cooney said. "We just don't have the resources."

Dan Browning - 612-673-4493

LOAD-DATE: December 31, 2012

THE WHITE HOUSE

WASHINGTON

May 28, 2013

The Honorable Claire McCaskill
Chairman, Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Government Affairs
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman McCaskill:

I write in response to your January 17, 2013 letter concerning the President's signing statement regarding the 2013 National Defense Authorization Act ("NDAA") and to follow-up on our subsequent telephone conversation. President Obama has a strong and longstanding commitment to protecting the courageous and patriotic individuals who expose government waste, fraud, and abuse. The President supported and signed the Whistleblower Protection Enhancement Act, Public Law No. 112-199, on November 27, 2012. And when it became clear that the legislation would not include fundamental protections for individuals in the intelligence community or with security clearances, he issued, on October 10, 2012, a landmark directive extending whistleblower protections to those individuals.[1]

The Administration also strongly supports expanding whistleblower protections offered to federal contractors. Congress has a significant, legitimate interest in addressing wrongdoing, abuse, and mismanagement in the Executive Branch, and the President supports the underlying policy embodied in sections 827 and 828 of the NDAA. Nevertheless, sections 827 and 828 of the NDAA do raise important issues which warranted clarification in light of the longstanding Executive Branch position regarding the constitutionality of statutory provisions that could be read to grant Executive Branch employees an absolute right to disclose national security or privileged information to Congress.

Under separation of powers principles, "a congressional enactment would be unconstitutional if it were interpreted to divest the President of his control over national security information in the Executive Branch by vesting lower-ranking personnel in that Branch with a right to furnish such information to a member of Congress without receiving official authorization to do so."[2] More broadly, Congress may not override the constitutional doctrine of executive privilege by vesting lower-level employees with a unilateral right to waive executive privilege by disclosing privileged and confidential information—including not just classified materials but also candid,

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[1] Presidential Policy Directive 19 (Oct. 10, 2012).

[2] *Access to Classified Information*, 20 Op. O.L.C. 402, 404 (1996) (quoting Brief for the Appellees, *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989) (No. 87-2127) (internal quotation marks omitted).

deliberative communications between high-level Government officials and other information subject to executive privilege—without authorization.[3]

While the NDAA contains clarifications regarding classified information, there are other categories of sensitive, confidential, or privileged information which are not classified (e.g., confidential information about informants or undercover officers) but which require similar protections. The Executive Branch must have the authority to supervise, control, and correct individuals' communications with Congress to ensure that those materials remain protected as appropriate.

Therefore, consistent with his predecessors, the President issued a signing statement making the narrow constitutional clarification that he does not interpret these provisions as abrogating his constitutionally required authority to "direct the heads of executive departments to supervise, control, and correct employees' communications with the Congress in cases where such communications would be unlawful or would reveal information that is properly privileged or otherwise confidential."[4] The President used the identical language in a 2009 signing statement.[5]

The President's statement does not in any way alter longstanding Executive Branch interpretation or practice. It would not restrict disclosure of a document simply because a contractor had stamped it "confidential." Nor is the signing statement inconsistent with your

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[3] *See, e.g., Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, 2004 OLC LEXIS 3 (2004) (opinion of Assistant Attorney General Jack Goldsmith), available at http://www.justice.gov/olc/crsmemoresponsese.htm; *Whistleblower Protections for Classified Disclosures*, Statement Before the Permanent Select Committee on Intelligence, U.S. House of Representatives, by Randolph Moss, Deputy Assistant Attorney General, Office of Legal Counsel, 22 Op. O.L.C. 92 (May 20, 1998).

[4] *Compare, e.g.*, Statement by President George W. Bush upon Signing H.R. 4986 (Jan. 28, 2008) ("Provisions of the Act, including sections 841, 846, 1079, and 1222, purport to impose requirements that could inhibit the President's ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as Commander in Chief. The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the President."); Statement by President William J. Clinton on Signing the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Oct. 23, 1998) ("I do not interpret this provision to detract from my constitutional authority and that of my appointed heads of departments to supervise and control the operations and communications of the executive branch, including the control of *privileged and national security information*." (emphasis added)); Statement of Administration Policy on S. 1668 (Mar. 9, 1998) ("This provision is clearly contrary to the Supreme Court's explicit recognition of the President's constitutional authority to protect national security and other privileged information. Congress may not vest lower-ranking personnel in the executive branch with a 'right to furnish *national security or other privileged information* to a member of Congress without receiving official authorization to do so. By seeking to divest the President of his authority over the disclosure of such information, S. 1668 would unconstitutionally infringe upon the President's constitutional authority." (emphasis added)); Statement by President William J. Clinton on Signing the National Defense Authorization Act for Fiscal Year 1998 (Nov. 18, 1997) ("Because of the President's constitutional role, the Congress may not prevent the President from controlling the disclosure of *classified and other sensitive information* by subordinate officials of the executive branch" (emphasis added)).

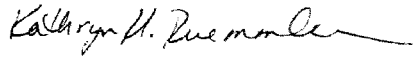
[5] Statement by President Barack H. Obama on Signing the Omnibus Appropriations Act, 2009 (Mar. 11, 2009) ("I do not interpret this provision to detract from my authority to direct the heads of executive departments to supervise, control, and correct employees' communications with the Congress in cases where such communications would be unlawful or would reveal information that is properly privileged or otherwise confidential.").

statement that "federal employees and contractors have the right and obligation to bring information to Congress in a lawful manner."

We agree with you that government employees and contractors are in the best position to protect taxpayers and ensure the integrity of their employing agencies and departments. Like you, we wish to encourage such individuals to expose waste, fraud, and other improper behavior. The Administration has been steadfast in its commitment to that very principle and to ensuring that individuals who make lawful disclosures receive the legal protections they deserve. This Administration has also repeatedly made clear that it will not tolerate retaliation against lawful whistleblowers and has implemented and improved agency procedures to ensure that does not happen.

We look forward to continuing to work with you to protect individuals who expose waste, fraud, and abuse through the appropriate channels and within the law. We share your commitment to doing so through meaningful legislation where necessary, and would welcome the opportunity to work with you, for example, to codify the protections for intelligence community whistleblowers we sought in the Whistleblower Protection Enhancement Act.

Sincerely,



Kathryn H. Ruemmler
Counsel to the President

cc: The Honorable Charles E. Grassley
Ranking Member
Senate Judiciary Committee

The Honorable Darrell E. Issa
Chairman
House Committee on Oversight and Government Reform

The Honorable Elijah E. Cummings
Ranking Member
House Committee on Oversight and Government Reform

POLITICO

Empower ATF to fight crime

By: David Chipman

June 10, 2013 10:05 PM EDT

When the Senate takes up B. Todd Jones's nomination for director of the Bureau of Alcohol, Tobacco, Firearms and Explosives at a hearing on Tuesday, it will be acting at long last to fill a gap in leadership that has persisted for nearly seven years. The Senate should act swiftly to confirm Acting Director Jones and finally give the agency the crucial resources it needs to keep Americans safe.

As a former ATF special agent with more than 24 years of experience at the bureau, I know all too well how serious our gun violence problem is and how desperately the agency lacks for the law enforcement tools that are necessary to help curb this national epidemic. Thirty-three Americans are murdered with guns every day in this country, more than 30 times the killings per capita in the United Kingdom and France. The ATF is charged with stopping the illegal use and trafficking of firearms and explosives, and it's America's first line of defense against gun violence.

But our weak firearms laws make it all too easy for guns to fall into the wrong hands — and since Congress has failed to address these gaps legislatively, ATF must chart a new course to combat the scourge of gun violence. This requires strong leadership.

Yet the agency has been deprived of resources — and a director at the helm — for too long. Public safety has been compromised as a result.

ATF is permitted by law to inspect each federally licensed gun dealer once per year, but the funding-strapped agency has set a more modest goal of inspecting all dealers at least once every five years. Even so, inspectors are missing this mark by a mile: Only 42 percent of dealers are being inspected in this five-year time frame — and field divisions report that more than 500 additional inspectors would be needed nationally to meet that goal.

Meanwhile, what inspectors are finding when they visit dealers is startling. Between 2004 and 2011, inspectors discovered that 175,000 firearms were simply missing from the inventory of licensed dealers. These are the very guns fueling our trafficking epidemic and inflating our daily death toll.

I was prepared to give my life in defense of this nation during my time with ATF. As a member of the bureau's Special Response Team, I led dangerous operations to arrest violent criminals armed with firearms and explosives. I dug for victims' bodies after the 1993 World Trade Center attack and after the Oklahoma City bombing. And I was on the scene after gruesome shootings and deadly rampages.

I know how critically important the job of ATF director really is. When asked whether I endorse the nomination of Jones, an outstanding U.S. attorney and a former Marine, the question is really: Would I follow him into battle? And the answer to this fundamental question of life or death is a resounding yes. He understands the agency's mission, and he understands the urgency of the situation at hand.

During my final six years with ATF, I served five acting directors. Morale was unsteady, and the agency was more chaotic than orderly. It's simply unacceptable that ATF isn't empowered to fight and stop crime. What we need instead is a full-time director and a fully funded agency with a proactive and aggressive approach to its mission, equipped to coordinate with other law enforcement agencies and with local and state partners.

Ahead of Tuesday's hearing, we have to question who gains when ATF is rudderless and without a confirmed leader — and who does not. The gun lobby wins when ATF is inconsistent, distrusted and worthy of criticism. The American public loses when the agency charged with fighting gun violence and keeping our streets safe is not at peak performance.

A vote for B. Todd Jones is a vote for accountable ATF leadership and a vote for the safety of our country. The American people will be watching.

David Chipman, a former ATF special agent, is a senior adviser to the national gun violence prevention group Mayors Against Illegal Guns.

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Senator Bennet Statement for the Record
June 11, 2013

Mr. Chairman, I am here today to express my strong support for the swift confirmation of Stuart F. Delery as Assistant Attorney General for the Civil Division at the Department of Justice.

Mr. Delery brings extensive experience and ability to the role of Assistant Attorney General that spans both the public and private sector. He has a distinguished record of service at DOJ, where he previously worked as Chief of Staff and Counselor to the Deputy Attorney General and Associate Deputy Attorney General. Mr. Delery currently serves as the Acting Assistant Attorney General for the Civil Division, the largest litigating division at DOJ. In this capacity, he has earned well-deserved praise from the hundreds of lawyers who look to him for leadership as they work to represent the United States government in court. Through his efficient and astute handling of some of the highest profile cases in the nation, Mr. Delery has more than demonstrated his fitness for this position.

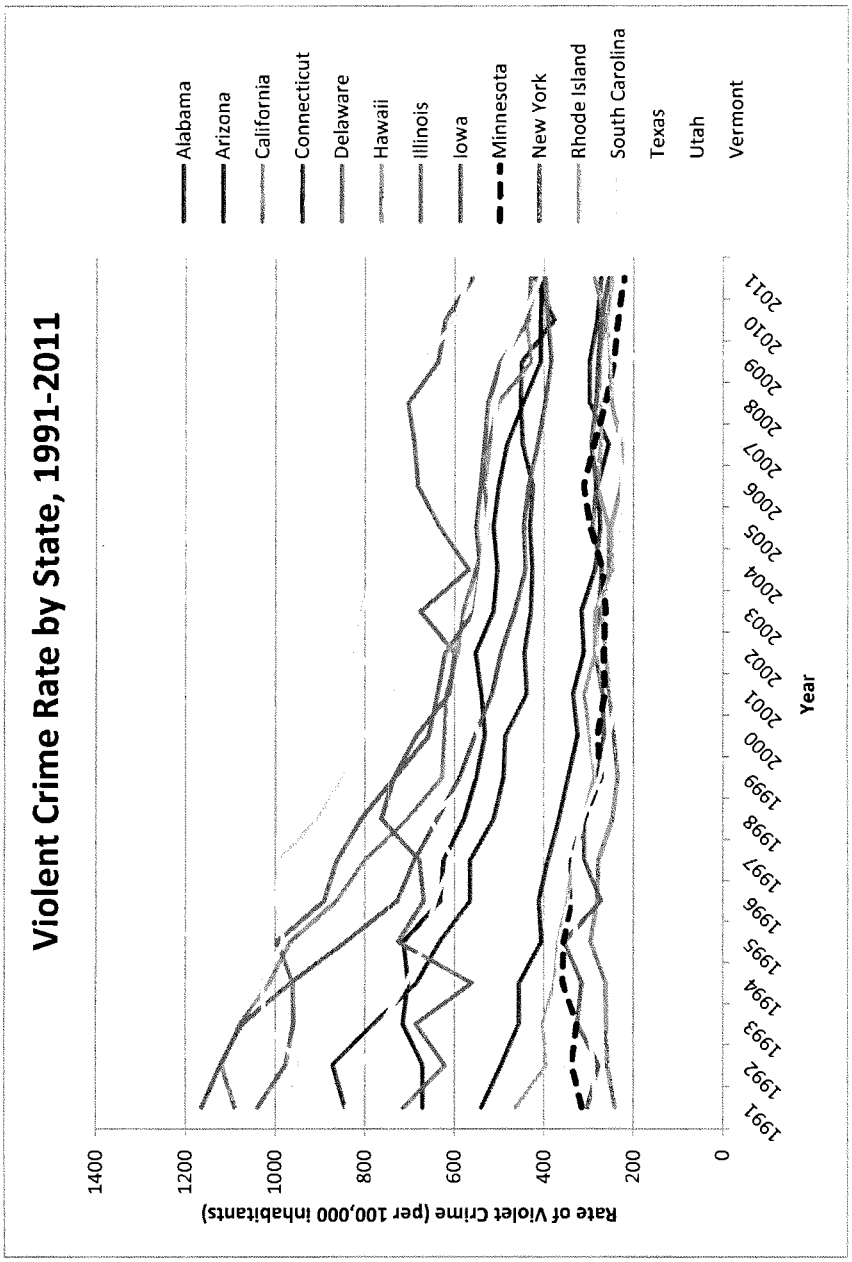
Mr. Delery is also an accomplished lawyer in his own right. Prior to joining the Department of Justice, he was a partner at the distinguished Washington D.C. law firm WilmerHale, where he was a member of the Litigation Department and the Appellate and Supreme Court Litigation Practice Group. He has two decades of experience in cases involving securities, financial fraud, and constitutional law. He has litigated complex matters on a wide range of topics.

Mr. Delery also clerked on the Supreme Court, having served both Justices Sandra Day O'Connor and Byron White.

I've known Stuart for many years. I can confidently say he is a brilliant legal thinker, a first-rate leader, and a man of enormous integrity.

Mr. Chairman, I have no doubt that Mr. Delery will continue to be a great asset to the Civil Division, and I look forward to his consideration by the full Senate following passage of his nomination through this committee.

Thank you for allowing me to voice my support today.


Violent Crime Rate by State, 1991-2011
Rate of Violet Crime (per 100,000 inhabitants)
1400
1200
1000
800
600
400
200
0
1991
1992
1993
1994
1995
1996
1997
1998
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2002
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2011
Year
Alabama
Arizona
California
Connecticut
Delaware
Hawaii
Illinois
Iowa
Minnesota
New York
Rhode Island
South Carolina
Texas
Utah
Vermont

NOMINATIONS OF TODD M. HUGHES, NOMINEE TO BE CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT; HON. MADELINE HUGHES HAIKALA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA; ANDREA R. WOOD, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; SARA LEE ELLIS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS; AND COLIN STIRLING BRUCE, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS

WEDNESDAY, JUNE 19, 2013

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

The Committee met, pursuant to notice, at 2:59 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Dick Durbin, presiding.

Present: Senators Durbin and Sessions.

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

Senator DURBIN. This hearing of the Judiciary Committee will come to order, and today we will consider five outstanding judicial nominees to the Federal bench: Todd Hughes, nominated to serve on the U.S. Court of Appeals for the Federal Circuit; Madeline Hughes Haikala, nominated to be a district judge for the Northern District of Alabama; and three district court nominees from my State of Illinois: Colin Bruce, nominated to serve in the Central District; Sara Ellis, nominated to serve in the Northern District; and Andrea Wood, also nominated to serve in the Northern District.

Each of these nominees has the support of their home State Senators. I commend President Obama for sending their nominations to the Senate Judiciary Committee.

At these hearings it is traditional for nominees to be introduced to the Committee by Senators from their home States. Today I will

introduce the nominee for the Federal Circuit, Mr. Hughes, since he is a resident of the District of Columbia and, thus, has no home State Senator. And I will also introduce the nominees from Illinois proudly. Later I will perhaps turn to one of my colleagues who will introduce the nominee from Alabama. We believe he is on his way.

First, let me introduce Todd M. Hughes, currently serving as Deputy Director of the Commercial Litigation Branch at the U.S. Department of Justice Civil Division, a position he has held since 2007. He is a native of Delaware, Ohio, received his B.A. from Harvard College, an M.A. from Duke University, and a J.D. with honors from Duke Law School.

After law school, he clerked for Judge Robert Krupansky of the Sixth Circuit Court of Appeals. Mr. Hughes then joined the Commercial Litigation Branch of the Justice Department in 1994 as a trial attorney, and he has worked at the Justice Department until the present day.

From 1999 to 2007, Mr. Hughes served as Assistant Director in the Commercial Litigation Branch and in 2007 became Deputy Director. His work is primarily focused on appellate litigation involving personnel law, veterans benefits, government contracts, and international trade.

Mr. Hughes has won numerous honors, including special commendations from the Justice Department for his work on personnel law, tax litigation, and veterans appeals. He has also received a Special Contribution Award from the Department of Veterans Affairs and the Attorney General's John Marshall Award, which he received in 2007.

I hope Mr. Hughes will not mind my pointing out the historic nature of his nomination. If he is confirmed, he will be the first openly gay American to serve as a Federal appellate court judge. His confirmation would represent another important milestone in the journey toward equality in America.

Mr. Hughes, we welcome you here today, as well as your parents, Barbara and Michael; your sister, Cindy; and your nephews.

I will now introduce the three district court nominees from Illinois. Let me note at the outset that Senator Kirk and I both support these nominees. In Illinois we have established a bipartisan process for recommending judicial nominations to the White House, and it has worked well to produce outstanding candidates for the Federal bench. I look forward to working with Senator Kirk to see that these nominations are confirmed.

Now, the first Illinois nominee today is Colin Stirling Bruce, who has been nominated to fill the judicial vacancy that will open up in Urbana when Judge Michael McCuskey takes senior status at the end of this month. Mr. Bruce has worked in the U.S. Attorney's Office for the Central District of Illinois since 1989, currently serves as the First Assistant U.S. Attorney, a position he has held since 2010. In his current capacity, he oversees the day-to-day operations of the U.S. Attorney's Office and helps supervise all of the Federal criminal investigations, prosecutions, and appeals in the district. He also supervises all civil, defensive, and affirmative litigation in the district in which the U.S. is a party. He was born in Urbana, received his undergraduate and law degrees from the University of Illinois, and after law school he went straight to the U.S.

Attorney's Office. He started handling criminal and civil cases, including bankruptcy and tort claims, then shifted to prosecuting complex criminal matters such as drug and fraud cases. Over the years, he developed particular expertise in cyber crime and prosecutions.

In 2007, he was appointed branch chief of the Urbana Division of the U.S. Attorney's Office, in 2010 was named First Assistant U.S. Attorney, the number two position in the office.

Mr. Bruce has received numerous recognitions for his work, including Certifications of Appreciation from the Justice Department, FBI, and DEA, as well as awards from the Illinois State Police and the Metropolitan Enforcement Group and Task Force.

He has a record of giving back to the Urbana community through his association with charities such as the Central Illinois Chapter of the American Red Cross and Imagine No Malaria, a charity pursuing the purchase of mosquito nets for families in Africa.

He is joined today by his wife, Martha; his son, Duncan; his daughter, Katherine; and by his parents, Kenneth and Rosalind. I welcome you all.

Our next nominee is Sara Lee Ellis, who has been nominated to the Chicago judgeship formerly occupied by Judge Joan Gottschall. Ms. Ellis currently works at the law firm Schiff Hardin in Chicago. She handles white-collar criminal matters, complex civil litigation, and corporate counseling. She was born in Ontario, Canada, to parents who emigrated from Jamaica. She moved to the U.S. and became a citizen at age 15, received her undergraduate degree from Indiana University, her law degree from Loyola University Chicago College of Law.

After law school, Ms. Ellis joined the Federal Defender Program in Chicago and served for 6 years as a staff attorney. In that capacity she represented indigent criminal defendants in all aspects of criminal litigation. Ms. Ellis then worked in private practice for several years at the white-collar defense firm Stetler and Duffy in Chicago, then joined the Chicago City Department of Law in 2004, serving as Assistant Corporation Counsel for 4 years, handling Section 1983 cases.

In 2008, she joined Schiff Hardin where she handles criminal and civil matters. She served as an adjunct professor at Loyola University Chicago College of Law, teaching Federal criminal practice and legal writing. She has a distinguished record of pro bono work and community service, and among many endeavors she has taught reading and legal skills to children living in juvenile detention, coached students at the Hyde Park Academy in mock trial, and provided legal advice and guidance to the Warren Park Youth Baseball League. She is also actively involved with S. Gertrude Catholic Parish in Chicago and is on the board of the parish school of the Northside Catholic Academy.

Ms. Ellis is joined today by her family and friends, including her husband, Alfred; her daughter, Sofia; her sons Freddie and Luke; her mother, Mary; her father, Robert; her brother, Robert; and many others came by my office. We welcome all of you here today.

Our final Illinois nominee is Andrea Wood. Ms. Wood has been nominated to fill the Chicago judgeship left vacant by the untimely death of Judge Bill Hibbler. Ms. Wood currently serves as Senior

Trial Counsel at the Securities and Exchange Commission Division of Enforcement in Chicago, representing that agency in complex litigation. Ms. Wood is a native of St. Louis, received her B.A. from the University of Chicago, where she was selected as one of the student convocation speakers. She received her law degree from Yale where she was on the Yale Law Journal.

After graduating from law school, Ms. Wood clerked for Judge Diane Wood of the Seventh Circuit, then joined the Chicago office of the law firm of Kirkland and Ellis, handling securities, bankruptcy, and other litigation matters. She joined the SEC in 2004 as a senior attorney in the Division of Enforcement, investigated and litigated securities law violations; in 2007 became a senior trial counsel serving as lead SEC attorney on litigation matters and coordinating with U.S. Attorney's offices and other regulators on enforcement actions. She has received numerous awards for her work at the SEC, including the Director's Award from the Division of Enforcement as well as eight Special Act Awards for her work on individual matters.

In addition to her Government service, Ms. Wood has served the Chicago community through a variety of charitable causes, including volunteering at organizations serving homeless women.

She is joined here today by her husband, Percy, who I met earlier, and we welcome both of you, of course, to this.

And before I proceed to the first panel, let me turn it over to my colleague from Alabama, Senator Sessions.

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

Senator SESSIONS. Thank you, Mr. Chairman, and I am sure you are indeed pleased to have this fine group of nominees, being Illinois' Senator that you are, and being the Assistant Leader of the U.S. Senate. I know that they are pleased to have your support and things will go well.

I am pleased to introduce to the Committee Magistrate Judge Madeline Haikala of the Northern District of Alabama. She is the magistrate judge now, and President Obama has nominated her to the District Court for the Northern District of Alabama, and I congratulate, Judge Haikala, and President Obama because he has made by all accounts a very good choice.

Judge Haikala has dedicated her life to the legal system to improving the lives of those around her through legal practice and extensive civic involvement. She got her undergraduate at Williams College. After graduating with honors from Tulane, she was named Order of the Coif. She joined the prestigious firm of Bradley Arant in Birmingham and then I believe was a founding partner at the real fine firm of Lightfoot Franklin, where she remained for 22 years practicing general and commercial litigation. She is known as one of the premier attorneys in Alabama, having been recognized for her appellate practice and dedication to pro bono work throughout her career. And the American Bar Association has rated her unanimously well qualified, and I believe that is a legitimate honor that you received.

She has been recognized by the Birmingham Volunteer Lawyers Program. She has been voted the top attorney in appellate law by

Birmingham Magazine in 2012. She is a member of the Birmingham Volunteer Lawyers Association, a participant in the Women's Fund for Greater Birmingham Voices Against Violence Initiative. She is, of course, a member of the Birmingham and American Bar Associations and otherwise has exemplified the best in the legal practice.

Last year, the judges of the court, the United States District Court of Birmingham, selected Judge Haikala to be their magistrate. That is a very competitive process. They have good lawyers. It is the kind of office where the district judges entrust great powers and responsibilities to the magistrate judges, more than a lot of districts in the country, and they look to get really good people for that office. Chief Justice Blackburn at that time noted, "The court selected Judge Haikala due to the wide breadth of her legal experience, her reputation as an outstanding lawyer, her tremendous intellect, and her wonderful temperament. These qualities are strong predictors that she will be an excellent magistrate judge."

I believe these qualities as well as her experience as magistrate judge will serve her well in this new position. She will certainly be an asset to the court. I congratulate President Obama for the fine nomination, and I look forward to being of assistance as I can, Senator Durbin, in the confirmation process.

Senator DURBIN. Thank you, Senator Sessions, and I know that you are busy with a bill on the floor. I hope you will stay as long as you can, but I understand if you have to leave.

For those who have not attended these hearings before, some of the Members will send in written questions to the nominees, which they will be asked to answer in a prompt fashion. We will ask a few questions of each today during the course of this hearing. We will divide it into two panels. The first panel will be our circuit court nominee, Federal Circuit court nominee Todd Hughes, and then the second panel of the district court judges, the three from Illinois and one from the State of Alabama.

So, Mr. Hughes, if you would please approach the witness table. Please raise your right hand. 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?

Mr. HUGHES. I do.

Senator DURBIN. Thank you very much. Let the record reflect that the nominee has answered in the affirmative.

I would like to give you an opportunity now to make an opening statement and acknowledge anyone you would like to at this point, and then I will ask a few questions. Please proceed.

STATEMENT OF TODD M. HUGHES, NOMINEE TO BE CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT

Mr. HUGHES. Thank you, Senator Durbin, for chairing the hearing. Thank you to Ranking Member Grassley and the Committee for holding the hearing.

I would first like to thank President Obama for the honor of nominating me to the Federal Circuit, and I would like to introduce my family:

My parents, Michael and Barbara Hughes, from Ohio. My parents are retired farmers and still live on the family farm, and my mother is also a retired township clerk.

My sister, Cindy Smith, and my twin nephews, Bryer and Bryce Smith, who I think are probably going to have a pretty good back-to-school story when they start middle school in the fall.

I have a number of friends and colleagues from the Department of Justice and elsewhere both in the audience and watching the webcast, and I would like to thank them as well as my family for their support and encouragement.

[The biographical information of Mr. Hughes appears as a submission for the record.]

Senator DURBIN. Thank you very much.

Let me say a word about the Federal Circuit. It is a unique court among the 13 circuit courts of appeal. It has nationwide jurisdiction over a wide range of subjects, including international trade, Federal personnel, Government contracts, patents and trademarks, and veterans benefits. Administrative law matters make up about half of the court's caseload and intellectual property cases make up about a third.

Mr. Hughes, you have had quite a legal career working for the U.S. Department of Justice in the Commercial Litigation Branch, and you have argued, I understand, 45 appeals before the Federal Circuit. Can you talk a little bit about that court, your experience, and what you look forward to if you are given the opportunity to serve?

Mr. HUGHES. Thank you for the question, Senator Durbin. The Federal Circuit is a very unique court, as you know. It has specialized jurisdiction, national jurisdiction over a number of areas of the law. I believe it occupies a very significant role in our country in a number of areas, both in international trade, business and commerce from the patent cases, but it also plays a very, very significant role in protecting the rights of veterans and making sure that they get the benefits due to their service and making sure that Federal workers are given due process as well.

And so the Federal Circuit is a significant and unique court and has a very special role in our country's judicial system.

Senator DURBIN. Those of us who had an opportunity or privilege to practice before any Federal courts have our opinions about what makes a good Federal judge and what makes a bad one. And I would like you, if you would, at this point tell us a little bit about what you think are the qualities that need to be part of a judge's contribution on the bench.

Mr. HUGHES. Thank you, Senator Durbin, for the question. The first and foremost quality a Federal judge should have is fidelity to the law. A judge should be a neutral, partial observer. He should be fair to all the litigants. He should be thoroughly prepared, understand the facts of the case, the law, and come to a reasoned and equitable decision.

Senator DURBIN. So as you look back on your practice, can you pick out a few of those qualities in judges you have appeared before, some illustrations of things that you thought indicated the right temperament or the right approach?

Mr. HUGHES. Well, I have the honor—and it is an extreme honor to me—of being nominated to fill the seat of Judge William Bryson who just took senior status. Judge Bryson exemplifies all those qualities. I practiced before him for many years. He is thoroughly fair to all the parties appearing before him. He is extremely well prepared. We will often get there, and he will ask a question that nobody has anticipated because he has pulled the record and found something that is very interesting to him and that he wants explained. He shows no bias. He has an incredible judicial demeanor.

What also I—this is perhaps more personal, but I admire Judge Bryson as well, because before his appointment to the bench, he was also a career Justice Department attorney and spent almost his entire legal career before appointment at the Solicitor General's Office and in various other capacities.

Senator DURBIN. Mr. Hughes, at the Justice Department you were involved in briefing and arguing the case of *Hesse v. Department of State*. This case involved allegations by a State Department foreign affairs officer that his security clearance was suspended in retaliation for acts of whistleblowing on his part. The Merit Systems Protection Board determined that it lacked jurisdiction to consider whether the State Department's decision to suspend the security clearance was proper, and the Federal Circuit agreed.

Can you tell us a little bit about the facts of the case and the work you put into it?

Mr. HUGHES. The *Hesse* case did involve an individual at the Department of Defense that claimed whistleblower retaliation as a result of the security clearance revocation, and before I get to my answer, I would just like to note that I and the Department are firmly committed to the Whistleblower Protection Act and think that it is a critical role to protecting Federal workers and, indeed, to the operation of our Government. And I would certainly be committed to upholding it when I got—if I am fortunate enough to be confirmed to the court.

Hesse involved a very narrow question that had already in the Department's view been decided by the Supreme Court in *Egan*, and that was whether the revocation of a security clearance was the type of personnel action that could be litigated in the Merit System Protection Board and then in the Federal Circuit. And the Federal Circuit—I am sorry. The Supreme Court in *Egan* recognized that security clearance decisions are firmly committed to the discretion of the executive branch and that it was not appropriate for the MSPB or the Federal Circuit to review those decisions. And the *Hesse* decision simply followed that reasoning and concluded that even in the context of a whistleblower case, the security clearance decision could not be litigated.

That is not to say that somebody whose security clearance has been revoked does not have alternative avenues. Every agency has full internal administrative procedures if somebody's security clearance is proposed to be suspended or revoked.

Senator DURBIN. So was that *Egan* decision based on a court evaluation of the statute as written or precedent in cases that preceded it?

Mr. HUGHES. I believe it is based on a couple of things, Senator. It is based primarily upon its reading of the Civil Service Reform

Act and its conclusion that security clearances were not specifically included in the list of personnel actions covered by the Civil Service Reform Act. Its decision was also certainly colored by the constitutional underpinnings that place certain decisions regarding national security within the executive branch.

Senator DURBIN. Mr. Hughes, when you were a trial attorney for the Justice Department, you were involved in several cases relating to the harbor maintenance tax that Congress enacted to provide funding for harbor maintenance and development. These cases led to the 1998 Supreme Court decision in *U.S. v. United States Shoe Corporation* in which the Court held that the taxes applied to exporters violated the Constitution's Export Clause. This Supreme Court decision then led to a number of subsequent cases in which companies sought refunds of the tax.

Tell us a little bit about the harbor maintenance tax cases that you worked on.

Mr. HUGHES. The harbor maintenance tax legislation was enacted by Congress to provide much needed funding for harbor maintenance and development projects, and I believe ended some longstanding delays over critical projects. In order to enact a tax, they enacted an ad valorem tax on basically everybody that used the ports, and some exporters challenged it because there is a clause in the Constitution that prohibits taxation of goods exported.

We attempted to defend the tax on the basis that it was neutral and did not single out exporters. In what was a fairly novel issue of law, the Supreme Court ultimately ruled that the tax did indeed burden exports and was unconstitutional. After that, all the other taxpayers that were burdened by the tax attempted various arguments to get refunds as well. We were successful in defending against those cases and preserved hundreds of millions of dollars for port maintenance and development and saved that money for the Treasury.

Senator DURBIN. When you look at the caseload that faces the Federal Circuit Court, we talked about some of the things, intellectual property cases I think take up a third of the matters that are involved there. Have you witnessed or been involved in any cases in that subject matter area?

Mr. HUGHES. I have not, Your Honor. Intellectual property will be the main area of the court's jurisprudence that I will have to work hard to get up to speed on. I have, though, substantial familiarity with the other remaining 60 or so percent of the court's docket—the veterans benefits, the trade law, government contracts, and Federal personnel.

Senator DURBIN. This is no reflection on you because it is rare that a judicial nominee has really handled everything that can come before the court, so I did not want to throw a curve ball at you, but I think that is one that I thought, boy, I would have to do some studying myself to face any cases on intellectual property. I usually leave that to my colleagues who are expert in the area, but thank you for your candor on that.

In terms of the bulk of the caseload in the Federal Circuit, though, you have seen a lot of those cases.

Mr. HUGHES. I have, Your Honor. I have been at the Justice Department for almost 19 years now, and I would say at least 50 per-

cent of my work is at the appellate court, either as an attorney of record personally handling the cases earlier in my career, where now mostly supervising other very bright trial attorneys who handle the cases before the court. So I am very well acquainted with all the other areas of the court's jurisprudence.

Senator DURBIN. Great. I do not have any further questions, and I will give you a chance to make a closing statement if you would like, and then, of course, some questions may be sent your way by other Members of the panel after this hearing. So if you would like to say something in conclusion, you are welcome.

Mr. HUGHES. I do not have anything further, Senator Durbin, just thank you for the opportunity to be here today.

Senator DURBIN. I was always warned that when you are doing well in a court case, do not keep talking.

[Laughter.]

Senator DURBIN. And you are doing very well, and thank you, Mr. Hughes, for joining us today. We appreciate that very much.

Mr. HUGHES. Thank you.

Senator DURBIN. You are excused at this point.

Senator DURBIN. I want to welcome the second panel, which I have introduced formally: Colin Bruce, of Illinois; Sara Ellis, of Illinois; Andrea Wood, of Illinois; and Madeline Hughes—"High-ka-la" or "Hay-ka-ala"?

Judge HAIKALA. "High-ka-la."

Senator DURBIN. Thank you. I am sorry I mispronounced your name—of Alabama. Please join us. Before you sit down, I will administer the oath. If you would each raise your right hand, 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?

Judge HAIKALA. I do.

Ms. WOOD. I do.

Ms. ELLIS. I do.

Mr. BRUCE. I do.

Senator DURBIN. Let the record reflect that all four of the nominees have answered in the affirmative. I am going to give each of you now an opportunity to say a word or two and introduce any family members or friends who are in attendance, and let me start with Ms. Haikala.

STATEMENT OF HON. MADELINE HUGHES HAIKALA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

Judge HAIKALA. Thank you very much, Senator Durbin. Thank you for having me here today. I want to express my appreciation to the entire Committee and, of course, I am deeply grateful to President Obama for this nomination and for the honor of being nominated.

I have here with me today my mother, Janice Hughes, from New Orleans; my son, Matthew Haikala, and my daughter, Leila Haikala. I also have a couple of friends from Williams College who are here to support me.

Back in New Orleans and in Birmingham, there are family and friends who are watching, and I would like to say a special hello

to my daughter, Allie, who hopefully is watching from Nashville. She is there in the Dominican Convent and hopefully watching with some of her sisters. And my youngest son, Christian, is in Birmingham, so hello to him, too.

[The biographical information of Judge Haikala appears as a submission for the record.]

Senator DURBIN. Thank you.

Ms. Wood.

STATEMENT OF ANDREA R. WOOD, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Ms. WOOD. Yes, first of all, I would like to thank you, Senator Durbin, for showing confidence in me and submitting my name to the President. I would also like to thank Senator Kirk for his role in the process, as well as the Committee for providing me with the opportunity to appear today. And, of course, I would like to thank the President for nominating me for this position.

With me here today is my husband, Percy Moss, who has been a wonderful source of support and love for me over the years.

Also, I have a couple of friends—a high school friend, Kirsten Williams, is here with me, as well as a friend from law school, Robin Meriweather—who took time out of their busy schedules to be here, for which I am very thankful.

There are also a few people I would like to acknowledge who were not able to be here in person: my mother, Margaret Wood, who was not able to make the trip but is at home in St. Louis sending her thoughts and prayers this way; and also my father, Carl Wood, who passed away almost 3 years ago but continues to be an inspiration for me.

I would also like to thank my sisters, Angela and Anita, and their families, as well as my father- and mother-in-law, Dr. Percy Moss and Mary Moss; my sister-in-law, Marla, and her daughter, Madison, who have welcomed me into their family as if I were born into it.

And then, finally, I just want to thank my colleagues at the SEC as well as my friends and family who may be watching this on the webcast for all of their support personally and professionally.

[The biographical information of Ms. Wood appears as a submission for the record.]

Senator DURBIN. Thank you.

Ms. Ellis.

STATEMENT OF SARA LEE ELLIS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Ms. ELLIS. Thank you, Senator Durbin. I would like to thank Senators Leahy and Grassley for scheduling this hearing and giving me the opportunity to be here today.

I would like to thank you for chairing this hearing and for recommending my name to the White House.

I would like to thank Senator Kirk for supporting my nomination.

And, most of all, I would like to thank the President for nominating me. This is a wonderful and great honor.

If I may, I would like to acknowledge, as you noted, the vast mob from Chicago that has accompanied me today. Present are my husband, Dr. Alfred Martin; my children, Sofia, Freddie, and Luke; my parents, Dr. Mary Escoffery and Dr. Robert Ellis; my dad's wife, Susan Ellis; my brother, Robert Ellis; my cousin, Dr. David Escoffery; my other cousin by marriage, the Honorable Daniel Martin; my sister-in-law, Bernadette Martin; and my nephew, Dominic Jentza; friends from Chicago: Joy, Sydney, and Samantha Baer; a colleague from Schiff Hardin, William Hannay; and there are a few family members who, surprisingly, could not make it—there are actually people that did not come—and that would be my sister, Juliet Ellis, and her family; my 94-year-old grandmother, Mavis Ellis, in Jamaica; and I would also like to thank my aunts and uncles and cousins who are watching both internationally and around the country.

And, finally, I would like to thank everybody who is watching at Schiff Hardin today, in particular our managing partner, Ron Safer; my practice group leader, Tom Quinn; and my wonderful friend and mentor, Patricia Holmes, who has supported me and encouraged me in this process along the way.

