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S. HRG. 113–515, Part 4

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JULY 10, JULY 24, AND SEPTEMBER 11, 2013

Serial No. J–113–1. Part 4

PART 4

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NOMINATION OF PATRICIA ANN MILLETT, OF VIRGINIA, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT; GREGORY HOWARD WOODS, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; ELIZABETH A. WOLFORD, OF NEW YORK, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK; AND DEBRA M. BROWN, OF MISSISSIPPI, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI

WEDNESDAY, JULY 10, 2013

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

The Committee met, pursuant to notice, at 10:08 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senators Leahy, Schumer, Franken, Coons, Grassley, Lee, and Cruz.

Senator SCHUMER. The hearing will come to order, and I want to welcome our colleagues. We have four colleagues here, and we are going to do the higher court first, which is the DC Circuit. And so here to introduce Ms. Millett are Senator Warner and Senator Kaine. Then we will have Senator Cochran and Senator Wicker introduce their nominee, and then we will get on with the rest of the hearing.

So, Senator Warner, you are on.

PRESENTATION OF PATRICIA ANN MILLETT, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, BY HON. MARK R. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman, and today I am honored to join with my good friend and colleague, Senator Kaine, to introduce a fellow Virginian, President Obama's nominee to the U.S. Court of Appeals for the DC Circuit, Patricia Millett. Patricia is extremely well qualified to carry out the duties and responsibilities of a federal appellate judge.

I know the Committee has no doubt looked at her professional career and had the same reaction as I did. This is an extraor-

dinarily talented individual who would be a great credit to the court.

Patricia earned her bachelor's degree summa cum laude, with highest distinction, in 1985 from the University of Illinois, and, Mr. Chairman, I think that—Mr. Chairman, this is an important factor. I think that Patricia went to the same law school that you and I and Senator Kaine did, and if my facts are correct, she graduated magna cum laude, which I am not sure that you or I or Senator Kaine had the distinction of graduating from.

[Laughter.]

Senator WARNER. So, you know, I just thought we might let that note be out there.

Senator SCHUMER. I used to say the best thing about going to Harvard is you are not impressed when someone else says they went there, because if they took you, they could take anybody.

[Laughter.]

Senator WARNER. That is right. I hope that will be stricken from the record.

[Laughter.]

Senator SCHUMER. When I said "meaning you," I meant "me."

[Laughter.]

Senator WARNER. After this distinctive educational background, she clerked for the late Judge Thomas Tang of the U.S. Court of Appeals for the Ninth Circuit. She worked on the appellate staff of the Civil Division of the U.S. Department of Justice. She went on to serve under both Democratic and Republican administrations as an assistant to the Solicitor General, where she was awarded the Attorney General's Distinguished Service Award.

Currently, she is chair of the Supreme Court practice at Akin Gump. Patricia has actually argued 32 cases before the High Court. This either places her, depending on the week, as the number one or second, top one or two, of all women lawyers who have ever argued that many cases before the Supreme Court.

She also brings a distinctive bipartisan support to this nomination. Seven former Solicitor Generals from both ends of the political spectrum support Patricia Millett's nomination. This includes Democrats Walter Dellinger and Drew Days and Republicans Ted Olson, Ken Starr, and Paul Clement.

She has been recognized by the *National Law Journal* as one of the 100 Most Influential Lawyers in America and received the endorsement of the American Bar Association and the Virginia State Bar.

She has got here with her family—beyond these impressive professional accomplishments, she is an active member of our community. She has volunteered at homeless shelters along with transitional housing organizations. I think a couple of her kids are about to go off on missions. She is an active member of the Aldersgate United Methodist Church in my home town of Alexandria, where she volunteers in Sunday school. She has also repeatedly volunteered her time to assist with the Street Law Project Supreme Court Summer Institute for Teachers that educates high school teachers about the Supreme Court. I know this is a program that many Members of the Committee widely respect.

Most importantly, she and her two young children have also been big supporters of her husband, who served for over 20 years in our military where he was deployed during Operation Iraqi Freedom.

Let me close before I get to Senator Kaine and say that for any of you who might not be willing to support Patricia's confirmation, I want to warn you ahead of time, both her husband and her two children all have a black belt in taekwondo.

[Laughter.]

Senator WARNER. So, you know, bear that in mind as well.

This is an extraordinary lawyer with a great background in the community. I can think of no one that would be better served—better service to the U.S. Court of Appeals, a court that is in desperate need of having its many vacancies filled. I endorse her without reservation, and it is my hope that this Committee will come to that same conclusion after you have had a chance to review her credentials and ask her questions. She will be a great tribute to the court.

With that, I will turn it over to my good friend Senator Kaine.

Senator SCHUMER. Senator Kaine is recognized.

Senator KAINE. Great.

Senator SCHUMER. By Chairman Warner.

[Laughter.]

PRESENTATION OF PATRICIA ANN MILLETT, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, BY HON. TIM KAINE, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator KAINE. Thank you, Mr. Chair and Members of the Committee. I love doing these with my friend and colleague, my senior Senator, Mark Warner, and it is a happy occasion to be here for Patricia Millett. Mark did a good job of summarizing her background, a public service background, two years as a judicial clerk. I worked as a clerk in the Eleventh Circuit, and I know how a beginning lawyer is often very molded by a clerkship experience, learning about judging, judicial temperament, dedication, and she had that experience early. She has had an extensive public career, as Senator Warner indicated, both in the Justice Department and then with a lengthy tenure in the Solicitor General's office under both Democratic and Republican Presidents.

The Senator mentioned that she has gotten strong recommendations from seven former Solicitor Generals of both parties, but also I believe the Committee has a letter with dozens of former Assistant or Deputy Solicitor Generals, current and former, weighing in on behalf of Patricia. That sort of bipartisan experience representing the United States under both Democratic and Republican administrations is a very important thing.

She left the public service to go to one of America's best known law firms at Akin Gump Strauss, where she has headed the appellate practice section, as Senator Warner mentioned. She has a very distinguished record of arguing cases before the Supreme Court, 32 cases and briefs in 77 cases. But she also has an extensive record of arguing cases before the courts of appeals. She has had 38 courts of appeals arguments in 12 circuit courts, including arguments before the DC Circuit. So this is a court that she knows well.

Senator Warner described her family: her husband, Robert, and her two children, Elizabeth and David, who are both here. It is a family that values public service, broadly defined, active in their church, active in community activities. And she would bring, I think, a great deal of life experience and balance to this all-important court.

We care about courts in Virginia. We proudly claim probably the greatest jurist in American history, John Marshall. We want to have judges who have the character and the educational and career experiences that will enable them to be solid jurists, and I know Patricia would carry that out in a wonderful way.

And so I encourage your favorable consideration of her candidacy and favorable consideration on the floor. Thanks very much.

Senator SCHUMER. Thank you, Senator Kaine, and I know you folks have busy schedules, so if you wish to leave, you may. And if you wish to stay and listen to the mellifluous words of Senators Cochran and Wicker, that would be fine, too.

So now let me call on Senator Cochran to introduce the nominee from the Northern District of Mississippi.

PRESENTATION OF DEBRA M. BROWN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, I am pleased to be here with the Committee this morning to recommend Debra Brown for confirmation as a United States District Court Judge for the Northern District of Mississippi.

Ms. Brown graduated from the Mississippi State University School of Architecture in 1987, where she has served as a member of the school's Advisory Council. She worked as an architect here in Washington, where she participated in the renovation and restoration of municipal and historic buildings and in the construction of commercial and residential properties as well.

She received her law degree from the University of Mississippi School of Law in 1997, where she served as associate editor and articles editor of the *Mississippi Law Journal*.

After graduating from law school, Ms. Brown became the only lawyer in Mississippi with degrees in both architecture and law, and in 1997 she joined the Phelps Dunbar law firm in Jackson, Mississippi, where she became a partner and remained until January 2012, when she joined, as a shareholder, the Wise, Carter, Child & Caraway law firm, also in Jackson.

During her almost 16 years in private practice, Ms. Brown has had the opportunity to engage in numerous civil cases covering a broad range of subject matters, but especially in the areas of commercial construction and civil liability litigation. The American Bar Association's Standing Committee on the Federal Judiciary unanimously concluded that she is qualified to serve as a federal district court judge.

She is a member of the American Bar Association, the National Bar Association, and the Federal Bar Association, as well as a member of the Mississippi State Bar and the Magnolia Bar Association, where she has served also as the Mississippi Women Law-

yers Association representative as president. She is also a fellow of the Mississippi Bar Foundation.

She was the 2004 recipient of the Jackson Young Lawyers Outstanding Service Award and was recognized in 2008 by the *Mississippi Business Journal* as one of Mississippi's leading business women.

Debra Brown is very well qualified by ability, education, and experience to serve as a United States district court judge. The President nominated her for the post on May 16, 2013. Senator Wicker and I have returned our Senate Judiciary Committee blue slips recommending approval of her nomination and her confirmation by the Senate.

It is a personal pleasure to be before the Committee today and to express my confidence that she will reflect great credit and serve with distinction as a member of the United States federal judiciary.

Senator SCHUMER. Thank you, Senator Cochran.

Senator Wicker.

PRESENTATION OF DEBRA M. BROWN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI, BY HON. ROGER WICKER, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator WICKER. Thank you, Mr. Chairman, and thank you, Members of the Committee. Let me join Senator Cochran in enthusiastically endorsing Debra Brown for the position of district court judge. And let me also say, Mr. Chairman, that as a son of Mississippi and as the junior Senator from Mississippi, this is a profoundly special moment for me because I think Judge Brown will be an outstanding addition to the federal bench and, if confirmed, Ms. Brown would be the first African American female judge in the State of Mississippi.

So it means a lot to me. It is an emotional moment for me, and we are making history, and I am just so honored to be part of it.

Ms. Brown has represented accomplishment and excellence her entire life. Back in Yazoo City High School, she was a National Merit finalist. She was president of the National Honors Society. It had not occurred to me, but it seems that it is a good balance that we need at least an architect or two on the federal bench.

[Laughter.]

Senator WICKER. And, my goodness, Ms. Brown got her degree from Mississippi State University School of Architecture. She practiced architecture right here in DC, and then decided to make a career switch, after having a very accomplished career in architecture, went back to the University of Mississippi Law School—the first person in her family to earn a law degree.

She has been a partner at Phelps Dunbar. She has been a shareholder at Wise, Carter, Child & Caraway in Jackson, Mississippi. She certainly represents legal excellence, as Senator Cochran mentioned, in the areas of commercial construction, general liability litigation, premises liability, product liability, intellectual property, employment law, and insurance defense. She has the intellectual capacity to take on the most complex issues. She also served as president of the Mississippi Women Lawyers Association from 2003 to 2004.

She has a reputation for professional excellence. She was selected by the *Mississippi Business Journal* as one of Mississippi's 50 leading business women, and in addition, she has given back to her community as a volunteer. In addition to her pro bono activities, she serves on the board of two nonprofit organizations, the Mississippi Center for Justice—a public interest law firm committed to combating discrimination and poverty in Mississippi—along with Operation Shoestring, a charity that offers academic enrichment and related services to the children of Mississippi.

Now, I have already pointed out that she is from Yazoo City, Mississippi. She lives in Jackson now, but she is a native of Yazoo City, a graduate of Yazoo City High School. This is in the Southern Delta, Mr. Chairman. She replaces the late Judge Allen Pepper, a dear friend of Senator Cochran and me, who was from Cleveland, at the northern end of the Mississippi Delta.

She will occupy the office of the federal judge in the courthouse in Greenville, Mississippi, and it occurs to me, Senator Cochran and Members who might be in a position to make appropriations, that that courthouse is not up to speed.

[Laughter.]

Senator WICKER. It is not state of the art. The setback from the street makes it a terrorist threat, and it needs to be replaced. And I just think it is special today to have in our presence and to submit to you the judge who will undoubtedly preside over the construction of a brand-new, state-of-the-art courthouse in Greenville, Mississippi.

[Laughter.]

Senator WICKER. Debra Brown is going to be good for the country. She will be good for the people, and this is a good day for Greenville, Mississippi, and for the Delta. And I consider it a personal and high honor to recommend her highly to this Committee and to the U.S. Senate.

Senator SCHUMER. Well, thank you, Senator Wicker. And we do have the most senior Members of the Appropriations Committee, one sitting to your right, one sitting to my left. So I am sure your pleas we will be listened to.

Anyway, thank you all for being here and introducing your witnesses, and before I call the first panel, we are honored to have our Chair of our Judiciary Committee here today, and I am going to call on him first for a brief opening statement, then the rest of us; then we will call Ms. Millett and go forward from there.

Chairman Leahy.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Well, I thank you, and I will be brief because I am going to another Committee meeting. But we could not have a more experienced Member of this Committee than Senator Schumer to be here to chair it.

I appreciate the comments of the two Senators from Mississippi, both good friends of mine, and the two Senators from Virginia, also good friends. And with Senator Grassley here, I would note that we held a respectful, productive hearing for the President's nominee to be FBI Director yesterday. And today we have another hearing,

which I hope will be of the same caliber. I think if we have a fair hearing today, we are going to agree that these nominees are deserving of bipartisan support, all of them.

I will mention one: Patricia Millett, who is nominated to one of three vacancies on the District of Columbia Circuit. An appellate advocate, she served in the Office of the Solicitor General under both President Clinton and President Bush. She has argued 32 cases before the Supreme Court—I mean, that would be a career for anyone—another 36 before federal courts of appeals. She testified here in 2008 at the request of the Senate Republicans. Eminently well qualified, and there is no question she should serve on that court.

I would note there has been some discussion of the caseload of the court. Earlier this week, the Senate voted unanimously to confirm Wyoming Attorney General Gregory Phillips to the Tenth Circuit. That means the number of pending appeals per active judge on that court dropped from 150 to 135. The DC Circuit has 177 pending appeals per active judge. Most of them are far more complex. So I think, just as earlier this year when Senators voted Jane Kelly to the Eighth Circuit, which gave that court the lowest caseload in the country, I hope those same Senators will realize that here we have somebody with a much busier court, a court that needs her, and do so.

But all of the nominees are so well qualified that I thank again Senator Schumer and Senator Grassley for having this hearing, and I can assure you I will try to move these. Once the hearing is over, is completed, and Senator Schumer tells me that the record is closed, we will put them on the agenda.

Thank you.

Senator SCHUMER. Thank you, Mr. Chairman, and we are honored by your presence here today.

Now we will call the first panel, which is a panel of one—oh, Senator Grassley, do you want to make an opening statement? I was going to make mine when Ms. Millett came here, but go ahead. Do you want to make one now?

Senator GRASSLEY. I would prefer to make mine after you make yours.

Senator SCHUMER. Okay, great. Okay. And so let us call our first panel, which is Patricia Millett.

[Pause.]

Senator SCHUMER. Patricia Millett, will you please stand to be sworn? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. MILLETT. I do.

Senator SCHUMER. Please be seated.

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Okay. Well, welcome. I want to thank Chairman Leahy for being here, Ranking Member Grassley, Senators Franken, Lee, and Cruz for being here as well.

Now, before we get to Ms. Millett, I am going to make an opening statement, Senator Grassley will, and then we will get right to our nominee.

So I would like to make a brief comment about President Obama's noble and serious efforts to fill vacancies on the United States Court of Appeals for the DC Circuit, often called the "second most important court in the country."

Four years after his election, the President has had just one nominee to the DC Circuit confirmed. The 11-member court has three vacancies. It does not even have enough judges for more than two full hearing panels.

To be clear, the caseload per active judge, as Senator Leahy mentioned, on the DC Circuit is now 177 per judge. For the Tenth Circuit, which we just confirmed a new judge two days ago, the caseload is 150 per judge. That was before the nominee was approved.

In fact, the DC Circuit currently has a higher number of pending appeals per active judge than there was when any of President Bush's nominees were nominated or confirmed. And we all know how complicated many of the cases before the circuit are.

Now, my good friend and colleague, fellow "Chuck" in the Senate, Senator Grassley, has introduced a bill called *The Court Efficiency Act*, which would take away the three remaining seats on the DC Circuit. This bill was not introduced by either party during the Bush administration. In fact, my Republican colleagues during the Bush administration voted to confirm the 9th, 10th, and 11th judges to the DC Circuit. They voted to confirm the 10th judge on that court twice.

Given that no party has ever refused to fill the ninth slot on the court based on caseload, and given that the current caseload is quite high, I hope and expect my colleagues on the Committee will proceed to evaluate each nominee on his or her own merits.

Sri Srinivasan, a truly exceptional candidate of whom any President would be proud, was finally confirmed to the eighth seat on the court, rightfully so.