Thank you.

[The biographical information of Ms. Ellis appears as a submission for the record.]

Senator DURBIN. Thank you, Ms. Ellis.

Mr. Colin Bruce.

STATEMENT OF COLIN STIRLING BRUCE, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS

Mr. BRUCE. Thank you, Senator. I would like to take the time to thank you for chairing this Committee.

I would like to thank Senator Grassley for the opportunity to be here as well, thank Senator Obama—excuse me, President Obama—he was Senator—President Obama for nominating me, you for recommending me, Senator Kirk for his support.

I would like to introduce the family that has come with me. Seated almost directly behind me is my wife, Martha, of just about 15 years, and I did not forget that my wedding anniversary is next week. She is not only my best friend, she is the engine that drives our whole household.

Next to her is my son, Duncan. He is 11. He is starting sixth grade in the fall.

Carefully seated behind him in a separate row is his sister, Katherine. She is 9. She is in fourth grade, and they are both on their best behavior at this time.

Next to them monitoring their activities is their grandparents: my father, Kenneth Bruce, and my mother, Rosalind Bruce. They have always supported me and encouraged me in everything I have tried to do, and I think it is fair to say they are very excited about being here and seeing me sitting here before this Committee.

Finally, I would like to thank all my friends and colleagues at the U.S. Attorney's Office, many of whom are watching me on web cam and I am sure will have a critique of my performance when I am done.

Thank you.

[The biographical information of Mr. Bruce appears as a submission for the record.]

Senator DURBIN. Thank you very much.

Now, you are all under oath, so we always ask this question because we want to get you on the record about what you think a Federal judge should be like, how they should conduct themselves, what their temperament should be. So this is sworn testimony on your part.

Mr. Bruce, would you, based on your experience of spending many days and hours in front of Federal judges, tell us what you think are the right qualities for a good judge?

Mr. BRUCE. Thank you for that question, Senator. I believe the right qualities for a judge are, first, that the judge be respectful—respectful and courteous to all the parties that appear before the court. I think that is very important because the judge is essentially the face of the judiciary.

In addition to being respectful and courteous to all the parties, a district court judge should also adhere to the law, follow the Supreme Court precedents, and in our district follow the Seventh Circuit, that way giving the parties fair warning of what will be coming and how decisions will be rendered.

Those would be the characteristics I would look—hope to have.

Senator DURBIN. Ms. Ellis, repetition is accepted, but I just want to give each of you a chance for the record. Please.

Ms. ELLIS. Thank you, Senator. I believe that a good judge is a judge that follows the rule of law so that the parties know what to expect when coming before a judge; that a good judge is also courteous and kind and respectful, shows no bias toward any party; and, finally, that a judge works efficiently and expediently because justice delayed is justice denied. So a good judge is a judge that issues opinions in a prompt manner and opinions that are well reasoned and thoughtful.

Senator DURBIN. Thank you.

Ms. Wood.

Ms. WOOD. Yes, Senator Durbin, in my view, the most important quality for a judge to possess is impartiality, respectfulness, respect not just for the parties who appear in the court but also just the respect for the institution of the judiciary, respect for the rule of law. A judge should always be open-minded and approach each case before him or her fully prepared, with diligence, and prepared to ensure a just result that is consistent with the precedent; and then, finally, always to represent the institution of the judiciary to the best of their abilities.

Senator DURBIN. Thank you.

Ms. Haikala.

Judge HAIKALA. Well, Senator, it is hard to be at the end of the list for that question. I have to second everything that my fellow nominees have said. And I suppose if I had to look for a couple of qualities to add to those, I would say that it is important for a judge to be even-tempered, to be calm, because often you are the calm in the middle of the storm, being the neutral and being somebody who is trying to listen well to both sides, to all of the sides when you have complex litigation; and also to have a sense of

humor, because I think at times that is important as well as a member of the bench.

Senator DURBIN. Judge Haikala, you presided over the case of *Dudley v. the City of Bessemer*, a gender discrimination action brought by a former chief court clerk. Tell me a little bit about the case and your ruling.

Judge HAIKALA. In that case, the former clerk of court brought her gender discrimination case. The defendants, who are the city and the former mayor of the city, moved to dismiss the case. They challenged the nature of the pleading and argued that there was not a legal basis for one of the claims in the case. There were Federal claims. There was also a State claim in addition to the Federal claims.

The parties briefed the motion to dismiss. I heard oral argument on the motion to dismiss, and ultimately denied the motion to dismiss. The parties were arguing very—well, the defendants were arguing for a very strict application of *Iqbal*, and I believed and I said in my decision that they were asking too much of *Iqbal*, that the complaint was pled with sufficient specificity that it satisfied the *Iqbal* test, so I denied the motion to dismiss.

Senator DURBIN. You have been a magistrate for a year or so?

Judge HAIKALA. Not quite.

Senator DURBIN. Not quite a year. Have you had a variety of different defendants before you?

Judge HAIKALA. I have. I have had the good fortune to have a lot of exposure on the criminal side, so I have been doing a lot of the magistrate judge work in criminal proceedings. And then on the civil side, the cases that I have run the gamut.

In the Northern District of Alabama, Senator Sessions mentioned—and I need to stop and thank him for that lovely introduction. But he mentioned that magistrate judges have a great deal of responsibility, and from my experience from talking to other magistrate judges around the country, I think we really do. And one of the things that is perhaps unique about the Northern District, or at least rare, is that magistrate judges get cases off the wheel. So the civil cases are assigned randomly to magistrate judges, just as they are to the district court judges. And the goal is for magistrate judges to build consent among the parties so that we actually may exercise dispositive jurisdiction.

So with that in mind, we see every type of case that the district court judges see and have the opportunity to become involved in all the legal issues that the district court judges see.

Senator DURBIN. I sometimes think about people appearing before a Federal judge, some of whom have limited life experience in a courtroom, limited education, may come to this experience believing the deck is stacked against them, either because of their economic status, their racial status, sexual orientation, whatever it may be. And they look up to that judge and think, "Do I have a chance in this courtroom, even with a good attorney?"

Have you ever reflected on that as you look down from the bench?

Judge HAIKALA. I really have. I have thought about that a lot. One of the things that I have talked to my clerks about in my office is we get a lot of prisoner litigation, and I have talked to them

about how important it is, in the opinions that we write, in the orders that we issue in prisoner litigation, to use everyday language and not to use some of the legal terminology that can become sort of weight in an opinion for somebody who really is not familiar with the legal system.

Often the prisoners are acting pro se. I would say 95 percent of the time they are acting pro se, and so they have to understand what the court is telling them to be able to engage.

So certainly from that perspective, I have considered it, but as you point out, as a magistrate judge, there are so many times that people come into the courtroom, and it is their first time to have any sort of interaction with the court system. It is intimidating. It is frightening. And so I pay very close attention to that and try to moderate my voice and do things to make them as comfortable as possible.

In detention hearings, family members will come in to try to offer to serve as third-party custodians for defendants, and that has to be a very difficult situation for them to be in, and I am very aware of that.

Senator DURBIN. Ms. Wood, your work at the SEC is involved with complex issues and litigation. You have received many awards for work that you have done there, certainly have an excellent legal background. As a Federal judge, you are going to deal with criminal matters probably more than you have in your private practice or life to this point. How do you reflect on that challenge that lies ahead?

Ms. WOOD. Thank you for that question, Senator Durbin. I am looking forward to the challenge presented by presiding over criminal matters, should I be fortunate enough to be confirmed as a district court judge. It is true that my practice has been in civil litigation. However, through my experience at the SEC in particular, I have been fortunate enough to gain a great deal of familiarity with criminal law and criminal procedure.

I would say that the vast majority of the matters that I have worked on have also had a parallel criminal proceeding of some nature. Frequently, I am working alongside and collaborating with my colleagues at the various agencies that have criminal jurisdiction, primarily the Department of Justice but also sometimes other agencies. And through that process, I have gained a familiarity with the ways in which the civil practice is similar to and also different from the criminal practice. I believe that that will provide me with a foundation upon which to build and grow my knowledge, such that if I am fortunate enough to be confirmed, I can bring myself up to speed on the areas that I need to to gain facility with in order to be an effective judge over criminal matters. And I would focus my personal education and training in coming up to speed on criminal matters as quickly as possible, also seek out the wisdom and guidance of some of the judges in the Northern District who I know to be particularly adept in that area. And through hard work and enthusiasm, I believe that I will be well prepared to handle that segment of the docket.

Senator DURBIN. One of the cases the lead counsel in for the SEC involves a fraud action against Sentinel Management Company, an investment adviser. It is my understanding this case was headed

toward a civil trial early last year when the U.S. Attorney's Office indicted two individuals at Sentinel and that the SEC case has been stayed pending resolution of the criminal proceeding.

What can you tell us about this matter and the work that you performed on it?

Ms. WOOD. Certainly. Sentinel was one of the first financial services firms to suffer and falter as a result of the market liquidity crisis in the late summer/early fall of 2007. At that time Sentinel was managing over $1.4 billion in client funds. These are funds from a variety of investment advisory clients, hedge funds, individuals, pension funds, all sorts of clients.

As a result of the liquidity crisis and some issues regarding the investments that they were making, they lost several hundred million dollars' worth of that $1.4 billion that they originally had under management. The SEC became involved early on when it appeared that there were problems at the firm. I was involved at the very early stages when we went into district court in Chicago as an emergency action in order to try to preserve as much of the money that was left as we could and also to begin an enforcement proceeding to try to obtain some measure of justice for the clients who had been harmed.

Since that time, in August 2007, I have been the lead counsel with respect to the subsequent litigation. In that role, I have had responsibility for all aspects of discovery, motion practice, just investigating what actually happened at the firm. I have also—this would be an example of a situation where I have worked closely with individuals from the Department of Justice as well as with the CFTC who also had parallel enforcement actions involving Sentinel going on at the same time. And as you mentioned, that matter is currently stayed. We did prevail, "we," the SEC, did prevail on a summary judgment motion against one of the individual defendants who was the investment manager at Sentinel, and the remainder of the case remains to be resolved.

Senator DURBIN. Thank you.

Ms. Ellis, I chair a Subcommittee of Judiciary, and it is the Constitution, Civil Rights, and Human Rights Subcommittee. It is a great assignment. Just about everything you can think of falls within the jurisdiction of that Subcommittee, if you choose to look into it. And I think one of the most important hearings we held in this room was, I believe, last year, and it was on the issue of solitary confinement, segregation of those who have been incarcerated. And it was prompted by some things I had read about the impact on individuals if they are separated from social contact for a long period of time.

I note that you represented a pro bono plaintiff in *Sparlin v. LaSalle County*. It was a case brought against LaSalle County that challenged the practice of using solitary confinement for extended periods. I have been interested in this issue, obviously, and I wonder if you could tell me a little bit about the facts of the case and the work that you put in it.

Ms. ELLIS. Thank you, Senator. Mr. Sparlin was a pretrial detainee in LaSalle County, and he spent approximately 18 months in solitary confinement, so from the time that he entered LaSalle County as a pretrial detainee until the time that he left LaSalle

County, he was held in solitary confinement. Originally, he brought this case on his own as a pro se plaintiff, and, in fact, my colleague here, Mr. Hannay, I assisted him actually in representing Mr. Sparlin in this matter.

Judge Kennelly appointed Mr. Hannay, and I had assisted him. We filed a new complaint, kind of refined the allegations in the complaint, and then conducted discovery and actually settled the case with LaSalle County just recently. But the crux of the complaint was that individuals, when they are held in solitary confinement for an extended period of time do suffer damage, psychological damage, from being isolated for such a long time, that it really is something that if institutions are going to use this practice, that they need to assess how the effects of solitary confinement are being played out and determine whether the individual is being affected by this and also determine whether it is appropriate and absolutely necessary to keep the individual in solitary confinement.

Senator DURBIN. You were not exactly on the other side of the issue, but in a similar case, you represented the city of Chicago as an Assistant Corporation Counsel in a private practice in the class action case of *Dunn v. City of Chicago* that dealt with the length and conditions of confinement of those arrested by the Chicago Police Department. I understand you were closely involved in the settlement of this case and the creation of policies and procedures to address the claims that were raised. Can you reconcile those two legal experiences?

Ms. ELLIS. Oh, I can, and it is very—my career actually—I at least have found it very interesting in that I have spent time on both sides. So throughout my career, I have represented plaintiffs and defendants. I have represented individuals in criminal cases, criminal defendants, and then spent 4 years at the city representing the police department, the department as a whole and then individual officers. So it has been able to give me balance as I go through and allowed me to really assess the strengths and weaknesses of particular cases knowing that I have to look for the weaknesses in the case, and the experiences that I have had representing both sides I think gives me that unique perspective.

Senator DURBIN. Thank you.

Mr. Bruce, I recently was visited by a friend of mine who is an attorney in Chicago. She came in with another colleague and sat down with me, and she said, "Senator, why do you Senators always pick prosecutors to be judges? You should be more balanced in your approach. These prosecutors have that prosecutorial mind about them." And so I remember when U.S. Attorney Jim Lewis came by my office with you not that many months ago, praising your work as his First Assistant at the U.S. Attorney's office, and I looked through your resume, the cases you handled. Clearly you are an accomplished prosecutor. And how will you deal with the fact now that you are no longer on the State side but you are on the bench looking at both sides?

Mr. BRUCE. Thank you for that question, Senator. I recognize that there is a difference between being a prosecutor, that is, being the attorney, and being a judge. A prosecutor, or any attorney, for that matter, represents a party. They are the advocate for that

party. For the last almost 25 years I have been the advocate for the United States.

That is a different role than a judge has. I am aware and recognize that a judge should be neutral. The judge should have a faithful adherence to the law and applying the law to the facts and be neutral. And I believe, Senator, I have the characteristics that I could perform in that manner.

Senator DURBIN. You have been involved in a lot of prosecutions. I looked through the list here: the prosecution of 19 conspirators engaged in a multimillion-dollar fraud scheme known as Omega Trust and Trading. This scam involved enticing victims to pay money to invest in offshore debentures, promising a 50:1 profit; 17 of the defendants pled guilty and 2 were convicted at trial.

It seems like a pretty complicated assignment to prosecute a case of this magnitude in a downstate area. Can you tell me a little bit about your experience on that?

Mr. BRUCE. Certainly, Senator. The Omega Trust and Trading fraud case originated with a man named Clyde Hood, who was actually a retired electrician from Mattoon, but he could really talk the talk and convince people of almost anything. And he aligned himself with several other individuals, and they principally targeted the elderly. They would promise a 50:1 return on what were called "prime bank notes"—which are fictitious, they do not exist—and talk about giving them this type of bank debenture and talk about overseas accounts. And essentially they promised a 50:1 return for every $100 invested. They were so effective at doing this, Mr. Hood and his co-conspirators, that they collected millions and millions of dollars, oftentimes cleaning out people's entire life savings.

When it came time for the payout in this case, there was always a reason why the payout could not come: It is Y2K. The computers made a mistake. The postal truck with the payouts got in an accident and caught on fire. There was a satellite glitch. These were all excuses they gave to their victims, which numbered in the hundreds, up to almost a thousand. We never could keep track because Omega Trust and Trading did not keep track of who they were getting the money from. They just wanted the money.

In the end, all but two of the defendants pled guilty. The other two did go to trial. Each one had a multi-week trial, and in both trials they were convicted. I helped in the investigation. I was the lead counsel on one of the trials and the second chair on the other trial. It was a highly complex case, especially from a little small downstate town like Mattoon, Illinois. All I can tell you the proudest moments of my career, knowing everyone was convicted and trying to give back the restitution and actually making a few of the victims whole, which was nice.

Senator DURBIN. Thank you.

I do not have any further questions, and if you are wondering what all those lights mean on that clock behind you on the wall, it means we have started a roll call vote, which they just gave me a note on, which means I have some work to do myself during the rest of the day. But I want to thank all four of you for being here and bringing your families and friends with you for this moment.

I have no further questions, and there may be some written questions from the staff or other Senators that will be sent your way, and we are hoping that you will respond to them in a timely fashion. The record is going to be open as well for at least a week for any additional materials that you would like to submit.

I thank you all for being here today, and at this point the Senate Judiciary Committee will stand in adjournment.

[Whereupon, at 3:53 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Judicial Nominations"

Wednesday, June 19, 2013
Dirksen Senate Office Building, Room 226
2:30 p.m.

Todd M. Hughes, to be United States Circuit Judge for the Federal Circuit

Colin Stirling Bruce, to be United States District Judge for the Central District of Illinois

Sara Lee Ellis, to be United States District Judge for the Northern District of Illinois

Andrea R. Wood, to be United States District Judge for the Northern District of Illinois

Madeline Hughes Haikala, to be United States District Judge for the Northern District of Alabama

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Todd Michael Hughes

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

   United States Circuit Judge for the Federal Circuit

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

   Commercial Litigation Branch
   Civil Division, U.S. Department of Justice
   P.O. Box 480, Ben Franklin Station
   Washington, DC 20044

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

   1966; Delaware, Ohio

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.

   1989 – 1992, Duke Law School; J.D. (with honors), 1992

   1989 – 1992, Duke University; M.A., 1992

   1985 – 1989, Harvard College; A.B. (*cum laude*), 1989

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

   1994 – present
   Commercial Litigation Branch

Civil Division, U.S. Department of Justice
P.O. Box 480, Ben Franklin Station
Washington, DC 20044
Trial Attorney (1994 – 1999)
Assistant Director (1999 – 2007)
Deputy Director (2007 – present)

Spring 1994
Cleveland-Marshall College of Law
2121 Euclid Avenue
Cleveland, Ohio 44115
Adjunct Lecturer in Law

1992 – 1994
United States Court of Appeals for the Sixth Circuit
201 Superior Avenue
Cleveland, Ohio 44114
Law Clerk to Judge Robert Krupansky

1992
The Princeton Review
309 North Elliott Road
Chapel Hill, North Carolina 27514
Instructor

Summer 1991
Crowell & Moring
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Summer Associate

Fall 1990
Duke University Writing Program
Duke University
Durham, North Carolina 27706
Instructor

Summer 1990
Baker & Hostetler
65 East State Street
Columbus, Ohio 43215
Summer Associate

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 with the selective service.

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

Special Commendation, Civil Division, U.S. Department of Justice, Federal Personnel Law Team (2011)
Special Contribution Award, Department of Veterans Affairs (2008)
Attorney General's John Marshall Award, Outstanding Legal Achievement for Preparation or Handling of Legislation (2007)
Special Commendation, Civil Division, U.S Department of Justice, for Handling Veterans Appeals (2004)
Special Commendation, Civil Division, U.S. Department of Justice, for Harbor Maintenance Tax Litigation (2000)

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

Federal Circuit Bar Association (2003 – present)
Co-Chair, Planning Committee for Bench and Bar Annual Conference (2009 – 2011)

Gay, Lesbian, Bisexual and Transgender Attorneys of Washington (2010 – 2011)

National LGBT Bar Association (2010 – 2011)

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, 1992 (inactive)
District of Columbia, 2009

There have been no lapses in membership, although my membership is inactive in Pennsylvania.

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, 1997
United States Court of Appeals for the Federal Circuit, 2010
United States Court of Appeals for the Ninth Circuit, 2006
United States Court of International Trade, 1996
United States Court of Federal Claims, 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.

None.

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

I do not belong to any organizations that are the subject of question 11a.

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

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

With Claudia Burke, *Constitutional Litigation and Its Jurisdictional Implications in the Court of International Trade*, 17 Tul. J. Int'l & Comp. L. 541 (2009). Copy supplied.

Making Romer Work, 33 Cal. W. L. Rev. 169 (1997). Copy supplied.

I wrote a book review for The Harvard Advocate during my attendance at Harvard College. I do not have a copy of the book review and have been unable to locate one.

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

None.

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

None.

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

May 9, 2012: Mock argument before a panel of Federal Circuit judges presented as part of the Merit Systems Protection Board's Symposium, Washington, DC. I represented the government agency and Kristen Alden of the Alden Law Group represented the employee in a mock argument concerning a whistleblower claim. Argument outline supplied.

March 16, 2011: Member of a panel discussion and webcast concerning the Supreme Court's decision in *Henderson v. Shinseki*, 131 S. Ct. 1197 (2011), sponsored by the Federal Circuit Bar Association in Washington, DC. An audio recording is available at http://www.fedcirbar.org/olc/pub/LVFC/cpages/misc/careers_relocate.jsp.

May 20, 2010: Member of a panel for the Merit Systems Protection Board session at the Federal Circuit Judicial Conference, Washington, DC. Our topic was best advocacy practices. I have no notes, transcript, or recording. The Federal Circuit is located at 717 Madison Place, NW, Washington, DC 20005.

February 19, 2009: Moderator of a panel, "Excellence in Appellate Advocacy," for a Federal Circuit Bar Association webcast, Washington, DC. Outline supplied and audio recording is available at http://www.fedcirbar.org/olc/pub/LVFC/cpages/misc/friedman.jsp.

November 19, 2008: Panelist at the 15th Judicial Conference of the Court of International Trade, New York, New York. I presented a paper, co-authored with Claudia Burke, published as *Constitutional Litigation and Its Jurisdictional Implications in the Court of International Trade*, 17 Tul. J. Int'l & Comp. L. 541 (2009). A copy of the article is supplied in response to question 12a.

May 15, 2008: Panelist at the Federal Circuit Judicial Conference, Washington, DC. My topic was, "An Examination of the Federal Circuit's Deference to Board Interpretations of Civil Service Law." I have no notes, transcript or recording. The Federal Circuit is located at 717 Madison Place, NW, Washington, DC 20005.

August 21, 2007: Speaker at Customs & Border Protection's Chief Counsel Conference, Providence, Rhode Island. I spoke regarding recent developments in federal personnel and whistleblower law. I have no notes, transcript or recording. The conference was sponsored by the Chief Counsel, Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

May 19, 2006: Panelist at the Federal Circuit Judicial Conference, Washington, DC. My topic was, "Non-Precedential Decisions in Trade Cases: Problems and Advantages of Current Practice and Effect of Proposed FRAP 32.1." A copy of my unpublished paper, co-authored with Claudia Burke, is supplied.

July 27, 2002: Panelist at the Federal Circuit Bench and Bar, San Diego, California. I participated in a panel about amicus briefs at the Federal Circuit. I have no notes, transcript or recording. The Federal Circuit is located at 717 Madison Place, NW, Washington, DC 20005.

September 18, 2000. Panelist at the Sixth Judicial Conference of the Court of Veterans Appeals (currently the Court of Appeals for Veterans Claims). My topic was "The Evolving and Expanding Role of Veterans Benefits Jurisprudence of the Federal Circuit." I have no notes, transcript or recording. The conference was sponsored by the Court of Veterans Appeals, 625 Indiana Avenue, NW, Suite 900, Washington, DC 20004.

March 1997: Panelist at California Western Law Review Symposium, "Towards a Radical and Plural Democracy," in San Diego, California. I participated in a panel about programs designed to increase participation of the disenfranchised. I have no notes, transcript or recording. A copy of the paper I prepared for the symposium is supplied.

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

I have not given any interviews.

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 held any 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 held no public offices. I have not been a candidate for elective office or nominee to any appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in any political campaign.

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

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

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

From 1992 to 1994, I served as a law clerk to the Honorable Robert Krupansky, Circuit Judge of the United States Court of Appeals for the Sixth Circuit.

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.

1994 – present
Commercial Litigation Branch
Civil Division, U.S. Department of Justice
P.O. Box 480, Ben Franklin Station
Washington, DC 20044
Trial Attorney (1994 – 1999)
Assistant Director (1999 – 2007)
Deputy Director (2007– 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 an arbitrator or mediator in alternative dispute resolution proceedings.

b. Describe:

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

Following my clerkship, I have devoted my entire 18 years of legal practice to public service at the Department of Justice. Although my work has primarily focused on appellate litigation, I also have gained substantial experience at the trial court level and some experience before federal administrative bodies. In addition to my litigation experience, in more recent years, I have provided advice and counseling to other parts of the Department of Justice and other federal agencies.

From 1994 to 1999, I served as a Trial Attorney in the Commercial Litigation Branch of the Civil Division. My practice consisted of work before three different courts: the Court of Appeals for the Federal Circuit, the Court of International Trade, and the Court of Federal Claims. I also handled a few cases at the boards of contract appeals. A substantial portion of my time was devoted to two large matters. The first was a massive government contracts case for which I conducted extensive document discovery, took and defended multiple depositions, and drafted portions of motions and other briefs. The second matter involved a large number of cases challenging the Harbor Maintenance Tax. For those cases, I drafted briefs to the Court of International Trade, the Federal Circuit, and the Supreme Court. I also oversaw a claims resolution process that efficiently disposed of thousands of Harbor Maintenance Tax cases without expending substantial litigation resources. I personally handled a significant number of appellate matters at the Federal Circuit, mostly involving federal personnel law and government contracts, and presented in excess of 20 oral arguments. Finally, I handled a number of other trial-level matters at the Court of Federal Claims.

From 1999 to 2007, I served as an Assistant Director in the Commercial Litigation Branch. In that capacity, I continued to personally handle a large number of appeals at the Federal Circuit, arguing approximately 17 appeals, including my first *en banc* argument. The subject matter of those appeals covered the broad range of the Federal Circuit's non-patent jurisprudence, including federal personnel law, veterans benefits, international trade, and government contracts. My work at the trial courts diminished somewhat but I still handled several significant matters at the Court of International Trade and Court of Federal Claims. In addition to the cases I personally handled, as an Assistant Director, I became the supervisory attorney for a large number of cases. As a supervisory attorney, I consulted with the assigned trial attorneys, providing guidance and support in how to approach their cases and making suggestions about litigation strategy and potential arguments; I personally reviewed all of the

trial attorneys' written work, making substantial edits and revisions where necessary; and, more generally, I mentored attorneys to ensure sound professional development. During this time period, I also assumed responsibility for our internal moot court program, ensuring that all attorneys with Federal Circuit arguments participated in at least one moot court, and personally judging many of those moots. During this time period, I also was frequently called on to provide advice to other parts of the Department of Justice and other federal agencies, particularly with regard to my expertise in federal personnel and whistleblower law, and veterans benefits.

Since 2007, I have served as a Deputy Director in the Commercial Litigation Branch. Due to an increase in my management responsibilities, the number of cases I personally handle has decreased, although I still regularly handle some of the more significant matters at the Federal Circuit involving federal personnel law, veterans benefits and international trade. I briefed and presented my second *en banc* argument in 2009 and have presented oral argument in at least eight other cases since 2007. I also continue to supervise trial attorneys in individual cases. In my role as a senior manager, I have taken a broader approach to improving my office's performance. I have implemented new and novel training procedures, restructured the office support staff to better aid attorneys in their legal work, and devised new team structures to better leverage the substantial experience of our office attorney staff. Of particular note, I created and continue to supervise an appellate team of extremely well-qualified attorneys to handle the most difficult and significant litigation at the Federal Circuit. Their expertise ensures that we provide the very best representation to our client agencies and also provides an important resource for other attorneys in the office handling Federal Circuit appeals. I also now devote substantially more time to advising and counseling other attorneys, from the Department of Justice and from other federal agencies. Among other things, I routinely provide advice about the Civil Service Reform Act and the Whistleblower Protection Act, international trade, veterans benefits, and jurisdictional issues regarding the Court of Federal Claims.

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

As an attorney for the Department of Justice for over 18 years, my client has been the United States. I have specialized in the areas of federal personnel and whistleblower law, veterans benefits, international trade, and government contracts.

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.

Almost all of my work has involved litigation, with the vast majority in federal courts and a very small number of cases in federal administrative agencies. As described above, much of that work has involved me appearing as counsel of record, but I also have been a supervisory attorney for thousands of cases in litigation. I frequently appear in court, particularly before the Federal Circuit. Prior to 1999, I also personally appeared frequently before the Court of International Trade and the Court of Federal Claims. I continue to supervise a large number of matters before those trial courts.

i. Indicate the percentage of your practice in:
   1. federal courts: 99%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 1%

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 not played an in-court role in any trial. I conducted a direct examination of a witness in a preliminary injunction hearing regarding the award of a government contract, a case in which I was counsel of record. I have been the supervisory attorney for a number of trials. For those matters, I reviewed all filings and provided advice, where necessary, regarding trial strategy.

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 not been counsel of record or personally argued before the Supreme Court. I have participated in the writing of many briefs in cases handled by the Solicitor General's office. In some cases, I personally prepared a draft brief for the

Solicitor General's office; in other cases, I commented on drafts prepared by other attorneys. In cases argued before the Supreme Court, I have participated in moot courts and provided advice to attorneys in the Solicitor General's office. I also am routinely asked to provide a recommendation as to whether to waive the government's response to a petition for a writ of certiorari.

To the best of my knowledge, the following is a list of the Supreme Court cases in which I have participated in the writing of a brief. Copies supplied.

Byron v. Shinseki, No. 12-389, *cert. denied*, 133 S. Ct. 843 (2013) (brief in opposition, available at 2012 WL 5940290)

Guerra v. Shinseki, No. 11-773, *cert. denied*, 132 S. Ct. 1795 (2012) (brief in opposition, available at 2012 WL 590122)

Roberts v. Shinseki, No. 11-603, *cert. denied*, 132 S. Ct. 1741 (2012) (brief in opposition, available at 2012 WL 522094)

Dean v. United States, No. 11-329, *cert. denied*, 132 S. Ct. 1002 (2012) (brief in opposition, available at 2011 WL 5548720)

Consolidation Coal Co. v. United States, No. 10-1020, *cert. denied*, 131 S. Ct. 2990 (2011) (brief in opposition, available at 2011 WL 1769335)

Henderson v. Shinseki, No. 09-1036, 131 S. Ct. 1197 (2011) (brief in opposition, available at 2010 WL 2173778; brief for respondent, available at 2010 WL 4312791)

Yant v. United States, No. 09-1100, *cert. denied*, 131 S. Ct. 69 (2010) (brief in opposition, available at http://www.justice.gov/osg/briefs/2009/0responses/2009-1100.resp.pdf)

Laroche v. Shinseki, No. 08-1413, *cert. denied*, 130 S. Ct. 552 (2009) (brief in opposition, available at 2009 WL 3183065)

Haas v. Peake, No. 08-525, *cert. denied*, 555 U.S. 1149 (2009) (brief in opposition, available at 2008 WL 5328208)

Shinseki v. Sanders, No. 07-1209, 556 U.S. 396 (2009) (petition for writ of certiorari, available at 2008 WL 782560; reply brief, available at 2008 WL 2277933; brief for the petitioner, available at 2008 WL 3895908; reply brief, available at 2008 WL 4892758)

Nufarm America's Inc. v. United States, No. 08-31, *cert. denied*, 555 U.S. 1011 (2008) (brief in opposition, available at 2008 WL 4533648)

Amber-Messick v. United States, No. 07-176, *cert. denied*, 552 U.S. 1038 (2007) (brief in opposition, available at 2007 WL 3085078)

White v. Nicholson, No. 05-762, *cert. denied*, 547 U.S. 1018 (2006) (brief in opposition, available at 2006 WL 331819)

Mapu v. Nicholson, No. 05-605, *cert. denied*, 547 U.S. 1018 (2006) (brief in opposition, available at 2006 WL 354226)

George E. Warren Corp. v. United States, No. 03-1280, *cert. denied*, 543 U.S. 808 (2004) (brief in opposition, available at 2004 WL 1347281)

Thomson Multimedia v. United States, No. 03-882, *cert. denied*, 541 U.S. 1040 (2004) (brief in opposition, available at 2004 WL 871294)

Azdell v. James, No. 03-624, *cert. denied*, 540 U.S. 1218 (2004) (brief in opposition, available at 2004 WL 198333)

Cook v. Principi, No. 02-1317, *cert. denied*, 539 U.S. 926 (2003) (brief in opposition, available at http://www.justice.gov/osg/briefs/2002/0responses/2002-1317.resp.pdf)

Hohenberg Bros. Co. v. United States, No. 02-1286, *cert. denied*, 538 U.S. 1068 (2003) (brief in opposition, available at http://www.justice.gov/osg/briefs/2002/0responses/2002-1286.resp.pdf)

BMW Manufacturing Corp. v. United States, No. 01-238, *cert. denied*, 534 U.S. 1065 (2001) (brief in opposition, available at 2001 WL 34116162)

Smurfit-Stone Container Corp. v. United States, No. 00-1131, *cert. denied*, 532 U.S. 971 (2001) (brief in opposition, available at 2001 WL 34117273)

United States Postal Service v. Gregory, No. 00-758, 534 U.S. 1 (2001) (petition for writ of certiorari, available at 2000 WL 33979515; brief for the petitioner, available at 2001 WL 492313; reply brief, available at 2001 WL 880285)

Florida Sugar Marketing and Terminal Ass'n v. United States, No. 00-660, *cert. denied*, 531 U.S. 1191 (2001) (brief in opposition, available at http://www.justice.gov/osg/briefs/2000/0responses/2000-0660.resp.pdf)

International Business Machines Corp. v. United States, No. 00-482, *cert. denied*, 531 U.S. 1183 (2001) (brief in opposition, available at 2000 WL 34000084)

United States v. Swisher International, Inc., No. 00-415, *cert. denied*, 531 U.S. 1036 (2000) (petition for writ of certiorari, available at 2000 WL 34000578)

Carnival Cruise Lines, Inc. v. United States, No. 99-1600, *cert. denied*, 530 U.S. 1274 (2000) (brief in opposition, available athttp://www.justice.gov/osg/briefs/1999/0responses/99-1596.resp.pdf)

United States v. United States Shoe Corp., No. 97-372, 523 U.S. 360 (1998) (petition for writ of certiorari, available at 1997 WL 33485657; reply brief, available at 1997 WL 33485656; brief for petitioners, available at 1997 WL 772730; reply brief, available at 1998 WL 67748)

Lachance v. Erickson, No. 96-1395, 522 U.S. 262 (1998) (petition for writ of certiorari, available at 1997 WL 33485601; brief for the petitioner, available at 1997 WL 458823; reply brief for the petitioner, available at 1997 WL 643344)

Diaz v. Department of the Air Force, No. 95-1145, *cert. denied*, 517 U.S. 1208 (1996) (brief in opposition, available at 1996 WL 33467853)

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. *Haas v. Peake*, 525 F.3d 1168 (Fed. Cir.), *rehearing denied*, 544 F.3d 1306 (Fed. Cir. 2008) (before Chief Judge Michel, and Judges Bryson and Fogel).

For veterans seeking benefits due to Agent Orange exposure, Congress enacted a statutory presumption that all veterans who served in Vietnam are presumed to have been exposed because the nature of the war made it extremely difficult for individual veterans to prove actual exposure. In this appeal, I personally handled the briefing and argument, and successfully defended the Secretary's interpretation of that presumption as limited to veterans who served on ground and not in waters offshore because Agent Orange was used on the land mass. I received a special commendation from the General Counsel of the Department of Veterans Affairs for my handling of this appeal, which resulted in several billions of dollars in monetary savings.

My opposing counsel were Barton Stichman and Louis George of the National Veterans Legal Services Program, 1600 K Street, NW, Suite 500, Washington, DC 20006 (202.265.8605).

2. *Henderson v. Peake*, 589 F.3d 1201 (Fed. Cir. 2009) (*en banc*), *rev'd*, 131 S. Ct. 1197 (2011).

The court of appeals, sitting *en banc*, ruled that the statutory time limit to file an appeal to the Court of Appeals for Veterans Claims was a jurisdictional requirement and could not be extended for equitable reasons. This case involved extremely complicated questions of statutory interpretation and legislative history, as well as the application of relevant Supreme Court precedent. I personally handled the briefing, panel argument and *en banc* argument at the Federal Circuit. I also prepared drafts of the government's brief in opposition to the petition for a writ of certiorari and the government's brief on the merits to the Supreme Court, and worked closely with the Solicitor General's office as it prepared for argument before the Supreme Court. The Supreme Court held that the statutory time period was not jurisdictional and could be tolled for appropriate equitable reasons.

My primary opposing counsel at the Federal Circuit was Thomas Stoever, Arnold and Porter, 370 Seventeeth Street, Suite 4500, Denver, CO 80202 (303.863.1000).

3. Harbor Maintenance Tax Cases.

The Harbor Maintenance Tax was enacted by Congress to provide a funding source for critical harbor maintenance and development projects. I was a primary author of the briefs to the Federal Circuit and the Supreme Court in the lead case, *United States v. United States Shoe*, 523 U.S. 360 (1998), *aff'g*, 114 F.3d 1564 (Fed. Cir. 1997). *United States Shoe* was selected as the lead test case to address several constitutional and jurisdictional issues regarding the Harbor Maintenance Tax. Ultimately, several thousand cases involving the tax were filed in the Court of International Trade. In *United States Shoe*, the Supreme Court held that the tax, as applied to exporters, violated the Export Clause of the Constitution. In a series of significant appeals following *United States Shoe*, I either personally handled or acted as the supervisory attorney for a number of cases in which various companies tried to extend *U.S. Shoe* to recover additional monies. My team successfully defended against those other arguments for refunds and preserved billions of funding for port maintenance and development provided by the Harbor Maintenance Tax. *E.g.*, *Thomson Multimedia, Inc. v. United States*, 340 F.3d 1355 (Fed. Cir. 2003) (tax assessed on domestic shippers was valid and did not violate Uniformity or Port Preferences Clauses of the Constitution); *Stone Container Corp. v. United States*, 229 F.3d 1345 (Fed. Cir. 2000) (upholding two-year statute of limitations for seeking refund of unconstitutional portion of the HMT); *Florida Sugar Marketing v. United States*, 220 F.3d 1331 (Fed. Cir. 2000) (tax on domestic shippers did not violate Export Clause); *Carnival Cruise Lines, Inc. v. United States*, 200 F.3d 1361 (Fed. Cir. 2000) (tax assessed on passenger liners is valid); *International Business Machines Corp. v. United*

States, 201 F.3d 1367 (Fed. Cir. 2000) (no waiver of sovereign immunity for interest on HMT refunds).

I personally handled the briefing and argument in *Stone Container* (before Judges Bryson, Linn and Dyk), *Florida Sugar* (before Judges Newman, Michel, and Gajarsa), and *Carnival Cruise Lines* (before Judges Michel, Friedman, and Bryson).

Opposing counsel in those cases were as follows:

Stone Container. Kirk T. Hartley, currently with Gnarus Advisors, LLC, 445 West Erie Street, Suite 102, Chicago, IL 60654 (312.857.5545).

Florida Sugar. Wesley Caine, Stewart and Stewart, 2100 M Street, NW, Washington, DC 20037 (202.466.1265).

Carnival Cruise Lines. Robert P. Parker, currently with Baker & McKenzie, 815 Connecticut Avenue, NW, Washington, DC 20006 (202.835.6172).