An earlier nominee, Caitlin Halligan, had two failed cloture votes before she withdrew her name. One of the chief arguments against her was the caseload of the DC Circuit, but Judge Srinivasan was confirmed after her failed votes. Halligan was also an exceptionally well-qualified nominee. Her opponents dredged up other reasons to prevent her nomination from going forward based on briefs she wrote as a lawyer and gave for other people. I hope that another qualified female candidate will be accorded the respect that she deserves.

Patricia Millett could not have possibly had a more varied career showing the breadth of her intelligence and her experience. She has represented a wide swath of clients, argued many types of cases from all sides, and expressed keenly intelligent opinions on a variety of legal issues, even if one disagrees with some of them. In short, as her myriad supporters have noted in dozens of letters to this Committee, she is a lawyer's lawyer. So I look forward to hearing from her and other nominees, and we will call on Senator Grassley for his opening statement now.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I have some differences with my distinguished colleague on this point, but I am also glad to have participated in the Senate confirmation of 199 of President Obama's nominees and the disapproval of only two, which I think is a 99-percent average, and this President ought to be very proud of the Senate's actions on these nominees.

First of all, congratulations to the nominee, to Ms. Millett. Glad to have you here.

I previously expressed my opposition to including on the agenda today any nominee of the District of Columbia Circuit. First, as my colleagues are aware, there is a lack of consensus regarding the workload of the court. Second, we are moving at a very quick pace on nominations. And, third, we are skipping over nominations that were submitted to the Committee earlier than the DC Circuit nominations. In fact, my concerns are identical to those expressed by Senate Democrats when President Bush nominated Peter D. Keisler to fill this particular vacancy in 2006.

For example, one of my colleagues said, "Like my colleagues, I am not pleased that the Committee is holding this hearing today. As we wrote to you last week, Mr. Keisler was nominated only a month ago. The question of whether another judge should be named to the DC Circuit is an issue that needs further study and discussion in the Committee."

Another Senator stated, regarding the timing of Mr. Keisler's hearing, "First, we have barely had time to consider the nominee's record. Mr. Keisler was named to this seat 33 days ago. So we are having this hearing with astonishing and inexplicable speed. The average time for nominations to a hearing for the last seven nominees to that court is several times that long."

That Senator also commented on my third point, skipping over nominees. In 2006, he said, "I am especially surprised that we are pushing forward, given that Mr. Keisler is now leapfrogging ahead of several nominees."

My point is both parties have raised concerns, and they should be addressed before we move forward with the nominations of Court of Appeals for the DC Circuit.

I would acknowledge that in 2006 the hearing for Mr. Keisler went forward, even with concerns expressed by my Democratic colleagues. But what was the result? Did Senate Republicans then steamroll the minority or quickly rubber stamp the nomination? Did they change the rules of the Senate to ensure confirmation by simple majority vote? Of course not. The Republican Chairman at the time was exceptionally accommodating, perhaps ultimately to the detriment of Mr. Keisler's nomination. Senator Democrats used every procedure and strategy possible to delay consideration of the nomination. This included boycotting Committee meetings to avoid a quorum, invoking the two-hour rule to prohibit a Committee meeting, and threatening a filibuster in Committee. Ultimately his nomination was returned to the President, even after a hearing had been held, and his nomination was held over in mark-up. Democrats blocked the final mark-up vote.

During the next Congress, when Democrats held the majority, Mr. Keisler was renominated and was pocket filibustered in the Committee. I would note that, despite the treatment that he received, Mr. Keisler submitted a letter in support of Ms. Millett's credentials. This is a real testament to his character, and I do not recall many Democrat letters of support for Mr. Keisler at the time of his nomination.

It is interesting that Mr. Keisler declined to take a position on whether additional judges on the DC Circuit are warranted. But I would like to address in a little more detail my concerns about moving forward on the DC Circuit.

First is the workload issue. In 2006, Democrats argued that the DC Circuit caseload was too light to justify confirming any additional judges to the bench. You know what? Since then, the caseload has continued to decrease. In terms of raw numbers, the DC Circuit has the lowest number of appeals filed annually among all circuit courts of appeal. In 2005, that number was 1,379. Last year, it was 1,193, a decrease of 13.5 percent. The next lowest circuit is the First Circuit, which has 33 percent more appeals filed and yet has half as many judges.

In terms of the number per authorized judgeship, again, the DC Circuit is the lowest. In 2012, the DC Circuit has 108 total appeals filed per authorized judgeship, the lowest in the Nation. By comparison, the national average was 344, nearly three times higher. Furthermore, this measure is also on decline. Total appeals per authorized judgeship in 2005 was 115. In 2012, that number had fallen to 108. What is noteworthy is that the number decreased despite having one less judge due to the judgeship transferred to the Ninth Circuit in 2008.

But probably the best numbers to look at are those that measure the workload per active judge. The caseload has decreased so much since 2005 that, even with two fewer active judges, the filing levels per active judge are practically the same. In 2005, with 10 active judges, the court had 138. Today, with only eight active judges, it has 149. This makes the DC Circuit caseload levels the lowest in the Nation and less than half the national average.

We have recently confirmed judges to the Eight and Tenth Circuits. It has been suggested—in fact, you heard it this morning—that these circuits have caseloads lighter than the DC Circuit. I think this is simply not accurate. The DC Circuit has fewer cases filed and fewer cases terminated than either the Eighth Circuit or the Tenth Circuit. Cases filed and cases terminated measure the amount of appeals coming into the court and being resolved by the court respectively. That is how you determine how busy a court is.

It is quite revealing that the White House is attempting to rely on pending cases to try to compare the Eighth and Tenth Circuits to the DC Circuit. But what the White House fails to mention is that cases pending measure case backlog, not how many cases are being added and removed from the docket.

When looking at how many cases are added per active judge, the DC Circuit is the lowest, with 149. It is nowhere near the Eighth Circuit, 280, and the Tenth Circuit, 217. When looking at the numbers of cases being removed by each court, the DC Circuit is once

again the lowest at 149. Again, the Eighth Circuit and Tenth Circuit are much higher at 269 and 218, respectively.

So by nearly every measure, the facts show that the DC caseload is low and getting lower, raising serious doubts as to whether we need more than eight active judges, given a remarkably light caseload.

The final point I will make about the workload is this: I am aware that the White House has been arguing aggressively that Republicans voted for Judge Griffith in 2005 who for a short term served as the 11th active judgeship. Therefore, they argue that we should now vote to fill the 9th, 10th, and 11th seats. However, again, what the White House fails to mention is that when we voted for Judge Griffith in 2005, Judge Edwards had already announced that he was taking senior status. As a result, anyone knew that in effect we were voting for the 10th active judge, not the 11th seat. And as I have already explained, since that time the numbers have fallen so much that the number of cases per active judge is roughly equivalent to 2005, even though there are two fewer active judges.

A second major area of concern in addition to the workload issue is the quick timeline for consideration of this nominee. The President nominated three individuals just 36 days ago. Compare this to the history of previous DC Circuit nominations. According to my count, since 1980 there have been 29 individuals nominated to this court, including the three recent nominees. The average wait for a hearing for these nominees is 130 days. President Clinton's nominees, on average, waited 120 days, slightly below the overall average. For President Clinton, the delay more than doubled with the nominees waiting an average of 287 days for their first hearing, but Senate Democrats insisted on second hearings for three of President Bush's nominees. When those are factored in, the nominations for hearings average jumps to 445 days.

Those averages do not tell the story of the worst delays. Estrada waited 505 days. John Roberts waited 630 days for his first hearing and 721 days for his second hearing. Brent Kavanaugh waited 277 days for his first hearing and did not complete the Committee hearing process until an astounding 1,019 days later. In contrast, today's nominees have waited 36 days. Not only are President Bush's—or President Obama's nominees receiving a hearing in a shorter time, but also a much faster pace. Today's hearing is the 10th hearing this year during which we will consider a total of 28 judicial nominees. Compare that favorable treatment of this President during the beginning of his second term versus President Bush's first year of his second term. At that stage, in President Bush's second term, the Committee had held not 10 hearings with 28 judicial nominees, but only three hearings for five nominees. All were holdovers from the previous Congress. In fact, for the entire year of 2005, Senator Democrats only allowed seven hearings for 18 judicial nominees, and, again, we have already exceeded that 10 hearings with 28 judiciCal nominees.

So I am disappointed that today we are moving forward on this particular nomination for DC Circuit. We should first have held hearings on the workload. We should not have leapfrogged over other nominees who have been waiting in Committee so we could

expedite this process. And we should give more time to the Members to review the qualifications and record of the nominees.

Saying all that, I am still happy that we have approved 199 judges during this Presidency with only two being not confirmed by the Senate.

Thank you.

Senator SCHUMER. Thank you, Senator Grassley.

And now let us turn to the witness. We want to welcome Senator Coons for being here. Ms. Millett, if you have an opening statement, you may make it, but we certainly want you to introduce your family, who I know is here.

STATEMENT OF PATRICIA ANN MILLETT, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Ms. MILLETT. Thank you, Senator Schumer. I know that I am someone who communicates for a living, but I have to confess that this morning, words seem quite inadequate to convey the depth of my gratitude and honor for being here and for this opportunity to discuss with you whatever questions you might have.

I am particularly grateful to you, Senator Schumer, Senator Grassley, and all the Senators present, for having this hearing and for taking the time. I am also very grateful for the incredibly gracious introduction by Senators Warner and Kaine.

I also want to express my gratitude to President Obama for the inexpressible honor of this nomination and the opportunity to serve as a steward of our very precious judicial system.

I have, as you may have noted, a lot of family and friends here today. I will not list them all. It will not be like an Academy Award speech. But I want every one of them to know that I am so grateful for the gift of their presence. It is a true blessing to me. I will, if you will permit, note that my father, Richard Millett, is here. My mother and my sister, Joan, could not be here, but are with me in spirit, as is my late brother, who joins us from a better place.

There are a couple of special people, if I could quickly just note: the Reverend Dr. Dennis Perry and Major General Carl McNair; from my church two very special people, Teresa and George Reyes, the godparents to my children and incredible sources of support to me and my husband. And I will simply quickly note that and confess again that the very best parts of my family are the ones sitting behind the table and not at the table: my daughter, Elizabeth, who is 12 years old, and my son, David King, who is 15; and as Senators Kaine and Warner noted, are both headed off next week away from swimming pools to spend their summertime helping the less fortunate through service projects. And I am incredibly proud of them.

And, of course, my husband, Robert King, who is simply the best husband and father anyone could ever ask for.

I could fill the hearing time with my pride and affection for friends and family, but I will not impose on your time any further, and I would be most happy to answer your questions.

[The biographical information of Ms. Millett follows:]

COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Patricia Ann Millett

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

   United States Circuit Judge for the District of Columbia Circuit

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

   Office: Akin Gump Strauss Hauer & Feld LLP
   1333 New Hampshire Avenue, NW
   Washington, DC 20036

   Residence: Alexandria, VA

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

   1963; Dexter, ME

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. (*magna cum laude*), 1988

   1981 – 1985, University of Illinois at Urbana-Champaign; B.A. (*summa cum laude*), 1985

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

   2007 – present
   Akin Gump Strauss Hauer & Feld LLP
   1333 New Hampshire Avenue, NW

Washington, DC 20036
Partner (2007 – present)
Head of Supreme Court Practice (2011 – present)
Co-Head of Supreme Court Practice (2007 – 2010)
Co-Chair of the National Appellate Practice (2011 – present)

1996 – 2007
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1993 – 1996
George Washington University Law School
2000 H Street, NW
Washington, DC 20052
Adjunct Professor of Legal Research & Writing

1992 – 1996
United States Department of Justice
Civil Division, Appellate Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Attorney

1990 – 1992
United States Court of Appeals for the Ninth Circuit
401 West Washington Street
Phoenix, AZ 85003
Law Clerk to the Honorable Thomas Tang

Summer 1987, 1988 – 1990
Miller & Chevalier
655 15th Street, NW
Washington, DC 20005
Associate (1988 – 1990)
Summer Associate (Summer 1987)

January – February 1985, August – September 1988
Frost & Sullivan, Inc.
555 Eighth Avenue
New York, NY 10018
Temporary Consultant on Papua New Guinea

Fall 1986, Fall 1987
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
Legal Methods Instructor for Professor Abram Chayes

Summer 1987
United States Attorney's Office for the District of Massachusetts
1 Courthouse Way
Boston, MA 02210
Volunteer Law Clerk

Summer 1986
Bryan Cave LLP
One Metropolitan Square
St. Louis, MO 63102
Summer Associate

Summer 1985
The Hon. Bruce George, Member of Parliament
House of Commons of the United Kingdom
London, UK SW1A 0AA
Volunteer Summer Intern

Other Affiliations (uncompensated):

2012 – present
Supreme Court Historical Society
224 East Capitol Street, NE
Washington, DC 20003
Member, Board of Trustees

2011 – present
Supreme Court Fellows Commission
Office of the Counselor to the Chief Justice
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
Commissioner

2011 – present
Supreme Court Institute
Georgetown University Law Center
600 New Jersey Avenue, NW
McDonough Hall Room 463

Washington, DC 20001
Member, Outside Advisory Board

2010 – present
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, NW, Suite 400
Washington, DC 20005
Member, Board of Trustees

2008 – present
Dwight D. Opperman Institute of Judicial Administration
New York University School of Law
40 Washington Square South
New York, NY 10012
Member, Board of Directors

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

   I have not served in the military. I 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.

   The 100 Most Influential Lawyers in America, The National Law Journal (2013)

   Litigation Star, Benchmark Appellate (2013)

   Second Degree Black Belt in Tae Kwon Do (2013)

   Best Lawyers in America, Appellate Practice List (2012 – 2013)

   Washington DC Super Lawyers (2009 – 2013)

   Leading Lawyer, Appellate Practice, Chambers USA (2009 – 2013)

   The Appellate Hot List, The National Law Journal (2008 – 2013)

   500 Leading Lawyers in America, LawDragon (2012)

   Appellate MVP, Law 360 (2012)

   Top Lawyer & DC Litigation Star, BenchMark Appellate (2011 – 2012)

Black Belt in Tae Kwon Do (2010)

Top Lawyer, Supreme Court Advocacy, Washingtonian Magazine (2010 – 2012)

National Association of Attorneys General Award for Assistance to the States in Preparation for Their Appearances before the Supreme Court of the United States (2011)

100 Most Powerful Women in Washington, DC, Washingtonian Magazine (2011)

100 Best Lawyers in Washington, DC, Super Lawyers (2011)

Washington's 100 Most Influential Women Lawyers, National Law Journal/Legal Times (2010)

Litigator of the Week, American Lawyer (October 15, 2010)

Inducted into the American Academy of Appellate Lawyers (2007)

Department of Justice, Environment & Natural Resources Division Special Commendation, for outstanding performance and invaluable assistance in support of the activities of the Division (2005)

Department of Justice, Attorney General's Distinguished Service Award, for representing the interests of the United States before the Supreme Court (2004)

Highest Distinction in Political Science, University of Illinois at Urbana-Champaign (1985)

Member of the Bronze Tablet, University of Illinois at Urbana-Champaign (top 3% of graduating class) (1985)

Phi Beta Kappa (1985)

Phi Kappa Phi Honorary Society & Scholarship recipient (1985)

Dean's List in College (every semester) (1981 – 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 Academy of Appellate Lawyers
- Amicus Committee (2009 – present)
- Committee on Appeals and Aggregate Litigation (2008)
- Fellow (2007)

American Bar Association
The Woman Advocate Committee (2013 – present)
Appellate Practice Committee (2012 – present)
Standing Committee on Amicus Curiae Briefs (2012 – present)

American Bar Foundation
Fellow (2013 – present)

American Inns of Court, Edward Coke Appellate Inn of Court
Master (approximately 2008 – present)
Barrister (approximately 2003 – approximately 2008)

American Law Institute
Advisor on the Restatement Third, The Law of American Indians (2012 – present)

Bar Association of the District of Columbia (1990 – present)

Bar Association of the Third Circuit (2008 – present)

District of Columbia Bar (1990 – present)

Dwight D. Opperman Institute of Judicial Administration, New York University School of Law
Member, Board of Directors (2008 – present)

Lawyers' Committee for Civil Rights Under Law
Member, Board of Trustees (2010 – present)
Amicus Committee (2010 – 2012)

Legal Aid Society
Honorary Chair of Generous Associates Campaign (2012)

Supreme Court Fellows Commission
Commissioner (2011 – present)

Supreme Court Historical Society
Member, Board of Trustees (2012 – present)

Supreme Court Institute, Georgetown University Law Center
Member, Outside Advisory Board (2011 – present)

Virginia Bar Association (2008 – present)
Appellate Practice Section (2008 – present)
Section Council (2012 – present)

Virginia Women Attorneys Association (2008 – present)

Women's Bar Association of the District of Columbia (2004 – 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.