4. *Garcia v. Department of Homeland Security*, 437 F.3d 1322 (Fed. Cir. 2006) (*en banc*).

In a significant appeal involving the scope of the Merit Systems Protection Board's authority to consider certain discrimination cases, the court held that an employee must first prove that he or she had been subject to an adverse personnel action otherwise within the jurisdiction of the Merit Systems Protection Board before the board could exercise jurisdiction over a related discrimination claim. This distinction is important because Congress has set up a careful scheme where challenges to certain adverse personnel actions are to be considered by the Merit Systems Protection Board, while other types of discrimination complaints are channeled through the normal Equal Employment Opportunity Commission procedures. The court's *en banc* decision provides important clarity and efficiency both for the tribunals that hear the cases and for federal employees. I presented oral argument to the panel, and prepared the supplemental brief and presented argument to the *en banc* court.

My opposing counsel was Katherine McDonough, then of Baptiste & Wilder, P.C., 1150 Connecticut Avenue, NW, Suite 315, Washington, DC 20036 (202.223.0723). Ms. McDonough is no longer associated with that firm and I have been unable to locate current contact information for her.

5. *Meeker v. Merit Systems Protection Board*, 319 F.3d 1368 (Fed. Cir. 2003) (before Judges Schall, Bryson, and Linn).

The Office of Personnel Management is charged with creating and administering competitive examinations for the selection of administrative law judges. In this case, I personally handled the briefing and argument, and successfully defended a newly established examination that enabled agencies to hire much-needed new administrative

law judges. I received a special commendation from the General Counsel of the Office of Personnel Management for my handling of this appeal.

My opposing counsel were Joyce Friedman, now retired, of the Merit Systems Protection Board, 1615 M Street, NW, Washington, DC, and William Bransford, Shaw, Bransford & Roth, 1100 Connecticut Avenue NW, Suite 900, Washington, DC 20036 (202.463.8400).

6. *Hesse v. Department of State*, 217 F.3d 1372 (Fed. Cir. 2000) (before Judges Michel, Schall, and Bryson).

The court held that the Merit Systems Protection Board lacked jurisdiction under the Whistleblower Protection Act to consider whether an employee's security clearance was revoked in reprisal for whistleblowing. In doing so, the court recognized both the broad discretion the Executive Branch has in making security clearance determinations and the many judicial determinations, including the Supreme Court's decision in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), concluding that nonexpert bodies should not second guess the agency's national security determinations. I personally handled the briefing and argument of this appeal.

My opposing counsel was F. Douglas Hartnett, currently of Elitok & Hartnett, 2428 Wisconsin Avenue, NW, 2nd Floor, Washington, DC 20007 (202.965.0529).

7. *Stanley v. Gonzales*, 476 F.3d 653 (9th Cir. 2007) (before Judges Tashima, McKeown, and Carter); *Stanley v. Department of Justice*, 423 F.3d 1271 (Fed. Cir. 2005) (before Judges Mayer, Rader, and Linn).

In these two appeals, one in the Federal Circuit and one in the Ninth Circuit, I successfully defended the authority of the Attorney General to remove two United States Trustees. Both courts held that Congress had provided discretionary authority to the Attorney General to remove the trustees. I personally handled the argument and briefing of these cases at the Merit Systems Protection Board, the district court, and the Federal and Ninth Circuits.

My opposing counsel in both cases was Howard Moore, Jr., Moore and Moore, 445 Bellevue Avenue, 2nd Floor, Oakland, California, 94610 (510.451.0104). Ellen Vergos appeared pro se on her own behalf in the Federal Circuit appeal. She is currently with Wyatt Tarrant and Combs LLP, The Renaissance Center, 1715 Aaron Brenner Drive, Suite 800, Memphis, TN 38120 (901.537.1059).

8. *King v. Erickson*, 89 F.3d 1575 (Fed. Cir. 1996) (before Judges Rich, Lourie and Rader), *rev'd sub nom. Lachance v. Erickson*, 522 U.S. 262 (1998).

This case involved the question of whether the Due Process Clause prohibits a federal agency from disciplining employees for making false statements regarding alleged employment-related misconduct. The Merit Systems Protection Board held that

employees could not be separately charged with a false statement when they denied committing misconduct. On behalf of the Office of Personnel Management, I prepared the briefs and presented oral argument to the Federal Circuit. After an adverse decision from the Federal Circuit, I prepared drafts of the petition for writ of certiorari and the merits briefing at the Supreme Court. The Supreme Court reversed the Federal Circuit and held that a separate charge of falsification did not violate the Due Process clause.

My opposing counsel at the Federal Circuit was Gail Heglund, then of Best Roberts and Associates, Albuquerque, New Mexico (I have been unable to locate current contact information for Ms. Heglund), and M. Jefferson Euchler, 708 South Rosemont Road, Virginia Beach, VA 23452 (757.498.8011).

9. *Briggs v. Merit Systems Protection Board*, 331 F.3d 1307 (Fed. Cir. 2003) (before Judges Lourie, Schall, and Prost).

The court held that the application of the Hatch Act, which prohibits partisan political activities by some public employees, to a District of Columbia public school teacher, did not violate the First Amendment or the Equal Protection Clause. I personally handled the briefing and argument of this appeal.

My opposing counsel was Matthew S. Yeo, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC, 20036 (202.429.8184).

10. *Consolidation Coal Co. v. United States*, 615 F.3d 1378 (Fed. Cir. 2010) (before Judges Lourie, Friedman, and Moore); *Consolidation Coal Co. v. United States*, 528 F.3d 1344 (Fed. Cir. 2008) (before Judges Newman, Prost, and Moore).

In this long-running case, a group of domestic coal producers challenged the application of a reclamation fee imposed by the Surface Mining Control and Reclamation Act. The coal producers contended that, to the extent that the fee was imposed on coal eventually destined for exportation, it violated the Export Clause of the Constitution. We successfully argued that the fee was a general tax on the production of coal, and did not burden the export process. I personally argued the 2010 appeal, and participated in the briefing and preparation for argument of the 2008 appeal.

Opposing counsel was Steven H. Becker, 600 Third Avenue, New York, NY 10016 (212.499.9098).

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.)

Following my clerkship, my entire legal career has been spent at the Department of Justice, performing civil litigation, primarily in the United States Supreme Court, the Federal Circuit, the Court of International Trade, and the Court of Federal Claims. I have personally handled roughly 200 cases, about 100 of which were in the Federal Circuit, and have been the supervisory attorney for roughly 2,000 cases. In addition to cases for which I am directly responsible, I also routinely advise trial and other supervisory attorneys about other cases handled by my office, or other parts of the Department of Justice.

Apart from my litigation practice, I regularly review proposed legislation and regulations, and provide comments in a number of subject matter areas, most notably federal personnel and whistleblower law, veterans benefits, international trade law, and jurisdictional issues regarding the federal courts.

I have never performed any lobbying activities.

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

    In 1994, I taught an advanced legal writing course at Cleveland-Marshall College of Law. The focus of the course was legal scholarship and the students were required to produce an original piece of legal scholarship. I do not have a copy of the syllabus.

    In 1990, I taught freshman writing at Duke University. I do not have a copy of the syllabus.

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 have any arrangements for deferred income or future benefits from previous business relationships.

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 during 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 am unaware of any individuals, family or otherwise, that are likely to present potential conflicts of interest. As a senior attorney at the Department of Justice, I am currently responsible, either as attorney of record or as a supervisory attorney, for a large number of cases currently pending before the Federal Circuit. If confirmed, I would recuse myself from all cases in which I was either directly or indirectly involved during my tenure at the Department of Justice.

    For matters handled by the Department of Justice after my departure, I would apply the standards of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse in other matters.

    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 consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and based on that consultation, I would compile a comprehensive list of matters for easy flagging of potential conflicts of interest. In close cases, I would consult other judges and any persons designated by the court or judicial organizations to provide advice on such questions as they arise.

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 the late 1990s, I attended a training workshop at the Whitman Walker Clinic in Washington, D.C. Following that training, I staffed an intake clinic on several occasions, providing legal advice about a variety of issues. From that clinic, I also took three separate matters. In one case, an individual believed that he was being discriminated against because he had AIDS. I corresponded both orally and in writing with his supervisor in an attempt to resolve the situation. In another instance, I advised an individual regarding an insurance situation. In the final matter, I investigated whether a pharmacy had breached any legal obligations when it inadvertently disclosed the names of certain drugs used to treat AIDS to an individual other than the person for whom the drugs were prescribed. None of these matters advanced to litigation.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On November 1, 2012, I received a message from an official in the White House Counsel's Office, who asked me whether I was interested in the possibility of serving on the Federal Circuit. I confirmed that I would be interested and spoke with that official. On November 13, 2012, I met with officials from the White House Counsel's Office. Since November 13, 2012, I have been in contact with officials from the Office of Legal Policy of the Department of Justice. On January 8, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On February 7, 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)	2. Court or Organization	3. Date of Report
Hughes, Todd M.	Federal Circuit	02/07/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination Date 02/07/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2012 to 1/19/2013
7. Chambers or Office Address		
1100 L Street, NW Washington, D.C. 20005		

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	Date of Report
Hughes, Todd M.	02/07/2013

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 (yours, not spouse's)
1. 2013	U.S. Department of Justice	$6,116.00
2. 2012	U.S. Department of Justice	$179,700.00
3. 2011	U.S. Department of Justice	$179,700.00
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 Hughes, Todd M.	Date of Report 02/07/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	U.S. Department of Education	Student Loan	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Hughes, Todd M.	02/07/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. Vanguard Target Retirement 2030	E	Distribution	K	T	Exempt				
2. Justice Federal Credit Union Cash Accounts	A	Interest	J	T	Exempt				
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

Name of Person Reporting	Date of Report
Hughes, Todd M.	02/07/2013

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

Income in Column B for Vanguard Target Retirement 2030 also included a dividend.

Name of Person Reporting	Date of Report
Hughes, Todd M.	02/07/2013

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/ Todd M. Hughes

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		4	355	Notes payable to banks-secured (auto)		12	911
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		1	852
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- personal residence		370	360
Real estate owned -- personal residence		500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		21	000	Department of Education loan		49	089
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		394	260				
Vanguard Target Retirement 2030 Fund		16	403				
				Total liabilities		434	212
				Net Worth		501	806
Total Assets		936	018	Total liabilities and net worth		936	018
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							

AFFIDAVIT

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

2/7/13
(DATE)

(NAME)

NATALIE R. PALMER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires Jan. 30, 2015

Natalie Palmer
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Colin Stirling Bruce

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

   United States District Judge for the Central District of Illinois

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

   United States Attorney's Office
   201 South Vine Street
   Suite 226
   Urbana, Illinois 61801

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

   1965; Urbana, Illinois

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

   1986 – 1989, University of Illinois; J.D., 1989
   1983 – 1986, University of Illinois; B.A., 1986

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

   1989 – present
   United States Attorney's Office for the Central District of Illinois
   201 South Vine Street
   Suite 226
   Urbana, Illinois 61801
   First Assistant United States Attorney (2010 – present)

Urbana Branch Supervisor (2007 – 2010)
Assistant United States Attorney (1989 – 2007)

1988 – 1989
University of Illinois
Institute of Government and Public Affairs
1007 West Nevada Street
Urbana, Illinois 61801
Research Assistant

Summer 1988
Zuckert, Scoutt and Rasenberger
888 17th Street, NW
Washington, DC 20006
Law Clerk

1987 – 1988
University of Illinois
Department of Political Science
1407 West Gregory Drive
Urbana, Illinois 61801
Teaching Assistant

Summer 1987
United States Attorney's Office for the Central District of Illinois
318 South Sixth Street
Springfield, Illinois 62701
Law Clerk

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.

   Department of Justice, Certificate of Appreciation (2009)
   Federal Bureau of Investigation, Certificate of Appreciation (2006)
   Department of Justice, OCDETF and Asset Forfeiture National Award for Outstanding Assert Forfeiture (2004)
   Illinois State Police, Metropolitan Enforcement Group and Task Force Award for Prosecution (2003)
   Federal Bureau of Investigation, Certificate of Appreciation (2000)

Department of Justice, Certificate of Appreciation (1999)
Drug Enforcement Administration, Certificate of Appreciation (1999)
Illinois State Police, Metropolitan Enforcement Group and Task Force Award for Prosecution (1992, 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.

   Illinois State Bar Association (1989 – 1991, 2000 – 2002)

   Illinois Trial Lawyers Association (1989 – 1992)

   National Association of Assistant United States Attorneys (2000 – 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.

       Illinois, 1989
       Florida, 1991 (inactive)

       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 Seventh Circuit, 1989
       United States District Court for the Central District of Illinois, 1989
       United States District Court for the Northern District of Illinois, 1990
       Illinois Supreme Court, 1989
       Florida Supreme Court, 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.

University of Illinois Alumni Association (1989 – present)

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

To the best of my knowledge, the organization listed in response to 11(a) above does not currently discriminate and did not formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

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.

March 30, 2011: Instructor, Department of Justice National Advocacy Center, Columbia, South Carolina. I joined James Barlow, Head of Security Operations and Incident Response for the National Center for Supercomputing Applications at the University of Illinois, in a discussion of Operation Piper Down (FBI Major Case 216). Mr. Barlow presented the technical aspects and I answered questions concerning legal issues that arose during the investigation. I have no notes, transcript or recording. The event was sponsored by the Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, NW, Suite 600, Washington, DC 20530.

April 20, 2006: Panel member, Department of Justice National Advocacy Center, Columbia, South Carolina. I participated in a panel discussing and answering questions concerning the investigation and prosecution of cybercrimes. I have no notes, transcript or recording. The event was sponsored by the Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, NW, Suite 600, Washington, DC 20530.

April 24, 2003: Panel member, Department of Justice National Advocacy Center, Columbia, South Carolina. I participated in a panel discussing and answering questions concerning the investigation and prosecution of cybercrimes. I have no notes, transcript or recording. The event was sponsored by the Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, NW, Suite 600, Washington, DC 20530.

June 26, 2002: Panel member, Department of Justice National Advocacy Center, Columbia, South Carolina. I participated in a panel discussing and answering questions concerning the investigation and prosecution of network cybercrimes. I have no notes, transcript or recording. The event was sponsored by the Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, NW, Suite 600, Washington, DC 20530.

October 6, 1999: Panel member, Department of Justice Computer and Telecommunications Coordinator Annual Conference, Houston, Texas. I participated in a panel discussing and answering questions concerning the unclassified aspects of Operation Moonlight Maze. I have no notes, transcript or recording. The event was sponsored by the Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, NW, Suite 600, Washington, DC 20530.

November 17, 1998: Panel member, Department of Justice Computer and Telecommunications Coordinator Annual Conference, San Diego, California. I participated in a panel discussing and answering questions about difficulties in the investigation and prosecution of federal computer crimes. I have no notes,

transcript or recording. The event was sponsored by the Department of Justice, Computer Crime and Intellectual Property Section, 1301 New York Avenue, NW, Suite 600, Washington, DC 20530.

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.

Scott Richardson, *State Suspects Coyote Poisoning*, Bloomington Pantagraph, October 8, 2005. Copy Supplied.

Staff Reporter, *Ex-Boy Scout Official Charged with Child Pornography*, Associated Press, October 26, 1995. 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 have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have not held 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 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.

1989 – present
United States Attorney's Office for the Central District of Illinois
201 South Vine Street
Suite 226
Urbana, Illinois 61801
First Assistant United States Attorney (2010 – present)
Urbana Branch Supervisor (2007 – 2010)
Assistant United States Attorney (1989 – 2007)

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.

I joined the United States Attorney's Office for the Central District of Illinois in November 1989 immediately after I was sworn into the Illinois Bar. For the first four years, my practice was both civil and criminal. The civil area of my practice was primarily bankruptcy, especially Chapter 12 bankruptcies involving farms. I also handled tort claims against the government. The criminal area of my practice was general and included cases involving drugs, firearms, violent crime, and simple fraud.

From approximately 1993 to 2007, my practice was almost exclusively criminal. I also shifted from general criminal to prosecuting larger drug conspiracies, complex frauds, and computer-related investigations.

In 2007, I was appointed Branch Chief for the Urbana Division of the United States Attorney's Office for the Central District of Illinois. As the Urbana Branch Chief, I directly supervised the investigations and cases of five other Assistant United States Attorneys and support staff in matters arising from the 11 counties which make up the Urbana Division. I also maintained a full caseload during this time.

In 2010, I was appointed to the position of First Assistant United States Attorney. In that capacity, I assist the United States Attorney and help oversee the day-to-day operations of the United States Attorney's Office for the Central District of Illinois. My assistance to the United States Attorney includes helping in 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 Central District of Illinois; 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.

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

As an Assistant United States Attorney, my only client has been the United States government. I have a minor specialization in cybercrime matters.

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

From 1990 to 2010, I appeared in court on almost a daily basis, handling initial appearances, detention hearings, probable cause hearings, suppression hearings, motion hearings, change of plea hearings, trials and sentencings. During this time period, I also appeared almost monthly before the Grand Jury to present witnesses and indictments.

In 2010, when I was appointed to the position of First Assistant United States Attorney, my matters and cases were transferred to other AUSAs. As First Assistant, I appear in court several times a month in a supervisory capacity.

i. Indicate the percentage of your practice in:

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

ii. Indicate the percentage of your practice in:

1. civil proceedings: 2%
2. criminal proceedings: 98%

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.

From 1990 through 2010, I tried approximately 60 jury trials (and three bench trials) to verdict. I was the sole prosecutor in all but approximately eight of those trials. In those trials in which I was not the sole prosecutor, I was the associate counsel (co-counsel).

i. What percentage of these trials were:

1. jury: 95%
2. non-jury: 5%

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

I have 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:

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. Ellzey et al.*, CDIL CR97-20046, 182 F.3d 923 (7th Cir. 1999) (unpublished)

This trial was the culmination of a multi-year investigation into cocaine trafficking by the Gangster Disciples street gang in Decatur, Illinois. The investigation and prosecutions resulted in the conviction of 32 members on various conspiracy, drug, and weapons charges. At the time of his arrest, Ellzey was the "Assistant Governor" of the Decatur Gangster Disciples. I served as lead counsel and first chair at Ellzey's trial. After his conviction, Ellzey received a statutorily mandated sentence of life imprisonment without possibility of release. This conviction was affirmed on appeal.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for Ellzey:
Jon Gray Noll
Noll Law Office
802 South Second Street
Springfield, IL 62704
(217) 544-8441

2. *United States v. Hood, et al.*, CDIL CR00-20046 (19 defendants), 378 F.3d 720 (7th Cir. 2004) (Diamond I); 400 F.3d 491 (7th Cir. 2005) (Turner)

Hood and 18 other conspirators engaged in a multi-million dollar fraud known as "Omega Trust and Trading." Hood and his other conspirators defrauded the victims by enticing them to become involved in the highly-secretive world of "off-shore debentures," promising a 50-to-1 return in less than a year for every $100 invested. The money defrauded from the investors was then laundered and used to purchase real estate and invest in multiple businesses. Seventeen of the conspirators eventually pled guilty. Two of them, Diamond and Turner, each separately proceeded to a lengthy trial. Both were convicted. I was the co-counsel on the overall investigation, second chair on the trial of Diamond, and first chair on the trial of Turner. The defendants' convictions were upheld on appeal; Diamond was re-sentenced after appeal.

Presiding Judge: United States District Judge Michael P. McCuskey

Co-Counsel:
Associate Judge Esteban F. Sanchez
Sangamon County Courthouse
200 South Ninth Street
Springfield, IL 62701
(217) 753-6367

Counsel for Diamond:
Diana S. Lenik
Law Office of Diana Lenik
202 West Green
Urbana, IL 61801
(217) 337-5610

Counsel for Turner:
John E. Gadau
Zimmerly, Gadau, Selin, & Otto
P.O. Box 3998
Champaign, IL 61826
(217) 352-7676

Counsel for Schnibben:
J. William Roberts
Hinshaw & Culbertson
Suite 200
400 South Ninth Street
Springfield, IL 62701
(217) 528-7375

Counsel for C. Hood:
Douglas C. McNabb
McNabb & Associates
1200 Smith Street
Suite 1600
Houston, TX 77002
(713) 237-0011

Counsel for P. Hood:
J. Steven Beckett
Beckett & Webber
508 South Broadway
Urbana, IL 61803
(217) 328-0263

Counsel for B. Wilson:
James E. Elmore

Elmore & Reid
808 South Second Street
Springfield, IL 62704
(217) 523-2340

Counsel for J. Wilson:
John W. Cox, Jr.
Cox & Ward
612 Spring Street
Galena, IL 61036
(815) 777-8180

Counsel for Kodosky:
Jerold W. Barringer
P.O. Box 213
Nokomis, IL 62075
(217) 563-2646

Counsel for Tillquist-Baibus:
David Kirk
1022 1/2 North Vermilion Street
Danville, IL 61832
(217) 443-2350

Counsel for Myers:
Scott R. Ealy
131 East Jefferson Avenue
Effingham, IL 62401
(217) 347-4900

Counsel for Engel:
Stanley L. Morris
LTC Management Inc.
2302 Clearlake Boulevard
Champaign, IL 61826
(217) 403-4900

Counsel for Haskell:
Carlton M. Kagawa
Carlton M. Kagawa Law Offices
Suite 200H Towne Center
2 East Main Street
Danville, IL 61832
(217) 446-0145

Counsel for Boes:
H. Kent Heller

Heller, Holmes & Associates
P.O. Box 889
Mattoon, IL 61938
(217) 235-2700

Counsel for R. Jones:
Mitchell K. Shick
Shick & Tapella
821 Monroe Avenue
P.O. Box 348
Charleston, IL 61920
(217) 348-6300

Counsel for N. Jones:
Mitchell K. Shick
Shick & Tapella
821 Monroe Avenue
P.O. Box 348
Charleston, IL 61920
(217) 348-6300

Counsel for Miller:
James L. Dobrovolny
Dobrovolny Law Offices
306 West Green Street
Urbana, IL 61801
(217) 344-2376

Counsel for McKibben:
Ronald E. Jenkins
10 South Brentwood Boulevard
Suite 200
Clayton, MO 63105
(314) 721-2525

Counsel for Hoehne:
Warren Gotcher
P.O. Box 160
McAlester, OK 74502
(918) 423-0412

Counsel for Bullington:
E. C. Eberspacher
Dove & Dove
151 South Morgan Street
P.O. Box 647

Shelbyville, IL 62565
(217) 774-2137

3. *United States v. Patel*, CDIL CR98-20040

Modern Dairy was a Meadow Gold Dairy-affiliated business operating in Champaign, Illinois for decades, employing approximately 230 people. In December 1995, Patel purchased Modern Dairy, and for the next ten months, fraudulently siphoned money from the dairy, laundering it through several banks. Eventually the dairy's day-to-day operations became untenable. Modern Dairy was closed when it filed for bankruptcy. Patel was indicted and pled guilty to bankruptcy fraud and money laundering based upon the theft and concealment of the operating revenue of the dairy and the employees' pension fund. I was the lead counsel on the case. There was no appeal.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for Patel (lead counsel):
J. William Roberts
Hinshaw & Culbertson
400 South Ninth Street
Suite 200
Springfield, IL 62701
(217) 528-7375

4. *United States v. Barefield, et al.*, CDIL CR99-20022, 6 Fed. Appx. 351 (7th Cir. 2001) (unpublished)

From 1991 until April 1998, seven members of the Barefield family of Champaign ran a highly successful stolen car operation, using sophisticated techniques. Hundreds of cars were stolen from east central Illinois to Chicago and east to Gary, Indiana. All seven of the indicted members of the Barefield family pled guilty. I was the lead counsel on the case. One defendant unsuccessfully appealed his conviction and sentence.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for L. Barefield:
John C. Taylor
Assistant Federal Defender
300 West Main Street
Urbana, IL 61802
(217) 373-0666

Counsel for F. Douglas Barefield:
Scott A. Lerner
Lerner Law Offices
201 West Springfield Avenue
Suite 608

Champaign, IL 61824
(217) 356-8381

Counsel for A.W. Barefield:
Michael J. Costello
Costello Law Office
820 South Second Street
1st Floor
Springfield, IL 62704
(217) 544-5500

Counsel for F. David Barefield:
Willie Harris
504 Broadway
#1016
Gary, IN 46402
(219) 882-3424

Counsel for F.L. Barefield:
Ralph E. Williams
P.O. Box 3081
Springfield, IL 62708
(217) 414-8290

Counsel for A. Barefield:
Walter Ding
Dodson, Piraino & Associates
501 West University Avenue
Suite 100
Champaign, IL 61820
(217) 359-8200

Counsel for N. Barefield:
Andrew J. McGowan
Assistant Federal Public Defender
401 Main Street
Suite 1500
Peoria, IL 61602
(309) 671-7891

5. *United States v. White*, CDIL CR03-20092, 519 F.3d 342 (7th Cir 2008)

From 1997 through 2003, White gradually became the largest cocaine dealer in Decatur, Illinois. As a result, he became the focus of a federal investigation. In late 2003, multiple search warrants were executed at homes and businesses related to White. More than a dozen firearms were recovered, including two fully automatic assault rifles. Agents also seized hundreds of rounds of ammunition, bullet-proof vests, scales, safes, and two SUVs

with electronically controlled hidden compartments, along with several kilos of cocaine. White was indicted on both drug and firearm charges. He pleaded guilty to the firearm charges and proceeded to trial on the drug charges. After a hotly-contested trial, White was found guilty. I was the first chair at the trial. White's conviction and sentence were affirmed on appeal.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for White:
Jon Gray Noll
Noll Law Office
802 South Second Street
Springfield, IL 62704
(217) 544-8441

6. *United States v. Wilson, et al.*, CDIL CR09-20090

In 1990, Wilson was convicted of a federal firearms offense and sentenced to a mandatory minimum 15 years imprisonment as an Armed Career Criminal. On August 4, 2007, while on federal supervised release from his earlier conviction, Wilson, accompanied by his look-out, Martin, robbed the First Federal Savings bank in Champaign, Illinois. Before they could successfully make their getaway, they were arrested. Wilson pled guilty. Martin proceeded to trial and was found guilty. I was the first chair at the trial. Neither Wilson nor Martin appealed.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for Wilson:
David N. Rumley
Law Office of David N. Rumley
401 West Elm Street
Urbana, IL 61801
(217) 778-8142

Counsel for Martin:
Harvey C. Welch
Welch & Hicks
401 West Elm Street
Urbana, IL 61801
(217) 367-3200

7. *United States v. Hamilton*, CDIL CR97-20044, 142 F.3d 440 (7th Cir. 1998) (unpublished)

Hamilton was a multiple-convicted crack cocaine dealer. He avoided additional convictions by intimidating witnesses and offering to pay crack addicts to store his crack cocaine stash in their homes. During the execution of a state search warrant, Hamilton

was found with a quarter-kilogram of crack, scales, a razor, and plastic baggies. He was indicted on drug charges and proceeded to trial. Prior to his trial, he successfully intimidated several witnesses and they refused to testify. Nevertheless, after a highly contentious trial, the jury convicted Hamilton. He was sentenced to mandatory life imprisonment without possibility of release. I was the first chair at the trial. Hamilton's conviction and sentence were upheld on appeal.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for Hamilton:
Patricia Bender
5415 North Sheridan Road
Suite 1411
Chicago, IL 60640
(no telephone listed with Illinois ARDC)

8. *United States v. Henkel*, CDIL CR07-20021

Henkel was a captain in the Army National Guard who served in Iraq during Operation Iraqi Freedom. He became frustrated and bitter towards the Army when he was passed over for a promotion to major. When his unit returned from Iraq in 2006, Henkel concealed much of his unit's equipment. Henkel then attempted to sell approximately $90,000 worth of functional military equipment both privately and on e-Bay. Before Henkel could sell most of the equipment, his house was searched and hundreds of pieces of stolen military equipment were recovered. Henkel was indicted and pled guilty to theft of government property. I was the lead prosecutor on the case. There was no appeal.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for Henkel:
John C. Taylor
Assistant Federal Defender
300 West Main Street
Urbana, IL 61802
(217) 373-0666

9. *United States v. Jones*, CDIL CR02-20092, 455 F.3d 800 (7th Cir. 2006)

Jones operated a lucrative crack house in Decatur, Illinois. When police executed a search warrant, they found a small amount of crack and money next to Jones' identification and personal effects near the front door of the house. In an abandoned back bedroom of the house, agents discovered 175 crack cocaine rocks and $1,700 in cash hidden in a paper bag behind a metal radiator. Jones was indicted and proceeded to trial. During the trial, an expert witness testified that experienced drug distributors often separated their "street" amounts of money and crack from their "stash" so that if they were robbed while making a crack sale, they would not lose everything. Further, Jones' prior felony drug convictions were introduced under Fed. R. Evid. 404(b) to provide a

foundation for the argument that Jones was familiar with the technique of separating the "street" amount from the "stash." I was the first chair at the trial. Jones was convicted and appealed. On appeal, Jones' conviction and sentence were upheld. Further, the appellate opinion focused on the Fed. R. Evid. 404(b) issue and clarified the procedure a district court should follow in determining whether the prosecution may introduce this type of evidence.

Presiding Judge: United States District Judge Michael P. McCuskey

Counsel for Jones:
Andrew J. McGowan
Assistant Federal Defender
401 Main Street
Suite 1500
Peoria, IL 61602
(309) 671-7891

10. *United States v. Lustfeldt*, CDIL CR07-20075

Lustfeldt was employed with The First National Bank of Gilman, Illinois, Watseka Branch, as one of the bank's more senior employees. In April 2007, bank personnel discovered that Lustfeldt had embezzled approximately $18,000. The prosecution was made more complicated because Lustfeldt's husband was a local judge. After the local State's Attorney declined to charge Lustfeldt, she was federally indicted. She retained a former Assistant United States Attorney and attempted to negotiate an exceptionally favorable plea agreement because of her charitable activities and her position on various civic boards. These attempts were unsuccessful. As a result, Lustfeldt pled guilty without a plea agreement. I was the lead prosecutor in the case. There was no appeal.

Counsel for Lustfeldt:
Lawrence S. Beaumont
Law Office of Lawrence S. Beaumont
53 West Jackson
Room 626
Chicago, IL 60603
(312) 765-6000

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 I have directed hundreds of Grand Jury investigations, approximately one dozen of them were both significant and, through an exercise of prosecutorial discretion, resulted

in no charges being brought against the subject or target of the investigation. Three of these Grand Jury investigations involved matters of national security, which later became classified; several of them also involved allegations of public corruption at the state level.

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.

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

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

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 employ all applicable guidelines, including Canon 3 of the Code of Conduct for United States Judges and other applicable rules, statutes and practices. I will always be mindful of the judiciary's responsibility to avoid actual conflicts and the appearance of them. I also anticipate seeking advice from my learned colleagues as appropriate.

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.

Since 2003, I have consistently made contributions to the Central Illinois Chapter of the American Red Cross and was specially recognized for my efforts in 2007.

Over the last twelve years, I also participated in various charitable community events as they have arisen. For example, most recently in 2012 I helped organize a 5K charitable run for Imagine No Malaria to purchase bed nets for families in Africa. In 2011, I participated in Feed My Starving Children to help children in need receive ready-packed meals.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In 2009, Senator Richard Durbin convened a Selection Committee to consider applicants for the district court vacancies in the Central District of Illinois. I applied to this Committee and was interviewed by it in late 2009. In January

2010, I interviewed with Senator Durbin's staff, and I subsequently interviewed with Senator Durbin. On February 26, 2010, Senator Durbin forwarded my name to the White House, but I was not selected for nomination at that time. In November 2012, I contacted Senator Durbin's staff after learning about another upcoming vacancy in the Central District of Illinois, and I interviewed with Senator Durbin on January 9, 2013. Since January 24, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 28, 2012, I met with officials from the White Counsel's Office and the Department of Justice in Washington, DC. On April 30, 2013, the President announced his intent to nominate me, and on May 6, 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. 1/2013

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Bruce, Colin S.	U.S. District Court, Central District of Illinois	05/01/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge	☑ Nomination Date 4/30/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 04/16/2013
7. Chambers or Office Address		
U.S. Attorney's Office 201 South Vine St. Suite 226 Urbana Il 61801		

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.***

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 Bruce, Colin S.	Date of Report 05/01/2013

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 (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

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

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Bruce, Colin S.	05/01/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Bruce, Colin S.	Date of Report 05/01/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. BUSEY BANK (CASH)	A	Interest	J	T	Exempt				
2. SABADELL UNITED BANK (VIRTUAL BANK MONEY MARKET) (CASH)	A	Interest	J	T					
3. SANGAMON SCHOOLS CREDIT UNION (CASH)	A	Interest	J	T					
4. UNIVERSITY OF ILLINOIS EMPLOYEES CREDIT UNION (CASH)	A	Interest	J	T					
5. COLLEGE SAVINGS IOWA (§529 PLAN): AGGRESSIVE GROWTH	B	Interest	M	T					
6. GE STOCK	A	Dividend	J	W					
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

Name of Person Reporting	Date of Report
Bruce, Colin S.	05/01/2013

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

The date of nomination listed in Box 5a is the date the President announced his intent to nominate me.

Name of Person Reporting	Date of Report
Bruce, Colin S.	05/01/2013

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/ Colin S. Bruce

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		13	014	Notes payable to banks-secured			
U.S. Government securities – Series EE		2	200	Notes payable to banks-unsecured			
Listed securities – see schedule		122	416	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		121	500
Real estate owned – personal residence		210	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		13	400				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		454	245				
				Total liabilities		121	500
				Net Worth		693	775
Total Assets		815	275	Total liabilities and net worth		815	275
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	
College Savings Iowa 529 – Aggressive Growth Portfolio	$ 118,044
General Electric stock	4,372
Total Listed Securities	$ 122,416

AFFIDAVIT

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

April 30, 2013
(DATE)

(NAME)

(NOTARY)

OFFICIAL SEAL
KARI M REED
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/19/15

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Sara Lee Ellis

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

   United States District Judge for the Northern District of Illinois

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

   Schiff Hardin LLP
   233 South Wacker Drive, Suite 6600
   Chicago, Illinois 60606

   Loyola University Chicago School of Law
   25 East Pearson Street
   Chicago, Illinois 60611

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

   1969; London, Ontario, Canada

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, Loyola University Chicago School of Law; J.D., 1994

   1987 – 1991, Indiana University; B.A., 1991

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

2008 – present
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
Counsel

2011 – present, 1998 – 2001
Loyola University Chicago School of Law
25 East Pearson Street
Chicago, Illinois 60611
Adjunct Professor

2004 – 2008
City of Chicago Department of Law
30 North LaSalle Street
Chicago, Illinois 60602
Assistant Corporation Counsel (2004 – 2007)
Special Assistant Corporation Counsel (2007 – 2008)

2000 – 2004
Stetler & Duffy, Ltd. (now Stetler Duffy & Rotert, Ltd.)
11 South LaSalle Street
Chicago, Illinois 60603
Associate (2000 – 2002)
Of Counsel (2002 – 2004)

Fall 1994
Cook County Public Defender's Office
69 West Washington Street, Suite 1600
Chicago, Illinois 60602
Volunteer Attorney

1993 – 1999
Federal Defender Program
55 East Monroe Street
Chicago, Illinois 60603
Student Intern (1993 – 1994)
Staff Attorney (1994 – 1999)

1992
Loyola University Chicago School of Law
25 East Pearson Street
Chicago, Illinois 60611
Student Intern

Other Affiliations (uncompensated):

2005 – present
Northside Catholic Academy
6216 North Glenwood Avenue
Chicago, Illinois 60660
Board member (2005 – 2007, 2012 – present)
Secretary (2011 – 2012)
President (2008 – 2010)

2008 – present
Warren Park Youth Baseball League
6601 North Western Avenue
Chicago, Illinois 60645
Board member

1993 – 1994
Public Interest Law Society
Loyola University Chicago School of Law
25 East Pearson Street
Chicago, Illinois 60611
President

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

   I have never served in the U.S. Military. I was not required to register for the selective service.

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

   Federal Defender Program: Student Intern Award (1994)

   Dean's List, Loyola University Chicago School of Law (1992 – 1994)

   Academic Awards in Secured Transactions (1994) and Bill of Rights (1993) courses, Loyola University Chicago School of Law

   Leadership and Service Award, Loyola University Chicago School of Law (1994)

   Dean's List, Indiana University (1987 – 1991)

Political Science Department Academic Award, Indiana University (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.

American Bar Association (2011 – present)
Black Women Lawyers Association (2011 – present)
Chicago Bar Association (1995 – 1996, 2008 – 2009, 2012 – present)
Federal Bar Association (2008 – 2009)
Illinois State Bar Association (1994 – 1995)
National Association of Criminal Defense Lawyers (1994 – 1995, 2010 – 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.

Illinois, 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 Seventh Circuit, 1998
United States District Court for the Northern District of Illinois, 1994
Northern District of Illinois Federal Trial Bar, 2000

There have been no lapses in membership.

11. **Memberships**:

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

Northside Catholic Academy School Board (2005 – present)
Board member (2005 – 2007, 2012 – present)
President (2008 – 2010)
Secretary (2011 – 2012)

Northside Catholic Academy Finance Committee (2009 – present)

Northside Catholic Academy Parent Organization (2005 – present)

St. Gertrude Parish Gralley Fundraising Steering Committee (2008 – 2011)
Chair of Entertainment Committee (2008 – 2011)

Warren Park Youth Baseball League
Board member (2008 – 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 either through formal membership requirements or the practical implementation of membership policies.

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

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

I have not written or edited any 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.

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 of which I was or am a member.

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 issued or provided any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, either directly or indirectly, 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.

April 11, 2009: I gave a speech and participated in a question-and-answer session before the Cook County Democratic Committee for the 10th District of the Cook County Board of Commissioners, Chicago, Illinois. I discussed my qualifications for Cook County Commissioner. I have no notes, transcript, or recording. The Democratic Committeemen of the 10th District of Cook County is located at 118 North Clark Chicago, IL 60602.

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.

Jerry Thomas, *Inmate Convicted for Mailing Bombs*, Chicago Tribune, November 1, 1997. 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 held judicial office.

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

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

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

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

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

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

I have not held public office. In 2009, I unsuccessfully applied for appointment to fill Cook County Commissioner Michael Quigley's vacated seat.

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

Volunteer, Ann Collins Dole for Cook County Judge for the 8th Judicial Sub-Circuit, Chicago, IL (2007 – 2008)

Volunteer, Harry Osterman for City of Chicago Alderman, Chicago, IL (2010 – 2011)

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 judicial clerk.

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.

1994 – 1999
Federal Defender Program
55 East Monroe Street
Chicago, Illinois 60603
Staff Attorney

2000 – 2004
Stetler & Duffy, Ltd.
11 South LaSalle Street
Chicago, Illinois 60603
Associate (2000 – 2002)
Of Counsel (2002 – 2004)

2004 – 2008
City of Chicago Department of Law
30 North LaSalle Street
Chicago, Illinois 60602
Assistant Corporation Counsel (2004 – 2007)
Special Assistant Corporation Counsel (2007 – 2008)

2008 – present
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
Counsel

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.

During my 18-year career as an attorney, I have practiced almost exclusively in federal court as a litigator for both criminal and civil matters. I have practiced both in district court and the Court of Appeals. My cases have covered a wide range of matters and involved diverse issues.

In 1994, I began my legal career as a staff attorney for the Federal Defender Program. My responsibilities consisted of representing indigent adults from the target stage of a criminal investigation through trial, sentencing and appeal. I negotiated plea agreements, represented cooperating individuals, took cases to trial, and litigated numerous sentencing hearings.

In 2000, I joined Stetler & Duffy Ltd., a white collar boutique law firm as a part-time associate. While at Stetler & Duffy, I continued to practice criminal defense in federal court. I expanded my practice to include the representation of corporations in criminal federal litigation. I also continued to represent indigent persons through my involvement in the Federal Defender Panel.

From 2004 through 2007, I handled § 1983 civil rights cases for the City of Chicago as an assistant corporation counsel. My practice specialized in *Monell* policy litigation on behalf of the Chicago Police Department. The cases I litigated were almost exclusively in the federal system. In January 2008, I began working at Schiff Hardin as part of the litigation team defending the City of Chicago in a large class action lawsuit, *Dunn v. City of Chicago*, 04-C-6804. During this period of time, I was a special assistant corporation counsel detailed to Schiff Hardin to work on this matter because the matter was too large for the City of Chicago to maintain in-house. I later joined Schiff Hardin in June 2008 as counsel and continued to work on this matter until its final resolution in 2012.

Currently, I am a member of the General Litigation and White Collar practice groups at Schiff Hardin, LLP, where I have been practicing for five years. I have a wide-ranging practice which has included cases involving white collar criminal litigation, counseling on corporate compliance issues, internal investigations, complex civil litigation, FDIC civil investigations of failed banks, and § 1983 actions defending the City of Chicago and the University of California. My litigation practice continues to consist of nearly 100 percent federal cases.

As a criminal defense attorney, I have represented individuals and corporations throughout every stage of the federal prosecution process. I have experience representing clients in initial appearances, detention hearings, preliminary hearings, arraignments, suppression hearings, change of plea hearings, hearings on pre-trial motions, trials, sentencing hearings, post-sentencing hearings (such as probation or supervised release revocation hearings), and appeals. Further, I have represented cooperating individuals and assisted in witness preparation. I have written and argued pre-trial and post-trial motions, as well as sentencing memoranda. I have written appeals and argued before the Seventh Circuit. My experience includes litigating cases that range from simple misdemeanors to complex felonies involving RICO, complicated financial frauds, political corruption, and violations of statutory regulations. I have participated in trials that have lasted a few days to a few weeks, as well as one that continued for six months. I have extensively litigated issues relating to the Federal Sentencing Guidelines.

As a civil litigator, I am experienced in drafting federal complaints and litigating motions to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6). I have participated in preliminary injunction hearings and hearings for temporary restraining orders. I have litigated cases through discovery and handled hearings on a myriad of discovery disputes. I have written and argued motions for summary judgment as well as pre-trial and post-trial motions. I also have federal civil trial experience. In addition, I have participated in numerous settlement conferences. For one case in particular, I participated in over 30 settlement conferences that continued for the better part of a year before finally resolving through a settlement. My civil federal litigation experience includes class actions, including administration of settlements, § 1983 matters, and commercial litigation.

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

As a staff attorney at the Federal Defender Program, my typical clients were indigent adults charged with federal crimes or indigent adults who were witnesses in federal criminal prosecutions. My practice consisted exclusively of federal criminal law.

In private practice at Stetler & Duffy, Ltd., I continued to represent indigent adults charged with federal crimes as a panel attorney with the Federal Defender Program. I also represented individuals and corporations in criminal matters. My practice involved federal criminal law.

At the City of Chicago Department of Law, I represented the Chicago Police Department in defending civil lawsuits brought under 42 U.S.C. § 1983. I specialized in *Monell* policy litigation.

As counsel at Schiff Hardin LLP, I represent a variety of individuals and corporations in criminal matters, corporate investigations, and civil commercial litigation. My practice is varied and almost evenly split between criminal and civil litigation.

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

The vast majority of my practice has been in litigation. The first half of my legal career, at the Federal Defender Program and in private practice, was focused on criminal defense. During that time, I handled all aspects of criminal litigation, including representing clients in initial appearances, detention hearings, preliminary hearings, arraignments, suppression hearings, change of plea hearings, hearing on pre-trial motions, trials, sentencing hearings, post-sentencing hearings (such as probation or supervised release revocation hearings), and appeals. Further, I represented cooperating individuals and assisted in witness preparation. I wrote and argued pre-trial and post-trial motions, as well as sentencing memoranda. I wrote appeals and argued before the Seventh Circuit. My court appearances during this period were frequent.

While practicing in the City of Chicago Law Department, my legal practice was focused on civil litigation, specifically § 1983 civil rights litigation. During that time, I handled all aspects of civil litigation, including answering complaints, drafting and responding to written discovery, taking and defending depositions, being primary counsel at trial, and assisting our appellate group in drafting appeals before the Seventh Circuit. During the time at the City of Chicago Law Department, I appeared in court frequently.

Currently, at Schiff Hardin LLP, my practice is a mix of criminal and civil litigation, split almost equally between them. I appear in court on a regular basis.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 5%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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

I have tried 11 cases to verdict, judgment or final decision. I was lead counsel for eight trials and associate counsel for three trials.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

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

I have not practiced before the Supreme Court of the United States.

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

a. the date of representation;

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

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

1. *United States v. Hurtgen*, Case No. 05-CR-408 (N.D. Ill.)

This is a criminal case in which the government charged my client with extortion and honest services fraud. The district court vacated his criminal conviction on honest services fraud pursuant to the Supreme Court's opinion in *United States v. Skilling*, 130 S. Ct. 2896 (2010). My client moved to dismiss the extortion count still pending against him, arguing that *Skilling* precluded extortion under color of law where the indictment failed to allege knowledge of a kickback or bribe. The district court agreed, dismissing the last remaining count in the indictment. I represented Mr. Hurtgen in preparing for trial, his guilty plea, and the subsequent motion to dismiss. The dates of my representation were 2008 to 2012. The case was litigated before U.S. District Judge John Grady. Opposing counsel were

Kaarina Salovaara, 219 South Dearborn Street, 5th Floor, Chicago, IL 60604, (312) 353-8880, and Joseph Ferguson (former AUSA), City of Chicago Office of the Inspector General, 740 North Sedgwick Avenue, Suite 200, Chicago, IL 60654, (773) 478-7799.

2. *Dunn v. City of Chicago*, Case No. 04-C-6804 (N.D. Ill.)

Plaintiffs brought a class action lawsuit claiming that the policies and procedures of the Chicago Police Department regarding the treatment of arrestees violated their constitutional rights. This case involved significant briefing on issues of length of detention and conditions of confinement. Further, there were regular settlement conferences that continued for almost one year. After settlement, I administered the distribution of the settlement fund. The Chicago Police Department instituted a number of policies to address the claims raised in this litigation. I assisted with the creation of these policies and procedures. I represented the City of Chicago from 2004 to 2012, from shortly after the filing of the complaint through the final resolution of this matter. The case was litigated before U.S. District Judge Robert W. Gettleman. Opposing counsel were Michael Kanovitz and Heather Donnell, Loevy & Loevy, 312 North May Street, Suite 100, Chicago, IL 60607, (312) 243-5900.

3. *Long Haul, Inc. et al. v. United States, et al.*, Case No. 09-C-168 (N.D. Cal.)

Plaintiffs, tenants of a building wherein a search warrant was executed, brought suit claiming that the warrant was defective and that defendants violated the Privacy Protection Act. This case raised issues regarding searches involving technology and computer hardware and the interplay between exceptions to the Privacy Protection Act and the protections of the Fourth Amendment. After filing cross motions for summary judgment, the parties resolved this matter through settlement. I represented the University of California and its police officers from the Berkeley campus from the filing of the complaint through settlement. The dates of my representation were 2009 to 2011. The case was litigated before U.S. District Judge Jeffrey S. White and U.S. Magistrate Judge Donna M. Ryu. Opposing Counsel was Jennifer Granick, Center for Internet and Society, 559 Nathan Abbott Way, Crown Quadrangle, Stanford, CA 94305, (650) 736-8675.

4. *Gauger v. Hendle, et al.*, Case No. 03-LA-292 (Ill.)

Plaintiff was exonerated of murdering his parents, following his arrest, conviction and the imposition of a death sentence. Plaintiff brought suit alleging that his civil rights were violated during his arrest, interrogation, and criminal trial. I represented Mr. Gauger after his criminal case during the pendency of his civil rights lawsuit against the police officers and County. This case raised issues of malicious prosecution and the existence of probable cause. This case further raised the issue of how prior criminal court rulings could be used during subsequent civil proceedings. After trial, the jury found for the defendants. I

represented plaintiff and assisted during the preparation of his civil trial, assisted at his civil trial, and participated in drafting his civil appeal. The Illinois Appellate Court found for the appellees after appeal in *Gauger v. Hendle*, 954 N.E.2d 307, 352 Ill.Dec. 447 (Ill.App.Ct. 2nd Dist. 2011). The dates of my representation were 2009 to 2011. The case was litigated before the Honorable Maureen McIntyre, Circuit Court of the Twenty-Second Judicial Circuit, in McHenry County, Illinois. Opposing counsel were James Sotos and Jeffrey Given, 550 East Devon Avenue, Itasca, IL 60143, (630) 735-3300.

5. *Moss v. City of Chicago*, Case No. 05-C-607 (N.D. Ill.)

Plaintiffs brought a class action lawsuit seeking injunctive relief. Plaintiffs alleged that they had been held in custody in violation of their civil rights because they did not receive a *Gerstein* hearing immediately after booking procedures were completed. This matter involved issues related to the timing of Fourth Amendment judicial determinations of probable cause and the completion of the administrative steps incident to arrest. I participated in creating the policies giving guidance to the Chicago Police Department in its detention procedures. This case resolved through settlement. I represented the City of Chicago from the filing of the complaint through settlement. The dates of my representation were 2008 to 2009. The case was litigated before U.S. District Judge Amy St. Eve. Opposing counsel were Thomas Peters (deceased) and Kevin Peters, 53 West Jackson, Suite 1615, Chicago, IL 60604, (312) 697-0022.

6. *Davis v. City of Chicago*, Case No. 05-C-1967(N.D. Ill.)

Plaintiffs brought a class action lawsuit seeking injunctive relief. They claimed that the policies and procedures of the Chicago Police Department regarding the treatment of witnesses in criminal investigations violated witnesses' constitutional rights. This case involved significant briefing on issues of class action certification, the elements of injunctive relief, and summary judgment. Further, there was a preliminary injunction hearing that lasted for one month. At the end of the preliminary injunction hearing and after the denial of plaintiffs' motion for preliminary injunction, the Chicago Police Department created a Special Order that clarified the Department's position on the proper treatment of witnesses in criminal investigations. This Special Order is the first of its kind in any law enforcement agency. I participated in the drafting of this policy. This case resolved through settlement. I represented the City of Chicago in 2005, from the filing of the complaint through settlement. The case was litigated before U.S. Chief District Judge James F. Holderman. Opposing counsel were Locke Bowman, MacArthur Justice Center, Northwestern University Law School, 357 East Chicago Avenue, Chicago, IL 60611, (312) 503-0844, and Craig Futterman, Mandel Legal Aid Clinic, University of Chicago Law School, 6020 South University Avenue, Chicago, IL 60637, (773) 702-9611.

7. *Paine v. City of Chicago*, Case No. 06-C-3173 (N.D. Ill.)

Plaintiff was the mother of a mentally ill woman who was arrested and released from the custody of the Chicago Police Department. After the daughter's release, she was abducted, raped, and fell out of a seventh-story window at a Chicago Housing Authority building. Plaintiff sued the City of Chicago alleging that her daughter's civil rights were violated when the Chicago Police Department made the decision to release her daughter from custody rather than transport her to a medical facility for a mental health evaluation. The case was extensively litigated around discovery issues of protective orders and the media's ability to obtain and disseminate material that had been designated as confidential. Further, this case involved issues of the Chicago Police Department's treatment of mentally ill persons, the rights of mentally ill persons, proximate cause, and the litigation of a highly publicized case. This case is currently set for trial. I represented the City of Chicago from the filing of the complaint in 2006 through 2008. This case was litigated before U.S. District Judge Mark Filip (ret.) and U.S. Magistrate Judge Maria Valdez. Opposing counsel was Jeffrey Singer, Segal, McCambridge, Singer & Mahoney, Willis Tower Suite 5500, 233 South Wacker Drive, Chicago, IL 60606, (312) 645-7800.

8. *Klipfel v. City of Chicago, et al.*, Case No. 94-C-6415 (N.D. Ill.)

Plaintiff and her husband were former ATF agents who were suing the City of Chicago for violation of their civil rights in connection with the criminal investigation related to a Chicago police officer later convicted of corruption. The issues in this case involved First Amendment retaliation, civil conspiracy, and *Monell* municipal liability. This case was tried by a jury and the plaintiffs prevailed. I represented the City of Chicago at trial. The dates of my representation were 2006 to 2007. The case was litigated before U.S. District Judge Blanche Manning. Opposing counsel was Sally Saltzberg, 27366 Hickory Ridge Court, Lake Barrington, IL 60010, (312) 913-2000.

9. *United States v. Love*, Case No. 95-CR-46 (N.D. Ill.)

This was a criminal case involving multiple charges of bank robbery. This case challenged the new practice, at the time, of requiring criminal defendants to plead to all counts in an indictment. This litigation also helped to set precedent for criminal defendants to challenge legal issues at trial without compromising their ability to seek credit at sentencing for acceptance of responsibility. Mr. Love entered a guilty plea to two counts in the indictment and was found guilty after a bench trial of the remaining count. I represented Mr. Love from his arrest through sentencing. The dates of my representation were 1995 to 1996. The case was litigated before U.S. District Judge Charles P. Kocoras. Opposing counsel was Jacqueline F. Ross (former AUSA), 1409 Clinton Avenue, Berwyn, IL 60402, (708) 749-9452.

10. *United States v. Patterson, et al.*, Case No. 95-CR-242 (N.D. Ill.)

This case was a large, multi-defendant drug conspiracy trial involving the Traveling Vice Lords Gang. I represented Mr. Williams, one of the 21 defendants. The trial took place over six months and the sentencing hearing did not occur until nearly a year later. This was my first significant trial. The government filed a sentencing enhancement based upon the drug quantities that would have guaranteed a life sentence for my client and many of the other defendants. I filed a sentencing memorandum challenging that enhancement and the government withdrew the enhancement. This case was significant because I was able to avoid a life sentence, not only for my own client, but for other individuals in the case. I represented Mr. Williams from his initial arrest through trial and sentencing. I also participated in drafting arguments for the joint appeal. The Seventh Circuit affirmed the judgments of all defendants, save one, and rejected the argument that the type and quantity of drugs must be found as elements of the offense under 21 U.S.C. §841. *United States v. Patterson*, 215 F.3d 776 (7th Cir. 2000). The Supreme Court vacated the judgments of several of the defendants and remanded the cases to the Seventh Circuit for consideration in light of the Supreme Court's ruling in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Patterson v. United States*, 121 S.Ct. 621 (2000). I was not involved in the Supreme Court briefing. The dates of my representation were 1995 to 1998. The case was litigated before U.S. District Judge Robert W. Gettleman. Opposing counsel were Diane Saltoun, Office of the Inspector General for the Attorney General, 100 West Randolph Street, Chicago, IL 60601, (312) 814-2963, and Ryan Stoll, 33 West Wacker Drive, Suite 2100, Chicago, IL 60606, (312) 407-0780.

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

In *Mason v. County of Cook Illinois*, 06-C-3449, before Judge James B. Zagel, I represented the Cook County Public Defender's Office in a lawsuit brought to change the procedures by which criminal defendants receive a bond hearing in state court. This lawsuit challenged the practice of using video cameras in bond court. I assisted plaintiffs' counsel in working to remove video cameras in bond court and hold bond hearings in person. Ultimately, this case settled and currently, Cook County bond court holds hearings with criminal defendants present in person.

I am currently representing on a *pro bono* basis a plaintiff in a civil rights lawsuit who is challenging the practice of using solitary confinement for extended periods of time. In *Sparlin v. LaSalle County, et al.*, 11-C-3875, Mr. Sparlin alleges that his civil rights were

violated by being held for months in solitary confinement in the LaSalle County Jail. This litigation will explore the effects of extended solitary confinement on detainees, seek to limit the use of solitary confinement and require evaluation of detainees who are subject to solitary confinement.

I have also provided legal assistance on a *pro bono* basis for the Warren Park Youth Baseball League, including advocating for the inclusion of female baseball players on high school baseball teams. I have compiled legal research for high school girls to use in advocating for their inclusion on high school baseball teams.

I have not performed any lobbying activities on behalf of any 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.

    Federal Criminal Practice, Loyola University Chicago School of Law, 2011 – present
    The major topics covered in the course are: (1) the role and scope of the federal criminal justice system; (2) grand jury investigations and federal indictments; (3) federal narcotics prosecutions; (4) law enforcement interviews and interrogations; (5) the use of informants in federal investigations and prosecutions; (6) plea bargaining and cooperation agreements; (7) the Racketeer Influenced and Corrupt Organization ("RICO") statute; (8) the law of conspiracy; (9) the role of the jury; and (10) the Federal Sentencing Guidelines. Syllabus supplied.

    Legal Writing, Loyola University Chicago School of Law, 1998 – 2001
    The course covered legal research, legal citation form, legal analysis, and legal writing of memoranda and briefs. I do not have a syllabus from this course.

    Street Law, Cook County Juvenile Detention Center, 1994 –1997
    The course subject matter included basic reading comprehension skills, civil rights, and criminal law. The major topics covered were reading comprehension skills, arrest, interrogation, and search and seizure. I do not have a syllabus from this course.

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

    I am unaware of any deferred income or future benefits to which I am entitled.

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

    I currently teach Federal Criminal Practice, as an adjunct professor at Loyola University Chicago School of Law. If it is consistent with my duties as a federal judge and subject to my ability to complete my judicial work-load, I hope to continue teaching this course.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I anticipate recusing myself in any civil or criminal matter that was investigated, defended, or litigated by me or any attorney whom I supervised while at Schiff Hardin LLP. I may also recuse myself from a civil or criminal matter involving the Cook County Health and Hospitals System where my spouse works as a physician. Lastly, I will evaluate any other real or potential conflict, or relationship that could give rise to the appearance of conflict, on a case by case basis and determine appropriate action with the advice of the parties and their counsel, including recusal where necessary.

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

       I would follow the guidance of the recusal statutes and the Code of Conduct for United States Judges, as well as consult with colleagues if necessary, and recuse myself where appropriate to avoid even the appearance of a conflict.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of

professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Currently, I am representing the plaintiff in *Sparlin v. LaSalle County*, Case No. 11-C-3875, on a *pro bono* basis. This is a § 1983 action against LaSalle County challenging the practice of using solitary confinement for extended periods of time. I met with my client, drafted the amended complaint, drafted discovery and responses, and I continue to litigate this matter.

From 2009 through 2011, I represented the plaintiff in Gauger v. McHenry County, Case No. 03-LA-292, in his civil rights action against McHenry County sheriff officers on a *pro bono* basis. I assisted at trial and with the appeal. I spent over 500 hours on this matter.

In 2010 and 2013, I assisted in coaching students from Hyde Park Academy High School in a mock trial competition. I met with the students twice per week for an hour for approximately two months. I spent an additional two hours per week preparing for the sessions.

From 2008 to present, I have provided legal advice and guidance to the Warren Park Youth Baseball League. I have also been a member of the board since 2008 and have been a volunteer with this league for the past 8 years. I volunteer approximately 100 hours per year to this program.

From 1994 to 2000, I participated in a volunteer program established by Loyola University Chicago School of Law in which volunteers taught an alternating reading skills and "street law" program to children living at the Juvenile Detention Center. This program entailed meeting with the children at the Detention Center two hours per week for 10-week sessions. The preparation time involved one hour per week.

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 judicial application to U.S. Senator Richard Durbin's judicial selection committee in August 2012. On October 9, 2012, I was interviewed by a small sub-group of Senator Durbin's judicial selection committee. The full

selection committee interviewed me on October 12, 2012. The selection commission recommended me as a finalist to be interviewed by Senator Durbin. Senator Durbin then interviewed me on January 10, 2013, and submitted my name to the White House as a potential nominee. I received a telephone call from Senator Durbin's staff informing me that my name was being submitted to the White House on January 14, 2013. Since January 24, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 4, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 30, 2013, the President announced his intent to send 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. 1/2013

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Ellis, Sara L.	Federal district court for the Northern District of Illinois	04/30/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Court Judge	☑ Nomination Date 4/30/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 04/10/2013
7. Chambers or Office Address		
233 South Wacker Drive, Suite 6600 Chicago, IL 60660		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Board member	Warren Park Youth Baseball
2.	Counsel	Schiff Hardin LLP
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 Ellis, Sara L.	Date of Report 04/30/2013

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 (yours, not spouse's)
1. 2013	Schiff Hardin LLP	$26,000.00
2. 2012	Schiff Hardin LLP	$62,000.00
3. 2012	Loyola University Chicago School of Law - teaching	$1,500.00
4. 2011	Schiff Hardin LLP	$91,000.00
5. 2011	Loyola University Chicago School of Law _ teaching	$1,500.00

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2013	Cook County - salary
2. 2013	Doctors' Council board member - fees
3. 2012	Cook County - salary
4. 2012	Doctors' Council board member - fees

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 Ellis, Sara L.	Date of Report 04/30/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Ellis, Sara L.	04/30/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. Citibank Accounts	A	Interest	J	T	Exempt				
2. American Funds American Balanced Fund	A	Dividend	J	T					
3. American FUnds Capital World Growth and Income Fund	C	Dividend	K	T					
4. Vanguard LifeStrategy Growth Fund	B	Dividend	K	T					
5. Cook County Blended Fixed Option	A	Dividend	J	T					
6. Eagle Seres Trust Mid Cap Stock Fund	B	Dividend	K	T					
7. Fidelity Contrafund	C	Dividend	L	T					
8. Oakmark Equity and Income Fund	B	Dividend	K	T					
9. PIMCO Total Return Fund	B	Dividend	K	T					
10. William Blair Small Cap Growth Fund	A	Dividend	J	T					
11. Cook County Pension Fund	D	Dividend	M	T					
12.									
13.									
14.									
15.									
16.									
17.									

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

Name of Person Reporting	Date of Report
Ellis, Sara L.	04/30/2013

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

The date of nomination listed in Box 5a is the date the President announced his intention to nominate me.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Ellis, Sara L.	Date of Report 04/30/2013

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/ Sara L. Ellis

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		14	395	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		199	009	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		410	098
Real estate owned – personal residence		650	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		21	000				
Cash value-life insurance							
Other assets itemize:							
Cook County Pension Fund		208	743				
				Total liabilities		410	098
				Net Worth		683	049
Total Assets	1	093	147	Total liabilities and net worth	1	093	147
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	
American Funds American Balanced Fund	$ 12,358
American Funds Capital World Growth and Income Fund	36,302
Cook County Blended Fixed Option	5,163
Eagle Series Trust-Mid Cap Stock Fund	16,814
Fidelity Contrafund	54,821
Oakmark Equity and Income Fund	26,220
PIMCO Total Return Fund	18,209
Vanguard LifeStrategy Growth Fund	23,142
William Blair Small Cap Growth Fund	5,980
Total Listed Securities	$ 199,009

AFFIDAVIT

I, Sara Lee Ellis, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5/01/2013
(DATE)

(NAME)

Nancy Lynn Brehme
(NOTARY)

OFFICIAL SEAL
NANCY LYNN BREHME
Notary Public - State of Illinois
My Commission Expires May 21, 2013

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Andrea Robin Wood

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

   United States District Judge for the Northern District of Illinois

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

   U.S. Securities and Exchange Commission
   175 West Jackson Boulevard, Suite 900
   Chicago, Illinois 60604

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

   1973; St. Louis, Missouri

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

   1995 – 1998, Yale Law School; J.D., 1998

   1991 – 1995, University of Chicago; B.A., *honors*, 1995

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

   2004 – present
   U.S. Securities and Exchange Commission
   175 West Jackson Boulevard, Suite 900
   Chicago, Illinois 60604

Senior Trial Counsel, Division of Enforcement (2007 – present)
Senior Attorney, Division of Enforcement (2004 – 2007)

Summer 1997, 1999 – 2004
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Associate (1999 – 2004)
Summer Associate (Summer 1997)

1998 –1999
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to the Honorable Diane P. Wood

1996 – 1998 (during academic year)
Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, Connecticut 06520
Student Director

Summer 1997
U.S. Department of Justice, Civil Division, Commercial Litigation Branch
950 Pennsylvania Avenue, NW
Washington, DC 20530
Summer Honors Intern

Summer 1996
SNR Denton (formerly Sonnenschein Nath & Rosenthal LLP)
233 South Wacker Drive
Suite 7800
Chicago, Illinois 60606
Summer Associate

Summer 1995
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Summer Paralegal/Sponsors for Educational Opportunity 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 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.

Professional
Director's Award from the Director of the Division of Enforcement (2007)

I have also received approximately eight Special Act awards for work on individual matters since joining the Commission in 2004.

Academic
Yale Law Journal (Articles Editor, 1997 – 1998)
Yale Law and Policy Review (Articles Editor, 1996 – 1997)
University of Chicago, Convocation Speaker (1995)
University of Chicago, Honors (1995)
University of Chicago, Phi Beta Kappa Society (elected 1995)
University of Chicago, Maroon Key Honor Society (elected 1994)
University of Chicago, College Honors Scholarship recipient (full tuition)
University of Chicago, Dean's List (all quarters)

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 (1999 – present)
Section of Litigation
Section of Administrative Law and Regulatory Practice
Section of Criminal Justice

Black Women Lawyers' Association of Greater Chicago (1999 – present)
Judicial Evaluations Committee (2006 – 2007, 2012 – present)
Mentoring Committee (2012 – present)

Chicago Bar Association (1999 – present)
CBA Chorus (2007 – present)
Federal Civil Practice Committee (2009 – present)
Alliance for Women (2009 – present)

10. **Bar and Court Admission**:

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

Illinois, 1998

There have been no lapses in membership.

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

United States Court of Appeals for the Seventh Circuit, 1999
United States District Court for the Northern District of Illinois, 2000

There have been no lapses in membership.

11. **Memberships**:

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

Literacy Chicago, Associate Board (2003 – 2004)
University of Chicago Alumni Schools Committee (2013 – 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, neither 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.

During college, I served as Staff Writer and News Editor for the student newspaper THE CHICAGO MAROON. In those positions, I authored numerous published articles, including the following:

Andrea Wood, *Police search for multiple rapist*, THE CHICAGO MAROON, May 10, 1994. Copy supplied.

Andrea Wood, *Former Alpha Delt pledge recounts troubling fraternity experiences*, THE CHICAGO MAROON, May 3, 1994. Copy supplied.

Andrea Wood, *Moon church brings peace campaign to campus*, THE CHICAGO MAROON, Apr. 12, 1994. Copy supplied.

Andrea Wood, *University acknowledges financial crisis, Administration calls for drastic action to reverse downward trend*, THE CHICAGO MAROON, Apr. 8, 1994. Copy supplied.

Andrea Wood, *Saller appointed Social Sciences Division dean*, THE CHICAGO MAROON, Apr. 5, 1994. Copy supplied.

Andrea Wood, *University announces 5.3% tuition increase*, THE CHICAGO MAROON, Mar. 8, 1994. Copy supplied.

Andrea Wood, *Model UN wins top honors at Harvard conference*, THE CHICAGO MAROON, Feb. 25, 1994. Copy supplied.

Andrea Wood, *Alpha Delt president, victim criticize University response*, THE CHICAGO MAROON, Feb. 22, 1994. Copy supplied.

Andrea Wood, *Sexual violence center seeks to raise awareness*, THE CHICAGO MAROON, Feb. 22, 1994. Copy supplied.

Andrea Wood, *College Bowl team racks up win on the road*, THE CHICAGO MAROON, Feb. 18, 1994. Copy supplied.

Andrea Wood, *Toure calls for student action against capitalism*, THE CHICAGO MAROON, Feb. 15, 1994. Copy supplied.

Amy McGoldrick and Andrea Wood, *Student accuses two Alpha Delts of sexual assault*, THE CHICAGO MAROON, Feb. 11, 1994. Copy supplied.

Andrea Wood, *CSO conductor Barenboim speaks on 'nature' of music*, THE CHICAGO MAROON, Feb. 11, 1994. Copy supplied.

Andrea Wood, *Program battles drug abuse among homeless*, THE CHICAGO MAROON, Feb. 1, 1994. Copy supplied.

Andrea Wood, *SG recommends student fee hike*, THE CHICAGO MAROON, Jan. 21, 1994. Copy supplied.

Andrea Wood, *Panel challenges image of King, civil rights*, THE CHICAGO MAROON, Jan. 18, 1994. Copy supplied.

Andrea Wood, *Power outage cancels classes*, THE CHICAGO MAROON, Jan. 18, 1994. Copy supplied.

Andrea Wood, *24-hour study space a bust*, THE CHICAGO MAROON, Jan. 11, 1994. Copy supplied.

Andrea Wood, *Radiation experiments provoke ethics debate, U of C exposed cancer patients without consent*, THE CHICAGO MAROON, Jan. 7, 1994. Copy supplied.

Andrea Wood, *Hospital therapist suspended after ventilator error*, THE CHICAGO MAROON, Jan. 7, 1994. Copy supplied.

Amy McGoldrick and Andrea Wood, *Student government shuttles students; backs bylaws*, THE CHICAGO MAROON, Dec. 3, 1993. Copy supplied.

Andrea Wood, *Legal officials rationalize drug policy*, THE CHICAGO MAROON, Nov. 16, 1993. Copy supplied.

Andrea Wood, *SG Assembly votes down allocation proposal*, THE CHICAGO MAROON, Nov. 12, 1993. Copy supplied.

Andrea Wood, *University finds permanent homes for Shoreland overflow*, THE CHICAGO MAROON, Oct. 29, 1993. Copy supplied.

Amy McGoldrick and Andrea Wood, *Student magazine ranks U of C social life 'worst ever,'* THE CHICAGO MAROON, Oct. 26, 1993. Copy supplied.

Andrea Wood, *Admissions battles negative perceptions*, THE CHICAGO MAROON, Oct. 26, 1993. Copy supplied.

Andrea Wood, *Sonnenschein ascends to power, Ceremony marks beginning of University's 11th presidency*, THE CHICAGO MAROON, Oct. 22, 1993. Copy supplied.

Andrea Wood, *Second shooting attributed to gang violence*, THE CHICAGO MAROON, Oct. 22, 1993. Copy supplied.

Andrea Wood, *Student housing admits 'big mistake,' Surprise roommates anger upperclassmen and first-years alike*, THE CHICAGO MAROON, Oct. 8, 1993. Copy supplied.

Andrea Wood, *U of C Laboratory Schools dedicate new addition*, THE CHICAGO MAROON, Oct. 8, 1993. Copy supplied.

Andrea Wood, *Student advocates deliver report on campus computing*, THE CHICAGO MAROON, May 28, 1993. Copy supplied.

Andrea Wood, *Braun returns to alma mater*, THE CHICAGO MAROON, May 25, 1993. Copy supplied.

Andrea Wood, *Abortion activists challenge on 'Common Ground,'* THE CHICAGO MAROON, May 14, 1993. Copy supplied.

Cory Scott and Andrea Wood, *SG campaigns blasted by 'loose cannons,'* THE CHICAGO MAROON, May 11, 1993. Copy supplied.

Andrea Wood, *Carville speaks down to earth on Clinton campaign*, THE CHICAGO MAROON, Apr. 30, 1993. Copy supplied.

Andrea Wood, *SA Court tosses votes: Referendum passes*, The Chicago Maroon, Apr. 27, 1993. Copy supplied.

Andrea Wood, *Korematsu shares plight of WWII internees*, THE CHICAGO MAROON, Apr. 23, 1993. Copy supplied.

Andrea Wood, *Referendum results challenged, Students to face allegations of illegal campaigning in SA Court*, THE CHICAGO MAROON, Apr. 16, 1993. Copy supplied.

Andrea Wood, *SG funding sparks controversy*, THE CHICAGO MAROON, Apr. 9, 1993. Copy supplied.

Andrea Wood, *Motet Choir storms West Coast; Rockefeller next*, THE CHICAGO MAROON, Apr. 2, 1993. Copy supplied.

Andrea Wood, *Urban renewal for HP's neighbors*, THE CHICAGO MAROON, Feb. 23, 1993. Copy supplied.

Jennifer Ordonez and Andrea Wood, *Activities fee set at $20 per quarter*, THE CHICAGO MAROON, Feb. 23, 1993. Copy supplied.

Heather Lauren Hughes and Andrea Wood, *'A Day for Bosnia' addresses region's conflicts*, THE CHICAGO MAROON, Feb. 12, 1993. Copy supplied.

Andrea Wood, *Tiffany Trent: The admissions office and beyond*, THE CHICAGO MAROON, Jan. 26, 1993. Copy supplied.

Andrea Wood, *Profs prophesize on presidency*, THE CHICAGO MAROON, Jan. 15, 1993. Copy supplied.

Andrea Wood, *Student petitions for SA justice's removal*, THE CHICAGO MAROON, Nov. 10, 1992. Copy supplied.

Andrea Wood, *Peer Health Educators address acquaintance rape*, THE CHICAGO MAROON, Nov. 3, 1992. Copy supplied.

Andrea Wood, *Eight new faculty members arrive on campus*, THE CHICAGO MAROON, Oct. 16, 1992. Copy supplied.

Andrea Wood, *Study finds diabetes genetic link*, THE CHICAGO MAROON, May 8, 1992. Copy supplied.

Andrea Wood, *Future secure for U of C Fermilab, Argonne lab*, THE CHICAGO MAROON, May 1, 1992. Copy supplied.

Andrea Wood, *Stored books damaged, repaired at Harper Library*, THE CHICAGO MAROON, Apr. 24, 1992. Copy supplied.

Andrea Wood, *Kenneth Dam revamps United Way of America*, THE CHICAGO MAROON, Apr. 10, 1992. Copy supplied.

Andrea Wood, *US News announces graduate school rankings*, THE CHICAGO MAROON, Apr. 3, 1992. Copy supplied.

Andrea Wood, *Controversy surrounds dental clinic*, THE CHICAGO MAROON, Mar. 6, 1992. Copy supplied.

Andrea Wood, *New umbrella coverage begins*, THE CHICAGO MAROON, Feb. 25, 1992. Copy supplied.

Andrea Wood, *Community discusses Hyde Park youth*, THE CHICAGO MAROON, Feb. 21, 1992. Copy supplied.

Andrea Wood, *Fairy Tales: myth or reality?*, THE CHICAGO MAROON, Feb. 4, 1992. Copy supplied.

Andrea Wood, *Hiring freeze hits home*, THE CHICAGO MAROON, Jan. 21, 1992. Copy supplied.

Andrea Wood, *Americans fear Japanese economic power*, THE CHICAGO MAROON, Nov. 22, 1991. Copy supplied.

Andrea Wood, *Professors challenge Noelle-Neumann*, THE CHICAGO MAROON, Nov. 1, 1991. Copy supplied.

Andrea Wood, *Professor rebuts Nazi charges*, THE CHICAGO MAROON, Oct. 25, 1991. Copy supplied.

Andrea Wood, *Hospitals may expand liver transplant program*, THE CHICAGO MAROON, Oct. 18, 1991. Copy supplied.

Andrea Wood, *Group fights PC label*, THE CHICAGO MAROON, Oct. 15, 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 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.

July 6, 2011: I signed a joint letter from Yale Law School alumni to Senators Patrick J. Leahy and Charles Grassley in support of Jesse Furman's nomination to be appointed as a federal judge on the U.S. District Court for the Southern District of New York. Copy supplied.

May 12, 2010: I signed a joint letter from Yale Law School alumni to Senators Patrick J. Leahy and Jeff Sessions in support of Goodwin Liu's nomination to be

appointed as a federal judge on the U.S. Court of Appeals for the Ninth Circuit. 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.

March 6, 2013: I prepared and presented a short reading to introduce a section of a concert by the Chicago Bar Association Chorus and Symphony Orchestra in Chicago, Illinois. The concert was entitled "Across the Pond: Music from France and America." Notes supplied.

February 16, 2013: I prepared and presented a short reading to introduce a section of a concert by the Chicago Bar Association Chorus and Symphony Orchestra in Springfield, Illinois. The concert was entitled "Lincoln and His America: A Musical Celebration." Notes supplied.

April 9, 2009: I served as a guest lecturer for a securities law class at John Marshall Law School, Chicago, Illinois. Outline and notes supplied.

November 15, 2007: I served as a faculty member for the Public Law Initiative's "Bridge-the-Gap" course for newly admitted attorneys in Chicago, Illinois. I made a presentation entitled *Basics of SEC Practice: Representing Public Companies and Regulated Entities*. The accompanying PowerPoint presentation was also published as part of PLI's course materials. PowerPoint supplied.

June 4, 2007: I served as a faculty member for the Public Law Initiative's "Bridge-the-Gap" course for newly admitted attorneys in Chicago, Illinois. I made a presentation entitled *Basics of SEC Practice: Representing Public Companies and Regulated Entities*. The accompanying PowerPoint presentation was also published as part of PLI's course materials. PowerPoint supplied.

June 10, 1995: I was selected as a student speaker for my commencement ceremony at the University of Chicago in Chicago, Illinois. I spoke regarding the importance of graduates using their University of Chicago education and experiences to make a difference in the world. I have no notes, transcript, or recording. The University of Chicago is located at 5801 South Ellis Avenue, Chicago, IL 60637.

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 Harris, *SEC Submits Revised Koss Settlement After Earlier Rejection*, BLOOMBERG BUSINESSWEEK, Feb. 17, 2012 (updated Feb. 21, 2012). Copy supplied.

Phil Porter, *Judge Orders Assets of Dublin Stockbroker Frozen*, THE COLUMBUS DISPATCH, Aug. 19, 2004. Copy supplied.

Phil Porter, *Dublin, Ohio, Stock Broker Faces Fraud Charges*, THE COLUMBUS DISPATCH, Aug. 14, 2004. 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 held judicial office.