District of Columbia, 1990
Massachusetts, 1988 (inactive)

During this judicial nomination process, I learned that for approximately six months in 1991 and 1992, while I was clerking and not practicing law, my membership in the District of Columbia bar temporarily lapsed due to a delayed payment of membership dues, likely caused by my move from Washington, DC to Arizona. There have been no other 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, 1992
United States Court of Appeals for the District of Columbia Circuit, 1993
United States Court of Appeals for the Federal Circuit, 1993
United States Court of Appeals for the Second Circuit, 1993
United States Court of Appeals for the Third Circuit, 1993
United States Court of Appeals for the Fourth Circuit, 1994
United States Court of Appeals for the Fifth Circuit, 1992
United States Court of Appeals for the Sixth Circuit, 1992
United States Court of Appeals for the Seventh Circuit, 1992
United States Court of Appeals for the Eighth Circuit, 1993
United States Court of Appeals for the Ninth Circuit, 1991
United States Court of Appeals for the Tenth Circuit, 1993
United States Court of Appeals for the Eleventh Circuit, 1994
United States District Court for the District of Columbia, 2011
United States District Court for the Western District of Michigan, 2011
United States Court of International Trade, 2011

My membership in the United States Court of Appeals for the Eleventh Circuit lapsed in 1999 because the court assessed a fee for maintaining membership and I have had no cases there that necessitated renewal. There have been no other lapses in membership.

11. **Memberships**:

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

American Health Lawyers Association (2012 – present)

Faith & Politics Institute (2007 – present)

Harvard Law School Alumni Association (1988 – present)

University of Illinois Alumni Association (1990 – 1997)

Washington Literacy Council (1993 – approximately 2004)

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 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.

Free Speech and the Future of Off-Label Pharmaceutical Marketing Regulation After United States v. Caronia (with James E. Tysse & Mark Mansour), Life Sciences Law & Industry Report, Jan. 25, 2013. Copy supplied.

Blurb on "*Nuanced Absolutism,*" by Ronald K.L. Collins. 2013. Copy supplied.

Legal Aid Breaks New Record for Generous Associates Campaign, Making Justice Real blog, July 24, 2012. Copy supplied.

Without the Minimum Coverage Provision, The Balance of the Law Cannot Function, National Law Journal, Mar. 19, 2012. Copy supplied.

Crumbling Cornerstones: The Evolution of Preemption Law in the Supreme Court's 2010 Term (with Hyland Hunt), 26 Legal Backgrounder 22, Sept. 23, 2011. Copy supplied.

Commentary on the Tohono O'odham Decision (with James Meggesto), Turtle Talk, Apr. 27, 2011. Copy supplied.

Supreme Court Rules That Corporations Do Not Have "Personal Privacy" Interests Protected Under the Freedom of Information Act (with Anne Lee), National Chamber Litigation Center Case Alert, Mar. 3, 2011. Copy supplied.

Developments in the Osage Case, Turtle Talk, Feb. 22, 2011. Copy supplied.

Second District Court Finds Individual Mandate Unconstitutional (with Jorge Lopez Jr. & Hyland Hunt), Health Reform Resource Center, Akin Gump Strauss Hauer & Feld LLP, Feb. 2, 2011.

Commentary on D.C. Circuit's Patchak Decision, Turtle Talk, Jan. 31, 2011. Copy supplied.

U.S. v. Tohono O'odham Oral Argument Recap (with James Meggesto), Turtle Talk, Nov. 2, 2010. Copy supplied.

Mixed Signals: The Roberts Court and Free Speech in the 2009 Term (with Kevin R. Amer, Jonathan H. Eisenman, & Josh N. Friedman), 5 Charleston L. Rev. 1 (2010). Copy supplied.

"We're Your Government and We're Here to Help": Obtaining Amicus Support from the Federal Government in Supreme Court Cases, 10 J. App. Pract. & Process 209 (2009). Copy supplied.

Practice Pointer: Mootness and Munsingwear *Vacatur*, SCOTUSBlog, June 10, 2008. Copy supplied.

Petition Explores Waivers of FMLA Rights, SCOTUSBlog, Oct. 23, 2007. Copy supplied.

Papua New Guinea: A South Pacific Democracy (with Bruce George, MP), The World Today (Aug. – Sept. 1984). 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.

To the best of my knowledge, 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.

Joint letter to Senate Judiciary Committee supporting the nomination of Richard Taranto to become a Judge on the United States Court of Appeals for the Federal Circuit (February 16, 2012). Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Edward DuMont to become a judge on the United States Court of Appeals for the Federal Circuit (March 22, 2011). Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Caitlin Halligan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (March 4, 2011). Copy supplied

Joint letter to Senate Judiciary Committee supporting the nomination of Donald Verrilli to become Solicitor General (February 10, 2011). Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Elena Kagan to become an Associate Justice of the Supreme Court (June 25, 2010). Copy supplied.

Joint letter to Senate Judiciary Committee supporting the nomination of Sonia Sotomayor to become an Associate Justice of the Supreme Court (August 5, 2009). Copy supplied.

On July 23, 2008, I testified before the Senate Judiciary Committee at a hearing entitled, "*Courting Big Business: The Supreme Court's Recent Decisions on Corporate Misconduct and Laws Regulating Corporations.*" Transcript, responses to questions for the record, and written testimony 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 effort to identify the speeches or talks that I have delivered. To compile this list, I searched my own records, my law firm's records, and Internet sources. There may, however, be other speeches or talks that I have been unable to recall or identify.

April 17, 2013: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have given the same talk to Professor Goldblatt's Appellate Advocacy Clinic every spring since approximately 1997. I have no individualized notes, transcript or recording of those discussions. I have found undated notes from one such class, which are provided. I recall reusing them as a general guide for a number of the class discussions. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

April 11, 2013: Panelist, "From *Carcieri* to *Ramah*—Mining the Supreme Court's Jurisprudence," 38th Annual Federal Bar Association Indian Law Conference, Santa Fe, NM. Notes supplied.

April 8, 2013: Speaker, Casey Family Programs' Indian Child Welfare Act media briefing regarding an amicus brief filed on behalf of child welfare organizations with the Supreme Court in *Adoptive Couple v. Baby Girl*, Washington, DC. Audio and notes supplied.

April 4, 2013: Remarks to Harvard Law School students about Appellate Practice, Cambridge, MA. Notes supplied.

April 1, 2013: Remarks to Professor Ross Guberman's law school class at George Washington University School of Law about brief drafting, strategy, and oral argument, Washington, DC. I have no notes, transcript, or recording. The address of the George Washington University School of Law is 2000 H Street, NW, Washington, DC 20052.

March 27, 2013: Panelist, "A Post-Argument Panel Discussion of the Same-Sex Marriage Cases *Hollingsworth v. Perry* and *United States v. Windsor*," Supreme Court Institute, Georgetown University Law Center, Washington, DC. Notes supplied.

March 26, 2013: Remarks to judicial assistants of the United Kingdom Supreme Court Justices on appellate advocacy at the Georgetown University Law Center, Washington, DC. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 12, 2013: Panelist, "High Court Halftime: The October 2012 Term at Midpoint," Washington Legal Foundation, Washington, DC. Notes supplied. Webcast available at: http://www.wlf.org/communicating/mediabriefing_detail.asp?id=239 (registration required).

February 6, 2013: Remarks to Professor Dan Metcalfe's law school class at American University Washington College of Law, about Supreme Court practice and oral argument skills, Washington, DC. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

November 29, 2012: Panelist discussing "Merits Briefs" at the Supreme Court Advocacy Seminar, National Association of Attorneys General, Washington, DC. Notes supplied.

November 16, 2012: Panelist, "202 Appellate Advocacy: Building Skills, Building a Practice," National Asian Pacific American Bar Association, Washington, DC. Notes supplied.

November 7, 2012: Remarks to Professor Jeffrey Fisher's law class at Stanford Law School about Supreme Court litigation, Stanford, CA. I have no notes, transcript or recording. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, CA 94305.

October 26, 2012: Panelist, "Appellate Advocacy 2012," District of Columbia Bar, Washington, DC. I have no notes, transcript or recording. The address of the District of Columbia Bar is 1101 K Street, NW, Washington, DC 20005.

October 22, 2012: Remarks to Professor Art Murphy's and Judge Thomas Ambro's undergraduate class at Georgetown University, Washington, DC, about tips on oral argument delivery and preparation. I have no notes, transcript or recording. The address of Georgetown University is 3700 O Street, NW, Washington, DC 20057.

October 8, 2012: Speaker, "The Supreme Court's Indian Law Docket in Review," Arizona State University of Law and the Native American Bar Association, Tempe, AZ. PowerPoint presentation supplied.

October 5, 2012: Panelist, "The Evolution of Appellate Specialization and the Emergence of Appellate Bars," The American Academy of Appellate Lawyers 2012 Fall Meeting, Colorado Springs, CO. I have no notes, transcript or recording. The address of the American Academy of Appellate Lawyers is 9707 Key West Avenue, Suite 100, Rockville, MD 20850.

October 4, 2012: Panelist, "My Perspectives on the U.S. Supreme Court," Product Liability Advisory Council Fall Conference, Irving, TX. PowerPoint presentation supplied.

September 20, 2012: Panelist, "Supreme Court Review and Preview Panel," American Constitution Society University of Pennsylvania Law School Chapter, Philadelphia, PA. I have no notes, transcript or recording, but press coverage is supplied. The address of the American Constitution Society University of Pennsylvania Law School Chapter is 3501 Sansom Street, Philadelphia, PA 19104.

September 13, 2012: Panelist, "The Supreme Court: Countdown to the First Monday in October," The Smithsonian Associates, Washington, DC. Notes supplied.

July 25, 2012: Panelist, Supreme Court CLE Program, Northern Virginia Chapter, Federal Bar Association, Washington, DC. Notes supplied.

July 19, 2012: Panelist, webinar "Supreme Court Review," State and Local Legal Center (via video conference). PowerPoint presentation supplied.

June 26, 2012: Panelist, "Appellate Experts To Review October 2011 Supreme Court Term," Washington Legal Foundation, Washington, DC. Notes supplied. Webcast available at:
http://www.wlf.org/communicating/mediabriefing_detail.asp?id=233 (registration required).

June 25, 2012: Speaker, "Supreme Court: Implications of the Affordable Care Act Decision," Eighth Annual National Council for Community Behavioral Healthcare, Hill Day, Washington, DC. PowerPoint presentation supplied.

June 21, 2012: Panelist, "The Supreme Court Review 2012," Federal Circuit Bar Association Annual Bench and Bar Conference, San Diego, CA. Notes supplied.

June 19, 2012: Panelist, "2011 – 2012 Supreme Court Review," American Constitution Society, Washington, DC. Video recording available at:
http://www.acslaw.org/news/video/2011-2012-supreme-court-review.

June 15, 2012: Speaker, Supreme Court Review Discussion, Maryland State Bar Association, Inc., Annual Meeting, Ocean City, MD. I have no notes, transcript

or recording, but press coverage is supplied. The address for the Maryland State Bar Association is 520 West Fayette Street, Baltimore, MD 21201.

June 14, 2012: Panelist, "The United States Supreme Court: A Discussion of Obama Care and Other Significant High Court Cases," Maryland State Bar Association's Annual Meeting, Ocean City, MD. Notes supplied.

June 4, 2012: Speaker, 2012 Legal Aid Society of the District of Columbia Generous Associates Campaign Reception, Washington, DC. Notes supplied.

May 18, 2012: Remarks to Professor Ron Collins's law school class at the University of Washington Law School about Supreme Court practice (via Skype). I have no notes, transcript or recording. The address of the University of Washington Law School is William H. Gates Hall, P.O. Box 353020 (4293 Memorial Way), Seattle, WA 98195.

May 14, 2012: Remarks to Professor Jeffrey Fisher's law class at Stanford Law School about Supreme Court litigation, Stanford, CA. I have no notes, transcript or recording. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, CA 94305.

April 20, 2012: Panelist, "Effective Appellate Advocacy: Views from the Bench and the Bar," Dwight D. Opperman Institute of Judicial Administration, the Edward Coke Appellate Inn of Court, and the American Academy of Appellate Lawyers, Washington, DC. Notes supplied.

April 17, 2012: Speaker, National Financial Partners Corporation presentation on the Affordable Care Act, Washington, DC. PowerPoint presentation supplied.

April 11, 2012: Speaker, Legal Overview: An Update on Supreme Court Litigation, American Farm Bureau Federation Health Care Reform Conference, Washington, DC. PowerPoint presentation supplied.

April 2, 2012: Panelist, "Post-Argument Panel Discussion of Affordable Care Act Arguments" Supreme Court Institute, Georgetown University Law Center, Washington, DC. I have no notes, transcript or recording, but press coverage is supplied. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

March 29, 2012: Judge, 2012 Robert J. Beaudry Moot Court Competition, Georgetown University Law Center, Washington, DC. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

March 22, 2012: Remarks to students from the American Constitution Society Harvard Law School Chapter, at a luncheon at Akin Gump Strauss Hauer & Feld

LLP, Washington, DC. I have no notes, transcript or recording. The address of the American Constitution Society Harvard Law School Chapter is 1563 Massachusetts Avenue, Cambridge, MA 02138.

March 9, 2012: Keynote Speaker, "Second Annual Capital Area Legal Writing Conference," Georgetown University Law Center, Washington, DC. Notes supplied.

February 24, 2012: Panelist, "The Women at the United States Supreme Court," The Supreme Court Fellows Alumni Association, Southwestern Law School, Los Angeles, CA. Video and press coverage supplied.

February 15, 2012: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 9, 2012: Speaker, "Treason and Sedition in American History," Smithsonian Resident Associates Program, Washington, DC. PowerPoint presentation supplied.

February 8, 2012: Remarks to Professor Steven Wermiel's law school class at American University Washington College of Law, about Supreme Court advocacy, Washington, DC. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

December 13, 2011: Panelist, "The View from the Bar: Effective Advocacy in the D.C. Circuit," Federal Communications Bar Association, Judicial Practice Committee, Washington, DC. I have no notes, transcript or recording. The address of the Federal Communications Bar Association is 1020 19th Street, NW, Washington, DC 20036.

December 1, 2011: Panelist, "*Microsoft v. i4i* and Pending Supreme Court Cases: Understanding Their Collective Implications for the Biotechnology Industry," American Conference Institute – 13th Advanced Forum on Biotech Patents, Boston, MA. PowerPoint presentation and notes supplied.

November 15, 2011: Panelist, "Federal Court Update," 13th Annual DC Indian Law Conference, Washington, DC. Notes and materials supplied.

November 14, 2011: Remarks to Professor Art Murphy's and Judge Thomas Ambro's undergraduate class at Georgetown University, Washington, DC, about

tips on oral argument delivery and preparation. I have no notes, transcript or recording. The address of Georgetown University is 3700 O Street, NW, Washington, DC 20057.

November 11, 2011: Panelist, "From Your Court to the Supreme Court: Discretionary Review in the Supreme Court of the United States," Appellate Judges Education Institute (AJEI), AJEI–SMU Dedman School of Law, Washington, DC. I have no notes, transcript or recording but press coverage is supplied. The address of the AJEI–SMU Dedman School of Law is 3315 Daniel Avenue, Dallas, TX 75205.

November 9, 2011: Presenter, Mock argument in *Texas v. White* (representing White), Supreme Court Historical Society, Washington, DC. Notes and press coverage supplied.

November 3, 2011: Panelist, "Supreme Court Merits Briefs Discussion," National Association of Attorneys General, Washington, DC. I have no notes, transcript or recording. The address of the National Association of Attorneys General is 2030 M Street, NW, Eighth Floor, Washington, DC 20036.

September 14, 2011: Panelist, "Supreme Court Preview. The 2011 – 2012 Term," New York University Law School, New York, NY. Video available at: http://www.youtube.com/watch?v=8ZpH7mAtREo.

July 26, 2011: Presenter, "Everything You Always Wanted to Know about the U.S. Supreme Court But Were Afraid To Ask," Aldersgate United Methodist Church, Alexandria, VA. PowerPoint presentation supplied.

July 22, 2011: Panelist, "The Roberts Court at Age Five: The 2010 U.S. Supreme Court Term in Review," The Virginia Bar Association, Hot Springs, VA. I have no notes, transcript or recording. The address of The Virginia Bar Association is 701 East Franklin Street, Suite 1120, Richmond, VA 23219.

June 28, 2011: Media briefing on "Assessing the October 2010 U.S. Supreme Court Term," Washington Legal Foundation, Washington, DC. Press coverage is supplied. Webcast available at: http://www.wlf.org/communicating/mediabriefing_detail.asp?id=220 (registration required).