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

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

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

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

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

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

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

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

I have not held any offices 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;

From 1998 to 1999, I clerked for Judge Diane P. Wood, United States Court of Appeals for the Seventh Circuit.

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.

1999 – 2004
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Litigation Associate

2004 – present
U.S. Securities and Exchange Commission
175 West Jackson Boulevard, Suite 900
Chicago, Illinois 60604
Senior Trial Counsel, Division of Enforcement (2007 – present)
Senior Attorney, Division of Enforcement (2004 – 2007)

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.

From 1999 until 2004, I worked as a litigation associate at Kirkland & Ellis LLP. While at Kirkland & Ellis, I spent the vast majority of my time working on litigation in federal court. My experience included day-to-day case management responsibility for multi-million dollar litigation matters, conducting examinations of trial witnesses, planning and implementing litigation strategy, taking and defending depositions of fact and expert witnesses, assisting in the preparation of expert reports, arguing motions, and drafting pleadings and briefs. My litigation matters involved a variety of legal topics including securities, bankruptcy, tax, insurance coverage, contracts, environmental torts, and discrimination.

During my first three years with the SEC, from April 2004 until August 2007, my practice was divided between litigation and investigations. As a Senior Attorney in the Division of Enforcement, I managed complex investigations and litigation matters involving a variety of securities law violations, including accounting and offering frauds, insider trading, unregistered offerings, auditor misconduct and reporting violations. My experience spanned all of the major statutes enforced by the SEC. My investigative work included fact-gathering through interviews, testimonies, document subpoenas and other investigative tools; analyzing evidence; performing legal research; drafting memoranda recommending enforcement action by the Commission; negotiating settlements and drafting settlement papers; and coordinating with other federal and state law enforcement authorities. I also litigated matters in federal district court and administrative proceedings on behalf of the Commission.

Since I became a Senior Trial Counsel at the SEC in 2007, my practice has consisted exclusively of federal litigation, either in district court or in administrative proceedings before the Commission and its hearing officers. I represent the Commission in district courts across the country. I am generally the lead attorney on the cases in which I appear and have primary responsibility for developing strategy, drafting pleadings, conducting fact and expert discovery, motion practice, conducting evidentiary hearings and trials, and engaging in settlement negotiations. The vast majority of my caseload consists of complex litigation. I have extensive experience with discovery matters, including issues involving electronic discovery. As counsel for a federal agency, I also have experience addressing constitutional law and administrative law issues. In addition, I regularly coordinate with U.S. Attorney's Offices, other federal and state law enforcement authorities, and foreign financial and securities regulators on parallel enforcement actions.

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

At Kirkland & Ellis, my typical clients were large national and multi-national corporations and some individuals. I had no particular area of specialization beyond being a litigator. Since I have been employed by the SEC, my only client has been the Commission.

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

Since August 2007, approximately 90% of my practice has been in litigation. The remaining 10% has consisted of advising SEC investigative staff prior to the filing of litigation and during settlement negotiations. When I served as a Senior Attorney at the SEC during the time period from April 2004 until August 2007, I spent approximately 40% of my time working on litigation and 60% of my time working on investigations.

During my time in private practice from 1999 to 2004, I spent over 90% of my time working on litigation. On occasion, I also worked on regulatory matters, such as assisting clients responding to information requests in connection with investigations by federal agencies.

I have appeared in court frequently throughout my career.

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 5%
   3. other courts: 0%

4. administrative agencies: 20%

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 two cases to verdict in SEC administrative proceedings. I served as lead counsel in one proceeding (*In the matter of Oprins and McNeeley*, Admin. Proc. File No. 3-13797) and second-chair in the other (*In the matter of Smith*, Admin. Proc. File No. 3-12267). Both of these cases were bench trials. I also tried a case as associate counsel in bankruptcy court that settled while we were waiting for the court's decision after the close of evidence and post-trial briefing (*In re Conseco, Inc.*, Case No. 02-49672 (Bankr. N.D. Ill.)). In addition, I have served as lead or associate counsel on several cases that were resolved on the merits at the motion to dismiss or summary judgment stage, and several others that settled on the eve of trial after pre-trial preparations had been completed.

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.

1. *SEC v. Sentinel Management Group, Inc. et al.*, Case No. 07-cv-4684, 2012 WL 1079961 (N.D. Ill. March 30, 2012), Honorable Charles P. Kocoras.

The SEC brought this enforcement action against Bloom and Mosley, alleging that they orchestrated a massive fraud at the investment adviser Sentinel Management Group, Inc. ("Sentinel"). Sentinel, which was one of the first financial services firms to falter during the financial crisis of 2007, lost several hundred million dollars of its $1.4 billion of client assets under management as a result of the alleged fraud. The case was originally brought in 2007 as an emergency action for a temporary restraining order and other relief against Sentinel. The SEC amended the complaint in 2008 to add multiple securities fraud charges against Bloom and Mosley. Sentinel filed for bankruptcy in August 2007 and subsequently settled the SEC's claims against it. In March 2012, the court granted the SEC's motion for summary judgment against Mosley on five counts of the complaint. In the same ruling, the court found that the claims against Bloom should proceed to trial. The parties were preparing for trial on the remaining claims when the U.S. Attorney's Office indicted both Bloom and Mosley. The SEC's case is currently stayed pending resolution of the parallel criminal proceeding. As lead counsel for the SEC, I have been primarily responsible for all aspects of the litigation since the initial action was filed in August 2007, including the initial TRO hearing, fact and expert discovery, and summary judgment briefing.

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2. *In re Conseco, Inc.*, Case No. 02-49672, United States Bankruptcy Court, Northern District of Illinois, Honorable Carol A. Doyle.

Conseco, Inc. filed for bankruptcy protection in December 2002. At the time, with $52 billion in assets, Conseco's bankruptcy was the third-largest in corporate history, trailing only those of WorldCom and Enron Corporation. I was a member of the trial team that litigated the contested bankruptcy plan confirmation proceeding. The trial lasted more than one month and concerned a challenge by a group of preferred shareholders to the fairness of the proposed plan of reorganization. At trial, I focused on a dispute involving the interaction between certain provisions of the bankruptcy and federal tax codes. My responsibilities included examining fact and expert witnesses at trial, arguing an evidentiary motion regarding the admissibility of testimony, and working on pre-trial and post-trial briefs. The parties reached a negotiated resolution after the close of evidence and completion of post-trial briefing. Conseco's bankruptcy plan was confirmed on September 9, 2003.

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3. *In the matter of Oprins, CPA, and McNeeley, CPA*, Admin. Proc. File No. 3-13797, 2010 WL 5376531, Release No. 411 (Initial Decision, December 28, 2010), Honorable Robert G. Mahoney; *In the matter of the Application of McNeeley, CPA*, Admin. Proc. File No. 3-13797, Release No. 3427, 2012 WL 6457291 (Commission Opinion, December 13, 2012).

The SEC's Division of Enforcement brought this disciplinary proceeding against Oprins and McNeeley in 2010 based on their improper professional conduct during the failed financial statement audits of AA Capital Partners, Inc., an investment adviser registered with the Commission, and one of its affiliated private equity funds. After an eight-day bench trial, the administrative law judge issued a decision finding that McNeeley engaged in improper professional conduct and imposed a sanction prohibiting her from practicing as an accountant before the Commission for a period of at least one year. The administrative law judge further found that Oprins also failed to meet the required standard of conduct for the audits but he declined to find that Oprins' conduct was reckless or highly unreasonable such as to warrant a sanction. Thus, the case against Oprins was dismissed. McNeely appealed the decision against her to the Commission, which serves as the first level of review for initial decisions. After full briefing and oral argument, the Commission issued an opinion on December 13, 2012 affirming the findings against McNeely but reducing her sanction from one year to six months. I served as the lead trial counsel with overall responsibility for the conduct of the litigation, including serving as first-chair counsel for the trial and briefing and arguing the Commission appeal.

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4. SEC v. Smith et al., Case No. C2 04 0739, 2005 WL 2373849 (S.D. Ohio September 27, 2005), Honorable Gregory L. Frost, *aff'd*, 2006 WL 3690414 (6th Cir. 2006) (*per curium*); *In the matter of Smith*, Admin. Proc. File No. 3-12267, 2006 WL 2795255, Release No. 2604 (Initial Decision, Sept. 29, 2006), Honorable Carol Fox Foelak; *In the matter of Smith*, Admin. Proc. File No. 3-12267, Release No. 2604, 2007 WL 1435548 (Commission Opinion, May 16, 2007).

In August 2004, the SEC sued Smith, Continental Midwest Financial, Inc. and Scioto National, Inc. for fraudulent securities offerings that raised approximately $2.1 million from dozens of victims, many of whom lost their retirement savings. In September 2005, the court granted summary judgment in the SEC's favor on all claims, with the exception of one aiding and abetting claim against Smith that the court found presented an issue for trial. In December 2005, shortly before a trial on remedies, the defendants stipulated to entry of a Final Judgment, subject to a right to appeal, which: (1) imposed a permanent injunction; (2) ordered Smith and the companies to disgorge the investor funds they had raised, plus prejudgment interest; and (3) ordered Smith to pay a civil penalty of $120,000. The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's summary judgment ruling on December 12, 2006. As second-chair counsel, I was responsible for pre-trial discovery and motion practice, including work on the successful summary judgment motion. I also presented the SEC's case at the initial TRO hearing in conjunction with the filing of the complaint, after which the court granted the SEC's request for emergency relief, including freezing and ordering an accounting of the defendants' assets.

In April 2006, following the entry of the district court judgment against Smith, the Division of Enforcement instituted an administrative proceeding to impose industry sanctions against him. After a three-day bench trial, the administrative law judge issued an Initial Decision barring Smith from associating with any broker, dealer or investment adviser. On appeal, the Commission affirmed the Initial Decision on May

16, 2007. I served as second-chair counsel at trial and was responsible for examining multiple witnesses, including cross-examining Smith, and preparing portions of the pre-trial and post-trial briefs. I also worked on the briefs for the Commission appeal, which was decided without argument.

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5. *SEC v. Fisher et al.*, Case No. 07-cv-4483, 2012 WL 3757375 (N.D. Ill. Aug. 28, 2012), Honorable James B. Zagel.

In August 2007, the SEC sued Fisher, Halloran and Behrens in federal district court for their roles in an alleged financial fraud by Nicor Inc., a natural gas utility holding company. The complaint alleges that the defendants caused Nicor to enter into a series of sham transactions in order to manage the company's earnings and achieve earnings targets under a performance-based rate plan. Fisher settled the claims against him in August 2010. In August 2012, the court ruled on a summary judgment motion filed by the remaining defendants. Although the court found in favor of the SEC and denied the defendants' motion on the merits of the claims, the court agreed with the defendants that certain relief requested by the SEC (including injunctive relief and civil penalties) would be inappropriate under the circumstances as a matter of law. The case is currently proceeding on the remaining relief, including disgorgement of the defendants' ill-gotten gains. As lead counsel for the SEC, I have day-to-day responsibility for all aspects of the litigation, including extensive pre-trial discovery, motion practice, trial preparation and settlement negotiations.

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6. *Hill v. Amoco Oil Company*, Case No. 97-cv-07501, 2003 WL 262424 (N.D. Ill. Jan. 27, 2003), Honorable Joan B. Gottschall.

Plaintiff Hill brought a class action against Amoco Oil Company alleging discrimination in the application of prepayment policies at its gas stations. I was a member of the litigation team that obtained summary judgment in Amoco's favor on the class claim for injunctive relief and obtained sanctions against class counsel for misconduct during discovery. The court denied the parties' cross motions for summary judgment on Hill's individual claim for damages, finding that there were issues of fact for the jury to decide. The parties subsequently settled Hill's individual claim. Among other things, I was primarily responsible for conducting fact discovery and drafting Amoco's summary judgment motion and motion for discovery sanctions.

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7. *Tricontinental Industries, Ltd. et al. v. Anixter et al.*, Case No. 01-cv-5526, *Tricontinental Indus., Ltd. et al. v. Anixter et al.*, 184 F. Supp. 2d 786 (N.D. Ill. 2002); *Tricontinental Indus., Ltd. et al. v. Anixter et al.*, 256 F. Supp. 2d 806 (N.D. Ill. 2003); *Tricontinental Indus., Ltd. et al. v. Anixter et al.*, 299 F. Supp. 2d 863 (N.D. Ill. 2004); *Tricontinental Indus., Ltd. et al. v. Anixter et al.*, 313 F. Supp. 2d 785 (N.D. Ill. 2004); *Tricontinental Indus., Ltd. et al. v. Anixter et al.*, 313 F. Supp. 2d 788 (N.D. Ill. 2004); *Tricontinental Indus., Ltd. et al. v. Anixter et al.*, 370 F. Supp. 2d 742 (N.D. Ill. 2004), Honorable Elaine E. Bucklo; *Tricontinental Indus., Ltd. et al. PricewaterouseCoopers, LLP*, 475 F.3d 824 (7th Cir. 2007), *cert. denied* 552 U.S. 824 (2007).

I was a member of the litigation team representing the accounting firm PricewaterhouseCoopers, LLP ("PwC") in litigation arising out of an alleged accounting fraud at PwC's audit client, Anicom, Inc. The plaintiffs claimed that officers and directors of Anicom deliberately misrepresented its financial and operational information to induce them to sell certain assets to Anicom in exchange for Anicom stock. The plaintiffs' claims against PwC were based on allegedly false and misleading statements in its audit opinions regarding Anicom's year-end 1998 and 1999 financial statements, which the plaintiffs claimed to have relied upon when entering into the transaction, as well as PwC's alleged failure to inform the plaintiffs about Anicom's fraudulent conduct prior to their transaction. The plaintiffs brought claims against PwC for fraud under the federal securities laws, as well as for state securities fraud, common law fraud and negligent misrepresentation. The district court dismissed the claims in the initial complaint against PwC for failure to state a

claim. The plaintiffs twice amended the complaint in attempts to state viable claims against PwC. Each time, the court granted PwC's motion to dismiss. On March 23, 2007, the U.S. Court of Appeals for the Seventh Circuit affirmed the district court ruling. As associate counsel, I worked on all aspects of the case prior to my departure from Kirkland & Ellis in April 2004, including the briefing for PwC's successful motions to dismiss the complaint. I did not work on the appeal because I had already left private practice to join the SEC.

In addition to the *Tricontinental* lawsuit, I also represented PwC in a related class action brought on behalf of Anicom shareholders that settled during discovery (*In re Anicom Inc. Securities Litigation*, Case No. 00-cv-4391, U.S. District Court, Northern District of Illinois) and an investigation by the Securities and Exchange Commission.

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8. *In the matter of Wanger and Wanger Investment Management, Inc.*, Admin. Proc. File No. 3-14676, Securities and Exchange Commission, Honorable Brenda P. Murray.

In December 2011, the SEC's Division of Enforcement brought an administrative proceeding against Wanger and Wanger Investment Management, Inc. ("Wanger Management"), alleging that Wanger and Wanger Management repeatedly marked the closing price of certain stocks held by the Wanger Long Term Opportunity Fund II, LP to artificially inflate the Fund's performance results in an attempt to attract new investors and keep current investors. The parties engaged in litigation for months, then settled days before the trial was scheduled to begin. Without admitting or denying the allegations against him, Wanger consented to the entry of a cease-and-desist order against him, a one-year bar from working in the securities industry, and a $75,000 civil penalty. Wanger Management consented to the entry of a cease-and-desist order, a censure, and disgorgement of management fees totaling $2,269, plus prejudgment interest. I was the lead counsel for the Division of Enforcement with responsibility for trial preparation and settlement negotiations.

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9. *SEC v. Global Materials & Services, Inc. et al.*, Case No. SACV 08-881, U. S. District Court, Central District of California, Honorable David O. Carter; *SEC v. Angel Acquisition Corp. et al.*, Case No. SACV 08-880, U.S. District Court, Central District of California, Honorable James V. Selna.

In August 2008, the SEC filed two separate but related actions in the U.S. District Court for the Central District of California against a total of six microcap companies and eight individuals for engaging in unregistered public offerings. The SEC alleged that the defendants implemented a novel mechanism for dumping billions of shares of stock into the public market through so-called employee stock option and consulting programs. Several defendants settled at the time of filing. Others litigated through discovery. In the end, the SEC obtained settlements with all 14 defendants. As lead counsel, I was responsible for conducting discovery and pre-trial preparations on a parallel track with complicated settlement negotiations.

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10. *SEC v. Luna et al.*, Case No. 10-cv-2166, U.S. District Court, District of Nevada, Honorable Philip M. Pro.

In December 2010, the SEC sued Luna, Montgomery, Daskivich, Murtha, St. Paul Venture Fund LLC, Minnesota Venture Capital, Inc., Real Estate of Minnesota, Inc. and Matrix Venture Capital, Inc. for their roles in a multi-million dollar scheme to sell shares of Axis Technologies Group, Inc. stock in a public distribution without registration with the Commission. The case is ongoing. As lead counsel, I have day-to-day responsibility for all aspects of the case, including pre-trial discovery, summary judgment briefing, trial preparation and settlement negotiations.

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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.)

    I have worked on several investigations by the SEC's Division of Enforcement that did not result, or have not yet resulted, in filed litigation. These confidential, non-public matters range from national priority matters for the agency involving coordination with other U.S. and foreign regulatory authorities to small, localized frauds. I also participate in bar association activities. Among other things, I am active on the Judicial Evaluations Committee for the Black Women Lawyers' Association of Greater Chicago, which is part of a coalition of local bar associations that evaluates candidates seeking appointment or running for election or retention as state court judges in the Circuit Court of Cook County.

    I have not performed any lobbying activities or registered as a lobbyist.

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

    I have not taught any courses.

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

    I have no such arrangements.

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

    If confirmed, 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.

       If confirmed, I would not participate in any case in which I had prior knowledge of the facts based on my employment with the SEC, whether the case was brought by the SEC, another civil or criminal law enforcement agency, or private litigants. In addition, my husband and I hold securities in investment accounts that could constitute financial interests in the issuers. I would promptly disqualify myself from any matter in which my impartiality might reasonably be questioned, consistent with Canon 3 of the Code of Conduct for United States Judges. I am not aware of any other associations or positions held by myself or my husband that present potential for 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.

       If confirmed, I intend to be guided by 28 U.S.C. 455 and Canon 3 of the Code of Conduct for United States Judges to resolve all conflicts of interest that might arise. I would take steps to ensure that I was informed and knowledgeable regarding any financial or professional interests that I held, or that my husband or another close family member held, that could present a potential conflict or give the appearance that I lacked impartiality regarding any matter before me. I would

recuse myself from any matter in which my impartiality might reasonably be questioned.

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

    During my time at the SEC, I have been involved in investigations and civil prosecutions undertaken to defend the economic security of vulnerable populations, such as the elderly, to vindicate the rights of individuals who have been taken advantage of by fraudsters, and generally to protect the integrity of the markets. Although ethical restrictions as a government attorney limit my ability to perform *pro bono* work, I have been trained by Chicago Volunteer Legal Services to serve as a volunteer *guardian ad litem*, though I have not yet served. Aside from my legal work, I support programs benefitting the disadvantaged by volunteering and making financial contributions. For example, I volunteer at a non-profit organization that provides shelter and supportive housing for homeless women. I also participate in holiday drives for toys and clothing and participate in other projects sponsored by my office or the various bar associations of which I am a member.

26. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

    On September 21, 2012, I submitted an application to Senator Richard Durbin's bipartisan screening committee for federal judges in the Northern District of Illinois. On October 9, 2012, I met with two members of that committee, and on October 15, 2012, I met with the full committee. On November 30, 2012, I met with Senator Durbin. On January 14, 2013, Senator Durbin's staff informed me that my name was being recommended to the White House. Since January 24, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On February 27, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On April 30, 2013, the President announced his intent to nominate me, and on May 6, 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. 1/2013

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Wood, Andrea R.	U.S. District Court, Northern District of Illinois	05/05/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge - Active	☑ Nomination Date 04/30/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 04/30/2013
7. Chambers or Office Address		
U.S. Securities and Exchange Commission 175 West Jackson Boulevard, Suite 900 Chicago, Illinois 60604		

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.*

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 9	Name of Person Reporting Wood, Andrea R.	Date of Report 05/05/2013

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 (yours, not spouse's)
1.			
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2012	County of Cook, Illinois - Salary
2.	2013	County of Cook, Illinois - 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 9	Name of Person Reporting Wood, Andrea R.	Date of Report 05/05/2013

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 9

Name of Person Reporting	Date of Report
Wood, Andrea R.	05/05/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. 3M Common Stock	A	Dividend	J	T	Exempt				
2. Abbott Laboratories Common Stock	B	Dividend	K	T					
3. Abbvie Inc. Common Stock		None	K	T					
4. Altria Group Common Stock	A	Dividend	K	T					
5. Applied Materials Inc. Common Stock	A	Dividend	J	T					
6. AT&T Inc. Common Stock	A	Dividend	J	T					
7. Biogen Idec Inc. Common Stock		None	J	T					
8. William Blair Emerging Market Growth Fund		None	J	T					
9. William Blair Small-Mid Cap Growth Fund	A	Dividend	J	T					
10. American Funds Capital World Growth and Income Fund (SM)	A	Dividend	K	T					
11. Coca-Cola Common Stock	C	Dividend	M	T					
12. Diamond Offshore Drilling Common Stock	A	Dividend	J	T					
13. Eagle Series TR-Mid Cap Stock Fund Class A		None							
14. Neuberger Berman Genesis Fund - Institutional Class		None	K	T					
15. American Funds Europacific Growth Fund (R)	A	Dividend	K	T					
16. Exxon Mobile Corp. Common Stock	A	Dividend	K	T					
17. Fidelity Contrafund	A	Dividend	M	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 9

Name of Person Reporting	Date of Report
Wood, Andrea R.	05/05/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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. Franklin Value Investors Trust: Franklin Balance Sheet Invst	A	Dividend							
19. General Electric Co. Common Stock	B	Dividend	K	T					
20. Google Inc. Common Stock		None	J	T					
21. Home Depot Inc. Common Stock	A	Dividend	J	T					
22. IBM Common Stock	B	Dividend	M	T					
23. Intel Corp. Common Stock	A	Dividend	J	T					
24. Invesco Van Kampen Growth and Income Fund - Class A	A	Dividend	K	T					
25. Johnson & Johnson Common Stock	B	Dividend	K	T					
26. JP Morgan Mid Cap Value Fund - Select Shares	A	Dividend	K	T					
27. Kraft Foods Inc. Common Stock	A	Dividend	J	T					
28. Microsoft Corp. Common Stock	B	Dividend	L	T					
29. Mondelez International Common Stock		None	J	T					
30. Nuveen Municipal Value Fund	A	Dividend	J	T					
31. Pepsico Inc. Common Stock	A	Dividend	J	T					
32. Pfizer Inc. Common Stock	A	Dividend	J	T					
33. Philip Morris International Inc. Common Stock	A	Dividend	K	T					
34. T Rowe Price High Yield Fund	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 9

Name of Person Reporting	Date of Report
Wood, Andrea R.	05/05/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
35. Qualcomm Inc. Common Stock	B	Dividend	L	T					
36. T Rowe Price Blue Chip Growth Fund		None	J	T					
37. Target Corp. Common Stock	A	Dividend	J	T					
38. American Funds Growth Fund of America (R) Class R4	A	Dividend	K	T					
39. Time Warner Cable Inc. Common Stock	A	Dividend	J	T					
40. Time Warner Inc. Common Stock	A	Dividend	J	T					
41. Vanguard (R) Institutional Index Fund - Institutional Shares	A	Dividend	J	T					
42. Walgreen Co. Common Stock	A	Dividend	K	T					
43. Western Union Co. Common Stock	A	Dividend	J	T					
44. Wal-Mart Stores Inc. Common Stock	A	Dividend	J	T					
45. William Blair Funds Ready Reserves Fund	A	Dividend	J	T					
46. Yahoo Inc. Common Stock		None	J	T					
47. Dreyfus Money Market Fund	A	Int./Div.	K	T					
48. Vanguard 500 Index Fund Adm Shares	A	Dividend	K	T					
49. Vanguard Mid-Cap Index Fund Adm Shares	A	Dividend	J	T					
50. Vanguard Total Bond Market Index Fund Adm Shares	A	Dividend	K	T					
51. Vanguard Total Int'l Stock Market Index Fund Adm Shares	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Wood, Andrea R.	Date of Report 05/05/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
52. JPMorgan Chase Bank Cash Accounts	A	Interest	N	T					
53. Amalgamated Bank of Chicago Cash Accounts	A	Interest	J	T					
54. Credit Union One Cash Accounts	A	Interest	K	T					

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

Name of Person Reporting	Date of Report
Wood, Andrea R.	05/05/2013

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

Personal Information - The nomination date listed in Box 5a. is the date on which the President announced his intent to nominate the filer.

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Wood, Andrea R.	Date of Report 05/05/2013

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/ Andrea R. Wood

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		400	232	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	212	101	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 – secondary residence		206	289
Real estate owned – see schedule		683	681	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		69	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		253	813				
				Total liabilities		206	289
				Net Worth	2	412	538
Total Assets	2	618	827	Total liabilities and net worth	2	618	827
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	
3M Co. stock	$ 3,259
Abbott Labs stock	22,152
Abbvie Inc. stock	27,630
Altria Group stock	16,430
American Funds Capital World Growth and Income Fund	24,133
American Funds EuroPacific Growth Fund	21,578
American Funds The Growth Fund of America	32,291
AOL Inc. stock	462
Applied Materials Inc. stock	3,033
AT&T Inc. stock	18,730
Biogen Idec Inc. stock	3,957
Cerus Corp. stock	553
Cisco Systems Inc. stock	394
Coca-Cola Company stock	129,540
Diamond Offshore Drilling stock	4,492
Dreyfus Money Market Fund	34,065
Exxon Mobil Corp. stock	35,596
FDIC Insured Cash Balance	244
Fidelity Contrafund	100,057
General Electric Co. stock	43,548
Google Inc. stock	3,065
Home Depot Inc. stock	12,212
IBM stock	130,234
Intel Corp. stock	2,395
Invesco Growth and Income Fund	33,515
iShares Russell 1000 Value Index Fund	175
Johnson & Johnson stock	34,092
JPMorgan Mid Cap Value Fund	35,040
Kraft Foods Inc. stock	5,303
Logitech International stock	508
Microsoft Corp. stock	50,014
Mondelez International stock	9,781
Neuberger Berman Genesis Fund	15,080
Nuveen Municipal Value Fund	7,272
PepsiCo Inc. stock	2,846
Pfizer Inc. stock	12,500
Philip Morris International Inc. stock	43,016
Qualcomm Inc. stock	61,600
Target Corp. stock	1,734
Time Warner Cable Inc. stock	3,708
Time Warner Inc. stock	9,049
T. Rowe Price High Yield Fund	9,194

T. Rowe Price Blue Chip Growth Fund	4,009
Vanguard Institutional Index Fund	10,324
Walgreen Co. stock	32,082
Wal-Mart Stores Inc. stock	10,769
Western Union Co. stock	2,162
William Blair Emerging Market Growth Fund	5,164
William Blair Ready Reserves Fund	7,190
William Blair Small-Mid Cap Growth Fund	14,762
Yahoo Inc. stock	1,978
Vanguard 500 Index Fund	39,362
Vanguard Mid-Cap Index Fund	44,525
Vanguard Total Bond Market Index Fund	23,185
Vanguard Total International Stock Market Index Fund	12,112
Total Listed Securities	$ 1,212,101

Real Estate Owned	
Primary residence	$ 422,431
Secondary residence	261,250
Total Real Estate Owned	$ 683,681

AFFIDAVIT

I, Andrea R. Wood, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/30/2013
(DATE)

Andrea R Wood
(NAME)

Terri Yvette Roberts
(NOTARY)

OFFICIAL SEAL
TERRI YVETTE ROBERTS
Notary Public - State of Illinois
My Commission Expires May 3, 2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Madeline Hughes Haikala, nee Madeline Clair Hughes

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

   United States District Judge for the Northern District of Alabama

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

   United States District Court for the Northern District of Alabama
   Hugo L. Black United States Courthouse
   1729 Fifth Avenue North
   Birmingham, Alabama 35203

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

   1964; New Orleans, Louisiana

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

   1986 – 1989, Tulane University Law School; J.D. (*magna cum laude*), 1989

   1982 – 1986, Williams College; B.A., 1986

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

   2012 – present
   United States District Court for the Northern District of Alabama
   Hugo L. Black United States Courthouse
   1729 Fifth Avenue North

Birmingham, Alabama 35203
United States Magistrate Judge

1990 – 2012
Lightfoot, Franklin, & White, LLC
400 20th Street North
Birmingham, Alabama 35203
Partner (1997 – 2012)
Associate (1990 – 1997)

1998 – 2005
Cumberland School of Law
800 Lakeshore Drive
Birmingham, Alabama 35229
Adjunct Professor

August – December, 1989
Bradley, Arant, Rose, & White
(now Bradley, Arant, Boult, Cummings, LLP)
2001 Park Place, Suite 1400
Birmingham, Alabama 35203
Associate

Summer 1988
Riker, Danzig, Scherer, Hyland, & Perretti, LLP
1 Speedwell Avenue
Morristown, New Jersey 07960
Summer Associate

Summer 1987
Hebert, Mouledoux, & Bland
(now Mouledoux, Bland, Legrande, & Brackett)
601 Polydras Street
New Orleans, Louisiana 70130
Summer Associate

Summer 1986
Louise S. McGehee School
2343 Prytania Street
New Orleans, Louisiana 70130
Secretary

Summer 1986
Various New Orleans grocery stores
Planter's Peanut greeter and marketer

Other affiliations (uncompensated):

2011 – present
Leading Edge Institute
P.O. Box 59402
Birmingham, Alabama 35259
Member, Board of Directors

2003 – 2010
Highlands School
4901 Old Leeds Road
Birmingham, Alabama 35213
Member, Board of Trustees

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

   I have not served in the military. I am not required to register with the selective service.

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

   Birmingham Volunteer Lawyer Program recognition for pro bono work (2012)

   Birmingham Magazine, "Top Attorney" in appellate law (2011, 2012)

   Tulane University Law School, Order of the Coif (1989)

   Tulane University Law School, American Jurisprudence Prize (1988)

   Tulane University Law School, Monte Lemann Award (1988)

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.

   Alabama Defense Lawyers Association

   Alabama State Bar
   Appellate Section Treasurer (2011 – 2012)

   American Bar Association

Birmingham Bar Association
Women's Section Board of Directors (2011 – present)

Defense Research Institute (DRI)
Women's Committee (2010 – 2012)

10. **Bar and Court Admission**:

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

Alabama, 1989

There have been no lapses in membership.

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

Supreme Court of the United States, 1998
United States Court of Appeals for the Eleventh Circuit, 1989
United States District Court for the Northern District of Alabama, 1989
United States District Court for the Middle District of Alabama, 1990
United States District Court for the Southern District of Alabama, 1991
Supreme Court of Alabama, 1989

There have been no lapses in membership.

11. **Memberships**:

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

Alabama Law Foundation (2010 – present)

Better Basics (approximately 2003 – 2009)
Tutor in Birmingham public schools

Cornerstone Schools of Alabama (approximately 2003 – present)
Guest Reader, K – 1st grade (2013)
Women's Committee (approximately 2003 – present)

Cumberland Law School (2006)
Judge Edward S. Smith Scholarship in Law Fund Committee

Highlands School
Member, Board of Trustees (2003 – 2010)
Chair, Parents' Auxiliary (2009 – 2010)

John Carroll Catholic High School (2006 – 2007)
Curriculum Evaluation Committee for Strategic Planning

Leading Edge Institute (2011 – present)
Member, Board of Directors

St. Francis Xavier Church (approximately 2002 – present)
Minister to the sick & homebound

United Way Red Feather Association (2008)

Williams College Alumni Fund (2010 – 2012)
Agent

Women's Fund of Greater Birmingham "Voices Against Violence" Domestic Violence Initiative (2007 – 2010)
Chair (2010)
Steering Committee (2009)
Giving Circle, Corporate Counsel Committee Chair (2007 – 2008)

YWCA Family Law Center (2011)
Fundraising Committee

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.

DRI, Women in the Law Blog "Best Advice" (May 13, 2013). Copy supplied.

July 2007 to July 2011 - *Alabama Appellate Watch* - contributing author to Lightfoot, Franklin, & White blog. The blog is devoted to opinions that the Alabama Supreme Court and the Alabama Court of Civil Appeals issue. Blog entries summarize procedural aspects of Alabama's civil appellate decisions and, occasionally, civil opinions from the Eleventh Circuit Court of Appeals. Copies of the blog entries that I could locate in my files or on the internet are supplied.

With Ivan B. Cooper, "Diversity Removals – Federal Jurisdiction's Disappearing Act," *In-House Defense Quarterly* (Summer 2010). Copy supplied.

"From Bass to Bard: Finding Tips for Persuasive Writing in Unexpected Places," *For the Defense,* DRI Writer's Corner (December 2009). Copy supplied.

With Laura Peck, "Birmingham Women Attorneys Lead Effort to Combat Domestic Violence," *Addendum* (June 2008). Copy supplied.

"*Pavillion Development, LLC v. JBJ Partnership*: The Court's Struggle with Waiver," *Alabama Lawyer* (January 2008, Vol. 69, No. 1), introduction by Alabama Supreme Court Chief Justice Sue Bell Cobb. Copy supplied.

Lawyers Cooperative Federal Practice Guide, *Federal Appellate Procedure 11th Circuit* – American Inns of Court Series (1996) – Ch. 20 –"Review by Extraordinary Writ in Civil Cases" (With Warren B. Lightfoot). This edition of this practice guide for attorneys is out of print, and I have been unable to locate a copy.

"Fraudulent Suppression – Has the Exception Swallowed the Rule?" 56 *Alabama Lawyer* 231 (July 1995). 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 reviewed my files, searched the internet, and contacted the relevant organizations to locate any reports, memoranda or policy statements to which I might have contributed.

The Leading Edge Institute, 2011-2012 Annual Report. Copy supplied.

As an officer of the Women's Fund's "Voices Against Violence" domestic violence initiative, I participated in the preparation of reports that summarized the organization's fundraising efforts and described the ways in which the funds that the organization collected were disbursed. Copies of the 2009 and 2010 reports supplied.

As a member of the Board of Trustees of Highlands School, an elementary school in Birmingham, I chaired a health committee, and I drafted a health policy for the student handbook. I prepared the health policy in approximately 2004 or 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.

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.

March 1, 2013: Birmingham Bar Association Bench & Bar Retreat – Federal Court Panel Discussion with Hon. Abdul Kallon and Hon. Mike Putnam. Notes supplied.

February 8, 2013: I was a guest speaker for a bioethics class at John Carroll Catholic High School. I spoke primarily about the legal challenges that homeless individuals face, and I discussed some of the work that I have done for the Homeless Experience Legal Protection (H.E.L.P.) program in Birmingham. I have no notes, transcript, or recording. The address of John Carroll Catholic High School is 300 Lakeshore Parkway, Birmingham, AL 35209.

October 29, 2012: My Investiture as a United States Magistrate Judge. Video recording supplied.

July 14, 2011 – Alabama State Bar Annual Meeting – Panel Discussion of waiver on appeal with Hon. Joel Dubina and Hon. Champ Lyons. Notes supplied.

I have searched my records and my memory, and I have not identified other talks or speeches that I have given.

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.

Kent Faulk, "Birmingham Lawyer Madeline Haikala Begins New Job as Federal Magistrate Judge," Birmingham News, Sept. 29, 2012. Copy supplied.

Kent Faulk, "Birmingham Lawyer Madeline Hughes Haikala Selected as U.S. Magistrate Judge for Northern Alabama," Birmingham News, Aug. 10, 2012. Copy supplied.

The Women's Fund of Greater Birmingham and NBC-13 News, "Blogging Against [Domestic] Violence," October 7, 2009. I have no transcript or record of the blog interview.

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

On October 1, 2012, I was appointed to serve as a United States Magistrate Judge for the Northern District of Alabama. In the Northern District of Alabama, subject matter jurisdiction of United States Magistrate Judges is coextensive with the powers authorized under 29 U.S.C. § 636 and related rules of civil and criminal procedure.

United States Magistrate Judges are "on the wheel" in the Northern District of Alabama. In other words, ordinary civil cases are randomly assigned to Magistrate Judges, just as those cases are randomly assigned to District Judges. The parties have the option of consenting to dispositive jurisdiction of the Magistrate Judge assigned to their case. If the parties consent, the Magistrate Judge may conduct a trial and may enter final judgment or otherwise dispose of the lawsuit.

In felony cases, Magistrate Judges have jurisdiction to issue warrants and to conduct various pretrial proceedings, including detention hearings, competency hearings, and hearings regarding motions to suppress evidence.

Per 18 U.S.C. § 3401 and Local Rule 73.1(a), a District Judge may designate a Magistrate Judge to try persons accused of, and to sentence persons convicted of, misdemeanors and other petty offenses committed within the Northern District of Alabama.

Non-capital habeas proceedings and prisoner civil rights cases are randomly assigned to both a District Judge and a Magistrate Judge. The Magistrate Judge decides all non-dispositive motions and issues a report and recommendation with respect to dispositive motions, unless the parties consent to dispositive jurisdiction.

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

Since I became a Magistrate Judge in October 2012, the cases that I have set for trial have settled, so I have not had the opportunity to preside over a trial yet.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	0%
criminal proceedings:	0%

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

Cunningham v. United States, 2013 WL 1346396 (N.D. Ala. March 8, 2013).

Oliver v. WHNT 19 News, 2012 WL 7784147 (N.D. Ala. Dec. 3, 2012).

Alabama Ins. Guar. Ass'n v. FrankCrum 1, Inc., 2012 WL 5931784 (N.D. Ala. Nov. 27, 2012).

Mitchell v. Pearce, 2012 WL 7160431 (N.D. Ala. Nov. 7, 2012).

Ramirez v. James, 2012 WL 5511045 (N.D. Ala. Oct. 19, 2012).

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) *Banks v. Birmingham Board of Education* (2:12-CV-01682-MHH).

Banks is a Fair Labor Standards Act ("FLSA") opt-in class action. A number of non-tenured employees of the Birmingham public school system allege that the Board of Education refused to pay them when they worked more than 40 hours per week. I held a hearing pertaining to the plaintiffs' motion for conditional class certification. The parties presented evidence and arguments in support of

their respective positions, and my decision is pending. The plaintiffs subsequently sought to dismiss because they wish to institute a new action. The parties are briefing the motion to dismiss.

Counsel for Plaintiffs:

Jerome Tucker
1728 North Third Avenue, Suite 500
P.O. Box 1333
Birmingham, AL 35203
(205) 328-0055

Counsel for Defendants:

Philip F. Hutcheson
Deputy Attorney General
Office of the Attorney General
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36104
(334) 328-8756

Mark S. Boardman
Boardman Carr Hutcheson & Bennett, PC
400 Boardman Drive
Chelsea, AL 35043
(205) 678-8000

(2) *Dudley v. City of Bessemer* (2:12-CV-01762-MHH).

This is a gender discrimination action. The plaintiff, a former Chief Court Clerk in the City of Bessemer, asserts Title VII and § 1983 claims against the City and § 1983 and assault claims against the former mayor of Bessemer. After hearing oral argument, I denied the defendants' motion to dismiss the plaintiff's complaint. Copy supplied.

Counsel for Plaintiff:

John D. Saxon
John D. Saxon, PC
2119 Third Avenue North, Suite 100
Birmingham, AL 35203
(205) 324-0223

Counsel for Defendants:

James W. Porter, II
Porter, Porter & Hassinger, PC
215 Richard Arrington Jr. Boulevard North, Suite 1000
P.O. Box 128
Birmingham, AL 35201
(205) 322-1744

(3) *Alabama Ins. Guar. Ass'n v. FrankCrum I, Inc.*, 2012 WL 5931784 (N.D. Ala. Nov. 27, 2012).

When I joined the bench, I inherited pending cases that had been assigned to my predecessor. Upon review of the removal petition and complaint in *FrankCrum*, I discovered that the defendants premised removal jurisdiction on a unique theory of citizenship. I propounded three questions to the parties to further explore subject matter jurisdiction and asked them to submit briefs responding to the questions. The FrankCrum defendants filed a brief in which they conceded that they improperly pled the citizenship of the Alabama Guaranty Insurance Association ("AIGA") and that the Court lacked subject matter jurisdiction. Consequently, though the case had been pending in federal court for more than one year, I remanded it to state court.

Counsel for Plaintiff:

Howard K. Glick
Simpson, McMahan, Glick & Burford, PLLC
2700 Highway 280, Suite 203W
Birmingham, AL 35223
(205) 876-1600

Counsel for Defendants:

James W. Porter, III
Kirk D. Smith
Haskell, Slaughter, Young & Rediker
2001 Park Place North, Suite 1400
Birmingham, AL 35203
(205) 251-1000

Counsel for Third-Party Defendant:

Leslie R. Barineau
Barineau & Barineau
Title Building
300 Richard Arrington Jr. Boulevard North, Suite 502

Birmingham, AL 35203
(205) 251-9200

William P. Traylor, III
Yearout & Traylor, PC
3300 Cahaba Road, Suite 300
Birmingham, AL 35223
(205) 414-8160

(4) *Williamson v. Williamson, et al.* (2:12-CV-01841-MHH).

This is a breach of trust case that is governed by Alabama law. The defendant trustee terminated her co-trustee and, acting as the sole trustee, made investment decisions that the plaintiff challenges. The plaintiff asserts a host of tort claims against the defendant trustee and her co-defendants. Wells Fargo, one of the defendants, filed a pre-discovery motion for summary judgment. Wells Fargo argued that the defendant trustee was contractually authorized to terminate the bank's predecessor as co-trustee and that the bank was powerless under the terms of the trust documents to compel the individual trustee to substitute an alternative co-trustee for the bank. I recently held a hearing on the motion, which is pending.

Counsel for Plaintiff:

Peter A. McInish
Peter A. McInish, LLC
P.O. Box 610
Dothan, AL 36302
(334) 671-2555

Counsel for Defendants:

Earl F. Hilliard
Hilliard & Associates
P.O. Box 12445
Birmingham, AL 35202
(205) 326-8844

Victor L. Haslip
William J. Long, IV
Burr & Forman, LLP
3400 Wachovia Tower
420 North 20th Street
Birmingham, AL 35203
(205) 251-3000

Daniel J. Martin
Johnston Barton Proctor & Rose, LLP
568 Brookwood Village, Suite 901
Colonial Brookwood Center
Birmingham, AL 35209
(205) 458-9483

(5) *K.R. v. Etowah Academy et al.* (4:09-CV-01307-MHH).

This is a case in which the plaintiff alleges violations of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. While he was in high school, K.R. transitioned from a local public school to Etowah Academy, a private school that offers an educational program geared toward children with certain learning disabilities. K.R. contends that the Academy and its owner denied him an education appropriate to his needs, needs which are shaped by learning and communication disabilities. The Rehabilitation Act claim presents a question of first impression about the scope of actions under the Act. In addition to his Rehabilitation Act claim, K.R. asserts state law breach of contract claims. I held a hearing on the parties' cross-motions for summary judgment. The motions are pending.

Counsel for Plaintiff:

Deborah A. Mattison
Rachel L. McGinley
Wiggins Childs Quinn & Pantazis LLC
301 19th Street North
Birmingham, AL 35203
(205) 314-0500

Counsel for Defendants:

Carl E. Johnson, Jr.
Bishop, Colvin, Johnson & Kent, LLP
1910 First Avenue North
Birmingham, AL 35203
(205) 251-2881

(6) *Ryan v. Event Operations* (2:12-CV-00670-MHH).

This is an FLSA action for unpaid overtime wages. It is undisputed that the plaintiffs were not exempt from the FLSA's overtime provisions. The complaint was pled as an opt-in class action. The parties agreed to settle the case confidentially. To avoid making a record of the settlement, the parties asked the Court to direct the matter to arbitration. Because there was no arbitration agreement pursuant to which the Court could order arbitration, I denied the

motion to direct the litigation to arbitration. Copy supplied. The Court is in the process of reviewing the proposed FLSA settlements to determine whether it will approve them.

Counsel for Plaintiff:

Robert J. Camp
The Cochran Firm
505 North 20th Street, Suite 825
Birmingham, AL 35203
(205) 244-1115

Counsel for Defendant:

David B. Walston
Christian & Small, LLP
505 North 20th Street, Suite 1800
Birmingham, AL 35203
(205) 795-6588

(7) *Camp v. City of Pelham* (2:10-CV-01270-MHH).

This is a hybrid FLSA opt-in class action and Rule 23(b)(2) and (b)(3) class action. The plaintiff firefighters contend that the City improperly reimbursed them for overtime and for vacation pay. I recently entered an order on the plaintiffs' Emergency Motion to Limit Communications by the city of Pelham with Class Members, and I finalized the class notices for the FLSA opt-in class and the Rule 23(b)(3) damages class. I recently conducted a hearing on the defendant's motion for summary judgment. The motion is pending.

Counsel for Plaintiff:

F. Inge Johnstone
Law Offices of F. Inge Johnstone
One Independence Plaza Drive, Suite 520
Birmingham, AL 35209
(205) 383-1809

Heather N. Leonard
Heather Leonard, PC
2105 Devereux Circle, Suite 111
P.O. Box 43768
Birmingham, AL 35243
(205) 977-5421

Counsel for Defendant:

Albert L. Vreeland, II
Lehr, Middlebrooks, & Vreeland, PC
2021 Third Avenue North
P.O. Box 11945
Birmingham, AL 35202
(205) 326-3002

Arnold "Trip" W. Umbach, III
Starnes, Davis, Florie, LLP
100 Brookwood Place, 7th Floor
P.O. Box 598512
Birmingham, AL 35259
(205) 868-6000

(8) *United States v. Wallace* (2:13-CR-00122-RDP-HGD).

This case offers an example of a typical detention hearing. The defendant was charged as a felon in possession of a firearm. The Government moved for pretrial detention. Based on the evidence presented at the detention hearing and the law governing the issue, I ordered the defendant remanded to federal custody for pretrial detention. Copy supplied.

Counsel for the Government:

Frank M. Salter
Assistant U.S. Attorney, Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203
(205) 244-2208

Counsel for Defendants:

Kevin Butler
Melanie Keiper
Federal Public Defender, Northern District of Alabama
505 20th Street North, Suite 1425
Birmingham, AL 35203
(205) 504-4440

(9) *United States v. McGowan* (2:11-CR-424-CLS-MHH)

The superseding indictment in this case charges that Mr. McGowan possessed with intent to distribute more than 500 grams of powder cocaine, more than 28 grams of crack cocaine, more than 100 grams of heroine, and a detectable amount

of marijuana. Mr. McGowan filed a series of motions in which he sought discovery of a wide assortment of information. The government filed an omnibus reply in which it asserted that it had complied with and would continue to comply with Rule 16 and the Court's standing discovery order. I denied the discovery motions. A copy of the opinion is supplied.

Counsel for the Government:

William R. Chambers, Jr.
Assistant U.S. Attorney, Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203
(205) 244-2189

Counsel for Defendant:

Randy A. Dempsey
Dempsey, Steed, Stewart, Ricthey & Gache, LLP
1122 22nd Street North
Birmingham, AL 35234
(205) 328-0162

(10) *United States v. Thomas* (2:12-CR-00464-RDP-TMP).

This case involved a defendant who was charged with being a felon in possession of firearms. Pretrial services recommended detention. Defendant's appointed counsel, the Federal Public Defender, initially identified the defendant's girlfriend as a third-party custodian. As she testified, the Public Defender realized that it was extremely unlikely that the Court would appoint her as a custodian, so the Public Defender withdrew the suggestion. Instead, he offered the defendant's sister and brother as custodians. After I heard their testimony, I recessed the hearing and directed pretrial services to conduct an at-home interview with the potential custodians. When the detention hearing resumed, with the support of pretrial services, I appointed the defendant's sister and brother as his third-party custodians. I included in the supervised release order a provision that prohibited the defendant from seeing his girlfriend who had been providing marijuana to him. The Probation Office has reported Mr. Thomas's physical and emotional health improved significantly after he was placed in his relatives' custody.

Counsel for the Government:

Frank M. Salter
Assistant U.S. Attorney, Northern District of Alabama
1801 Fourth Avenue North
Birmingham, AL 35203
(205) 244-2208

Counsel for Defendant:

Kevin Butler
Federal Public Defender, Northern District of Alabama
505 20th Street North, Suite 1425
Birmingham, AL 35203
(205) 208-7170

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) *Cunningham v. U.S.*, 2013 WL 1346396 (N.D. Ala. March 8, 2013).

Plaintiff:

Plaintiff is pro se.

Counsel for Defendants:

Elizabeth Anne Holt
United States Attorney
1801 Fourth Avenue
Montgomery, AL 35203
(205) 244-2182

(2) *Oliver v. WHNT 19 News*, 2012 WL 7784147 (N.D. Ala. Dec. 3, 2012).

Plaintiff:

Plaintiff is pro se.

Counsel for defendants did not have to appear because the Court dismissed the case *sua sponte* for lack of subject matter jurisdiction.

(3) *Alabama Ins. Guar. Ass'n v. FrankCrum 1, Inc.*, 2012 WL 5931784 (N.D. Ala. Nov. 27, 2012).

Counsel for Plaintiff:

Howard K. Glick
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Counsel for Defendants:

James W. Porter, III
Kirk D. Smith
Haskell, Slaughter, Young & Rediker
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(205) 251-1000

Counsel for Third-Party Defendant:

Leslie R. Barineau
Barineau & Barineau
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Birmingham, AL 35203
(205) 251-9200

William P. Traylor, III
Yearout & Traylor, PC
3300 Cahaba Road, Suite 300
Birmingham, AL 35223
(205) 414-8160

(4) *Mitchell v. Pearce*, 2012 WL 7160431 (N.D. Ala. Nov. 7, 2012).

Plaintiff:

Plaintiff is pro se. Counsel for the defendant has not appeared yet.

(5) *Ramirez v. James*, 2012 WL 5511045 (N.D. Ala. Oct. 19, 2012).

Counsel for Plaintiff:

Jose D. Vega
Spencer R. Mobley
Bradley, Arant, Boult, Cummings, LLC
1819 Fifth Avenue North
Birmingham, AL 35203
(205) 521-8000

Counsel for Defendants:

Mary A. Goldthwaite
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36109
(334) 353-8189

(6) *Ryan v. Event Operations* (2:12-CV-00670-MHH). Copy supplied in response to Question 13c.

Counsel for Plaintiff:

Robert J. Camp
The Cochran Firm
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Birmingham, AL 35203
(205) 244-1115

Counsel for Defendants:

David B. Walston
Christian & Small, LLP
505 North 20th Street, Suite 1800
Birmingham, AL 35203
(205) 795-6588

(7) *Dudley v. City of Bessemer* (2:12-CV-01762-MHH). Copy supplied in response to Question 13c.

Counsel for Plaintiff:

John D. Saxon
John D. Saxon, PC
2119 Third Avenue North, Suite 100
Birmingham, AL 35203
(205) 324-0223

Counsel for Defendants:

James W. Porter, II
Porter, Porter & Hassinger, PC
215 Richard Arrington Jr. Boulevard North, Suite 1000
P.O. Box 128
Birmingham, AL 35201
(205) 322-1744

(8) *Mayfield v. Progressive Specialty Insurance Co.* (7:12-CV-02898-MHH). Copy supplied.

Counsel for Plaintiff:

Joshua Patrick Hayes
The Prince Glover Law Group, PC
P.O. Box 20149
Tuscaloosa, AL 35402
(205) 345-1234

Counsel for Defendants:

Paul A. Miller
Matthew E. Dye
Miller Christie & Kinney, PC
2090 Columbiana Road, Suite 3400
Vestavia Hills, AL 35216
(205) 326-0000

Mark C. Peterson
Wade S. Anderson & Associates
600 Luckie Drive, Suite 400
Birmingham, AL 35223
(205) 879-7243

(9) *Couch v. Talladega Circuit Courts, et al.* (1:11-CV-01737-JFG-MHH). Copy supplied.

Plaintiff:

Plaintiff is pro se.

Counsel for Defendants:

Jean-Paul M. Chappell
Office of the Attorney General
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36130
(334) 242-7300

(10) *United States v. McGowan* (2:11-CR-424-CLS-MHH). Copy supplied in response to Question 13c.

Counsel for the Government:

William R. Chambers, Jr.
Assistant U.S. Attorney
1801 Fourth Avenue North
Birmingham, AL 35203
(205) 244-2189

Counsel for Defendant:

Randy A. Dempsey
Dempsey, Steed, Stewart, Ritchey & Gache, LLP
1122 22nd Street North
Birmingham, AL 35234
(205) 328-0162

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

Certiorari has not been requested or granted in any case over which I have presided.

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.

Mitchell v. Pearce, et al., 2012 U.S. Dist. LEXIS 186285 (N.D. Ala. Nov. 7, 2012), *adopted in part, vacated in part*, 2013 U.S. Dist. LEXIS 22047 (N.D. Ala. Feb. 19, 2013). I issued a Report and Recommendation in which I recommended that the district court enter judgment as a matter of law on all of the prisoner's § 1983 claims. The prisoner filed objections to the Report and Recommendation. The district court adopted the Report and Recommendation with respect to three of the defendants. The district court vacated the portion of the Report pertaining to the prisoner's retaliation claim against a prison officer.

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.

Slightly fewer than 80% of my approximately 24 substantive orders and opinions are unpublished. They are available electronically on CM/ECF.

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 issued no opinions that I would characterize as significant opinions on federal or state constitutional issues. I have issued opinions relating to habeas petitions and prisoner 1983 actions that address constitutional issues. For example:

King v. Marino, et al. (2:10-CV-01593-KBO-MHH). Copy Supplied.

Ramirez v. James, 2012 WL 5511045 (N.D. Ala. Oct. 19, 2012).

Houston v. State of Alabama (2:12-CV-02219-KOB-MHH). Copy Supplied.

Mitchell v. Pearce, et al., 2012 U.S. Dist. LEXIS 186285 (N.D. Ala. Nov. 7, 2012), *adopted in part, vacated in part*, 2013 U.S. Dist. LEXIS 22047 (N.D. Ala. Feb. 19, 2013).

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

Our court has an automatic recusal list for me. Pursuant to Advisory Committee Opinion 24, for the first two years that I am on the bench, I may not participate in cases in which a lawyer from my former law firm, Lightfoot, Franklin, & White, LLC, is involved. Accordingly, the clerk's office excludes me from all cases in which a Lightfoot lawyer has appeared. The clerk's office also has a list of my

former clients, which the office uses to re-assign to other judges cases to which any of those clients is a party.

Beyond that general recusal policy, I have recused myself three times. On the first occasion, I was assigned to resolve a fee dispute in *Solutia, Inc. v. McWane, Inc.* Pursuant to Canon 3(D) of the Code of Conduct for United States Judges, I advised the parties that I had prepared a motion in a related case many years ago, and my firm had represented one of the defendants years ago. I gave the parties the option of requesting my recusal. One of the parties exercised the option, and I recused.

More recently, I was assigned to serve as the Magistrate Judge to manage discovery in multi-district litigation ("MDL") concerning Blue Cross & Blue Shield. When I reviewed the list of 170 attorneys in the case, I discovered that one of my former partners and a Lightfoot, Franklin associate were representing one of the defendants. I learned that Lightfoot, Franklin was retained to represent the defendant before I joined the bench. Consequently, I recused myself from the MDL.

The week that I was nominated, the clerk's office inadvertently assigned to me a case in which members of my former firm represent the defendant. Based on the general two-year recusal rule in Advisory Committee Opinion 24, I recused from the case and asked the clerk's office to reassign the matter.

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

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

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

I have not held office in, or rendered 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 did not serve 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.

August – December, 1989
Bradley, Arant, Rose, & White
(now Bradley, Arant, Boult, Cummings, LLP)
2001 Park Place, Suite 1400
Birmingham, Alabama 35203
Associate

1990 – 2012
Lightfoot, Franklin, & White, LLC
400 20th Street North
Birmingham, Alabama 35203
Partner (1997 – 2012)
Associate (1990 – 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 did not serve as a mediator or arbitrator when I was in private practice.

b. Describe:

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

I began practicing law in the fall of 1989 as an associate with Bradley, Arant, Rose, & White. At the time, Bradley, Arant was the largest law

firm in the state of Alabama. I worked with the litigation group and was assigned to a wide range of cases.

Approximately four months after I began working at Bradley, Arant, in January, 1990, eight partners left to start the Lightfoot, Franklin firm. They asked four associates to join them, including me.

My practice at Lightfoot, Franklin came full circle in the 22 years that I worked with the firm. When I started practicing in 1989, I handled general litigation, focusing primarily on commercial litigation. In the early 1990s, Alabama juries issued a series of significant multi-million punitive damages awards. The defendants in those cases hired Lightfoot, Franklin to help the trial lawyers prepare the post-trial due process record and to handle the appeals of the jury awards. I began to specialize in those cases, and I helped the firm develop its post-trial and appellate practice. On occasion, plaintiff firms would hire us to help them retain a large damages award. Although my practice focused on post-trial and appellate practice, I worked on a few cases as trial counsel.

In the last five years before I joined the bench, I returned to a more balanced practice. My work was split almost evenly between trial and appellate work. I handled cases of every variety from product liability wrongful death actions to business disputes to environmental class actions. I typically was responsible for the legal aspects of the case. I wrote and argued motions, and, at trial, I was responsible for record preservation, motion practice, and charge conferences. Our practice extended well beyond Alabama, and I typically was responsible for mastering the state law that applied to cases that we litigated. I often was a triage lawyer, coming into a case after it jumped off track either before or after trial. My task was to master the case quickly and to help move the case toward a favorable resolution.

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

As a young associate, I practiced general litigation, with an emphasis on business litigation. Representative commercial clients include Liberty National Life Insurance Company, Universal Underwriters Insurance Company, and Unocal.

Over time, I developed a specialty in post-trial and appellate practice, but in doing so, I became a jack of all trades with respect to substantive law. Representative clients for whom I handled post-trial and appellate matters include Avondale Mills; CNH America, LLC; General Motors Company; Ford Motor Company; A.O. Smith; Supervalu, Inc.; and Prudential Insurance Company.

In the last five years of my practice, I continued my appellate practice, and I used my appellate skills as a member of trial teams. With the exception of the pro bono matters that I handled, my clients typically were large businesses such as Ford Motor Company; Cingular Wireless, LLC; CNH America, LLC; E.I. DuPont de Nemours & Company; Chase Mortgage Company; and SunBelt Chlor Alkalai Partnership.

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: 50%
      2. state courts of record: 50%
      3. other courts: 0%
      4. administrative agencies: 0%

   ii. Indicate the percentage of your practice in:
      1. civil proceedings: 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 four cases to verdict. I was chief counsel in two cases and associate counsel in two cases. Serving as associate counsel, I tried two other cases that settled during trial.

   i. What percentage of these trials were:
      1. jury: 50%
      2. non-jury: 50%

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

   I prepared the petition for writ of certiorari in *Supervalu Inc. v. Discount Foods, Inc.*, 525 U.S. 825 (1998). The petition is available at 1998 WL 34112183. The petitioner's reply brief is available at 1998 WL 34111948.

I opposed a petition for writ of certiorari in *Huss v. Gayden*, 571 F.3d 442 (5th Cir. 2009), *cert. denied*, 130 S.Ct. 1892 (2010). The opposition brief is available at 2010 WL 599163.

I have not presented oral argument in the United States Supreme Court.

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) *Downes v. Ford Motor Co.*, CV-2010-000472 (Circuit Court of Houston County, Alabama), the Hon. Henry D. "Butch" Binford presiding.

    I was part of Ford's trial team in this wrongful death action from early 2012 until the fall of 2012. The Court applied Florida substantive law and Alabama procedural law. The decedent's son alleged that his father's compact pickup truck was defectively designed because it did not include a rollover canopy, a safety option that Ford developed and installed in various Ford models. After a two-week trial, the jury returned a verdict in favor of Ford in less than 18 minutes. The plaintiff did not request a new trial and did not appeal from the jury's verdict. I first appeared in *Downes* in May 2012, a few months before the case went to trial. I drafted and argued many pre-trial motions. I also argued trial motions and handled jury charges.

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(2) *SunBelt Chlor Alkalai Partnership v. Oxy Vinyls, LP*, CV-07-101 (Circuit Court of Washington County, Alabama), the Hon. Gaines C. McCorquodale presiding.

After a two-week trial, on August 24, 2012, a Washington County, Alabama jury returned a $70 million verdict against OxyVinyls, LP, a subsidiary of Occidental Chemical Corporation and Occidental Petroleum Corporation, in a breach of contract case brought by our client, SunBelt Chlor-Alkali Partnership, a subsidiary of Olin Corporation. The jury found that OxyVinyls breached a contract under which OxyVinyls is obligated to purchase 250,000 tons of chlorine from SunBelt annually. In addition to $20 million in compensatory damages that the jury awarded SunBelt, the jury awarded $50 million in punitive damages for OxyVinyls's intentional, malicious breach of the contract. The case was governed by Delaware substantive law and Alabama procedural law.

I began working on the SunBelt case in 2011. I drafted multiple motions for the case and developed the punitive damages theory of recovery under Delaware law. I was slated to try the case with attorneys from Lightfoot, Franklin and with local counsel, but I had to drop off of the trial team when the trial was rescheduled so that it overlapped with Magistrate Judge school in August, 2012. Judge McCorquodale denied OxyVinyls's post-trial motions.

Co-counsel:

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(3) *Ligon Capital, LLC et al. v. CNH*, CV-2009-900339 (Circuit Court of Jefferson County, Alabama), Hon. Joseph L. Boohaker, presiding.

I became involved in this case in January 2012 after a Jefferson County jury returned an $11.4 million verdict against our client. The verdict included $3.8 million in compensatory damages and $7.6 million in punitive damages. The jury found in favor of CNH on Ligon's breach of contract claim but returned a verdict against CNH on one of Ligon's fraud theories. Together with attorneys from my firm and CNH's trial counsel, I helped CNH develop its post-trial arguments, draft its post-trial briefs, and develop its post-trial due process evidence. I participated in the two day post-trial evidentiary hearing, putting on expert testimony in support of CNH's constitutional challenge to the verdict for the court's consideration in its de novo review of the punitive damages judgment. I worked on this case from January 2012 until October 2012 when I joined the bench. The trial court denied the post-trial motions. CNH's appeal is pending before the Alabama Supreme Court.

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(4) *Maggette v. BL Development, Corp.*, No. 2:07-CV-181MA (N.D. Miss.), the Hon. Michael Mills presiding.

This case pertained to a bus accident in Arkansas in which a number of passengers died and a number were injured. Together with three of my partners, I became defense counsel in this negligence action in late 2010 after the district court, as a discovery sanction, held that the bus driver, as a matter of law, was an agent of the defendant Mississippi casinos, eliminating the defendants' strongest defense. I was heavily involved in pre-trial motion practice and was responsible for jury charges (which were governed by Arkansas and Mississippi law) and other legal aspects of the case. I drafted the motions that the court decided in *Maggette v. BL Development Corp.*, 2011 WL 2134578 (N.D. Miss. May 27, 2011).

Motion practice continued through trial. The district court divided the case into four phases – a liability phase and three damages phases. The jury returned a verdict for the defendants and against all of the plaintiffs at the close of the liability phase in June 2011.

Co-counsel:

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(5) *Huss v. Gayden*, 130 S. Ct. 1892 (2010), on appeal from the United States Court of Appeals for the Fifth Circuit, 571 F.3d 442 (2009).

The Fifth Circuit ordered a new trial in a medical malpractice action, finding that the district court erred in excluding the defendants' expert's opinions. When the plaintiffs sought relief from the United States Supreme Court, our firm was hired to oppose the writ petition. With assistance from an associate in our firm, in early 2010, I wrote the brief in opposition to the petition for writ of certiorari. The United States Supreme Court denied the petition.

Co-counsel:

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(6) *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106 (D.N.J. Aug. 26, 2011), the Hon. Renee M. Bumb presiding.

Together with three of my partners, I represented DuPont in this environmental class action in New Jersey. The plaintiffs resided near a plant that DuPont operated. They alleged that they were adversely affected by perfluorooctanoic acid in their drinking water which purportedly was emitted from DuPont's plant. Pursuant to Rule 23(b)(2), the district court certified two subclasses, one consisting of private well owners who requested injunctive relief for private nuisance and the other consisting of customers of the local water company who sought injunctive relief for public nuisance.

The case was steeped in expert evidence and required detailed briefing, much of which I handled after our firm became involved in the case in 2009 following class certification. The case settled in 2011 while DuPont's summary judgment and *Daubert* motions were pending. Together with one of my partners, I drafted many of the settlement documents. The court's opinion approving the class action settlement reflects a lot of my work in the case.

Co-counsel:

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(7) *Cotton v. Cingular Wireless, LLC*, No. 1:06-CV-01486-KOB (N.D. Ala.); *Wheeler v. Cingular Wireless, LLC*; No. 1:06-CV-02055-KOB (N.D. Ala.), the Hon. Karon O. Bowdre presiding.

In these parallel wrongful death and personal injury actions, my partners and I represented Cingular Wireless. We became involved in the lawsuit toward the end of discovery. I prepared motions for summary judgment, multiple motions in limine, proposed jury charges, and a variety of other filings. I also prepared the case for trial. Ultimately, we settled the *Cotton* wrongful death claim, and we won summary judgment on the *Wheeler* personal injury premises liability claim on the eve of trial. Plaintiff appealed the second case, but it was settled while the appeal was pending. We also prevailed on Cingular's indemnity demand against a contractor for the wrongful death settlement without litigation.

Co-counsel:

Jere F. White, Jr. (deceased 2011)
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Counsel for Plaintiffs:

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(8) *Roebuck v. CNH*, AL CV-05-200273, 41 So. 3d 41 (Cir. Ct. Ala. 2009), the Hon. Allen T. Jolley presiding.

After counsel for CNH won a defense verdict, the trial judge ordered a new trial based on purported juror misconduct. I joined the case in the summer of 2008 and developed CNH's post-trial strategy. I renewed CNH's motion for judgment as a matter of law. After the trial court denied that motion, we appealed from the new trial order and from the order denying CNH's motion for judgment as a matter of law. In October 2009, the Alabama Supreme Court held that CNH was entitled to judgment as a matter of law and rendered judgment for CNH.

Co-counsel:

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(9) *Sullivan v. Avondale Mills*, CV-93-1762 (Circuit Court of Jefferson County, Alabama), *rev'd, Russell Corp. v. Sullivan*, 790 So. 2d 940 (Ala. 2001), the Hon. J. Scott Vowell presiding.

We were hired to assist Avondale Mills after a jury returned a verdict against Avondale Mills and its two co-defendants for $155,000 in compensatory damages and $52 million in punitive damages on nuisance and trespass claims. On appeal, the Alabama Supreme Court reversed and rendered judgment for the defendants. Over the course of approximately one year, I wrote Avondale Mills's post-trial and appellate briefs, and, together with Warren Lightfoot, I developed our client's post-trial evidence.

Co-counsel:

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(10) *In the matter of ZCE & NLE,* minors, No. DR06-177 (Circuit Court of St. Clair County, AL, Ashville Division), the Hon. Alan Furr, presiding.

I filed a motion to enforce a divorce settlement so that my pro bono client could resume contact with her two young sons. Over the course of a bench proceeding involving a number of witnesses, a Lightfoot associate and I proved that our client's ex-husband violated several of the terms of the divorce settlement. The trial court enforced the visitation provisions of the settlement agreement and ordered our client's ex-husband to pay money that he still owed under the terms of the agreement. I represented this pro bono client from approximately July, 2010 until I joined the bench in October, 2012. Additional details regarding this case appear below in my discussion of my pro bono work.

Co-counsel:

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Lightfoot, Franklin, & White, LLC

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Defendant:

The defendant was pro se.

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.)

Like other litigators, many of the cases that I have handled over the years have settled on the eve of trial. The year before I became a Magistrate Judge, I was involved in a significant case that was pending in federal court in Mississippi. The plaintiff's expert in that case opined that the conduct of the defendant hospital management company had caused the plaintiff to incur approximately $100 million in damages. The parties litigated the case until the eve of trial and achieved a successful settlement shortly after I joined the bench. I participated in one of the court-ordered mediations in the case before I became a judge. I also have won many cases for clients on motions to dismiss and motions for summary judgment. Perhaps the most noteworthy clients for whom I won a motion to dismiss were a number of the justices of the Alabama Supreme Court. Years ago, disgruntled litigants sued the justices in federal district court. As an associate, I worked with a partner to successfully pursue a motion to dismiss on the justices' behalf.

I handled a variety of pro bono matters for indigent and homeless clients. Many of these cases involved family law issues. Through my representation of a number of women in shelters and treatment centers in Birmingham, I learned that many of the women living in those institutions have experienced domestic violence. Through the work that I did with Voices Against Violence, I learned about the tools that the legal system uses to address domestic violence and the ways in which law enforcement efforts can be coordinated to better equip law enforcement to respond to the needs of the victims of domestic violence. As a leader of the Voices Against Violence Campaign, I helped raise significant funding from the legal community. Voices Against Violence used those funds to purchase computers for the courts, cameras for law enforcement, and other tools to address domestic violence cases.

I have served on the Board of Directors for the Women's Section of the Birmingham Bar Association since 2011 and have been a member of the section for approximately five years. The Women's Section will celebrate its twentieth anniversary next year. The Board selects civic programs in which the Women's Section participates, develops networking and continuing education programs for the section's members and for women

in Alabama's law schools, and develops networking tools for women in the bar, a valuable asset for solo practitioners in particular. As a member of the Board, I have attended monthly Board meetings and participated in all of these activities. I also have attended many of the section's programs and volunteered as a mentor for women in Alabama's law schools. I have participated in a variety of the section's civic activities such as preparing breakfast for the YWCA's Santa's Workshop program for homeless families.

I have never performed lobbying 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.

    From 1998 to 2005, I taught Appellate Law at Cumberland School of Law as an adjunct professor. The course offered a comprehensive study of appellate practice and strategy. It included brief writing and oral argument exercises. I have not been able to locate a syllabus from this class.

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 such arrangements.

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

    If confirmed, I do not currently 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 am not aware of any potential conflicts of interest. If confirmed, I would maintain my current recusal list and would carefully review cases and parties for actual or potential conflicts of interest. I would adhere to the Code of Conduct for United States Judges and the relevant advisory opinions 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 as a District Judge, I will continue to apply all relevant authority including the Code of Conduct for United States Judges and relevant statutory provisions to avoid all actual or potential conflicts and to avoid the appearance of impropriety.

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

    I have handled pro bono matters through the Homeless Experience Legal Protection program and the Birmingham Volunteer Lawyer Program (BVLP). I helped a number of residents of a women's shelter and a resident of an in-house drug treatment facility with a variety of legal matters. I represented clients in family law matters through BVLP.

    The most significant pro bono matter in my career spanned two years. It was one of the most poignant and challenging cases that I handled in private practice. My client, L.A.E., was a resident of the First Light Shelter in Birmingham, Alabama. She asked me to help her get custody of her two sons. While I was representing L.A.E., she was diagnosed with Huntington's Disease, a fatal illness that causes muscle deterioration, personality changes, and difficulties with balance and memory. The diagnosis made providing a stable environment in which L.A.E. could have regular visits with her sons more pressing. After overcoming many obstacles, we filed a motion to enforce L.A.E.'s divorce settlement. The court ultimately found L.A.E.'s husband in contempt, ordered him to comply with the visitation provisions in the divorce decree, and ordered him to

pay L.A.E. money that he should have remitted years before under the terms of the divorce decree.

As a judge, I have continued my work with elementary school students. I visit Cornerstone Schools of Alabama every week to read to kindergarten and first grade classes. Cornerstone was founded in an effort to break the cycle of poverty: Cornerstone is a private school that is funded by community donations with parents generally paying only 8% of the cost of tuition. The median family income for Cornerstone students is $17,800.

I also routinely judge practice rounds for the trial and moot court teams at Cumberland Law School.

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 2013, I was invited to meet with Representative Terri Sewell, who was screening potential candidates for the vacancy in the Northern District of Alabama. Also that month, Senator Jeff Sessions called to let me know that he had submitted my name to the White House as a candidate for the district court bench. Since February 21, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 29, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 9, 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. 1/2013

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Haikala, Madeline H.	United States District Court, Northern District of Alabama	05/09/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5a. Report Type (check appropriate type)	6. Reporting Period
District Court Judge	☑ Nomination Date 05/09/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2012 to 5/3/2013
7. Chambers or Office Address		
United States District Court Hugo L. Black United States Courthouse 1729 Fifth Avenue North, Room 319 Birmingham, AL 35203-2000		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Board of Directors	Birmingham Bar Association Women's Section
2.	Board of Directors	Leading Edge Institute
3.	Committee Member	Women's Committee of Cornerstone Schools of Alabama
4.	Executive Officer	Appellate Section Alabama State Bar
5.	Partner	Lightfoot, Franklin & White, LLC (through 9/30/2012)

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2012-2013	Lightfoot, Franklin & White, LLC Retirement Plan with former law firm, no control
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Haikala, Madeline H.	Date of Report 05/09/2013

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 (yours, not spouse's)
1. 2012	Lightfoot, Franklin & White, LLC	$153,954.00
2. 2011	Lightfoot, Franklin & White, LLC	$194,859.00
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.)*

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 Haikala, Madeline H.	Date of Report 05/09/2013

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	Date of Report
Haikala, Madeline H.	05/09/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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)
1. First Commercial Cash Account	A	Interest	K	T	Exempt				
2. Wells Fargo Cash Accounts	A	Interest	L	T					
3. PNC Bank CDs	B	Interest	L	T					
4.									
5. 401K #1									
6. - Credit Suisse Cushing 30 MLP Index ETN	A	Dividend	K	T					
7. - DoubleLine Total Return Bond Fund	A	Dividend	K	T					
8. - Dreihaus Active Income Fund	A	Dividend	K	T					
9. - IBoxx Investment Grade Corporate Bond Fund	A	Dividend	J	T					
10. - iShares Barclays TIPS Bond Fund	A	Dividend	J	T					
11. - iShares Gold Trust	A	Dividend	J	T					
12. - iShares S&P North American Natural Resources Sector Index	A	Dividend	J	T					
13. - JPMorgan Alerian MLP Index ETN	A	Dividend							
14. - SPDR Barclays Capital High Yield Bond ETF	A	Dividend							
15. - SPDR Barclays Emerging Market Local Bond ETF	A	Dividend							
16. - SPDR Dow Jones REIT ETF	A	Dividend	J	T					
17. - TD Bank Money Market Deposit Account	A	Interest	J	T					

1. Income Gain 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
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
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
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Haikala, Madeline H.	05/09/2013

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)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, 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. - Vanguard Dividentd Appreciation ETF	A	Dividend	K	T					
19. - Vanguard Emerging Market Stocks ETF	A	Dividend	J	T					
20. - Vanguard Short Term Bond ETF	A	Dividend	K	T					
21. - Vanguard Total Bond Market ETF	A	Dividend	L	T					
22. - Vanguard Total International Stock ETF	A	Dividend	K	T					
23. - Vanguard Total Stock Market ETF	A	Dividend	M	T					
24. - Wasatch Emerging Markets Sm. Cap.	A	Dividend	J	T					

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

Name of Person Reporting	Date of Report
Haikala, Madeline H.	05/09/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Haikala, Madeline H.	Date of Report 05/09/2013

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/ **Madeline H. Haikala**

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	225	Notes payable to banks (auto)		11	261
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		338	012	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		192	108
Real estate owned – personal residence		443	200	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		24	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		2	805				
				Total liabilities		203	369
				Net Worth		773	873
Total Assets		977	242	Total liabilities and net worth		977	242
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	
Credit Suisse Cushing 30 MLP Index ETN	$ 5,830
DoubleLine Total Return Bond Fund	20,571
Driehaus Active Income Fund	18,086
iBoxx $ Investment Grade Corporate Bond Fund	11,691
iShares Barclays TIPS Bond Fund	8,940
iShares Gold Trust ETF	3,497
iShares S&P North American Natural Resources Sector Index Fund	7,667
SPDR Dow Jones REIT ETF	3,409
TD Bank Money Market Deposit Account	5,003
Vanguard Dividend Appreciation ETF	12,783
Vanguard Emerging Market Stocks ETF	9,163
Vanguard Short Term Bond ETF	18,683
Vanguard Total Bond Market ETF	72,472
Vanguard Total International Stock ETF	36,783
Vanguard Total Stock Market ETF	100,435
Wasatch Emerging Markets Small Cap Fund	2,999
Total Listed Securities	$ 338,012

AFFIDAVIT

I, Madeline Hughes Haikala, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 10, 2013
(DATE)

Madeline H. Haikala
(NAME)

Amy Ford Hersey
(NOTARY)

AMY FORD HERSEY
Notary Public
State of Alabama
MY COMMISSION EXPIRES: FEB 27, 2016

Questions for the Record for all nominees
Senator Ted Cruz

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?