April 13, 2011: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

March 16, 2011: Remarks to Professor Irv Gornstein's law school class at Georgetown University Law Center about Supreme Court practice and the Supreme Court case of *City of Indianapolis v. Edmond*, Washington, DC. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 2, 2011: Remarks to Professor Dan Metcalfe's law school class at American University Washington College of Law, about Supreme Court practice and oral argument skills, Washington, DC. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

November 18, 2010: Panelist, "Supreme Court Preview," The Smithsonian Associates, Washington, DC. I have no notes, transcript or recording. The address of the Smithsonian Resident Associate Program is 1100 Jefferson Drive, SW, Washington, DC 20026.

November 8, 2010: Panelist, "A Look at the New Supreme Court. Hot Topics Before the New Court," American Academy of Appellate Lawyers Fall Meeting, Washington, DC. I have no notes, transcript, or recording. The address of the American Academy of Appellate Lawyers is 9707 Key West Avenue, Suite 100, Rockville, MD 20850.

November 5, 2010: Keynote speaker, 12th Annual Washington, DC Indian Law Conference, Indian Law Section of the Federal Bar Association, in conjunction with the National Native American Bar Association and the Native American Bar Association of Washington, DC, Washington, DC. I discussed recent developments in the Roberts Court's Indian Law rulings, the current state of Indian law and upcoming issues, and effective advocacy before the Supreme Court. I have no notes, transcript, or recording but press coverage is supplied. The address of the Indian Law Section of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, VA 22201.

May 20, 2010: Panelist, "Arizona Immigration Law – Constitutionality," Independent Women's Forum and Georgetown Law Supreme Court Institute, Washington, DC. Video available at: http://www.cspanvideo.org/program/LawCons and press coverage supplied.

May 17, 2010: Participant, "Faith Community Conference Call: Elena Kagan and the Judicial Nomination Process," Religious Action Center of Reform Judaism (via telephone). Audio supplied.

May 12, 2010: Panelist, "Reports on Recent Developments in the Law," (*United States v. Stevens*), District of Columbia Bar, Arts, Entertainment, Media and Sports Law Section, Media Law Committee, Washington, DC. I have no notes,

transcript or recording. The address of the District of Columbia Bar is 1101 K Street, NW, Suite 200, Washington DC 20005.

April 14, 2010: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

April 8, 2010: Panelist, "Women and the Supreme Court Bar," Georgetown University Law Center, Washington, DC. Video available at: http://www.youtube.com/watch?v=tife4XiKDg4&feature=player_detailpage and press coverage supplied.

March 23, 2010: Panelist, "Assessing the Supreme Court's Case Selection Process," Yale Law School Supreme Court Advocacy Clinic, Spring Symposium, New Haven, CT. I have no notes, transcript or recording. The address of the Yale Law School Supreme Court Advocacy Clinic is 127 Wall Street, New Haven, CT 06511.

March 9, 2010: Moderator, "Appellate Lawyers and the War on Terror," Edward Coke Appellate Inn of Court, Washington, DC. I have no notes, transcript or recording. The address of the Edward Coke Appellate Inn of Court is Tayloe House, Howard T. Markey National Courts Building, 717 Madison Place, NW, Washington, DC 20439.

February 18, 2010: Panelist, "High Court Halftime: The October 2009 Term at Midpoint," Washington Legal Foundation, Washington, DC. Webcast available at: http://www.wlf.org/communicating/mediabriefing_detail.asp?id=200 (registration required). Press coverage supplied.

January 27, 2010: Remarks to Professor Dan Metcalfe's law school class at American University Washington College of Law, about Supreme Court practice and oral argument, Washington, DC. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

January 22, 2010: Remarks to a group of Harvard Law School students visiting Washington, DC, about "Legal Writing." I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 11, 2010: Remarks to Professor Lisa McElroy's law school class from Drexel University Earle Mack School of Law visiting Washington, DC. I have no

notes, transcript or recording. The address of Drexel University Earle Mack School of Law is 3320 Market Street, Philadelphia, PA 19104.

December 9, 2009: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

October 9, 2009: Speaker, *United States v. Stevens*, the American Constitution Society Georgetown University Law Center Chapter, Washington, DC. I have no notes, transcript or recording. The address of the American Constitution Society Georgetown University Law Center Chapter is 600 New Jersey Avenue, NW, Washington, DC 20001.

September 25, 2009: Remarks to Professor Jeffrey Fisher's law school class at Stanford Law School, on Supreme Court practice and brief writing, Stanford, CA. Notes supplied.

September 17, 2009: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

June 19, 2009: Panelist, "11th Bench and Bar: Excellence in Appellate Advocacy – The Do's and Don'ts of Oral Advocacy," Federal Circuit Bar Association, Annual Meeting, White Sulphur Springs, WV. I have no notes, transcript or recording. The address of the Federal Circuit Bar Association is 1620 I Street, NW, Suite 801, Washington, DC 20006.

June 17, 2009: Panelist, "Discussion of *U.S. v. Stevens*," Freedom Forum, Washington, DC. I have no notes, transcript or recording. The address of the Freedom Forum is 555 Pennsylvania Avenue, NW, Washington, DC 20001.

June 3, 2009: Panelist, "President Obama's nominee to the U.S. Supreme Court and the Confirmation Process," Georgetown University Law Center's Supreme Court Institute, Washington, DC. Audio available at: http://apps.law.georgetown.edu/webcasts/assets/GL_200961662539.mp3 and press coverage supplied.

May 1, 2009: Speaker, "Welcoming of Elena Kagan," Georgetown Supreme Court Institute, Washington, DC. Notes and press coverage supplied.

April 6, 2009: Speaker, "The Supreme Court in the Classroom," Close Up Foundation Teacher luncheon, Washington, DC. I have no notes, transcript or recording. The address of the Close Up Foundation is 44 Canal Center Plaza, Alexandria, VA 22314.

April 2, 2009: Panelist, "American Indian Religious Freedom and the Religious Freedom Restoration Act," Federal Bar Association's Indian Law Conference, Santa Fe, NM. Paper on which discussion was based supplied.

March 18, 2009: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

February 17, 2009: Participant, moot court judge for PBS documentary on Alexander Hamilton and the Federalist Papers at the Georgetown Supreme Court Institute, Hotung Building, Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001. The PBS documentary is available for purchase at: http://manifoldproductions.com/AlexanderHamiltonfilm.html.

February 4, 2009: Remarks to Professor Dan Metcalfe's law school class at American University Washington College of Law, about Supreme Court practice and oral argument skills, Washington, DC. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

January 8, 2009: Remarks to a group of Harvard Law School students visiting Washington, DC, about "Legal Writing." I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

November 20, 2008: Panelist, "The Roberts Court and the 2008 Term," National Women's Law Center, Washington, DC. I have no notes, transcript or recording. The address of the National Women's Law Center is 11 Dupont Circle, NW, Washington, DC 20036.

November 20, 2008: Panelist, "Overview of the Supreme Court and Supreme Court Practice," Smithsonian Institution, Washington, DC. I have no notes, transcript or recording. The address of the Smithsonian Institution is SI Building, Room 153, MRC 010, Washington, DC 20013.

November 14, 2008: Panelist, "Effective Advocacy in the Federal Appellate Courts," Pennsylvania Bar Institute, about preparing for and delivering oral arguments, Philadelphia, PA. Notes supplied.

October 17, 2008: Panelist, "Trends in Supreme Court decisionmaking under the Roberts Court and their impact on Indian law," DC Indian Law Conference, Indian Law Section of the Federal Bar Association, the National Native American Bar Association, and the Native American Bar Association of Washington, DC, Washington, DC. Notes supplied.

September 29, 2008: Remarks to Professor Dan Metcalfe's law school class at American University Washington College of Law, about Supreme Court practice and oral argument skills, Washington, DC. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, NW, Washington, DC 20016.

July 16, 2008: Panelist, "*Quanta Computer v. LG Electronics*: IP License Strategies After Court's Unanimous Ruling on Patent Exhaustion?," Winston & Strawn LLP, Washington, DC. Notes supplied.

July 9, 2008: Panelist, "7th Annual Program on the Supreme Court," Legal Times, Washington, DC. Transcript and press coverage supplied.

June 10, 2008: Panelist, "2008 Supreme Court Term and issues of significance to the FCC Bar," Federal Communications Bar Association, Washington, DC. I have no notes, transcript or recording. The address of the Federal Communications Bar Association is 1020 19th Street, NW, Washington, DC 20036.

April 30, 2008: Panelist, "Do's and Don'ts of Effective Appellate Advocacy," Third Circuit Judicial Conference, Cambridge, MD. Notes supplied.

April 16, 2008: Remarks to Professor Steve Goldblatt's law school class at Georgetown University about appellate advocacy, the Solicitor General's Office, skills needed for successful legal practice, and brief writing and oral argument tips, Washington, DC. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on April 17, 2013, for which notes have been provided. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

April 3, 2008: Remarks to first-year law students at Harvard Law School, about oral argument, in preparation for moot courts, Cambridge, MA. Notes supplied.

March 27, 2008: Remarks to Professor Neil Siegel's law school class at Duke Law School, about Supreme Court practice, Durham, NC. I have no notes,

transcript or recording. The address of Duke Law School is 210 Science Drive, Durham, NC 27708.

March 26, 2008: Remarks to Judge Tom Ambro's class at Georgetown University, Washington, DC, about oral argument. I have no notes, transcript or recording. The address of the Georgetown University is 3700 O Street, NW, Washington, DC 20057.

February 28, 2008: Panelist, "The Roberts Court – An Assessment," Defense Research Institute Conference, Orlando, FL. PowerPoint presentation supplied.

February 12, 2008: Panelist, "Assessing the U.S. Supreme Court at Its Mid-Term Point," Washington Legal Foundation, Washington, DC. Webcast available at: http://www.wlf.org/communicating/mediabriefing_detail.asp?id=159 (registration required).

January 31, 2008: Remarks to Professor Richard Lazarus's law school class at Georgetown University Law Center about Supreme Court practice, Washington, DC. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

January 23, 2008: Remarks to Professor Dan Metcalfe's law school class "Secrecy Controversies Seminar," at American University Washington College of Law, about appellate advocacy, Washington, DC. Notes supplied.

January 17, 2008: Remarks to Harvard Law School Students about Supreme Court Practice, Cambridge, MA. I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 14, 2008: Remarks on Supreme Court Oral Arguments, Quill and Grill Group, Wilmington, DE. Notes supplied.

December 8, 2007: Panelist, "Domestic Violence Legal Empowerment and Appeals Project Symposium," Professor Joan Meier, George Washington University Law School, Washington, DC. I have no notes, transcript or recording. The address of George Washington University Law School is 2000 H Street, NW, Washington, DC 20052.

October 11, 2007: Panelist, "Upcoming Supreme Court Term," American Constitution Society Harvard Law School Chapter, Cambridge, MA. I have no notes, transcript or recording, but press coverage is supplied. The address of the American Constitution Society Harvard Law School Chapter is 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 3, 2007: Remarks to law school students at Widener Law School about Supreme Court practice and high-profile cases for the upcoming Supreme Court Term, Harrisburg, PA. I have no notes, transcript or recording but press coverage is supplied. The address of Widener Law School is 3800 Vartan Way, Harrisburg, PA 17110.

March 5, 2007: Panelist, "Appellate Advocacy," Rutgers-Camden Law School, New Jersey. I have no notes, transcript or recording. The address of Rutgers-Camden Law School is 217 North Fifth Street, Camden, NJ 08102.

November 17, 2006: Panelist, "Effective Advocacy in the Federal Appellate Courts," Pennsylvania Bar Institute, The CLE Conference Center, Philadelphia, PA. I have no notes, transcript or recording, although content would have mirrored the presentations in earlier years and in 2008, for which notes have been supplied. The address of the Pennsylvania Bar Institute is 100 Penn Square East, Philadelphia, PA 19107.

October 10, 2006: Speaker, Remarks on effective appellate brief writing, Utah Bar Association, Salt Lake City, UT. Notes supplied.

May 2, 2006: Panelist, "Effective Appellate Briefwriting and Effective Appellate Advocacy," Third Circuit Judicial Conference, Nemacolin Resort, PA. Notes supplied.

January 26, 2006: Remarks on "Government and Religion – What You Must Do, What You Can't Do and Everything in Between," Defense Research Institute, Civil Rights and Governmental Tort Liability Seminar, Henderson, NV. Paper on which discussion was based supplied.

December 2005: Panelist, Annual luncheon on the Supreme Court and disability rights, Bazelon Center for Mental Health Law, Washington, DC. I have no notes, transcript or recording. The address of the Bazelon Center for Mental Health Law is 1101 15th Street, NW, Washington, DC 20005.

June 2005: Co-speaker, Annual conference on disability issues in the Supreme Court in the 2004 and 2005 Terms, National Disability Rights Center, Training & Advocacy Support Center, Alexandria, VA. I have no notes, transcript or recording. The address of the National Disability Rights Network is 900 Second Street, NE, Washington, DC 20002.

May 3, 2005: Panelist, Discussion of Supreme Court briefing, oral argument, and decision in *KP Permanent Make-Up, Inc. v. Lasting Impressions, Inc.*, No. 03-409, District of Columbia Bar Association, Intellectual Property Section & Women's Bar Association, Washington, DC. Notes supplied.

April 13, 2005: Panelist, "*Tennessee v. Lane:* Disability Rights in the New Millennium" Symposium, University of Tennessee Law School, Knoxville, TN. Transcript supplied.

March 2005: Remarks at Pepperdine Law School's "Lives in the Law" series, Pepperdine Law School, Malibu, CA. I have no notes, transcript or recording. The address of Pepperdine Law School is 24522 Pacific Coast Highway, Malibu, CA 90263.

November 19, 2004: Panelist, "Effective Advocacy in the Federal Appellate Courts," Pennsylvania Bar Institute, CLE Course, Philadelphia, PA. Notes supplied.

March 8, 2004: Remarks on "The Supreme Court and the Separation of Church and State: Current Issues," Ormond Church and State Lecture, Greenville College, Greenville, IL. Following my remarks, I met with and spoke with students at the college. Remarks and outline of student discussion supplied.

January 13, 2004: Panelist, "Post-argument Discussion on *Tennessee v. Lane*," American Constitution Society, Washington, DC. Video available at: http://www.c-spanvideo.org/program/CourtsAm.

January 8, 2003: Speaker, Remarks on the role of women in Supreme Court advocacy and the Solicitor General's office, Women and Politics Institute, American University, Washington, DC. Notes supplied.

November 22, 2002: Panelist, "Effective Advocacy in the Federal Appellate Courts," Pennsylvania Bar Institute, CLE course, Pittsburgh, PA. I have no notes, transcript or recording, although content would have mirrored the presentations in subsequent years, for which notes have been supplied. The address of the Pennsylvania Bar Institute is 100 Penn Square East, Philadelphia, PA 19107.

November 15, 2002: Panelist, "Effective Advocacy in the Federal Appellate Courts," Pennsylvania Bar Institute, CLE course, Philadelphia, PA. I have no notes, transcript or recording, although content would have mirrored the presentations in subsequent years, for which notes have been supplied. The address of the Pennsylvania Bar Institute is 100 Penn Square East, Philadelphia, PA 19107.

November 3, 2000: Panelist, "Effective Advocacy in the Federal Appellate Courts," Pennsylvania Bar Institute, CLE course, Philadelphia, PA. I have no notes, transcript or recording. The address of the Pennsylvania Bar Institute is 100 Penn Square East, Philadelphia, PA 19107.

Week of July 10, 2000: Panelist, Panel on recent Supreme Court employment decisions, including *Reeves v. Sanderson Plumbing Prods.*, No. 99-536, American

Bar Association, Litigation Sub-Committee on Employment and Labor Relations Law, New York, NY. I have no notes, transcript or recording. The address of the Litigation Sub-Committee on Employment and Labor Relations is 321 North Clark Street, Chicago, IL 60654.

March 20, 2000: Speaker, Remarks on oral argument in *Reeves v. Sanderson Plumbing Prods.*, No. 99-536, Bronx High School of Science, student visit to Washington, DC. I have no notes, transcript or recording. The address of the Bronx High School of Science is 75 West 205th Street, New York, NY 10468.

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.

Nominee Pattie Millett: Black Belt, Legal Bisnow, June 5, 2013 (interview provided previously). Copy supplied.

Lawrence Hurley, *U.S. Supreme Court Rules for Monsanto in Patent Fight*, Reuters, May 13, 2013. Copy supplied.

Irv Gornstein, et al., *Supreme Court Institute Annual Report 2012 – 2013*, May 6, 2013 (interview provided previously). Copy supplied.

Marcia Coyle, *Harvard Professor Makes a High-Pressure, High-Profile Court Debut*, National Law Journal, Apr. 1, 2013. Copy supplied.

Steven T. Taylor, *Appellate Practices Turn Profits, Perform Pro Bono Work and Recruit a Different Breed*, Of Counsel, Apr. 2013 (interview provided previously). Copy supplied.

Supreme Court Takes Up Same-Sex Marriage, Weekends with Alex Witt, MSNBC, Mar. 24, 2013. Video available at: http://tv.msnbc.com/2013/03/26/scotus-preview-understanding-the-doma-and-prop-8-arguments/.

Jamie Malanowski, *Patricia Millett*, Illinois Alumni, Spring 2013. Copy supplied.

Supreme Court Considers the Voting Rights Act, MSNBC Live with Thomas Roberts, MSNBC, Feb. 27, 2013. Video available at: http://video.msnbc.msn.com/msnbc/50974997#50974997.

Erin Fuchs, *The Supreme Court Is Deciding Whether Cops Can Force Open Your Mouth and Swab Your DNA*, Business Insider, Feb. 26, 2013. Copy supplied.

Supreme Court Takes Up Challenge to Voting Rights Act, Weekends with Alex Witt, MSNBC, Feb. 24, 2013. Video available at: http://video.msnbc.msn.com/weekends-with-alex-witt/50930285#50930285.

Tony Mauro, *Practitioners Mourn Francis Lorson, the Court's Institutional Memory*, National Law Journal, Jan. 14, 2013. Copy supplied.

Supreme Court, Weekends with Alex Witt, MSNBC, Jan. 12, 2013. I have been unable to obtain a copy of the recording.

Max Stendahl, *SEC Faces Uphill Battle In Supreme Court Gabelli Showdown,* Law 360, Jan. 4, 2013. Copy supplied.

Thai Phi Le, *Affordable Care Act and the Scope of Federal Power*, Washington Lawyer, Jan. 2013. Copy supplied.

Lisa T. McElroy, *Cameras at the Supreme Court: A Rhetorical Analysis*, 2012 BYU L. Rev. 1837 (2012). Copy supplied.

Supreme Court to Hear Same-Sex Marriage Cases, Weekends with Alex Witt, MSNBC, Dec. 8, 2012. Video available at: http://video.ca.msn.com/watch/video/inside-scotus-doma/17yyi1spd.

Jeremy Heallen, *Appellate MVP: Akin Gump's Patricia A. Millett,* Law 360, Dec. 5, 2012. Copy supplied.

SCOTUS to Announce Plan for Same-Sex Marriage Cases, Weekends with Alex Witt, MSNBC, Dec. 1, 2012. Audio available at: http://video.msnbc.msn.com/msnbc/50039106#50039106.

Weekends with Alex Witt, MSNBC, Sept. 29, 2012. I have been unable to obtain a copy of the recording.

Victor Li, *Oyez! Oyez! Oyez!,* The American Lawyer, Aug. 29, 2012. Copy supplied.

The Affordable Care Act As Dissected by a Constitutional Expert, The Metropolitan Corporate Counsel, Aug. 16, 2012. Copy supplied.

Ann Gerhart, *For Verrilli and Other Supreme Court Advocates, Waiting May Be the Hardest Part,* The Washington Post, June 24, 2012. Copy supplied.

Emily Belz, *Still Clean TV*, World: Today's News, Christian Views, June 21, 2012. Copy supplied.

Tony Mauro, *Akin Gump: A Good Year on Both Coasts,* National Law Journal, June 18, 2012. Copy supplied.

SCOTUS Health Care Ruling Could Come Soon, Weekends with Alex Witt, MSNBC, June 9, 2012. Video available at: http://video.msnbc.msn.com/msnbc-tv/47747486/#47747486.

Kali Borkoski, *Q&A with Patricia Millett*, SCOTUSblog, May 25, 2012. Copy supplied.

Tony Mauro, *Millett Sets Record with 31st Supreme Case,* National Law Journal, Apr. 30, 2012. Copy supplied.

A History-Making SCOTUS Argument, Legal Bisnow, Apr. 27, 2012. Copy supplied.

Elizabeth Amon, *Akin Gump, Mark Lewis, Skadden, Sheppard: Business of Law,* Bloomberg, Apr. 26, 2012. Copy supplied.

Tony Mauro, *Millett Takes the Lead for Most Arguments by a Woman,* Supreme Court Insider, Apr. 24, 2012. Copy supplied.

Hannah Hayes, *Women in Black: The New Normal, Perspectives*, Vol. 20 (Spring 2012). Copy supplied.

Tony Mauro, *Millett Set to Become Second Woman to Argue 30 Cases at the Court*, National Law Journal, Jan. 4, 2012. Copy supplied.

Andrew Ramonas, *Relentless Pursuit of Justice for Survivors*, National Law Journal, Jan. 2, 2012. Copy supplied.

John Council, *David Beck of Beck Redden & Secrest Makes History at U.S. Supreme Court,* Tex Parte Blog, Nov. 18, 2011. Copy supplied.

Kimberly Atkins, *The New Class of 2011: U.S. Supreme Court Defeats Didn't End Class Actions, But They Did Change Them,* Lawyers USA, July 26, 2011. Copy supplied.

Samuel Howard, *Pro Bono Firm of 2011: Akin Gump*, Law 360, July 11, 2011. Copy supplied.

Marcia Coyle, *Sketching Out the U.S. Supreme Court's Term,* Texas Lawyer, July 6, 2011. Copy supplied.

Kimberly Atkins, *In Drug Tort Suits, It's a Name Game: U.S. Supreme Court Ruling Subjects Name-Brand Generic Drugs to Different Liability*, Lawyers USA, July 5, 2011. Copy supplied.

Marcia Coyle & Tony Mauro, *From High Court Heavyweights, Highlights of the 2010 Term*, National Law Journal, June 29, 2011. Copy supplied.

Aaron Bouchie, *Patents on the Line*, BioCentury, Apr. 25, 2011. Copy supplied.

Supreme Court Agrees to Hear "Waiver of Arbitration" Case, Dispute Resolution Journal, Feb./Apr. 2011. Copy supplied.

Allison Grande, *Rising Star: Jones Day's Shay Dvoretzky*, Law 360, Mar. 14, 2011. Copy supplied.

Michael Dresser, *WWII Controversy Surfaces in Annapolis*, Baltimore Sun, Feb. 19, 2011. Copy supplied.

Jessica Gresko, *U.S. Supreme Court Hears from Few Female Lawyers*, Washington Post, Jan. 20, 2011. Copy supplied.

All Things Considered: Pro-Gay Groups 'Desperate' For Obama To Take Action, National Public Radio, Oct. 18, 2010. Transcript supplied.

Tosin Sulaiman, *Pro Bono Lawyer Fights to Uphold Five Somalis' Faith in U.S. Justice*, Thomson Reuters Foundation, Sept. 23, 2010. Copy supplied.

Jerry Markon, *In Immigration Uproar, an Attorney with Subtlety*, Washington Post, July 31, 2010. Copy supplied.

The Supreme Court's Latest Rulings and Confirmation Hearings for Elena Kagan, The Diane Rehm Show, WAMU/National Public Radio, June 29, 2010. Transcript supplied.

Nina Totenberg, *How Women Changed The High Court ... And Didn't*, NPR News, June 25, 2010. Copy supplied.

Marisa M. Kashino, *Fashion Crimes*, Washingtonian.com, May 25, 2010. Copy supplied.

Jessica Dye, *Friends, Past Opponents Hint at Kagan's Judicial Style*, Law 360, May 11, 2010. Copy supplied.

Fox Hosts Supreme Court Expert to Debunk Myth that "Incredibly Smart" Kagan isn't Qualified, Fox News Live, May 10, 2010. I have been unable to obtain a copy of the recording.

Katie Connolly, *Supreme Court: Kagan's Philosophy Hard to Define*, BBC News, May 10, 2010. Copy supplied.

Is Elena Kagan the Right Choice?, CNN.com, May 10, 2010. Copy supplied.

Elena Kagan Announced As Obama's Supreme Court Pick, Fox Chicago News, May 10, 2010. Copy supplied.

The Press Pool hosted by Joe Mathieu, Sirius XM Radio, May 7, 2010. I discussed the Supreme Court nomination of Elena Kagan. I have been unable to obtain a copy of the recording.

Joseph P. Tartaro, *High Court's 8-1 Ruling Protects Hunting Media,* Gunweek.com, May 2010. Copy supplied.

Joan Biskupic, *High Court Negates Animal-Cruelty Law As Too Broad*, USA Today, Apr. 21, 2010. Copy supplied.

Brian Bowling, *Supreme Court Rules Law that Led to W. Pa. Conviction Unconstitutional*, Pittsburgh Tribune Review, Apr. 21, 2010. Copy supplied.

Ariane de Vogue, *Supreme Court Overturns Law Banning Depictions of Animal Cruelty*, ABC News, Apr. 20, 2010. Copy supplied.

Ex-Obama Insider Advises Goldman Sachs; From Wall Street to Washington; Supreme Court Rules on Animal Fighting Videos, The Situation Room, CNN radio, Apr. 20, 2010. Transcript supplied.

A First Amendment Victory: U.S. v. Stevens, NRA News, Apr. 20, 2010. Video available at: http://www.nranews.com/resources/video/a-first-amendment-victory-u-s-v-stevens/list/amicus-briefs.

Joan Biskupic, *Supreme Court Kills Animal-Cruelty Law*, USA Today, Apr. 20, 2010. Copy supplied.

Tony Mauro, *Justices Find Animal Cruelty Law Goes Too Far*, National Law Journal, Apr. 20, 2010. Copy supplied.

National Shooting Sports Foundation, *Supreme Court Shoots Down Law Hostile to Hunting Videos*, Opposing Views, Apr. 20, 2010. Copy supplied.

Tony Mauro, *Battling the Bomb*, National Law Journal, Apr. 19, 2010. Copy supplied.

Supreme Court, Fox News, Apr. 10, 2010. I have been unable to obtain a copy of the recording.

Justice John Paul Stevens to Retire, Weekends with Alex Witt, MSNBC, Apr. 10, 2010. I have been unable to obtain a copy of the recording.

Court Vacancy a Big Challenge for Obama, CNN, Apr. 9, 2010. Copy supplied.

Jordan Weissmann, *Appeals Court Hands Contractors a Reprieve in FOIA Case*, The BLT: The Blog of Legal Times, Mar. 24, 2010. Copy supplied.

Samantar v. Yousuf, KPFK Radio, Mar. 3, 2010. Audio supplied.

Marisa M. Kashino, *Power Players: Last Woman at the High Court*, Washingtonian, Nov. 13, 2009. Copy supplied.

Sound Bites: What Are Your Thoughts on the New SCOTUS Term?, Legal Bisnow, Oct. 27, 2009. Copy supplied.

Animal Cruelty, CTV News, Oct. 6, 2009. Transcript supplied.

Bill Mears, *High Court Debates Dog Fighting Videos*, CNN, Oct. 6, 2009. Copy supplied.

Nina Totenberg, *Dogfighting Case Gets Its Day In Court*, National Public Radio, Oct. 6, 2009. Copy supplied.

Joan Biskupic, *Animal-Abuse Videos Are Test of Free Speech*, USA Today, Oct. 5, 2009. Copy supplied.

Supreme Court Has Plenty of Work Waiting as it Goes into Session Monday, NBC Nightly News, Oct. 4, 2009. Transcript supplied.

Tony Mauro, *"Lobbying" the SG's Office*, National Law Journal, Aug. 17, 2009. Copy supplied.

Supreme Court, Alex Witt of *MSNBC*, Aug. 8, 2009. I have been unable to obtain a copy of the recording.

Interview on Fox News regarding Sonia Sotomayor, Aug. 6, 2009. I have been unable to obtain a copy of the recording.

Interview on CBS News regarding Sonia Sotomayor, Aug. 6, 2009. I have been unable to obtain a copy of the recording.

Interview by Shepard Smith of Fox News regarding Sonia Sotomayor, July 13, 2009. I have been unable to obtain a copy of the recording.

Interview by Kelly Wright of Fox News regarding Sonia Sotomayor, July 12, 2009. I have been unable to obtain a copy of the recording.

Interview on The Michael Eric Dyson Show regarding the confirmation hearing of Sonia Sotomayor, July 10, 2009. I have been unable to obtain a copy of the recording.

Darren Warner, *Why Should This Photo Be Illegal?*, NRAhuntersrights.org, Jul 9, 2009. Copy supplied.

Ricci, et al. v. DeStefano, et al., Fox News, June 29, 2009. I have been unable to obtain a copy of the recording.

James Rowley, *Sotomayor May Have Some Unlikely Allies on Gun Issue*, Bloomberg, June 2, 2009. Copy supplied.

John D. McKinnon, *Another Hot Issue: Intellectual Property*, Wall Street Journal, May 29, 2009. Copy supplied.

Evan Weinberger, *Sotomayor May Not Get Quick OK Obama Hopes For*, Law 360, May 26, 2009. Copy supplied.

Christopher S. Rugaber, *Nominee Has Pragmatic Record on Business*, Associated Press, May 26, 2009. Copy supplied.

Steve LeVine & Theo Francis, *Sotomayor: A Moderate on Business Issues*, Business Week, May 26, 2009. Copy supplied.

Nightly Business Report: A Look at the Business Impact From Sonia Sotomayor's SCOTUS Nomination, PBS television, May 26, 2009. Transcript supplied.

Theo Francis & Steve LeVine, *What the Supreme Court Pick Will Mean for Business*, Business Week, May 14, 2009. Copy supplied.

Carrie Johnson, *Holder's Comments on Race Prompt Requests for Legal Help*, Washington Post, May 13, 2009. Copy supplied.

In Memoriam: Mark Levy, Legal Bisnow, May 1, 2009. Copy supplied.

Alexander Heffner, *Obama's Law: The Future of the Supreme Court*, Huffington Post, May 1, 2009.

Tony Mauro, *Refusal to Take Monument Called Within City's Rights*, N.Y. L.J., Feb. 26, 2009. Copy supplied.

Mike Scarcella, *Race Develops for Open 4th Circuit Seats*, Legal Times, Feb. 16, 2009. Copy supplied.

Lawyer2Lawyer, LegalTalkNetwork, Feb. 12, 2009. Audio available at: http://legaltalknetwork.com/podcasts/lawyer-2-lawyer/2009/02/justice-ruth-bader-ginsburg/.

Joe Palazzolo, *Obama Announces 4 Picks for Key DOJ Slots*, The Legal Intelligencer, Jan. 6, 2009. Copy supplied.

Jocelyn Allison, *Obama Names 1st Female SG, Other Top DOJ Posts*, Law 360, Jan. 5, 2009. Copy supplied.

Tony Mauro, *"Superstar" Elana Kagan is Named SG*, The BLT: The Blog of Legal Times, Jan. 5, 2009. Copy supplied.

Jocelyn Allison, *Change To Come Slowly To SG Office Under Obama*, Law 360, Nov. 7, 2008.

Thelen RIP; Akin Gump Fashion Show; Fight Night, Legal Bisnow, Oct. 29, 2008. Copy supplied.

Mike Scarcella, *Bush Makes Last Stand to Defend Record in Court*, Miami Daily Bus. Rev., Sept. 8, 2008. Copy supplied.

Mike Scarcella, *Last Chance at D.C. Circuit*, Legal Times, Sept. 1, 2008. Copy supplied.

William Triplett, *Bipartisan Blitz Tackles FCC*, Variety, Aug. 18, 2008. Copy supplied.

John Schwartz, *Back to Court, Decades After Atomic Tests*, New York Times, Aug. 7, 2008. Copy supplied.

Dan Slater, *50 Years After Nuclear Tests, Bikini Atoll Case Hits Federal Circuit*, Wall Street Journal, Aug. 7, 2008. Copy supplied.

Supreme Court Wrap: Akin Gump, Mayer Brown, WilmerHale, Legal Bisnow, July 10, 2008. Copy supplied.

Joan Biskupic, *Supreme Court Begins Its Finale Today*, USA Today, June 9, 2008. Copy supplied.

What's It Like ... to Argue a Case Before the Supreme Court?, MORE Mag., June 2008. Copy supplied.

Attila Berry, Nathan Carlile, & Marisa McQuilken, *Keeping Score*, Legal Times, Oct. 8, 2007. Copy supplied.

To the Point: A Change of Direction for the Roberts Supreme Court?, KCRW and Public Radio International, Oct. 1, 2007. Audio supplied.

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

I have not held any judicial office

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have never been a judge.