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?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

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

Colin Stirling Bruce
Nominee, U.S. District Judge for the Central District of Illinois

1. You have spent your entire legal career as an Assistant United States Attorney handling both civil and criminal matters. What assurances can you give this committee that you will be able to fairly judge a case that involves the United States Attorney's Office and AUSAs that you have previously worked with and supervised?

2. What recusal policies do you plan to implement with respect to the US Attorney's Office and AUSAs with whom you have worked and supervised?

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. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?

7. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.

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. 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? Please explain.

11. What is your understanding of the workload in the Southern District of New York? 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

Sara Lee Ellis
Nominee, U.S. District Judge for the Northern District of Illinois

1. In *Sparlin v. LaSalle County*, you represented a plaintiff in a civil rights lawsuit who challenged the use of extended solitary confinement. Is it your belief that prisoners who are placed in solitary confinement for their protection are being subjected to cruel and unusual punishment?

2. In *Mason v. County of Cook Illinois*, you represented the Cook County Public Defender's Office when it challenged the practice of using video cameras in bond court. What is your view of the use of cameras in the federal courtroom?

3. You have spent part of your career working as a criminal defense attorney, specifically with the Federal Defender Program.
    a. How will you transition from the role of advocate to that of a judge?
    b. What assurances can you provide that will assuage any concerns that you will have a bias towards criminal defendants, especially in cases that involve the Federal Defender Program?

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. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?

8. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.

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. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

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12. What is your understanding of the workload in the Southern District of New York? 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. 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?

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

Madeline Hughes Haikala
Nominee, U.S. District Judge for the Northern District of Alabama

1. What recusal policies, if any, do you plan to implement with respect to your former law firm, Lightfoot, Franklin & White?

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. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?

6. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.
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. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

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10. What is your understanding of the workload in the Southern District of New York? 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

Todd M. Hughes
Nominee, U.S. Circuit Judge for the Federal Circuit

1. Whistleblowers play an important role in the Federal Government and in business and industry. They risk a great deal to come forward and uncover wrongdoing, waste, fraud and abuse. Oftentimes, whistleblowers face significant retaliation or retribution, both overtly and covertly, from their employers.

    a. Do you support federal whistleblower laws? Please explain any actions you have taken to support or strengthen such laws.

    b. You have spent much of your career defending governmental interests in whistleblower suits.

        i. Have you ever represented a government whistleblower or advocated for a whistleblower's interest?

        ii. Please describe any actions you have taken, including legal representation, opposing federal government whistleblowers who claimed they were subject to prohibited personnel practices after making protected disclosures.

        iii. What evidence can you provide that demonstrates you will handle whistleblower issues in an impartial fashion?

    c. Do you believe that any worker employed by any agency dealing in national security matters, without regard to the existence of the worker's access to confidential information or security clearance, should be precluded from:

        i. Bringing whistleblower complaints before Congress? Please explain why or why not.

        ii. Appealing adverse actions taken against them? Please explain why or why not.

    d. May an employee be exempted from having a right to appeal an adverse action if that employee's position is designated as national security sensitive (or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made before the adverse action was taken?

    e. May an employee be exempted from having a right to appeal an adverse action if that employee's position is designated as national security sensitive (or any other

applicable status subject to exemption under CSRA or otherwise) when that designation was made after the adverse action was taken?

f. What role do national security interests play in exempting an adverse action from appeal?

g. Are employees in non-intelligence positions exempted from a right to appeal adverse actions? Why or why not?

h. Do low-level employees working for the Department of Defense with no access to classified information and having no security clearance have a right to appeal the merits of an adverse action taken against their employment status?

i. What are the differences between a federal employee with no access to classified information and no security clearance who works for an agency dealing in national security matters and a federal employee with no access to classified information and no security clearance who works for an agency completely divorced from national security?

j. Considering any stated differences, should these two employees be subject to different rights to appeal adverse actions taken against their employment status? Why or why not?

2. Your broad reading of *Navy v. Egan* in *Hesse v. Department of State*, and your support of the Office of Personnel Management in *Berry v. Conyers* is of particular concern to me.

   a. Does *Egan* preclude any and all review of whistleblower retaliation claims in any security-related context? Please explain your views on the breadth and limitations of this case.

   b. Are there other contexts in which you feel *Egan* entirely precludes review of these claims?

3. *National Organization of Veterans Advocates v. Secretary of Veteran Affairs* is a recent case before the Federal Circuit that your division at the DOJ has been handling. Earlier this year, the Federal Circuit threatened sanctions against the government for repeatedly making representations to the court when in fact the represented agency, in this case the Department of Veterans Affairs, continued to act contrary to those representations.

   a. Please describe in detail your involvement in this case?

   b. When did you first become aware of the VA's failure to comply with the representations made to the court on its behalf?

c. Please explain why there was such a disparity between the promises made by your division's attorneys and the conduct of the VA.

d. Is this sort of issue of agency behavior at odds with the Department of Justice's representation common? Is this an isolated or unique occurrence? Please explain.

e. The reason the court in this case was so alarmed by the government's conduct was that the VA continued to act contrary to its repeated assurances to the court. Although the court recently gave its preliminary approval of the government's proposed remedy, subject to a few clarifications, what changes have occurred in this specific case that will ensure to the court and to this committee that the VA will comply with the representations you, as a DOJ attorney, have made to the court through your most recent filing?

f. What efforts have you taken to ensure that this sort of issue doesn't occur again with respect to the VA?

g. What steps have you taken to ensure that this issue doesn't arise between other executive agencies and the Department of Justice during future court action?

4. Would you please explain the role you took in the case *Berry v. Conyers & Northover*?

   a. What was your input on developing the legal strategy, writing briefs, or otherwise overseeing that effort?

   b. You were listed on the brief with other Department of Justice officials. Would you describe your input on that document?

   c. Would you agree that this case constitutes a substantial limit on whistleblowers' protection? Please explain.

5. You have argued in front of the Federal Circuit many times, and your current colleagues will continue to do so once you take the bench. How will you approach the transition between the role of advocate and judge to ensure that you are fair and neutral? Also, please elaborate on what will be your approach to recusal.

6. You have written about the role of specific language in opinions, and how courts can use certain words to legitimize personal identities, especially on issues of sexual orientation.

   a. Do you feel it is the responsibility of courts to help certain classes of citizens fit into society?

b. How does the personal background of a judge factor into a judge's decision-making and opinion-writing process? Please explain.

7. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?

   a. May 15, 2008 Panelist, Federal Circuit Judicial Conference where the topic was "An examination of the Federal Circuit's Deference to Board Interpretations of Civil Service Law."

   b. August 21, 2007 Speaker, Customs & Border Protection's Chief Counsel Conference where you spoke on recent developments in federal personnel and whistleblower laws.

   c. March 1997 Panelist, California Western Law Review Symposium where the topic was "Towards a Radical and Plural Democracy."

8. What is the most important attribute of a judge, and do you possess it?

9. 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?

10. 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?

11. 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?

12. 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?

13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

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?

15. 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?

16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Andrea R. Wood
Nominee, U.S. District Judge for the Northern District of Illinois

1. In a response to Senator Durbin on what you think a Federal judge should be like, you responded that a judge should be "prepared to ensure a just result that is consistent with the precedent." What is a "just result" and, as a judge, how will you know when you have achieved that result?

2. According to your questionnaire, it does not appear that you have tried a case in federal court yet you listed that 75% of your litigation experience was in federal court.
   a. Have you tried a case to verdict, judgment or final decision in federal court?
   b. Can you explain your experience practicing in federal court?

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. What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?

7. Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.

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. 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? Please explain.

11. What is your understanding of the workload in the Southern District of New York? 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?

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Colin Stirling Bruce:

1. If you had to describe it, how would you characterize your judicial philosophy?

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?

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Sara Lee Ellis:

1. If you had to describe it, how would you characterize your judicial philosophy?

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?

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Madeline Hughes Haikala:

1. If you had to describe it, how would you characterize your judicial philosophy?

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?

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Todd M. Hughes:

1. If you had to describe it, how would you characterize your judicial philosophy?

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?

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Andrea R. Wood:

1. If you had to describe it, how would you characterize your judicial philosophy?

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?

Questions for the Record for all nominees
Senator Ted Cruz
Response of Todd Hughes

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: The role of a judge is to determine what the law is, relying on applicable constitutional provisions, statutes, judicial precedents, and other legal authorities, and then to apply the law to the facts of the case in a neutral, even-handed and equitable manner. A judge should be respectful of the parties and fully understand all details of the case and the litigants' positions. I have not studied the opinions of any Justice in sufficient detail to determine which Justice's 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: Yes. In interpreting the Constitution, the original understanding of the Framers is a critical tool in determining the meaning of any provision.

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: As a circuit court judge, I would be bound by all decisions of the Supreme Court and would follow them. I would also be bound by all precedential decisions of the Federal Circuit, unless there is intervening precedent from the Supreme Court. In rare circumstances, a circuit court may convene en banc to overturn prior circuit precedent, but only to resolve conflicting precedent or a question of exceptional importance.

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 Court in *Garcia* concluded that the structural protections of the Constitution and the federal political process protect state interests. I would follow *Garcia*, and any other relevant Supreme Court precedent, 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 cases such as *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court has concluded that there are three categories of activity that Congress can regulate pursuant to its powers under the Commerce Clause: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce, and (3) those activities having a substantial relationship to interstate commerce. I would follow the Supreme Court's precedents in *Morrison* and *Lopez*. In striking down the statutes at issue in *Morrison* and *Lopez*, the Supreme Court especially focused on the non-economic character of the activities at issue.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's executive authority is set forth and limited by the Constitution. Those limits would be judicially enforceable in the context of a case or controversy within the Judiciary's authority. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President's authority must be based on either the Constitution or an act of Congress. In his concurring opinion, Justice Jackson further elaborates that the President's actions are strongest when he acts pursuant to express or implied authorization of Congress; weakest when he acts contrary to the will of Congress; and in an intermediary zone when he acts in the absence of either a congressional grant or denial of authority. *Id.* at 635-37.

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, 720 (1997), the Supreme Court held that the Due Process Clause protects "those fundamental rights 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.'"

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court applies strict scrutiny to classifications based on race, national identity, or national origin. Intermediate scrutiny applies to classifications based on 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 personal views regarding this subject nor would my personal views be relevant to any case involving the use of racial preferences in public education. I would be bound by *Grutter*, *Fisher v. University of Texas at Austin*, __ S. Ct. __, 2013 WL 3155220 (2013), and any subsequent binding precedent.

Senator Chuck Grassley
Questions for the Record

Todd M. Hughes
Nominee, U.S. Circuit Judge for the Federal Circuit

1. **Whistleblowers play an important role in the Federal Government and in business and industry. They risk a great deal to come forward and uncover wrongdoing, waste, fraud and abuse. Oftentimes, whistleblowers face significant retaliation or retribution, both overtly and covertly, from their employers.**

   a. **Do you support federal whistleblower laws? Please explain any actions you have taken to support or strengthen such laws.**

      Response: I am firmly committed to federal whistleblower laws. In my role as a government attorney, I have counseled Department of Justice lawyers and officials from other Executive Branch agencies regarding the proper interpretation of the Whistleblower Protection Act (WPA) and advised officials about how to be fully compliant with the law.

   b. **You have spent much of your career defending governmental interests in whistleblower suits.**

      i. **Have you ever represented a government whistleblower or advocated for a whistleblower's interest?**

         Response: As a government attorney, my primary responsibility has been to represent agencies in appeals to the Federal Circuit; therefore, I have not individually represented any government whistleblower. However, in *Costello v. Merit Systems Protection Board*, 182 F.3d 1372 (Fed. Cir. 1999), I represented the Office of Special Counsel (OSC), the federal agency charged with protecting the interests of whistleblowers. In that case, OSC, which was an intervenor in the appeal, supported the Merit Systems Protection Board's (MSPB's) decision imposing discipline on a federal manager for retaliating against a whistleblower. In another instance, I determined that the MSPB had potentially applied the wrong legal standard in rejecting a whistleblower's claim and recommended, over the employing agency's objections, a remand to the MSPB for further action. *Ganski v. Department of Interior*, 232 F.3d 910 (Fed. Cir. 2000).

      ii. **Please describe any actions you have taken, including legal representation, opposing federal government whistleblowers who claimed they were subject to prohibited personnel practices after making protected disclosures.**

Response: For 19 years, I have worked for the Commercial Litigation Branch of the Civil Division within the Department of Justice. The Commercial Litigation Branch litigates exclusively on behalf of the United States and its agencies in a wide variety of cases. With respect to the Federal Circuit and whistleblowers, my primary responsibility during my years at the Department has involved representing government agencies that have already prevailed below – in front of the MSPB – in sustaining adverse actions imposed by the agencies. These cases include me personally handling appeals as well as supervising cases handled by other trial attorneys in my office. Over the course of my representation in these cases, I have had the obligation to make reasonable, good faith arguments on behalf of my client agencies. However, I also have a responsibility to raise concerns if I believe an agency's actions are indefensible or its legal position is without merit. As I mentioned in response to question 1a, my general expertise in the WPA means that I regularly provide advice and feedback to officials in order to help managers understand their obligations under the WPA.

One example of a case I handled is *Strader v. Department of Agriculture*, 475 Fed. Appx. 316, 2012 WL 1388337 (Fed. Cir. 2012). In that case, I served as the supervisory attorney for an appeal in which the Federal Circuit affirmed the decision of the MSPB, sustaining Mr. Strader's removal. The court concluded that the MSPB administrative judge had properly determined that Mr. Strader's removal was a result of the expiration of his term appointment, and not due to any protected disclosures.

iii. What evidence can you provide that demonstrates you will handle whistleblower issues in an impartial fashion?

Response: I understand and take very seriously the differences between serving as an impartial judge and an advocate representing a client. If I am fortunate enough to be confirmed, I would be committed to acting as an impartial judge in all cases that might come before me – including whistleblower cases. Although as an advocate, I was obligated to represent my client and make reasonable arguments on an agency's behalf, I also have had the responsibility as a Department of Justice attorney to make my own judgment about whether an agency's position was correct and advocate for a different position if I disagreed.

That was the situation in the *Ganski* case discussed above, where I disagreed with the grounds on which an agency had prevailed against a whistleblower and recommended that the case be sent back to the MSPB for a new determination, a recommendation which was internally adopted in the Department of Justice, and was subsequently ordered by the court. I have taken similar actions in other appeals handled by my office in other

types of cases, such as veterans benefits and MSPB cases, where I have disagreed with the agencies' positions and recommended either settlement of the appeal or a remand for further action. That independent exercise of my judgment and my willingness to challenge agency positions is evidence of my ability to deal with whistleblowers and indeed all litigants in a fair and impartial manner.

c. **Do you believe that any worker employed by any agency dealing in national security matters, without regard to the existence of the worker's access to confidential information or security clearance, should be precluded from:**

   i. **Bringing whistleblower complaints before Congress? Please explain why or why not.**

   Response: Consistent with the terms of the Whistleblower Protection Act, federal employees working in any agency can bring whistleblower complaints before appropriate Members of Congress.

   ii. **Appealing adverse actions taken against them? Please explain why or why not.**

   Response: My understanding is that all federal workers, regardless of their employment status at a national security agency, have some type of ability to challenge adverse employment decisions. In the Whistleblower Protection Act, Congress has excluded employees of certain national security agencies from appealing adverse actions to the MSPB and the Federal Circuit. 5 U.S.C. 2302(a)(2)(C). Even employees at those agencies, however, have some type of internal administrative review.

d. **May an employee be exempted from having a right to appeal an adverse action if that employee's position is designated as national security sensitive (or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made before the adverse action was taken?**

Response: Employees in national security sensitive positions have the right to appeal any adverse action covered by the Civil Service Reform Act (CSRA), regardless of the timing of that designation. In *Berry v. Conyers*, No. 2011-3207, the Federal Circuit en banc is considering a related, but more narrow question: whether the determination of an individual's eligibility to occupy a position designed as national security sensitive is the type of adverse action covered by the CSRA. If confirmed, I would follow the Federal Circuit's decision in that appeal and all other applicable precedent.

e. **May an employee be exempted from having a right to appeal an adverse action if that employee's position is designated as national security sensitive**

(or any other applicable status subject to exemption under CSRA or otherwise) when that designation was made after the adverse action was taken?

Response: Employees in national security sensitive positions have the right to appeal any adverse action covered by the Civil Service Reform Act (CSRA), regardless of the timing of that designation. In *Berry v. Conyers*, No. 2011-3207, the Federal Circuit en banc is considering a related, but more narrow question: whether the determination of an individual's eligibility to occupy a position designed as national security sensitive is the type of adverse action covered by the CSRA. If confirmed, I would follow the Federal Circuit's decision in that appeal and all other applicable precedent.

f. **What role do national security interests play in exempting an adverse action from appeal?**

Response: With the exception of certain national security agencies excepted by Congress, *see* 5 U.S.C. 2302(a)(2)(C)(ii), national security interests should not play any role in exempting an adverse action, as defined by the CSRA, from appeal. Individuals in national security positions, including those that possess security clearances, maintain the right to appeal adverse employment actions in the same manner as do employees in positions that do not involve national security or require a security clearance. The Supreme Court, in *Egan v. Department of the Navy*, 484 U.S. 518 (1988), concluded that a security clearance determination did not constitute an adverse action otherwise subject to review.

g. **Are employees in non-intelligence positions exempted from a right to appeal adverse actions? Why or why not?**

Response: Employees in non-intelligence positions have the right to appeal adverse actions as defined by the CSRA.

h. **Do low-level employees working for the Department of Defense with no access to classified information and having no security clearance have a right to appeal the merits of an adverse action taken against their employment status?**

Response: Employees in national security sensitive positions have the right to appeal any adverse action covered by the Civil Service Reform Act (CSRA), regardless of the timing of that designation. In *Berry v. Conyers*, No. 2011-3207, the Federal Circuit en banc is considering a related, but more narrow question: whether the determination of an individual's eligibility to occupy a position designed as national security sensitive is the type of adverse action covered by the CSRA. If confirmed, I would follow the Federal Circuit's decision in that appeal and all other applicable precedent.

i. **What are the differences between a federal employee with no access to classified information and no security clearance who works for an agency dealing in national security matters and a federal employee with no access to classified information and no security clearance who works for an agency completely divorced from national security?**

Response: There are no differences between the two groups identified by the question.

j. **Considering any stated differences, should these two employees be subject to different rights to appeal adverse actions taken against their employment status? Why or why not?**

Response: Employees in national security sensitive positions have the right to appeal any adverse action covered by the Civil Service Reform Act (CSRA), regardless of the timing of that designation. In *Berry v. Conyers*, No. 2011-3207, the Federal Circuit en banc is considering a related, but more narrow question: whether the determination of an individual's eligibility to occupy a position designed as national security sensitive is the type of adverse action covered by the CSRA. If confirmed, I would follow the Federal Circuit's decision in that appeal and all other applicable precedent.

2. **Your broad reading of *Navy v. Egan* in *Hesse v. Department of State*, and your support of the Office of Personnel Management in *Berry v. Conyers* is of particular concern to me.**

a. **Does *Egan* preclude any and all review of whistleblower retaliation claims in any security-related context? Please explain your views on the breadth and limitations of this case.**

Response: As noted above, my primary responsibility during my years at the Department has involved representing government agencies that have already prevailed below – in front of the MSPB – in sustaining adverse actions imposed by the agencies. Thus, the positions advanced in *Hesse* and *Conyers* were done so on behalf of my client agencies.

Egan answered the narrow question of whether a security clearance determination is an "adverse action" reviewable by the MSPB or in the federal courts, and concluded that it was not. Employees who work in the national security area or who possess security clearances may still pursue whistleblower claims as long as the claims do not require the MSPB or the Federal Circuit to address the merits of the security clearance determination. Moreover, employees have other alternative means of challenging negative security clearance determinations, including administrative review within the agency and actions before an agency inspector general.

b. **Are there other contexts in which you feel *Egan* entirely precludes review of these claims?**

Response: *Egan* does not entirely preclude review of all claims. To the extent that claims in other areas of the law might require addressing the merits of a security clearance determination, courts have recognized that *Egan* precludes judicial review. *See, e.g.*, *El-Ganayni v. Department of Energy*, 591 F.3d 176 (3rd Cir. 2010). However, employees have other alternative means of challenging negative security clearance determinations, including administrative review within the agency and actions before an agency inspector general.

3. ***National Organization of Veterans Advocates v. Secretary of Veteran Affairs* is a recent case before the Federal Circuit that your division at the DOJ has been handling. Earlier this year, the Federal Circuit threatened sanctions against the government for repeatedly making representations to the court when in fact the represented agency, in this case the Department of Veterans Affairs, continued to act contrary to those representations.**

a. **Please describe in detail your involvement in this case?**

Response: I am the supervisory attorney in this appeal. In that role, I am responsible for reviewing all written materials, and conferring with the trial attorney about the case. At some point after the appeal was filed, internal discussions occurred at the Department of Justice, the result of which was to advise the Department of Veterans Affairs (VA) that the regulation at issue was procedurally deficient and that the Justice Department would not defend the case. VA agreed with that recommendation, agreed to revoke the regulation, and also committed to not apply the regulation in the interim. As discussed further below, when I was notified that VA failed to meet this commitment, I took immediate action to address the situation.

b. **When did you first become aware of the VA's failure to comply with the representations made to the court on its behalf?**

Response: I became aware of VA's failure when counsel for the National Organization of Veterans Advocates (NOVA) personally informed me of the situation. I immediately contacted my counterparts in VA General Counsel's office and obtained their assurances that they would comply with the representations made to the Court.

c. **Please explain why there was such a disparity between the promises made by your division's attorneys and the conduct of the VA.**

Response: The representations made to the court by my Division were based on the assurances of the VA that it would discontinue application of the rule. Those assurances were given by senior counsel at the VA and, based on the long

working relationship between my office and those officials, I had no reason to suspect that the commitment would not be honored. Moreover, senior VA leadership instructed the Board of Veterans Appeals to discontinue application of the challenged rule. Some administrative judges, however, continued applying the rule and that fact led the court to consider sanctions against the VA.

In its sanctions order, the court did not suggest that the Department of Justice lawyers handling the court case had acted inappropriately in any way. In fact, the court credited the Department of Justice with correctly declining to defend the regulation.

d. **Is this sort of issue of agency behavior at odds with the Department of Justice's representation common? Is this an isolated or unique occurrence? Please explain.**

Response: This was a unique occurrence. In my nearly 19 years of service at the Department of Justice, I cannot recall a single instance where my office made a representation to the Federal Circuit that was so at odds with the agency's subsequent behavior. I take my duty of candor and honesty to the courts very seriously, as does the department of Justice. In particular, because my office handles an especially large percentage of appeals at the Federal Circuit, it is critical that the court be able to rely on our honesty, integrity, and candor. Accordingly, we work closely with all agency counsel and personnel to ensure that all representations made to the court are fully accurate and truthful. As stated in response to the court's order, the VA made clear that it "understands and appreciates the significance of [its] commitments and deeply regrets its failure to abide by them." *See* Response (May 20, 2013), at 3. As the supervisory attorney in this appeal, I also deeply regret the VA's failures in this case and have worked closely with the VA to remedy any harm caused by such failure.

e. **The reason the court in this case was so alarmed by the government's conduct was that the VA continued to act contrary to its repeated assurances to the court. Although the court recently gave its preliminary approval of the government's proposed remedy, subject to a few clarifications, what changes have occurred in this specific case that will ensure to the court and to this committee that the VA will comply with the representations you, as a DOJ attorney, have made to the court through your most recent filing?**

Response: Immediately after VA's failure to comply with its representations was brought to my attention, I contacted counsel for the VA and firmly insisted that VA immediately stop applying the challenged rule. Likewise, after the court's Order to Show Cause, I and other attorneys from my office immediately began working with VA to develop a plan for identifying and fully remedying the harms caused by VA's failures. That plan was coordinated with counsel for NOVA in order to reach an acceptable proposal.

The submission to the court stated: "VA never intended to mislead the Court or NOVA, nor did it intend to prejudice any veteran's claims. VA undertook its commitment to cease applying the 2011 Rule with sincerity and deeply regrets that it fell short of that commitment. VA also never intended to evade responsibility for remedying any harm resulting from application of the 2011 Rule. VA has collaborated with NOVA in carefully drafting this Proposed Plan in an effort to ensure that any potentially affected appellant receives an opportunity for a new decision and a new hearing, including an opportunity to submit additional evidence." *See* Response (May 20, 2013), at 4-5. After reviewing this plan, the court "express[ed] satisfaction with the Government's Response and its timeliness" and found that "the Proposed Plan appears to address in a creative and comprehensive way most of the problems for veterans" created by the VA's failure to stop application of the challenged rule. *See* Order (June 10, 2013), at 2. Our supplemental response to the court's request for clarification was filed on June 27, 2013, and, again, expressed our commitment to fully remedy any and all harms caused by VA's conduct.

f. **What efforts have you taken to ensure that this sort of issue doesn't occur again with respect to the VA?**

Response: Throughout the course of these proceedings, I have emphatically reminded VA of its duties of candor and its serious obligation to live up to its commitments to the court.

g. **What steps have you taken to ensure that this issue doesn't arise between other executive agencies and the Department of Justice during future court action?**

Response: The Department of Justice takes very seriously its duty of candor and honesty toward the courts. That commitment plays a fundamental role in our effectiveness as an advocate for the United States. I, other supervisory attorneys in my office, and all trial attorneys will continue to work closely with agency counsel and other agency representatives to ensure that we continue to meet those very high standards.

4. **Would you please explain the role you took in the case *Berry v. Conyers & Northover*?**

a. **What was your input on developing the legal strategy, writing briefs, or otherwise overseeing that effort?**

Response: The briefing and argument of this case was principally handled by the Appellate Staff of the Civil Division. I was involved in developing the legal strategy and reviewing the briefs, along with a large number of other government attorneys from the Department of Justice, the Office of Personnel Management,

the Department of Defense, the Department of Homeland Security, and other agencies.

b. **You were listed on the brief with other Department of Justice officials. Would you describe your input on that document?**

Response: I reviewed drafts of the briefs and provided feedback.

c. **Would you agree that this case constitutes a substantial limit on whistleblowers' protection? Please explain.**

Response: The government's position is that this case does not constitute a substantial limit on whistleblowers' protection because this appeal involves the same type of narrow question addressed in *Egan*: whether the MSPB and the Federal Circuit can review the decision of the Executive Branch as to who is eligible to occupy a position designated as national security sensitive. Apart from the eligibility determination, employees in those positions still retain their full rights under the CSRA and the Whistleblower Protection Act. In any event, the case is pending before the en banc Federal Circuit and I would follow its decision if confirmed.

5. **You have argued in front of the Federal Circuit many times, and your current colleagues will continue to do so once you take the bench. How will you approach the transition between the role of advocate and judge to ensure that you are fair and neutral? Also, please elaborate on what will be your approach to recusal.**

Response: As noted above, I understand and take very seriously the vast differences between being an advocate and being a judge. An advocate's role is to represent his client, advancing reasonable, good faith interpretations of the law to further the client's interest. In contrast, a judge must approach the case from a neutral, objective standpoint, determine what the law is, and faithfully apply it to the facts of the case, without regard to the identity of the litigants. If I am confirmed, I would be strongly committed to acting as a neutral and impartial judge.

I will recuse myself from all cases in which I was either personally involved as the attorney of record or as the supervisory attorney. This includes any cases pending at the Court of Federal Claims or the Court of International Trade, which may be appealed to the Federal Circuit. I also will recuse myself from any cases handled by my office prior to the date of my nomination, whether I had any personal involvement or not. Following the date of my nomination, I imposed a firewall that prevents me from having any involvement in, or knowledge of, any new cases filed at the Federal Circuit, the Court of Federal Claims, or the Court of International Trade. For those cases filed after my nomination and handled by my office, I will apply the provisions of 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other relevant principles of judicial ethics, to determine whether to recuse in an individual matter. If confirmed, I

would also consult with other judges of the Federal Circuit regarding specific recusal issues.

6. **You have written about the role of specific language in opinions, and how courts can use certain words to legitimize personal identities, especially on issues of sexual orientation.**

   a. **Do you feel it is the responsibility of courts to help certain classes of citizens fit into society?**

      Response: No. The article referenced by the question was written nearly 16 years ago, very early in my legal career and when I was considering the pursuit of a career in legal academia. The article was written with that goal in mind and attempted to address the question in a way that was then-common for academic legal writing. To the extent that the article suggested that courts should "help certain classes of citizens fit into society," I no longer adhere to those views. The role of a judge is to faithfully apply the law to the facts of the case, without regard to the identities of any of the litigants. I am firmly committed to being such a neutral, impartial judge.

   b. **How does the personal background of a judge factor into a judge's decision-making and opinion-writing process? Please explain.**

      Response: A judge's personal background should play no factor in the decision-making and opinion-writing process.

7. **You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for several of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?**

   a. **May 15, 2008 Panelist, Federal Circuit Judicial Conference where the topic was "An examination of the Federal Circuit's Deference to Board Interpretations of Civil Service Law."**

      Response: This panel was chaired by the then-current Chairman of the Merit Systems Protection Board, Neil McPhie, and included other attorneys who practiced in the subject matter area. As I recall, the focus of my presentation was chiefly a description of the relevant principles of deference that federal courts owe to agency interpretations, and the way those principles are generally applied to the MSPB.

   b. **August 21, 2007 Speaker, Customs & Border Protection's Chief Counsel Conference where you spoke on recent developments in federal personnel and whistleblower laws.**

Response: I do not recall the specific details of my presentation. Generally, I provided an update regarding any new developments in federal personnel and whistleblower laws. I likely discussed any significant new cases from the Federal Circuit. I also answered questions from the audience.

c. **March 1997 Panelist, California Western Law Review Symposium where the topic was "Towards a Radical and Plural Democracy."**

Response: I do not recall any specific details, but the substance of my presentation was reflected in the published article, "Making *Romer* Work," which was included in my response to the Committee Questionnaire.

8. **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 the rule of law and the ability to apply the law to the facts of the case in a neutral, even-handed manner, without regard to the identities of the parties. I believe I possess those attributes.

9. **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 fair, impartial, and willing to fully engage the record, and the arguments of all parties in the case. Moreover, a judge should be respectful of all litigants and counsel appearing before the court. I believe I meet that standard.

10. **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.

11. **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 of first impression, the starting point is the text of the legal document involved. For instance, in a case involving statutory interpretation, a judge should first look to determine whether the language of the statute is plain and unambiguous. If so, that is the end of the inquiry and the law is then applied to the facts of the case. If the statutory language is ambiguous, a judge should consider the relevant canons of statutory construction as set forth by the Supreme Court and may also look to legislative history in determining the statute's intended purposes. If the case involved an agency's

interpretation of the statute, and the statutory language was ambiguous, I would evaluate whether the agency's interpretation was based on a permissible construction of the statute pursuant to *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). To the extent that there is any analogous precedent from other courts, I would also consider that precedent.

12. 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: Decisions of the Supreme Court and the Federal Circuit are binding and I would apply them regardless of my personal beliefs. In rare circumstances, the Federal Circuit can convene en banc to reconsider its own previously decided precedent to ensure uniformity of panel decisions, or to answer a question of exceptional importance.

13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Under the constitutional avoidance principle, a federal court should avoid deciding constitutional questions if the case can be resolved on any other basis. A federal statute is presumed to be constitutional and should not be struck down unless it is clearly inconsistent with the Constitution (for example, if it exceeds the enumerated powers of Congress).

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?

Response: No.

15. 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: An appellate court may convene en banc to overturn its own precedent, but should do so only to resolve conflicts between panel decisions or to address questions of exceptional importance, or if intervening Supreme Court precedent compels that result.

16. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on June 26, 2013, and prepared responses. On July 1, I sent my answers to an official within the Department of Justice. After receiving comments, I made revisions and then authorized the submission of my responses to the committee.

17. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Todd M. Hughes:

1. **If you had to describe it, how would you characterize your judicial philosophy?**

   Response: If I am confirmed, my judicial philosophy would be that the role of a judge is to determine what the law is, relying on applicable constitutional provisions, statutes, judicial precedents, and other legal authorities, and to apply it to the facts of the case in a neutral, even-handed and equitable manner. A judge should be respectful of the parties and fully understand all details of the case and the litigants' positions.

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 role of a judge should be to apply the law to the facts of the case in a neutral, fair and objective manner without regard to the identity of the parties. I am firmly committed to that role. Although I have been an advocate for the United States my entire career, I always have been sensitive to the concerns of the other litigants in cases I have handled or supervised. Moreover, as a member of the Federal Circuit Bar Association, I played a significant role in creating pro bono programs for veterans and federal employee appeals.

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: Stare decisis is essential to the functioning of our judicial system. It provides important predictability and stability for litigants, and ensures even-handed application of the law. Circuit court judges are bound by Supreme Court decisions and precedential decisions of the circuit, unless there is intervening Supreme Court precedent. In rare circumstances, a circuit court may convene en banc to overturn prior circuit precedent, but only to resolve conflicting precedent or when a question of exceptional importance exists.

Response of Colin S. Bruce
Nominee to be United States Judge for the Central District
of Illinois to the Written Questions of Senator Ted Cruz

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 a judge should decide matters fairly, impartially and promptly. Further, I believe a judge should treat all parties coming before the court with courtesy and respect. In deciding any issue before the court, a judge should apply the rule of law without regard to prevailing popular opinion or personal beliefs. I also believe judges should exercise judicial restraint in all matters by deciding only the issues in controversy before them and applying the applicable precedent. While I have great respect and admiration for the justices of the Supreme Court, I am not familiar enough with any one Supreme Court Justice's judicial philosophy to say which is most analogous with 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 I am confirmed as a district court judge, I would apply the precedent from the United States Supreme Court and the Seventh Circuit Court of Appeals in decisions interpreting the Constitution. This includes Supreme Court decisions which interpreted the Constitution using originalism such as *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 I am confirmed as a district court judge, I will apply precedential authority issued by the Supreme Court and the Seventh Circuit Court of Appeals. Thus, I would not overrule precedent as a district court judge.

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 decision by the United States Supreme Court in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), is precedential and binding on district courts. Thus, if I am confirmed as a district court judge, I believe any agreement or disagreement I may have involving such an issue is irrelevant to any decision which I may be called upon to make.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Under the Supreme Court's holding in *United States v. Lopez*, 514 U.S. 549, 558–59 (1995), Congress "may regulate 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 if threatened only by "intrastate activities," and may "regulate those activities having a substantial relation to interstate commerce, i.e., . . . that substantially affect interstate commerce." If I am

confirmed as a district court judge and presented with a case involving the scope of Congress's Commerce Clause power, I would follow the analysis and binding precedent of the United States Supreme Court, including *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), and any other subsequent relevant precedential decisions from the Supreme Court or the Seventh Circuit Court of Appeals addressing this issue.

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, 585 (1952), the United States Supreme Court held that the President's power to issue executive orders or actions "must stem either from an act of Congress or from the Constitution itself." If the President exceeds the stated authority as explained and defined in *Youngstown*, and the relevant executive order or action is challenged in court before me, if I am confirmed as a district court judge, I believe it would be my responsibility and duty to invalidate the executive order or action at issue.

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). If confirmed as a district court judge, I will apply this precedent, as well as any other relevant precedent from the Supreme Court or the Seventh Circuit Court of Appeals.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it targets a suspect class (e.g., race, alienage, national origin, or gender) or involves a fundamental right. If confirmed as a district court judge, I would follow this analysis on this issue.

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 the Supreme Court's holding in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), and any other Supreme Court or Seventh Circuit Court of Appeals decisions addressing this issue.

Response of Colin S. Bruce
Nominee to be United States Judge for the Central District
of Illinois to the Written Questions of Senator Chuck Grassley

1. **You have spent your entire legal career as an Assistant United States Attorney handling both civil and criminal matters. What assurances can you give this committee that you will be able to fairly judge a case that involves the United States Attorney's Office and AUSAs that you have previously worked with and supervised?**

   Response: If I am confirmed as a district court judge, I am confident that I would be fair in any case involving the United States and the United States Attorney's Office for several reasons. First, my twenty-four years in the United States Attorney's Office trained me to strive for fairness and justice, following Mr. Justice Sutherland's direction in *Berger v. United States*, 295 U.S. 88 (1935), that the United States Attorney's purpose "in a criminal prosecution is not that it shall win a case, but that justice shall be done." Second, I believe that opposing counsel generally perceive me as a person who strives for fairness and justice. Third, I fully understand the difference between a representative of the executive and a representative of the judiciary; I fully embrace the responsibility for neutrality, fairness and justice that comes with the judiciary. Finally, I have a bedrock belief in the rule of law and equal justice under the law. I intend to treat all persons with courtesy and respect, and I will base my decisions not on the person or party appearing before me, but instead on the rule of law.

2. **What recusal policies do you plan to implement with respect to the US Attorney's Office and AUSAs with whom you have worked and supervised?**

   Response: If I am confirmed as a district court judge, my intent is to recuse myself from all criminal matters for the first six months after I take the bench. Further, I intend to recuse myself from all matters which were opened in the United States Attorney's Office for the Central District of Illinois during the time when I was either the First Assistant or the branch supervisor, or any case in which I was previously involved as an Assistant United States Attorney.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attributes of a judge include the ability to apply the law fairly and impartially to all cases, while exercising judicial restraint by only addressing the issues before the court. A judge should also show humility, be courteous and respectful to all parties, and be hard working. I believe I possess these attributes.

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: I believe a district court judge needs to be polite, patient and respectful to all parties while still maintaining control of the courtroom. A judge also needs to remain calm, show humility, listen carefully, and focus only on the issues before the court. I believe I possess all of those abilities.

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. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?**

   Response: If I am confirmed as a district court judge, I will decide issues presented before me based upon the facts and the law. During my twenty-four years as an Assistant United States Attorney, I have exercised prosecutorial discretion without regard to my personal beliefs and regardless of a defendant's or victim's economic status, political beliefs or any other characteristic. If confirmed as a district court judge, I would be faithful to the judicial oath and treat everyone appearing before me fairly, courteously and respectfully.

7. **Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

   Response: The Supreme Court has held that the death penalty is constitutional, except in certain limited circumstances. If I am confirmed as a district court judge, I would apply the relevant Supreme Court and Seventh Circuit Court of Appeals precedent to any case where death is a potential punishment.

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: If I am confirmed as a district court judge and presented with a statutory interpretation case of first impression, I would look first to the express language of the statute and give the text its plain and ordinary meaning. If the language is ambiguous, I would look to controlling Supreme Court and Seventh Circuit Court of Appeals precedent and use the applicable rules of statutory construction to resolve the ambiguity. If there were no

controlling precedents from the Supreme Court or the Seventh Circuit Court of Appeals, I would look for persuasive precedent involving similar issues from those and other federal courts.

9. **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 statute is only unconstitutional when Congress has exceeded its authority in enacting the statute or when the statute violates the Constitution.