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

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

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

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

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

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

I have not held any public 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.

From September 2008 to November 2008, I was a volunteer legal advisor for the campaign of now-President Barack Obama. I provided legal assistance to the Voter Protection Teams for Ohio and New Hampshire, including preparing for potential election challenges.

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 1990 to 1992, I served as a law clerk to Judge Thomas Tang, Circuit Judge of the United States Court of Appeals for the Ninth 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.

1988 – 1990
Miller & Chevalier
655 15th Street, NW
Washington, DC 20005
Associate

1992 – 1996
United States Department of Justice
Civil Division, Appellate Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Attorney

1996 – 2007
United States Department of Justice
Office of the Solicitor General

950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

2007 – present
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
Partner (2007 – present)
Head of Supreme Court Practice (2011 – present)
Co-Head of Supreme Court Practice (2007 – 2010)
Co-Chair of the National Appellate Practice (2011 – present)

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

I have never served as a mediator or arbitrator.

b. Describe:

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

My law practice has focused extensively on appellate and Supreme Court practice. The bulk of that practice has been with the federal government (from 1992 to 2007), with increasing levels of responsibility. In private practice, I also provide legal analysis and counsel to clients outside of litigation, generally on constitutional, statutory construction, litigation procedure, or administrative law questions. I handle a broad variety of legal issues, both civil and criminal, although predominantly civil.

As an associate at Miller & Chevalier from 1988 to 1990, my principal role was to research and prepare initial drafts of briefs and analytical memoranda for litigation and legal consulting assignments, as well as assisting more senior attorneys with oral argument preparation.

As an attorney in the Civil Division, Appellate Staff from 1992 to 1996, I wrote briefs and presented approximately twenty oral arguments in the federal courts of appeals and state appellate courts. I prepared appeal, rehearing, and certiorari authorization memoranda for the Solicitor General's Office. I also occasionally assisted with the drafting of briefs and oral argument preparation by more senior attorneys, as well as drafting Supreme Court certiorari-stage briefs for the Solicitor General's Office.

As an Assistant to the Solicitor General from 1996 to 2007, I drafted Supreme Court merits and certiorari-stage briefs, presented twenty-five oral arguments in the Supreme Court, assisted more senior attorneys with oral argument preparation, and prepared appeal, rehearing, and certiorari-authorization memoranda for the Solicitor General's decision making.

As a partner at Akin Gump Strauss Hauer & Feld from 2007 to the present, I have presented 7 arguments in the Supreme Court, and nineteen arguments in the federal and state appellate courts. I initially co-headed and now head the firm's Supreme Court practice and co-head the national appellate practice. I primarily lead the legal team on client matters, manage client relationships, review and edit drafts of briefs and client memoranda prepared by junior lawyers, and present oral argument in the courts.

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

At Miller & Chevalier, my typical clients were businesses and business entities. I also represented a death row inmate and the Salvation Army in pro bono matters. During my work in the Civil Division, my clients were federal agencies or the United States generally concerning their civil litigation matters. I specialized in appellate litigation on a broad array of civil issues. During my work in the Solicitor General's Office, my clients were the United States Government, federal agencies, and occasionally the Congress or federal courts. I represented them in all litigation matters, civil and criminal. My specialization was Supreme Court practice on a broad array of civil and criminal matters. At Akin Gump Strauss Hauer & Feld, my clients are primarily businesses and related entities involved in appellate matters on a broad range of legal issues. I have also represented individuals, American Indian Tribes, and state and local governments. Through pro bono matters, I have also represented indigent individuals and non-profit entities in both civil and criminal matters.

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

My practice has been 85% litigation, 15% legal consulting. I had only one court appearance while at Miller & Chevalier. Since joining the Justice Department in September 1992, virtually all of my practice has been litigation, primarily in appellate courts and the Supreme Court. I have also had infrequent appearances in federal district court and state courts. I have argued a total of 32 cases in the Supreme Court, 36 cases in the federal courts of appeals, 4 cases in state appellate courts, 3 cases in federal district court, and 1 case in state trial court.

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: 85%
   2. criminal proceedings: 15%

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.

Other than one pro bono small claims court trial in Washington, DC, on behalf of the Salvation Army, in 1989 or 1990, I have not done substantial trial work. During my time in private practice, I have been involved as lead counsel for clients in three trial court cases that were resolved on motions for judgment. For example, I was lead counsel in a federal district court proceeding on behalf of a client that brought a constitutional challenge to a state beverage regulation law. I was also lead counsel for clients in state court, originally as amicus curiae and subsequently as parties, who challenged a state law as an unconstitutional taking.

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.

<u>Argued cases:</u>

Blessing v. Freestone, 520 U.S. 329 (1997) (transcript, 1997 WL 8589; amicus brief for the United States supporting respondents, 1996 WL 625407)

Kalina v. Fletcher, 522 U.S. 118 (1997) (transcript, 1997 WL 633539; amicus brief for the United States supporting petitioner, 1997 WL 234199)

Ricci v. Village of Arlington Heights, 523 U.S. 613 (1998) (transcript, 1998 WL 204590; amicus brief for the United States supporting respondent, 1998 WL 145336)

Bank of America Nat'l Trust & Sav. Ass'n v. 203 North LaSalle Street P'ship, 526 U.S. 434 (1999) (transcript, 1998 WL 767503; amicus brief for the United States supporting petitioner, 1998 WL 346622)

INS v. Aguirre-Aguirre, 526 U.S. 415 (1999) (transcript, 1999 WL 141033; brief for the petitioner, 1998 WL 858535; reply brief, 1999 WL 74195)

Norfolk Southern Ry. v. Shanklin, 529 U.S. 344 (2000) (transcript, 2000 WL 268312; amicus brief for the United States supporting respondent, 2000 WL 134333)

Reeves v. Sanderson Plumbing Prods., 530 U.S. 133 (2000) (transcript, 2000 WL 346179)

City of Indianapolis v. Edmond, 531 U.S. 32 (2000) (transcript, 2000 WL 1474135; amicus brief for the United States supporting petitioners, 2000 WL 633467)

Shaw v. Murphy, 532 U.S. 223 (2001) (transcript, 2001 WL 55355)

Young v. United States, 535 U.S. 43 (2002) (transcript, 2002 WL 57250; brief for the United States, 2001 WL 1597747)

Devlin v. Scardelletti, 536 U.S. 1 (2002) (transcript, 2002 WL 521351)

Gonzaga Univ. v. Doe, 536 U.S. 273 (2002) (transcript, 2002 WL 859173; amicus brief for the United States supporting petitioners, 2002 WL 354729)

Washington Dep't of Human Servs. v. Keffeler, 537 U.S. 371 (2003) (transcript, 2002 WL 31800400; amicus brief for the United States supporting petitioners, 2002 WL 1836735)

Nguyen v. United States, 539 U.S. 69 (2003) (transcript, 2003 WL 1699862; brief for the United States, 2003 WL 548057)

Illinois v. Lidster, 540 U.S. 419 (2004) (transcript, 2003 WL 22681604; amicus brief for the United States supporting petitioner, 2003 WL 21537768)

National Archives & Records Admin. v. Favish, 541 U.S. 157 (2004) (transcript, 2003 WL 22962422; petition for a writ of certiorari, 2002 WL 32101044; reply brief in support of petition for a writ of certiorari, 2003 WL 21251593; brief for the petitioner, 2003 WL 21738777; reply brief for the petitioner, 2003 WL 22282514)

KP Permanent Make-Up v. Lasting Impressions, 543 U.S. 111 (2004) (transcript, 2004 WL 2340185; amicus brief for the United States supporting petitioner, 2004 U.S. S.Ct. Briefs LEXIS 331)

Small v. United States, 544 U.S. 385 (2005) (transcript, 2004 WL 2607532; brief for the United States, 2004 WL 1844488)

Gonzalez v. Crosby, 545 U.S. 524 (2005) (transcript, 2005 WL 1047257; amicus brief for the United States supporting respondent, 2005 WL 760331)

Dolan v. U.S. Postal Service, 546 U.S. 481 (2006) (transcript, 2005 WL 3095496; brief for the respondents, 2005 WL 2250501)

Arkansas Dep't of Human Servs. v. Ahlborn, 547 U.S. 268 (2006) (transcript, 2006 WL 531270; amicus brief for the United States supporting petitioners, 2005 WL 3226397)

Washington v. Recuenco, 548 U.S. 212 (2006) (transcript, 2006 WL 1063290)

Safeco Ins. Co. v. Burr, 551 U.S. 47 (2007) (transcript, 2007 WL 102644; amicus brief for the United States supporting petitioners, 2006 WL 3336481)

Fry v. Pliler, 551 U.S. 112 (2007) (transcript, 2007 WL 837149)

Sole v. Wyner, 551 U.S. 74 (2007) (transcript, 2007 WL 1135592; amicus brief for the United States supporting petitioner, 2007 WL 621860)

United States v. Clintwood Elkhorn Mining Co., 553 U.S. 1 (2008) (transcript, 2008 WL 760427; brief in opposition, 2007 WL 3270377; brief for the respondents, 2007 WL 3270377)

United States v. Stevens, 130 S. Ct. 1577 (2010) (transcript, 2009 WL 3187229; brief for the respondent, 2009 WL 2191081)

Samantar v. Yousuf, 130 S. Ct. 2278 (2010) (transcript, 2010 WL 723449; brief for the respondents, 2010 WL 265636)

Gonzalez v. Thaler, 132 S. Ct. 641 (2012) (transcript, 2011 WL 5196311; petition for a writ of certiorari, 2011 WL 86646; reply brief in support of petition for a writ of certiorari, 2011 WL 1881827; brief for petitioner, 2011 WL 3488993; reply brief for petitioner, 2011 WL 4957385)

Filarsky v. Delia, 132 S. Ct. 1657 (2012) (transcript, 2012 WL 123128; brief for petitioner, 2011 WL 5591817; reply brief for petitioner, 2012 WL 78243)

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 132 S. Ct. 2199 (2012) (transcript, 2012 WL 1410076; petition for a writ of certiorari, 2011 WL 3750709; reply brief in support of petition for a writ of certiorari, 2011 WL 5856195; brief for petitioner, 2012 WL 416752; reply brief for petitioner, 2012 WL 1332576)

Arizona v. Inter Tribal Council of Arizona Inc., No. 12-71 (transcript, 2013 WL 1100118; brief for respondents, 2013 WL 166231) (decision pending)

Briefed Cases:

Tompkins v. Texas, 490 U.S. 754 (1989) (reply brief for petitioner, 1988 WL 1026168)

DeWitt v. Foley, 507 U.S. 901 (1993) (motion of appellee to affirm, copy supplied)

DeLeonardis v. Koch, No. 92-1865 (brief for the respondent in opposition, copy supplied) (cert. denied)

Schneider v. United States, No. 94-552 (brief for the United States in opposition, 1994 WL 16100071) (cert. denied)

City of Boerne v. Flores, 521 U.S. 507 (1997) (brief for the United States, 1997 WL 13201; brief for United States in opposition, 1996 WL 33413750)

Quality King Distributors, v. L'Anza Research Int'l, 523 U.S. 135 (1998) (amicus brief for the United States supporting respondent, 1997 WL 588864)

Phillips v. Washington Legal Found., 524 U.S. 156 (1998) (amicus brief for the United States supporting petitioners, 1997 WL 528612)

Kolstad v. American Dental Ass'n, 527 U.S. 526 (1999) (amicus brief for the United States and the EEOC supporting petitioner, 1998 WL 915910)

Kimel v. Florida Bd. of Regents, 528 U.S. 62 (2000) (brief for the United States, 1999 WL 513848; reply brief, 1999 WL 33609325)

Humenansky v. Regents of the Univ. of Minnesota, No. 98-1235 (petition for a writ of certiorari, 1999 WL 33640858) (cert. denied)

United States v. Weatherhead, 528 U.S. 1042 (1999) (petition for a writ of certiorari, copy supplied; reply brief, copy supplied; brief for the petitioner, 1999 WL 988266; reply brief, 1999 WL 1086463; petitioner's motion to vacate the judgment and remand with directions to dismiss the case as moot, copy supplied; reply to respondent's opposition to motion to vacate the judgment and remand the

case with directions to dismiss the case as moot, 1999 U.S. S. Ct. Briefs LEXIS 275)

Alsbrook v. City of Maumelle, No. 99-423 (brief for the United States, copy supplied) (cert. denied)

DeBose v. Nebraska, No. 99-940 (brief for the United States, 1999 WL 33639328) (cert. denied)

United States v. Board of Governors of State Colleges, No. 99-2077 (petition for a writ of certiorari, 2000 WL 34014566) (cert. denied)

Board of Trustees of the Univ. of Alabama v. Garrett, 531 U.S. 356 (2001) (certiorari-stage brief for the United States, 2000 WL 34014929; brief for the United States, 2000 WL 1178761)

Atwater v. City of Lago Vista, 532 U.S. 318 (2001) (amicus brief for the United States supporting respondents, 2000 WL 1673201)

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001) (amicus brief for the United States supporting respondent, 2000 WL 1873821)

United States v. Snyder, No. 00-554 (petition for a writ of certiorari, 2000 WL 34000581) (cert. denied)

United States Dep't of Justice v. Maydak, No. 00-1507 (petition for a writ of certiorari, 2001 WL 34125473) (cert. denied)

Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002) (amicus brief for the United States and the EEOC supporting petitioner, 2001 WL 1480828)

Christopher v. Harbury, 536 U.S. 403 (2002) (amicus brief for the United States supporting petitioners, 2002 WL 126371)

Smith v. Doe, 538 U.S. 84 (2003) (amicus brief for the United States supporting petitioners filed *sub nom. Godfrey v. Doe*, copy supplied)

Nevada Dep't of Human Res. v. Hibbs, 538 U.S. 721 (2003) (brief for the United States, 2002 WL 31455490)

Minnesota v. Martin, No. 02-117 (amicus brief for the United States, copy supplied) (cert. denied)

Medical Board v. Hason, 538 U.S. 958 (2003) (brief for the United States, 2003 WL 554506)

Doe v. Chao, 540 U.S. 614 (2004) (brief for the respondent, 2003 WL 22489257)

Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004) (petition for a writ of certiorari (copy supplied); reply brief (copy supplied); brief for the United States as respondent supporting petitioners, 2003 WL 23051994; reply brief, 2004 WL 522593)

Higbee Co. v. Chapman, No. 02-1646 (amicus brief for the United States, 2004 WL 1204468) (cert. denied)

Tennessee v. Lane, 541 U.S. 509 (2004) (brief for the United States, 2003 WL 22733902)

Regal Cinemas v. Stewmon, No. 03-641 (amicus brief for the United States, 2004 WL 1205203) (cert. denied)

Crawford v. Martinez, 541 U.S. 986 (2004) (brief for petitioners, 2004 WL 1080689; reply brief , 2004 WL 2006590)

Cinemark USA, Inc. v. United States, No. 03-1131 (brief for the United States in opposition, 2004 WL 1204474) (cert. denied)

Crawford v. Riveron-Aguilera, No. 03-1265 (petition for a writ of certiorari, 2004 WL 440855) (cert. denied)

Alcanter v. Pedroso, No. 03-1436 (petition for a writ of certiorari, 2004 WL 838112) (cert denied)

Senger v. Wisconsin Dep't of Health and Family Servs., No. 03-10777 (amicus brief for the United States, 2005 WL 1277852) (cert. denied)

Van Orden v. Perry, 545 U.S. 677 (2005) (amicus brief for the United States supporting respondents, 2005 WL 263790)

McCreary County v. ACLU of Kentucky, 545 U.S. 844 (2005) (amicus brief for the United States supporting petitioners, 2004 WL 2831788)

Benitez v. Mata, 541 U.S. 1084 (2004) (brief for the respondent, 2004 WL 2363184)

Cutter v. Wilkinson, 544 U.S. 709 (2005) (brief for the United States as respondent supporting petitioners, 2004 WL 2961153; reply brief for the United States as respondent supporting petitioners, 2005 WL 593064)

Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal, 546 U.S. 418 (2006) (petition for a writ of certiorari, 2005 WL 350203; reply brief, 2005 WL

737422, brief for the petitioners, 2005 WL 1650792; reply brief, 2005 WL 2646470; emergency application for a temporary stay and motion for a stay of preliminary injunction, copy supplied)

United States v. Georgia, 546 U.S. 151 (2006) (petition for a writ of certiorari, 2005 WL 562197; reply brief, 2005 WL 952241; brief for the United States, 2005 WL 1811401; reply brief, 2005 WL 2841655)

Brigham City v. Stuart, 547 U.S. 398 (2006) (amicus brief for the United States supporting petitioner, 2006 WL 448210)

Lopez v. Gonzales, 549 U.S. 47 (2006) (brief for the respondent, 2006 WL 2474082).

Gonzales v. Thomas, 547 U.S. 183 (2006) (petition for a writ of certiorari, 2005 WL 2875043; reply brief, 2006 WL 189809; supplemental brief, 2006 WL 897020)

United States v. Nebraska Dep't of Health and Human Servs. Finance and Support, 547 U.S. 1067 (2006) (petition for a writ of certiorari, 2005 WL 3464498; reply brief, 2006 WL 703884) (certiorari granted, decision vacated, and case remanded)

Gonzales v. Tchoukhrova, 549 U.S. 801 (2006) (petition for a writ of certiorari, 2006 WL 1221857; reply brief, 2006 WL 2425778) (certiorari granted, decision vacated, and case remanded)

Hein v. Freedom from Religion Found., 551 U.S. 587 (2007) (petition for a writ of certiorari, 2006 WL 2161324; reply brief, 2006 WL 3357057; brief for petitioners, 2007 WL 62299; reply brief, 2007 WL 760512)

Gonzales v. Gao, 552 U.S. 801 (2007) (petition for a writ of certiorari, 2007 WL 835007; reply brief, 2007 WL 1911532) (certiorari granted, decision vacated, and case remanded)

United States v. Rodriguez, 553 U.S. 377 (2008) (petition for a writ of certiorari, 2007 WL 1684900)

Quanta Computer, Inc. v. LG Elecs., Inc., 553 U.S. 617 (2008) (amicus brief of the Biotechnology Industry Organization supporting neither party, 2007 WL 3353099)

John R. Sand & Gravel Co. v. United States, 552 U.S. 130 (2008) (amicus brief of the Metamora Group supporting respondent, 2007 WL 2843830)

Meacham v. Knolls Atomic Power Lab., 554 U.S. 84 (2008) (amicus brief of the Chamber of Commerce supporting respondents, 2008 WL 1744863)

Sanchez-Aran v. United States, No. 07-536 (petition for a writ of certiorari, 2007 WL 3101390) (cert. denied)

Progress Energy, Inc. v. Taylor, No. 07-539 (petition for a writ of certiorari, 2007 WL 3129916; reply brief, 2007 WL 4613641; supplemental brief, 2008 WL 2305816) (cert. denied)

Negusie v. Mukasey, 552 U.S. 1255 (2008) (amicus brief of the Human Rights First, American Immigration Lawyers Association, Human Rights Watch, and U.S. Committee for Refugees and Immigrants supporting petitioner, 2008 WL 2597010)

Carcieri v. Kempthorne, 555 U.S. 991 (2008) (amicus brief of the Narragansett Indian Tribe supporting respondents, 2008 WL 4080368)

Sprint Commc'ns Co. v. APCC Servs., Inc., 554 U.S. 269 (2008) (petition for a writ of certiorari, 2007 WL 4377581; reply brief, 2007 WL 3143560; brief for petitioners, 2007 WL 3143560; reply brief for petitioners, 2008 WL 1721901)

City of Pleasant Grove v. Summum, 555 U.S. 460 (2009) (brief for petitioners, 2008 WL 2445506; reply brief for petitioners, 2008 WL 4264486)

Lawler v. Nara, No. 07-733 (brief for the respondent in opposition, 2008 WL 623186) (cert. denied)

Radian Guar., Inc. v. Whitfield, 553 U.S. 1091 (2008) (petition for a writ of certiorari, 2007 WL 4618413; suggestion of mootness and motion to vacate the judgment of the court of appeals, 2008 WL 1989683) (vacatur granted)

Centerior Energy Corp., v. Mikulski, No. 07-961 (petition for a writ of certiorari, 2008 WL 194304; reply brief, 2008 WL 1803447) (cert. denied)

Tyson Foods v. DeAsencio, No. 07-1014 (petition for a writ of certiorari, 2008 WL 336224; reply brief, 2008 WL 2155251) (cert. denied)

Cone v. Bell, 556 U.S. 449 (2009) (petition for a writ of certiorari, 2008 WL 534796; reply brief, 2008 WL 2199932; brief for petitioner, 2008 WL 4181882; reply brief for petitioner, 2008 WL 5130442)

Wilcox v. United States, No. 07-1336 (brief in opposition to cross-petition for certiorari, 2008 WL 3606947) (cert. denied)

Level 3 Commc'ns, LLC v. City of St. Louis, No. 08-626 (petition for a writ of certiorari, 2008 WL 4887724; reply brief, 2008 WL 5456711; supplemental brief, 2009 WL 1640373) (cert. denied)

Sprint Telephony PCS, LP v. San Diego County, No. 08-759 (amicus brief of Level 3 Communications supporting neither party, 2008 WL 5456713) (cert. denied)

Hamilton v. Lanning, 130 S. Ct. 2464 (2010) (brief for the respondent, 2010 WL 342041)

Wiggenhorn v. AXA Equitable Life Ins. Co., No. 08-1340 (brief in opposition, 2009 WL 2473871) (cert. denied)

Sossamon v. Texas, 131 S. Ct. 1651 (2011) (petition for a writ of certiorari, 2009 WL 1430027; reply brief, 2009 WL 2419166; supplemental brief, 2010 WL 1321419; brief for petitioner, 2010 WL 3066225; reply brief for petitioner, 2010 WL 4216268)

Brown v. Entertainment Merchants Ass'n, 130 S. Ct. 2398 (2010) (amicus brief of Social Scientists, Medical Scientists, and Media Effects Scholars supporting respondents, 2010 WL 3697191)

United States v. O'Brien, 130 S. Ct. 2169 (2010) (brief for respondent, 2010 WL 181571)

Johnson v. United States, 130 S. Ct. 1265 (2010) (amicus brief of the National Association of Criminal Defense Lawyers supporting petitioner, 2009 WL 1580306)

Thompson v. North American Stainless, 131 S. Ct. 863 (2011) (amicus brief of the Chamber of Commerce supporting respondent, 2010 WL 4339890)

Cardinal v. Metrish, No. 09-109 (petition for a writ of certiorari, 2009 WL 2248364; reply brief, 2009 WL 3327379) (cert. denied)

USI MidAtlantic, Inc. v. William A. Graham Co., No. 09-262 (petition for a writ of certiorari, 2009 WL 2864358; reply brief, 2009 WL 3327384) (cert. denied)

Ferguson v. Holder, No. 09-263 (petition for a writ of certiorari, 2009 WL 2842077; reply brief, 2010 WL 604636) (cert. denied)

Alaska v. Equal Employment Opportunity Comm'n, No. 09-384 (petition for a writ of certiorari, 2009 WL 3162190; reply brief, 2009 WL 4875828) (cert. denied)

Stolt-Nielson SA v. AnimalFees Int'l Corp, 559 U.S. 662 (2010) (amicus brief of the American Arbitration Association in support of neither party, 2007 WL 2896309)

Staub v. Proctor Hospital, 131 S. Ct. 1186 (2011) (brief for petitioner, 2010 WL 2690585; reply brief, 2010 WL 3905492)

People of Bikini v. United States, No. 09-499 (petition for a writ of certiorari, 2009 WL 3476314; reply brief, 2010 WL 942804) (cert. denied)

United States v. Tohono O'odham Nation, 131 S. Ct. 1723 (2011) (amicus brief of the Osage Nation supporting respondent, 2010 WL 3501191)

City of Warren v. Moldowan, No. 09-1149 (reply brief, 2010 WL 2225520) (cert. denied)

FCC v. AT&T, 131 S. Ct. 1177 (2011) (amicus brief of the Chamber of Commerce supporting respondent, 2010 WL 5275249)

National Football League v. Williams, No. 09-1380 (petition for a writ of certiorari, 2010 WL 1932622; reply brief, 2010 WL 4022689) (cert. denied)

Worldwide Network Servs., LLC v. DynCorp Int'l LLC, No. 10-11 (petition for a writ of certiorari 2010 WL 2604156; reply brief, 2010 WL 3501250) (cert. denied)

Microsoft v. i4i Limited P'ship, 131 S. Ct. 2238 (2011) (amicus brief of the Biotechnology Industry Organization, Association of University Technology Managers, and CropLife International supporting respondents, 2011 WL 1059617)

Osage Nation v. Irby, No. 10-537 (petition for a writ of certiorari, 2010 WL 4163767; reply brief, 2011 WL 220695; supplemental brief for the petitioner, 2011 WL 2213715) (cert. denied)

Super Duper, Inc. v. Mattel, Inc., No. 10-603 (amicus brief of The Stuttering Foundation, Great Ideas for Teaching, Inc., and Speak Up for Say supporting petitioner, 2010 WL 5043330) (cert. denied)

City of Loveland v. Board of Comm'rs of Hamilton County, No. 10-965 (petition for a writ of certiorari, 2011 WL 291139; reply brief, 2011 WL 1393826) (cert. denied)

Freund v. Société Nationale Des Chemins De Fer Français, No. 10-1314 (petition for a writ of certiorari, 2011 WL 1594674; reply brief, 2011 WL 2678215) (cert. denied)

Fast Break Foods LLC v. Saudi Arabian Oil Co., No. 10-1393 (brief in opposition, 2011 WL 2837933) (cert. denied)

Gila River Indian Cmty. v. Lyon, No. 11-80 (petition for a writ of certiorari, 2011 WL 2838030; reply brief, 2011 WL 4594311) (cert. denied)

National Fed. of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012) (amicus brief of America's Health Insurance Plans in partial support of certiorari, 2011 WL 5128125; amicus brief of America's Health Insurance Plans and the Blue Cross Blue Shield Association supporting reversal of the court of appeals' severability judgment, 2012 WL 72449)

Janssen Biotech, Inc. v. Abbott Labs., No. 11-596 (petition for a writ of certiorari, 2011 WL 5548738; reply brief, 2012 WL 135304) (cert. denied)

Fisher v. Univ. of Texas at Austin, No. 11-345 (amicus brief of Former Commissioners and General Counsel of the Federal Communications Commission and the Minority Media and Telecommunications Council supporting respondents, 2012 WL 3527851)

Bowman v. Monsanto Co., No. 11-796 (amicus brief of the Biotechnology Industry Organization supporting respondents, 2013 WL 267024)

Comcast Corp. v. Behrend, 133 S. Ct. 1426 (2013) (amicus brief of Economists supporting neither party, 2012 WL 3716866)

Sebelius v. Auburn Regional Medical Ctr., 133 S. Ct. 817 (2013) (brief for the respondents, 2012 WL 5078760)

Ferguson v. Florida, No. 12-6812, 12A390 & 12A402 (brief of the American Bar Association as amicus curiae in support of petitioner and urging stay of execution, copy supplied)

Chafee v. United States, No. 12-223 (joint motion to stay the mandate or, in the alternative, for a temporary stay of the mandate, copy supplied; petition for a writ of certiorari, 2012 WL 3596976; reply brief, 2012 WL 6204236) (cert. denied)

United States v. Windsor, No. 12-307 (court-appointed amicus brief addressing jurisdiction, 2013 WL 315234; court-appointed amicus reply brief on jurisdiction, 2013 WL 1143557)

Adoptive Couple v. Baby Girl, No. 12-399 (amicus brief of Casey Family Programs, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, North American Council on Adoptable Children,

Voice for Adoption, and Twelve other National Child Welfare Organizations as Amici Curiae in support of Respondent Birth Father, 2013 WL 1279468)

Limelight Networks, Inc. v. Akamai Techs., Inc., No. 12-786, 12-800 (amicus brief of CTIA-The Wireless Association, Consumer Electronics Association, and MetroPCS Wireless, Inc., supporting petitioners, 2013 WL 442508) (cert. pending)

Suggs v. United States, No. 12-978 (petition for a writ of certiorari, 2013 WL 476443; reply brief, 2013 WL 1751490) (cert. denied)

American Beverage Ass'n v. Snyder, No. 12-1344 (conditional cross-petition for a writ of certiorari, 2013 WL 1945151) (cert. pending)

Samantar v. Yousuf, et al., No. 12-1078 (brief in opposition, 2013 WL 2316709) (cert. pending)

Momenta Pharm., et al. v. Amphastar Pharm., et al., No. 12-1033 (brief in opposition, 2013 WL 2316705) (cert. pending)

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.

The cases are listed in reverse chronological order based on the date of decision.

1. *American Beverage Ass'n v. Snyder, et al.*, No. 11-2097, 700 F.3d 796 (6th Cir. amended opinion, Jan. 7, 2013) (Judges Clay & Sutton; Judge Rice, DJ). I initiated this case in the District Court for the Western District of Michigan on behalf of the American Beverage Association in February 2011, challenging the constitutionality under the dormant Commerce Clause of a Michigan law mandating that designated beverage containers be packaged exclusively for sale in Michigan and forbidding the sale in Michigan of beverages packaged for sale in all or almost all other States. When summary judgment was denied, I obtained certification for an interlocutory appeal to the Sixth Circuit and briefed and argued the appeal. The issue before the Sixth Circuit was

whether Michigan's law requiring that interstate beverage companies manufacture and sell, on pain of criminal penalty, a unique-to-Michigan product that could not be sold in any other state without Michigan's advance permission violates the dormant Commerce Clause as (i) impermissibly extraterritorial, (ii) discriminatory against interstate commerce, or (iii) imposing an undue burden on interstate commerce. The Sixth Circuit held that Michigan's law was unconstitutionally extraterritorial and therefore invalid.

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2. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012). I was lead Supreme Court counsel for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians commencing in approximately May 2011. The case arose from a challenge by Mr. Patchak, a member of the township in which the Band acquired a portion of land, to the Secretary of Interior's decision to take land into trust for the Band. After the district court dismissed his case on prudential standing and Quiet Title Act grounds, the D.C. Circuit reversed. I successfully obtained certiorari review, along with a parallel petition filed by the U.S. Solicitor General. The questions before the Supreme Court were (1) whether the Quiet Title Act's reservation of the United States' sovereign immunity in suits involving "trust or restricted Indian lands" applies to a suit seeking to strip the United States' title to the land or only to suits in which the plaintiff claims a legal interest in the land, and (2) whether Mr. Patchak had prudential standing to sue under the Quiet Title Act. I was responsible for leading the briefing and conducting the oral argument. The Supreme Court held that the Quiet Title Act's reservation of immunity applies only to suits in which the plaintiff asserts a legal interest in the land and that Mr. Patchak had prudential standing.

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3. *Filarsky v. Delia*, 132 S. Ct. 1657 (2012). After certiorari was granted, I was lead Supreme Court counsel for Mr. Filarsky, the petitioner, commencing in approximately November 2011 and concluding in August 2012. The case arose from a lawsuit filed by Mr. Delia against Mr. Filarsky and numerous municipal government officials in the City of Rialto, California under 42 U.S.C. § 1983. The City had hired Mr. Filarsky, a private attorney, to assist with the conduct of an internal affairs investigation of Mr. Delia, a firefighter. Mr. Delia filed suit alleging that the Fire Department's demand that he produce evidence to verify the legitimacy of his absences from work violated the Fourth and Fourteenth Amendments. The question before the Supreme Court was whether

private attorneys temporarily retained by state and local governments enjoy qualified immunity for their conduct while employed by the government to the same extent that government officials do. I was responsible for leading the briefing and conducting the oral argument. The Supreme Court held that private individuals temporarily retained by governments are entitled to the protections of the qualified immunity doctrine to the same extent as full-time government employees.

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4. *Samantar v. Yousuf*, 130 S. Ct. 2278 (2010). I was lead Supreme Court counsel for respondents, Mr. Yousuf and Mr. Deria, as well as three Somaliland residents, commencing in October 2010. This case arose from a lawsuit they brought against Mr. Samantar, a former Defense Minister of the Barre regime in Somalia. They filed suit under the Alien Tort Statute and the Torture Victims Protection Act for atrocities, including torture, rape, and extrajudicial killing, that Mr. Samantar ordered and were

committed against them and their family members. The issue before the Supreme Court was whether Mr. Samantar, as a former foreign government official, was entitled to immunity under the Foreign Sovereign Immunities Act. I was responsible for leading the briefing and conducting the oral argument. The Supreme Court held that the Foreign Sovereign Immunities Act does not apply to former government officials sued in their personal capacity for monetary relief.

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5. *United States v. Stevens*, 130 S. Ct. 1577 (2010). I was lead Supreme Court counsel for Mr. Stevens on direct appeal of his criminal conviction, commencing in approximately February 2009. Mr. Stevens was a published author of a book about pit bull dogs and had made documentaries about the dogs, their dog fighting history, and dog fighting in Japan. He was convicted under 18 U.S.C. § 48 for selling depictions of animal cruelty. The question before the Supreme Court was whether that law criminalizing speech was facially invalid or unconstitutionally overbroad under the Free Speech Clause of the First Amendment. I was responsible for leading the briefing and conducting the oral argument. The Supreme Court ruled that the law was unconstitutionally overbroad and affirmed the Third Circuit's decision overturning his conviction.