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? Please explain.**

    Response: No.

11. **What is your understanding of the workload in the Central District of Illinois? If confirmed, how do you intend to manage your caseload?**

    Response: If I am confirmed as a district court judge, 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 set firm deadlines for pretrial discovery, motions and trials. In criminal cases, I would hold regular status hearings to ensure that both sides were complying with discovery deadlines. In both civil and criminal cases, I would promptly issue decisions to expedite resolution and litigation. I would make an expectation in my courtroom that the attorneys will be held to deadlines set by the court. Lastly, I would consult with fellow judges to learn their best practices.

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: I believe that judges have a role in controlling the pace and conduct of litigation. If I am confirmed as a district court judge, I would establish deadlines for specific events and after these deadlines are set, grant a continuance only upon good cause. I would also take the steps described in my response to Question 11 to control and manage my 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?**

    Response: As an Assistant United States Attorney, I am an advocate for the United States. I understand that if I am confirmed as a district court judge, my role will be much different. A judge must be neutral and detached from the parties and issues, deciding cases based solely on the facts and the applicable law. If I am confirmed as a district court judge, I am confident that I can successfully make this transition. For guidance in reaching decisions, I will look to

the decisions of the United States Supreme Court, the Seventh Circuit Court of Appeals, and all applicable laws and rules of procedure.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions via e-mail from the Department of Justice on June 26th, 2013. On June 28th, 2013, I drafted my responses to the questions. I returned my responses to these questions and the written questions of other Senators to the Department of Justice on June 28th, 2013, and authorized the Department of Justice to submit these responses to the United States Senate.

15. Do these answers reflect your true and personal views?

Response: Yes.

Response of Colin S. Bruce
Nominee to be United States Judge for the Central District
of Illinois to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy?**

   Response: My judicial philosophy is that a judge should decide matters fairly, impartially and promptly. Further, I believe a judge should treat all parties coming before the court with courtesy and respect. In deciding any issue before the court, a judge should apply the rule of law without regard to prevailing popular opinion or personal beliefs. I also believe judges should exercise judicial restraint in all matters by deciding only the issues in controversy before them and applying the 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: I strongly believe that judges must be impartial and treat all parties with respect and courtesy, regardless of their socio-economic status, posture before the court or political beliefs. As an Assistant United States Attorney, I have carefully handled all the matters brought to me with an open mind, and exercised my prosecutorial discretion in such a manner that opposing counsel generally perceive me as a person who strives for fairness and justice. I fully embrace the responsibility toward fairness and justice that comes with the judiciary. I have a bedrock belief in the rule of law and equal justice under the law. If I am confirmed as a district court judge, I will treat all persons with courtesy and respect, and I will base my decisions not on the person or party appearing before me, but instead on 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: I believe the doctrine of *stare decisis* is fundamental to American jurisprudence. Supreme Court precedent is binding on all lower federal courts; Circuit Court of Appeals precedent is binding upon the district courts within a particular circuit. If I am confirmed as a district judge, I would faithfully apply controlling Supreme Court and Seventh Circuit Court of Appeals precedent. Further, while the Supreme Court may overturn its earlier rulings or those of a Court of Appeals, and an *en banc* panel may overturn a three-judge panel decision in the same Court of Appeals, I do not believe a district court may ever overturn a decision of the Supreme Court or Court of Appeals.

Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Ted Cruz

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 rule of law and apply the law in a fair and impartial manner to the facts presented to the court. Additionally, my judicial philosophy would call for treating all litigants with courtesy, respect, and an even hand. Finally, my judicial philosophy would call for resolving legal issues promptly, decisively, and after thorough application of the relevant legal principles to the facts at hand. I have not studied the judicial philosophies of the Supreme Court Justices and thus, could not identify the philosophy of any particular Justice that I would follow. However, the judicial philosophy I have identified above is one that I have admired and observed in many judges in the Northern District of Illinois. If fortunate enough to be confirmed, I would follow this judicial philosophy.

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 follow the Seventh Circuit and Supreme Court precedent in interpreting the Constitution. The Supreme Court has applied originalism in cases including *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: As a district court judge I would not have authority to overrule legal precedent and there is no circumstance where I would seek to do so.

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 Supreme Court's holding in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) is binding on a district court judge and if confirmed, I would apply this legal precedent without regard to my personal feelings, if any, on the issue.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), the Supreme Court identified three categories of activity which Congress may regulate under the Commerce Clause. These

categories include: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *Id.* In those cases, where the Supreme Court struck down an act of Congress, the court noted the non-economic nature of the activities being regulated. If confirmed, I would apply the law as identified in *Lopez* and other Supreme Court and Seventh Circuit precedent to determine whether the regulation of a particular activity is covered under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The proper analysis to use in determining whether the President has exceeded Executive authority is contained in the Supreme Court decision of *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579 (1952). If confirmed, and if I were presented with this legal issue, I would apply this analysis to assessing the legality of any presidential executive orders or actions.

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, 720-21 (1997), the Supreme Court defined rights and liberties as "fundamental" for purposes of Due Process Clause protection when the right or liberty is "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 [it was] sacrificed."

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that a classification is subject to heightened scrutiny under the Equal Protection Clause when the classification involves a suspect class, such as race, alienage, national origin, or gender. Courts will also apply strict scrutiny where laws impinge on a fundamental constitutional right.

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 whether the use of racial preferences will no longer be necessary in public higher education, at any time in the future. If confirmed, I will follow the controlling precedent of the Supreme Court, including *Grutter* and *Fisher v. University of Texas at Austin, et al.*, 570 U.S. ___ (2013), on the appropriate use of racial preferences in public higher education.

Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Chuck Grassley

1. **In *Sparlin v. LaSalle County*, you represented a plaintiff in a civil rights lawsuit who challenged the use of extended solitary confinement. Is it your belief that prisoners who are placed in solitary confinement for their protection are being subjected to cruel and unusual punishment?**

   Response: In *Sparlin*, I assisted a colleague from my law firm who was appointed by the judge to represent the plaintiff, and my personal belief, if any, did not play a role in that representation. The Seventh Circuit has held that it does not violate the Eighth Amendment to place prisoners in solitary confinement for their protection, as long as two conditions are met: first, that the prison conditions are not "sufficiently serious so that a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities" and second, that the prison official did not act "with deliberate indifference to the conditions in question." *Townsend v. Fuchs,* 522 F.3d 765, 771 (7th Cir. 2008) (internal citations and quotations marks omitted).

2. **In *Mason v. County of Cook Illinois*, you represented the Cook County Public Defender's Office when it challenged the practice of using video cameras in bond court. What is your view of the use of cameras in the federal courtroom?**

   Response: Currently, the Northern District of Illinois is participating in a three-year pilot program, which began on June 18, 2011, to evaluate the effect of cameras in district court courtrooms, video recordings of proceedings, and publications of such video recordings limited to civil cases only. Proceedings may be recorded only with the approval of the presiding judge, and parties must consent to the recording of each proceeding in a case. Unless the presiding judge decides not to make the recordings publicly available, they will subsequently be posted on www.uscourts.gov, as well as on local participating court websites at the court's discretion. The results of the pilot program will be studied by the Federal Judicial Center, and I look forward to that study in informing my views on this important issue.

3. **You have spent part of your career working as a criminal defense attorney, specifically with the Federal Defender Program.**

   a. **How will you transition from the role of advocate to that of a judge?**

      Response: If confirmed, I will be very aware of the differences between my new role and my former role. I would be diligent about conquering the learning curve through studying the materials provided to me from the Administrative Office of the U.S. Courts and consulting with other judges who have made a similar transition from advocate to judge. I am confident that I will be able to make this transition because I strongly believe in the rule of law and the role of a judge as a neutral arbiter who faithfully applies the law to the facts of each individual case without bias or favor.

b. **What assurances can you provide that will assuage any concerns that you will have a bias towards criminal defendants, especially in cases that involve the Federal Defender Program?**

Response: During my career, I have represented a wide variety of parties, both plaintiffs and defendants, from individuals to corporations, and criminal defendants to members of law enforcement. Specifically, I have represented members of law enforcement (both members of the Chicago Police Department and the University of California Police Department) in civil cases brought by criminal defendants. I zealously represented both criminal defendants and members of law enforcement alike, and have shown no bias toward one group of litigants over another. Although I am cognizant of the difference between the role of an advocate and the role of a judge, just as I showed no bias or favor toward any type of litigant represented by any of my former employers, such as the City of Chicago or Schiff Hardin LLP, I would likewise show no bias or favor toward any other type of litigants as a judge, including those represented by the Federal Defender Program. I would recuse myself in any case in which my impartiality could be reasonably questioned.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: A judge should possess many attributes including fidelity to the rule of law, diligence, fairness, decisiveness and efficiency. I possess all of these attributes.

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 must be respectful of the parties and litigants, patient, hard-working, even-handed, and open-minded. If confirmed, I believe that I would 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. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?**

Response: As an advocate, my actions have never been motivated by any political, economic, or philosophical influences. Instead, I have reviewed the facts at hand as well as any pertinent statutes, researched the applicable law, and formulated the best arguments in light of that process. Political, economic or philosophical influences have no place in a courtroom. A judge should faithfully apply the law to the facts before him or her. If

confirmed, I would base any legal decision on the facts presented, any applicable statutes, and the relevant legal precedent.

8. **Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

   Response: The Supreme Court has ruled that the death penalty is an appropriate form of punishment with limited exceptions. If confirmed, I would follow Supreme Court and Seventh Circuit precedent in imposing this sentence.

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 a case of first impression that involved a statute, I would first turn to the relevant statute. If I could not resolve the issue from the plain language of the statute, I would look to the standard rules of statutory construction and also examine Supreme Court and Seventh Circuit precedent from related contexts in order to reach a decision. If I could not decide the issue from Supreme Court and Seventh Circuit precedent, I would also review precedent from other Circuits that while not binding, could provide persuasive authority. Finally, I would review the legislative history of the statute if its meaning was still ambiguous.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: The circumstances under which a federal court can declare a Congressional statute unconstitutional are limited. A Congressional statute is presumptively constitutional and can only be declared unconstitutional where a federal court determines, after careful consideration, that the statute violates a right granted by the Constitution or exceeds the authority granted to Congress by the Constitution.

11. **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. Federal courts are to determine the meaning of the Constitution by looking to the language of the Constitution and applying relevant Supreme Court and Circuit Court precedent.

12. **What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?**

    Response: The Northern District of Illinois has a significant workload. If confirmed, I intend to manage my caseload by utilizing case management software to ensure that I am aware of

deadlines and can keep case files organized. Further, I would rule on issues promptly so that cases can be resolved in a timely manner. Finally, I would utilize the resources available to me, such as the Magistrate Judges and support staff, to make sure that cases are progressing through the judicial system in a just, prompt, and efficient manner.

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 utilize regular status conferences, firm deadlines, and prompt, thorough rulings to ensure that cases efficiently progressed toward resolution through trial or settlement.

14. 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 will reach a decision in cases that come before me by reading the briefs that the parties present, listening carefully to any oral arguments that may be made, researching the legal issues, and then applying the relevant law to the facts of the case as a neutral arbiter. If it is an area of the law where I do not have familiarity, I will also look to treatises and scholarly articles to obtain a better understanding of the law and consult with other judges who have more experience. Although there will be a learning curve, I am confident that I will be able to make this transition.

15. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on June 26, 2013. I reviewed them thoroughly, researched legal issues where necessary, and prepared my answers. I subsequently reviewed my answers with representatives from the Department of Justice.

16. Do these answers reflect your true and personal views?

Response: Yes.

Response of Sara Lee Ellis
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy?**

   Response: My judicial philosophy is to adhere to the rule of law and apply the law in a fair and impartial manner to the facts presented to the court. Additionally, my judicial philosophy would call for treating all litigants with courtesy, respect, and an even hand. Finally, my judicial philosophy would call for resolving legal issues promptly, decisively, and after thorough application of the relevant legal principles to the facts at hand.

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 19 year career, I have represented a variety of parties and litigants. I have represented criminal defendants and members of law enforcement, plaintiffs and defendants, corporations and individuals. I have been a zealous advocate for my clients regardless of their political beliefs, financial standing, or their role in the case as plaintiff or defendant. Though the role of a judge is different from the role of an advocate, what would not change is the respect and fairness with which I would approach every party. If I were fortunate enough to be confirmed, I assure this Committee that I would treat all parties who come before me fairly, impartially, and with respect.

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 bound, without exception, to the doctrine of *stare decisis.* In practice, this means that district court judges must follow the controlling precedent within their Circuit. Moreover, district court judges must adhere to controlling authority issued by the Supreme Court. While the Supreme Court or an *en banc* panel of a particular Circuit Court may overturn controlling legal precedent within that Circuit, district court judges do not have that authority. The doctrine of *stare decisis* is the basis on which our legal system operates in a just, fair and predictable manner.

Responses of Andrea R. Wood
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Ted Cruz

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: I believe that a judge should demonstrate a deep and abiding respect for the rule of law, the institution of the judiciary and its role in our constitutional system. I further believe that the integrity of our judicial system depends upon judges treating all participants in the judicial process with respect and fairness, and faithfully applying the law to the facts of particular cases regardless of their own personal views or opinions. Although I hold all Supreme Court Justices in the highest regard, I do not consider myself to be a scholar of their judicial philosophies such that I can identify one whose judicial philosophy is 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: If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent regarding constitutional interpretation. In a number of cases, the Supreme Court has used originalism to interpret certain Constitutional provisions. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would faithfully apply all such precedents.

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 have no authority to overrule Supreme Court or Seventh Circuit decisions. I would faithfully apply controlling precedent in all circumstances. Correspondingly, if a decision that is precedent today were to be overturned by the Supreme Court or the Seventh Circuit in the future, I would follow the precedent that exists at the time of my ruling.

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 judicial nominee, I do not feel it is appropriate to express a personal view regarding the quoted statement from *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528 (1985). *Garcia* is binding Supreme Court precedent. If confirmed, I would follow it regardless of any 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: The Supreme Court has identified three areas that the federal government may regulate under its Commerce Clause power: (1) the use of the channels of interstate commerce, (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce even if threatened only by intrastate activities, and (3) those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce. *United States v. Lopez,* 514 U.S. 549, 558-59 (1995). In *Lopez* and *United States v. Morrison,* 529 U.S. 598 (2000), the Court focused on the non-economic nature of the conduct that Congress sought to regulate pursuant to its Commerce Clause power in finding the statutes at issue to be unconstitutional. If confirmed as a district court judge, I would faithfully follow Supreme Court and Seventh Circuit precedent in this area, including *Lopez, Morrison* and *Gonzales v. Raich,* 545 U.S. 1 (2005).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's ability to issue executive orders or executive actions is limited to those powers authorized by the Constitution and acts of Congress. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent in determining whether the President had exceeded the limits of his authority.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has described "fundamental" rights protected by the Due Process Clause as including "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). If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent to determine whether 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?

Response: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny when it differentiates based on certain characteristics such as race, alienage, national origin or gender. *See City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Heightened scrutiny also applies when a state law impinges on personal rights protected by the Constitution, *see id.*, or when legislation affects "fundamental" rights, *see Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent regarding this issue.

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: As a judicial nominee, I do not feel it is appropriate to express a personal view regarding the quoted passage from *Grutter v. Bollinger*, 539 U.S. 306 (2003). If confirmed as a district court judge, I would faithfully apply controlling precedent regarding the use of racial preferences in public higher education – including the Supreme Court's decisions in *Grutter*, *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), *Gratz v. Bollinger*, 539 U.S. 244 (2003), and *Fisher v. University of Texas at Austin*, __ S.Ct. __, 2013 WL 3155220 (June 24, 2013) – regardless of any personal views or expectations.

Responses of Andrea R. Wood
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Chuck Grassley

1. **In a response to Senator Durbin on what you think a Federal judge should be like, you responded that a judge should be "prepared to ensure a just result that is consistent with the precedent." What is a "just result" and, as a judge, how will you know when you have achieved that result?**

   Response: A just result is achieved through a judicial process that is fair, impartial and grounded in the rule of law. A federal judge promotes the integrity of the judicial process by treating all participants in the process with respect, providing parties with a full and fair opportunity to be heard, and deciding the issues presented to him or her based on a faithful application of controlling legal precedent to the facts, regardless of the judge's own personal views and opinions.

2. **According to your questionnaire, it does not appear that you have tried a case in federal court yet you listed that 75% of your litigation experience was in federal court.**

   a. **Have you tried a case to verdict, judgment or final decision in federal court?**

      Response: I have not litigated a case to final verdict after a trial in federal court. However, I have litigated many federal court cases to a final resolution on the merits. For example, I have had judgments and orders entered in my client's favor at the motion to dismiss and summary judgment stages of litigation. In addition, I have tried two cases to final decisions in proceedings before administrative law judges of the Securities and Exchange Commission. Those administrative proceedings consisted of full bench trials with live testimony and argument. In those proceedings, I examined witnesses, argued trial motions, sought admission of evidence and presented closing arguments, in a manner analogous to practice in federal district court. Finally, I was a member of the trial team for a month-long trial in federal bankruptcy court that settled after the close of evidence and post-trial briefing. Although the case was resolved before the judge issued her ruling, all of the trial work had been completed.

   b. **Can you explain your experience practicing in federal court?**

      Response: I have spent the majority of my career practicing in federal court, with a focus on complex litigation. At various times, I have represented a government agency, corporations and other business entities of various sizes, and individuals. I have also represented both plaintiffs and defendants. While my work at the Securities and Exchange Commission has focused on securities litigation, during my time in private practice I worked on cases involving a variety of subject matters. My experience with federal court practice includes managing all stages of litigation, including developing strategy, drafting pleadings and briefs, conducting fact and expert discovery, engaging in motion practice, participating in evidentiary hearings

and trials, and negotiating settlements. Although my cases generally have been resolved prior to trial, I have frequently appeared and argued before federal district courts across the United States.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe that a judge should always conduct himself or herself in a manner that promotes confidence in the integrity of the judicial system. To accomplish this, a federal judge must treat all participants in the process with respect, provide parties with a full and fair opportunity to be heard, and decide matters based on a faithful application of controlling legal precedent to the facts, regardless of the judge's personal views and opinions. I believe that I possess these attributes.

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: I believe that the appropriate temperament for a judge is characterized by the following attributes: a calm and professional demeanor, respect for all participants in the judicial process, open-mindedness, impartiality, patience and humility. A good judge is also decisive without being rash and can maintain control of a courtroom without behaving in an unduly harsh manner. I believe that I meet this 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?**

   Response: Yes.

6. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?**

   Response: While I believe that all attorneys should conduct themselves with integrity and professionalism, I have always felt that those qualities are particularly important for attorneys representing the government because we are not only advocates but also public servants. Similarly, I believe judges have an obligation to conduct themselves in a manner that promotes confidence in the integrity of the judicial system. Thus, if confirmed as a district court judge, I assure the Committee that I will decide all issues presented to me based on the facts and the law, and not based on any personal opinions, biases or influences.

7. **Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

   Response: The Supreme Court has held that the death penalty is constitutional, except in certain limited circumstances. If confirmed, I would faithfully apply controlling Supreme

Court and Seventh Circuit precedent in any case in which the death penalty is a potential punishment.

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: If confirmed as a district court judge, I would approach cases of first impression by looking first to the text of the statute or provision at issue. If the meaning of the provision could not be ascertained from its plain language, then I would consider the purpose and structure of the statutory scheme as a whole, determine whether identical language appears in other parts of the same statute, and employ traditional tools of statutory interpretation established by Supreme Court and Seventh Circuit precedent. If the issue presented did not involve interpretation of a text, I would look to Supreme Court and Seventh Circuit precedent regarding analogous legal issues and, if necessary, consider precedent from other Circuits as persuasive authority.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Federal statutes are presumed to be constitutional. When presented with a case questioning the constitutionality of a federal statute, a judge should first determine whether the case can be resolved without reaching the constitutional issue. If the judge determines that it is necessary to address the constitutional issue, then it would be appropriate for the judge to declare the statute unconstitutional if Congress exceeded its constitutional authority or enacted the statute in contravention of a constitutional provision. If confirmed as a district court judge, I would faithfully apply Supreme Court and Seventh Circuit precedent in evaluating whether Congress had done so.

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? Please explain.**

    Response: No, I do not believe it is proper for a judge to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution. If confirmed as a district court judge, I would rely on Supreme Court and Seventh Circuit precedent in deciding such matters.

11. **What is your understanding of the workload in the Northern District of Illinois? If confirmed, how do you intend to manage your caseload?**

    Response: My understanding is that the judges in the Northern District of Illinois have a heavy workload. During my career, I have had the privilege of appearing before judges in many different Districts across the United States, including the Northern District of Illinois. If confirmed, I would adopt the best practices that I have observed for effective and efficient case management. Among other things, I would issue clear standing orders regarding scheduling and pre-trial procedures so that there is no confusion regarding expectations. I would also work with parties from the outset to establish a realistic but firm schedule,

including setting trial dates as soon as practicable, and hold regular status conferences to make sure cases remain on track. Finally, I would lead by example by always being prepared, resolving motions promptly, and offering my own services and those of the magistrate judges to assist parties in resolving cases short of trial.

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: In my experience, an engaged and diligent district court judge can make a significant difference when it comes to resolving litigation in an expeditious manner. If confirmed, I would follow the approach outlined in my response to Question 11 above in order to control the pace and conduct of litigation.

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 the most difficult part of this transition for you?

Response: If confirmed as a district court judge, I would decide legal issues by faithfully applying any controlling Supreme Court or Seventh Circuit precedent. When required to make factual determinations, I would listen carefully to the evidence, keep an open mind and make determinations based strictly on the evidence. In all circumstances, I would give full, fair and thoughtful consideration to the arguments presented by the litigants, conduct my own legal research when appropriate, and rule promptly. I expect that one of the most difficult parts of transitioning into the role of judge would be quickly getting up to speed on the substantial docket of cases in all stages of litigation that I would inherit on the first day. With the help of chambers staff, I would implement case management procedures immediately to gain control of my docket.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on June 26, 2013. I read each question carefully and drafted my responses. I then discussed my responses with an official at the Department of Justice. Thereafter, I finalized my responses and authorized the Department of Justice to transmit them to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Andrea R. Wood
Nominee to be United States District Judge for the Northern District of Illinois
to the Written Questions of Senator Amy Klobuchar

1. **If you had to describe it, how would you characterize your judicial philosophy?**

   Response: I believe that a judge should demonstrate a deep and abiding respect for the rule of law, the institution of the judiciary and its role in our constitutional system. The integrity of our judicial system depends upon judges treating all participants in the judicial process with respect and fairness, and faithfully applying the law to the facts of particular cases without regard for personal views or opinions.

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: Over the course of my career, I believe that I have achieved a reputation among my colleagues and adversaries for professionalism, respectfulness and fairness. If confirmed as a district court judge, I would continue to treat all parties with respect and provide full, fair and thoughtful consideration to their arguments, regardless of their political beliefs, socio-economic positions or other personal characteristics. Furthermore, I would approach all cases with the same level of dedication, preparation and open-mindedness, regardless of the subject matters or dollar amounts involved.

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: I believe that all judges should adhere to the doctrine of stare decisis. District court judges, in particular, are absolutely bound by controlling precedent from the Supreme Court and the Court of Appeals for the Circuit in which they sit.

Responses of Madeline Hughes Haikala to Questions Submitted by Senator Cruz

Questions for the Record for all nominees
Senator Ted Cruz

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 grounded in the concept of respect: respect for the rule of law, respect for litigants, respect for the institution of the court, and respect for the balance of powers. Respect for the rule of law cabins every decision that I make as a judge. Respect for litigants gives lawyers and their clients (and *pro se* litigants) freedom to choose their strategies and develop their cases within the bounds of the rules of procedure and evidence. Respect for the institution of the court demands that I engage in no conduct that impugns the integrity of the court. Respect for the balance of powers among our three co-equal branches of government requires that I exercise only the powers of judicial office and that I leave to the legislative and executive branches of government the work that the Constitution assigns to them. I am not sure which Justice's 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: At times, the United States Supreme Court and the Eleventh Circuit Court of Appeals have considered originalism in resolving issues that require interpretation of the United States Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008). In conducting a constitutional analysis as a magistrate judge, or, if confirmed, as a district court judge, I will weigh arguments regarding originalism when binding precedent directs its consideration.

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 will apply the precedent that is binding when I issue an opinion. Consequently, I would not overrule any precedent today. If the United States Supreme Court or the Eleventh Circuit Court of Appeals expands, contracts, or overturns a decision that is binding precedent today, I will follow the precedent that is in place when I resolve an issue.

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: Respectfully, as a judge, my personal beliefs on this or any topic are irrelevant. I am bound to follow *Garcia* just as I am bound to follow all other precedent from the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has, "identified three broad categories of activity that Congress may regulate under its commerce power." *United States v. Lopez*, 514 U.S. 549, 558 (1995). "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." *Id.* at 558-59; *see also United States v. Morrison*, 529 U.S. 598 (2000).

With respect to non-economic activity, the Supreme Court has not definitively established a bright line rule. In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia wrote that, "Congress's authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to law directed against economic activities that have a substantial effect on interstate commerce. Though the conduct in *Lopez* was not economic, the Court nevertheless recognized that it could be regulated as 'an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.' . . . The relevant question is simply whether the means chosen are 'reasonably adapted' to the attainment of a legitimate end under the commerce power." *Id.* at 36-37 (Scalia, J., concurring) (quoting *United States v. Lopez*, 514 U.S. 549, 561 (1985)).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Article II establishes the constitutional limits on the President's powers. Federal statutes may delegate specific authority to the President. When a person with standing challenges an executive order, a court may consider whether Article II or a particular statute enables the President to issue the order. *Youngstown Sheet & Tube Co. v.* Sawyer, 343 U.S. 579, 585 (1942) ("The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself."). The President has certain implied and inherent powers, but those powers derive from the Constitution or from statutory authority. If a person challenges an executive order or action, and the President contends that he was exercising his implied or inherent authority, then a court must determine whether that authority is rooted in the Constitution or in federal legislation. *Id.*

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that the "established method of substantive-due-process analysis has two primary features: First, we have regularly observed 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. Second, we have required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest. Our Nation's history, legal traditions, and practices thus provide the crucial 'guideposts for responsible decisionmaking' that direct and restrain our exposition of the Due Process Clause." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). Were a party to ask the Court to decide whether a particular right is fundamental for purposes of the substantive due process doctrine, I would use this precedent and precedent from the Eleventh Circuit Court of Appeals in evaluating the parties' arguments concerning the issue presented.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Binding precedent provides that a district court should examine a classification using heightened scrutiny under the Equal Protection Clause when the classification is suspect (*i.e.*, one involving race, gender, alienage, or national origin). *See, e.g.*, *City of Cleburne, Tex. v. Cleburne Living Center,* 473 U.S. 432 (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 faced with a case concerning alleged racial preferences in public education, either as a magistrate judge or, if confirmed, as a district court judge, I will apply *Fisher v. Univ. of Texas*, No. 11-345, 2013 WL 3155220 (S. Ct. June 24, 2013), *Grutter v. Bollinger*, 539 U.S. 306 (2003), and any other binding precedent relating to the issue.

Senator Chuck Grassley
Questions for the Record

Madeline Hughes Haikala
Nominee, U.S. District Judge for the Northern District of Alabama

1. **What recusal policies, if any, do you plan to implement with respect to your former law firm, Lightfoot, Franklin & White?**

   Response: As a magistrate judge, I have recused from all cases in which attorneys from Lightfoot, Franklin appear. If confirmed, I will maintain that practice. Under Canon 3 of the Code of Conduct for United States Judges, I must disqualify myself from a proceeding in which my impartiality "might reasonably be questioned." The Committee on Codes of Conduct, "recommends that judges consider a recusal period of at least two years" with respect to cases in which colleagues from the judge's former law firm appear as counsel of record. Committee on Codes of Conduct Advisory Opinion No. 24, *Guide to Judiciary Policy*, Vol. 2B, Ch. 2, p. 24-1 (June 2009). I have followed that recommendation and will continue to do so. After two years, I will decide if a longer recusal period is necessary.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is integrity. Webster's online dictionary offers these synonyms for integrity: character, decency, honesty. From integrity, important attributes spring such as trustworthiness, and integrity engenders respect. I believe I possess integrity.

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: In my view, a judge should listen well and be thoughtful, even-tempered, courteous, patient, and humble. Humility ranks high among these qualities because it is critical to a judge's credibility. I believe I possess an appropriate judicial temperament.

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, I am committed to following binding precedent, regardless of my personal views.

5. **What assurances can you give this committee that, should you be confirmed, you will be able to eliminate any potential biases and influences, and that your courtroom decisions will not affected by any political, economic, or philosophical influences?**

Response: When I was sworn in as a magistrate judge, I affirmed that I would, "administer justice without respect to persons, and do equal right to the poor and to the rich." I also affirmed that I would, "faithfully and impartially discharge and perform all the duties incumbent upon" me as a magistrate judge. I have abided by that affirmation as a magistrate judge. If I am fortunate enough to be confirmed as a district court judge, I will continue to do so.

6. **Do you believe the death penalty is an appropriate form of punishment? If called upon to do so, would you have any personal objection to imposing this sentence? Please explain your response.**

   Response: The United States Supreme Court has held that the death penalty is constitutional. However, "[t]he death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded . . . ." *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (holding that "[t]he Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed"). As in all matters, I am committed to following binding precedent, regardless of any personal views.

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: In deciding cases of first impression, I will follow the methods that the Eleventh Circuit employs. The Eleventh Circuit Court of Appeals just decided a question of first impression regarding a recent amendment to a long-standing statute. In answering the question presented, the court of appeals began with the text of the section of the statute at issue. Finding some ambiguity in that section, the court examined the statute as a whole to determine the context for the section in dispute. The court noted that the interpretation urged by one of the parties would produce an "absurd result," and the court considered the way in which the Secretary of Labor interpreted the provision when the Secretary revamped the implementing regulations for the statute. Concluding that a term in the section was subject to multiple reasonable interpretations, the court turned to legislative history and to the canons of statutory construction to interpret and apply the code section. *U.S. Steel Min. Co. v. Director, OWCP*, 2013 WL 3213132 (11th Cir. June 27, 2013).

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Binding precedent establishes that a federal court may declare a federal statute unconstitutional only when Congress exceeds its authority. *See, e.g.*, *U.S. v. Lopez*, 514 U.S. 549, 551 (1995).

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: In my view, foreign law or the opinions of the "world community" are irrelevant to judicial interpretation and application of the provisions of the United States Constitution.

10. What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?

Response: The workload of district court judges and magistrate judges in the Northern District of Alabama is extremely heavy. It is my responsibility to manage my docket effectively and efficiently both through my efforts and the efforts of my staff.

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: Often, there is little need for the court to intercede to set the pace of litigation; however, the court should reserve the right to intervene when parties fail to manage their case. Generally speaking, scheduling orders give a judge adequate oversight of the pace of litigation pending before him.

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 have had the privilege of serving as a magistrate judge since October 1, 2012. I reach decisions in cases by studying the record, reading and/or listening to the arguments that the parties make, and identifying and applying the legal precedent that governs the issues presented.

13. Please describe with particularity the process by which these questions were answered.

Response: I received Senator Grassley's questions on June 26, 2013. Over the course of a few days, I drafted and revised my responses. A member of the Department of Justice reviewed my answers.

14. Do these answers reflect your true and personal views?

Response: Yes, the answers to these questions reflect my true and personal views.

Questions for the Record
Hearing: Nominations
June 19, 2013
Submitted by Senator Amy Klobuchar

Questions for Madeline Hughes Haikala:

1. **If you had to describe it, how would you characterize your judicial philosophy?**

   Response: My judicial philosophy is grounded in the concept of respect: respect for the rule of law, respect for litigants, respect for the institution of the court, and respect for the balance of powers. Respect for the rule of law cabins every decision that I make as a judge. Respect for litigants gives lawyers and their clients (and *pro se* litigants) freedom to choose their strategies and develop their cases within the bounds of the rules of procedure and evidence. Respect for the institution of the court demands that I engage in no conduct that impugns the integrity of the court. Respect for the balance of powers among our three co-equal branches of government requires that I exercise only the powers of judicial office and that I leave to the legislative and executive branches of government the work that the Constitution assigns to them.

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 have tried to set a tone in the courtroom that reflects my commitment to fairness and equality before the law. At my investiture as a magistrate judge, I quoted the following passage from Harper Lee's *To Kill a Mockingbird*: "[T]here is one way in this country in which all men are created equal – there is one human institution that makes a pauper the equal of a Rockefeller . . . in this country our courts are the great levelers, and in our courts all men are created equal." Litigants coming into the courtroom have the assurance that I have studied their case with an open mind and that their personal beliefs and demographics have no bearing on the court's evaluation of the issues presented.

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 must bind themselves closely to the doctrine of stare decisis. As a magistrate judge, I have demonstrated commitment to applying binding precedent from the United States Supreme Court and from the Eleventh Circuit Court of Appeals.

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VIA EMAIL AND FIRST CLASS MAIL

February 11, 2013

Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Todd M. Hughes
To the United States Circuit Court for the Federal Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Todd M. Hughes who has been nominated for a position on the United States Circuit Court for the Federal Circuit. As a result of our investigation, the Committee is of the opinion that Mr. Hughes is Unanimously Qualified for this position.

A copy of this letter has been provided to Mr. Hughes.

Sincerely,

Judy Perry Martinez
Chair

cc: Todd M. Hughes, Esq. (via email)
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)

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 February 11, 2013.

The Federal Circuit Bar Association

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June 13, 2013

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
SR-437 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Charles E. Grassley
Ranking Minority Member
Senate Judiciary Committee
SH-135 Hart Senate Office Building
Washington, DC 20510-1501

Re: Nomination of Todd M. Hughes as Circuit Judge.
U.S. Court of Appeals for the Federal Circuit

Dear Senators Leahy and Grassley:

We write to voice strong support for the pending nomination of Todd Hughes to fill a vacancy on the U.S. Court of Appeals for the Federal Circuit. We understand that the Senate Judiciary Committee will conduct a hearing on Mr. Hughes' nomination this coming Wednesday, June 19, 2013. A favorable vote by the Judiciary Committee of Mr. Hughes' nomination at the earliest possible date would greatly facilitate the work of the Federal Circuit, a court essential to our nation's innovation and job creation through its review of patents, government contracts, trade disputes, and other matters.

The Federal Circuit Bar Association is a national organization for the bar of the Federal Circuit and its related practice communities. Our members come from across the country and seek to serve the court. To this end, we work to unite the different interests practicing before the Circuit and the tribunals that it reviews. The Association provides a forum for dialogue among court, bar, government counsel and private practitioner members. Government practitioner members have not participated in the preparation or submission of this letter.

Mr. Hughes has been an active practitioner before the Circuit and several of the tribunals it reviews (e.g., the U.S. Court of Federal Claims and U.S. Court of International Trade) since 1994, representing the U.S. Department of Justice. In addition to experience in government contracts and international trade cases, Mr. Hughes has expertise in two other areas of the Circuit's jurisdiction—federal personnel law and veterans affairs law. Mr. Hughes has been a member of the Association since 2003, where he has assumed a variety of leadership roles, including service as co-chair of the Association's annual conference, and he has addressed that conference and the Circuit's Judicial Conference on civil service, veterans, and internal trade matters. Of particular significance, he helped lead the Association's efforts to adopt pro bono programs for veterans and civil servants.

Many members of our Association have worked with Mr. Hughes on a broad range of matters. We know that Mr. Hughes has the experience and expertise to perform very well at the Federal Circuit. We also know that Mr. Hughes has extensive exposure to, and appreciation for, the administration and processes of the Federal Circuit, having practiced before the court for so long. Mr. Hughes' unique experience and skills will make him an excellent addition to the Circuit.

If we can provide further information, please do not hesitate to contact me, tstewart@stewartlaw.com, 202-466-1241, Robert K. Huffman, Chair of our Judicial Nominations Committee, rhuffman@akingump.com, 202-887-4530, or James E. Brookshire, our Executive Director, brookshire1@fedcirbar.org, 202-558-2421.

Respectfully submitted,

Terence P. Stewart

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Standing Committee on the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

May 7, 2013

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

Re: Nomination of Colin S. Bruce
To the United States District Court for the Central District of IL

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Colin S. Bruce who has been nominated for a position on the United States District Court for the Central District of Illinois. As a result of our investigation, the Committee is of the opinion that for this position Mr. Bruce is Unanimously Qualified.

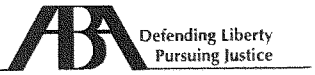
A copy of this letter has been provided to Mr. Bruce.

Sincerely,

Judy Perry Martinez
Chair

cc: Colin S. Bruce, Esq. (via email)
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)

This letter was sent to The 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 May 7, 2013.



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VIA EMAIL AND FIRST CLASS MAIL

May 7, 2013

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

Re: Nomination of Sara L. Ellis
To the United States District Court for the Northern District of IL

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Sara L. Ellis who has been nominated for a position on the United States District Court for the Northern District of Illinois. As a result of our investigation, the Committee is of the opinion that for this position Ms. Ellis is Substantial Majority-Qualified, Minority-Not Qualified, one recusal recorded.

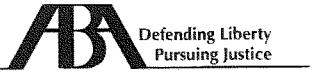
A copy of this letter has been provided to Ms. Ellis.

Sincerely,

Judy Perry Martinez
Chair

cc: Sara L. Ellis, Esq. (via email)
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)

This letter was sent to The 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 May 7, 2013.



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VIA EMAIL AND FIRST CLASS MAIL

May 7, 2013

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

Re: Nomination of Andrea R. Wood
To the United States District Court for the Northern District of IL

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Andrea R. Wood who has been nominated for a position on the United States District Court for the Northern District of Illinois. As a result of our investigation, the Committee is of the opinion that for this position Ms. Wood is Majority-Qualified, Minority-Not Qualified, one recusal recorded.

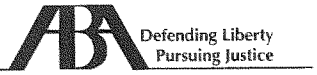
A copy of this letter has been provided to Ms. Wood.

Sincerely,

Judy Perry Martinez
Chair

cc: Andrea R. Wood, Esq. (via email)
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)

This letter was sent to The 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 May 7, 2013.



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AMERICAN BAR ASSOCIATION

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VIA EMAIL AND FIRST CLASS MAIL

May 14, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
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Re: Nomination of Madeline Hughes Haikala
To the United States District Court for the Northern District of AL

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Madeline Hughes Haikala who has been nominated for a position on the United States District Court for the Northern District of Alabama. As a result of our investigation, the Committee is of the opinion that for this position Judge Haikala is Unanimously Well Qualified.

A copy of this letter has been provided to Judge Haikala.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Madeline H. Haikala (via email)
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)

This letter was sent to The 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 May 14, 2013.

○