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6. *Van Orden v. Perry*, 545 U.S. 677 (2005). The United States participated as amicus curiae in this case to defend the propriety of a Ten Commandments display on public property when presented as part of a larger display commemorating state history and culture. From late 2004 to 2005, while an Assistant in the Solicitor General's Office, I drafted the United States' brief, subject to the supervision of the Solicitor General, and was responsible for assisting in preparing the Solicitor General for oral argument. The Supreme Court held that the display was consistent with the Establishment Clause.

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7. *Cutter v. Wilkinson*, 544 U.S. 709 (2005). The United States intervened in this case brought by Ohio prisoners to defend the constitutionality of the institutionalized persons provision of the Religious Land Use and Institutionalized Persons Act of 2000 against the State of Ohio's argument that the law violated the Establishment Clause of the First Amendment, exceeded Congress's legislative power under the Commerce and Spending Clauses, and violated the Tenth and Eleventh Amendments. From 2003 to 2005, while an Assistant in the Solicitor General's Office, I drafted the United States' brief, subject to the supervision of the Solicitor General, and was responsible for preparing the government attorney arguing the case for oral argument. The Supreme Court held that the Act was a proper exercise of congressional power and comported with the Establishment Clause.

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8. *Tennessee v. Lane*, 541 U.S. 509 (2004). The United States intervened in this case to defend the constitutionality of Title II of the Americans with Disabilities Act as applied to the States. From approximately 2002 to 2004, while an Assistant in the Solicitor General's Office, I drafted the United States' brief, subject to the supervision of the Solicitor General, and was responsible for preparing the government attorney arguing the case for oral argument. The Supreme Court held that Title II reflected a constitutional exercise of Congress's legislative power under Section 5 of the Fourteenth Amendment to prevent and remedy disability discrimination as applied to claims of access to the courts, and thus could be constitutionally applied to state and local governments in that context.

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9. *Smith v. Doe*, 538 U.S. 84 (2003). This case involved a challenge under the Ex Post Facto Clause to Alaska's Sex Offender Registration Act. The United States participated as amicus curiae in this case to defend the Act's constitutionality because a separate federal law, the Jacob Wetterling Crimes Against Children and Law Enforcement Act, 42 U.S.C. §§ 14071 *et seq*. encourages States to adopt such registration systems. From approximately February 2002 to March 2003, while an Assistant in the Solicitor General's Office, I drafted the United States' brief, subject to the supervision of the Solicitor General, and was responsible for assisting in preparing the Solicitor General for oral argument. The Supreme Court held that the Act did not violate the Ex Post Facto Clause.

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10. *Nevada Dep't of Human Res. v. Hibbs*, 538 U.S. 721 (2003). The United States intervened in this case to defend the constitutionality of the Family and Medical Leave Act of 1993 as applied to the States as employers. From January 2001 to June 2002, while an Assistant in the Solicitor General's Office, I drafted the United States' brief, subject to the supervision of the Solicitor General, and was responsible for preparing the government attorney arguing the case for oral argument. The Supreme Court held that the Act reflected a constitutional exercise of Congress's legislative power under Section 5 of the Fourteenth Amendment to prevent and remedy gender discrimination, and thus could be constitutionally applied to state and local governments.

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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 not performed lobbying activity on behalf of any client or organization, and I am not and have never been a registered lobbyist. The overwhelming focus of my practice has involved litigation, preparation for litigation, or the evaluation of legal options in light of potential litigation risks. While in private practice, I have on occasion provided strategic counseling to clients about the advantages and risks of potential courses of conduct or on the potential impact of pending litigation involving others on their own operations and business decision making.

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 1993 to 1996, I co-taught a course on legal writing and oral advocacy skills to first-year law students at the George Washington University Law School. I have been unable to obtain a copy of the syllabi.

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.

    My law firm has a partner retirement plan that is a defined benefit plan in which I am fully vested. The vested funds can be rolled over into another qualified retirement plan were I to leave the firm. Otherwise, I have no arrangements to receive deferred compensation 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 current plans, commitments, or agreements to pursue any outside employment during judicial service if confirmed.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       The starting point for potential conflicts of interest would be full and scrupulous adherence to the Code of Conduct for United States Judges, including its recent amendments supporting recusal when impartiality could be reasonably questioned, and to the codes of conduct prescribed by my State Bars. I would permanently recuse from any litigation I was involved in while at the law firm. I would recuse myself from cases in which my law firm represents a party until all financial ties are severed and a proper cooling off period has passed. I would also

recuse myself from cases involving former clients for an appropriate cooling off period. My husband is employed by the Florida Sugar Cane League, and any case involving that entity or affecting its financial interests would trigger recusal. My husband and I own no stocks (other than indirectly through 401k plans), nor do our children. Cases that could substantially affect the financial interests of other relatives (within the third degree of relationship) would also require recusal, pursuant to the Code of Conduct, as would cases reasonably suggesting an appearance of impropriety.

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 err on the side of recusal if my involvement would raise an appearance of impropriety, unless the Chief Judge or the ethics official at the Administrative Office of the U.S. Courts advised that the rule of necessity applied. If I am unsure, I would consult the governing Code and state bar rules, and would seek the advice of relevant ethics officials in the Administrative Office. I would also seek the advice of more experienced judges.

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

During my two years at Miller & Chevalier, I devoted substantial time to representing Mr. Tompkins, who was on death row in Texas, and obtained a commutation of his sentence. I also represented the Salvation Army pro bono in a small claims court trial.

During my time in government service, I was prohibited from participating in legal pro bono litigation work. I did, however, continue to participate in non-legal community service. While clerking for Judge Tang, I served meals to the homeless on the streets of Phoenix each week. I also worked as a volunteer at a day care center devoted to children who live in homeless or battered women's shelters and volunteered directly with the children at a local battered women's shelter. While at the Justice Department, I began serving (and have continued to serve for almost 20 years) as a literacy tutor. I also am currently engaged in homeless ministries through my church, such as sleeping overnight as a monitor and preparing dinners at the Hypothermia Shelter, providing fresh produce to local homeless shelters every week, and visiting the sick, grieving, and home-bound members of the church community.

While at Akin Gump Strauss Hauer & Feld LLP, I have engaged in substantial pro bono legal representation, receiving two firm awards for pro bono service. I have represented numerous indigent criminal defendants and pro bono civil clients in cases in the Supreme Court and courts of appeals, including the *Stevens* and *Samantar* cases in the Supreme Court, and *People of Bikini v. United States*, No. 07-5175, in the Federal Circuit, and the

Samantar case on remand to the Fourth Circuit. Another illustration is *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012), in which I represented an individual incarcerated in Texas state prison. His conviction, which turned entirely on decade-old eyewitness testimony, presented one of the longest delays between indictment and prosecution, and thus one of the most significant speedy trial issues, documented in Supreme Court case law. We successfully obtained certiorari review and a partial victory for Mr. Gonzalez when the Supreme Court held that the failure of a court to identify the substantial constitutional question presented was not jurisdictional and that Mr. Gonzalez's appeal was proper (but we did not succeed on a timeliness question).

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no judicial selection commission for this position. In January 2012, officials from the White House Counsel's Office discussed with me the possibility of my being considered to fill a vacancy on the D.C. Circuit. On February 9, 2012, I met with the White House Counsel to discuss my interest. I was contacted again by an official from the White House Counsel's Office in March 2013 to discuss whether I continued to be interested in being considered for nomination to the D.C. Circuit. Since then, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On May 9, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 4, 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
Millett, Patricia A.	United States Court of Appeals for the District of Columbia	06/04/2013
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 06/04/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/17/2013
7. Chambers or Office Address		
1333 New Hampshire Avenue, N.W. Washington, DC 20036		

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	Akin Gump Strauss Hauer & Feld LLP
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.	9/25/2007	Akin Gump Strauss Hauer & Feld LLP 401(k) Profit Sharing Plan
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Millett, Patricia A.	Date of Report 06/04/2013

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	Akin Gump Strauss Hauer & Feld LLP - salary	$992,608.00
2. 2012	Akin Gump Strauss Hauer & Feld LLP - salary	$1,073,526.25
3. 2013	Akin Gump Strauss Hauer & Feld LLP - salary	$369,843.60
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	Florida Sugar Cane League, Inc. - spouse's salary
2. 2013	Florida Sugar Cane League, Inc. - spouse's 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 7	Name of Person Reporting Millett, Patricia A.	Date of Report 06/04/2013

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.	Citibank	Akin Gump Strauss Hauer & Feld LLP partnership capital loan	None
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Millett, Patricia A.	06/04/2013

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. Akin Gump Strauss Hauer & Feld LLP Partners' Retirement Plan	C	Interest	L	T	Exempt				
2. Akin Gump Strauss Hauer & Feld LLP 401(K)Profit Sharing Plan	E	Interest	N	T					
3. Pacific Universal Variable Life: Fixed LT Account	A	Interest	J	T					
4. U.S. Treasury Bonds		None	K	T					
5. Akin Gump Strauss Hauer & Feld LLP Capital Account	D	None	N	U					
6. National Life Group: Whole Life	B	Interest	J	T					
7. Wells Fargo Bank -- Cash Accounts	A	Interest	M	T					
8. 401(K) #1	F	Int./Div.	M	T					
9. - Columbia Acorn Select Fund									
10. - First Eagle Overseas Fund									
11. - FMI Large Cap Fund									
12. - Janus Growth and Income Fund									
13. - Janus Perkins Mid Cap Value Fund									
14. - Keeley Small Cap Value Fund									
15. - Mainstay ICAP Select Equity Fund									
16. - Principal High Yield Fund									
17. - Schroeder U.S. Opportunities Fund									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

3. Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Millett, Patricia A.	06/04/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. - Schwab 1000 Index Fund									
19. - TCW Total Return Bond Fund									
20. - Wells Fargo Stable Value Fund									
21. IRA #1	F	Int./Div.	N	T					
22. -Principal Strategic Asset Mgmt. Conservative Balanced Fund									
23. - Principal Strategic Asset Mgmt. Conservative Growth Fund									
24. American Funds Growth Fund of America 529 Plan	E	Dividend	K	T					
25. American Funds Income Fund of America 529 Plan	D	Dividend	K	T					
26. JP Morgan Chase Bank - Health Savings Account	A	Interest	J	T					
27.									
28.									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
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K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Column C1 and D3)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

3. Value Method Codes (See Column C2)

Name of Person Reporting	Date of Report
Millett, Patricia A.	06/04/2013

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

1) Part VII, Line 2 - The Akin Gump Strauss Hauer & Feld LLP 401(k) Profit Sharing Plan is maintained and controlled by Akin Gump Strauss Hauer & Feld LLP.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Millett, Patricia A.	Date of Report 06/04/2013

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/ Patricia A. Millett

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		210	590	Notes payable to banks-secured			
U.S. Government securities –Treasury bonds		20	000	Notes payable to banks-unsecured			
Listed securities – see schedule		597	832	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		187	669
Real estate owned – personal residence		469	980	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		39	000				
Cash value-life insurance		15	153				
Other assets itemize:							
Akin Gump capital account		387	500				
Akin Gump Partners Defined Benefit Plan		69	155				
Akin Gump 401(k) Profit Sharing Plan		276	657	Total liabilities		187	669
				Net Worth	1	898	198
Total Assets	2	085	867	Total liabilities and net worth	2	085	867
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 Growth Fund of America -529	$ 46,691
American Funds Income Fund of America -529	45,479
Columbia Acorn Select Fund	7,642
First Eagle Overseas Fund	13,797
FMI Large Cap Fund	9,098
Janus Growth and Income Fund	14,980
Janus Perkins Mid Cap Value Fund	7,231
Keeley Small Cap Value Fund	7,779
Mainstay ICAP Select Equity Fund	15,055
Principal High Yield Fund	6,264
Principal Strategic Asset Mgmt. Conservative Balanced Fund	199,379
Principal Strategic Asset Mgmt. Conservative Growth Fund	185,235
Schroder U.S. Opportunities Fund	7,567
Schwab 1000 Index Fund	10,305
TCW Total Return Bond Fund	16,874
Wells Fargo Stable Value Fund	4,456
Total Listed Securities	$ 597,832

AFFIDAVIT

I, Patricia Ann Millett, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

JUN 4, 2013
(DATE)

(NAME)

(NOTARY)

Angela Akins Staton
Notary Public, District of Columbia
My Commission Expires January 1, 2016

Senator SCHUMER. Thank you. Could we ask all of those who were introduced just to stand so we may greet you and say hello? Welcome. Thank you for being here.

Okay. I will start with the questions. First, Ms. Millett, you have represented business interests in your private practice at Akin Gump. As a young associate at Miller & Chevalier, your clients were primarily business and business entities. At the same time, you commented about the *Ledbetter* case, where the Supreme Court ruled in favor of Goodyear Tire on equal pay, that the Court does not always get it right.

Will your business experience color your views as you hear cases, particularly on labor and employment issues? What will be your approach to cases where business and labor are in conflict?

Ms. MILLETT. Thank you, Senator. I appreciate the question. My approach as a lawyer is, of course, to advocate on behalf of clients and to present their story. Every case that I have belongs to my clients. I am their voice. It is not my voice.

If I were to be confirmed as a judge, my role would be to be the voice of the rule of law, to be impartial and to represent and to adjudicate decisions consistent with text and precedent. And I note that while I have certainly represented businesses, I have also represented employees like Mr. Staub in a case in the Supreme Court involving employment discrimination. And during my time in the Solicitor General's office, we filed briefs on behalf of individual employees in cases in the Supreme Court. So I do think that my experience on both sides of those cases is something that has informed the balance I would bring as a judge and impartiality as a judge.

Senator SCHUMER. Thank you.

Throughout your career you have appeared on panels, speaking to and educating students at law schools across the country. Is it part of your professional responsibility to teach and mentor?

Ms. MILLETT. Absolutely. As I think all lawyers are committed to doing that and should be doing that, it is part of our professional obligations. I have always felt a particular duty to do that as a woman Supreme Court advocate.

Senator SCHUMER. Thank you. And in the course of speaking and writing about various issues like *Citizens United*, you have formed personal opinions on the law. Is that correct?

Ms. MILLETT. Yes.

Senator SCHUMER. Is there any reason you could not separate your personal views from your role as a judge?

Ms. MILLETT. Not only is there no reason, but, in fact, with every fiber of my being, I value our justice system and the way it works. And it would be a betrayal of the justice that every client I have ever represented wants, which is simply an impartial, fair hearing by a judge who applies the rule of law. That is what they all want, and that is all that I would be capable of providing.

Senator SCHUMER. What can you say to those on the right or on the left who may have questions about your judicial philosophy?

Ms. MILLETT. I can say that I am not sure I even have a judicial philosophy. I have been very busy handling cases one case at a time and working the case one case at a time. I think were I to be confirmed, I would have certainly a mechanism and it would be

to study the case hard, decide only what is before me through the application of controlling precedent and relevant text.

Senator SCHUMER. Thank you.

Now, you have spoken in the past of your Christian faith, and in 2004 you told Greenville College, "To be a Christian lawyer, I must always remember that laws are made for the benefit of people. People are not made for the benefit of laws."

In what ways will your religious faith shape how you conduct yourself as a judge? And will your religious faith dictate how you decide cases, should you be confirmed?

Ms. MILLETT. My religious faith is the biggest part of who I am, and I am proud of that. And it is something that is incredibly important to me. But the—our Constitution is a very precious system of justice that it creates, and it creates judges to decide cases based not on personal views, not on background, not on personal beliefs, but based on the rule of law. That is what every client I have ever had wants. That is what the system demands. And I would never betray that incredibly precious system by injecting personal beliefs into decision making.

Senator SCHUMER. Thank you. We are going to try to stick strictly to the five-minute rule, since we have a second panel and we have a vote at noon.

Senator Grassley.

Senator GRASSLEY. Thank you very much.

You have extensive appellate experience, especially with the Supreme Court. Certainly during that time you have reflected on judges or justices before whom you have appeared. I would like to have you describe for us some traits or judicial philosophy that you would like to emulate as a judge if confirmed. Is there a particular justice that you admire? Two questions.

Ms. MILLETT. Thank you. There are many justices that I admire. As a Virginian, I am, of course, duty bound to note first the great Chief Justice John Marshall. But I also want to mention Judge Tang for whom I clerked, if you will permit me to cite a judge rather than a justice, who taught me—he was the very epitome of approaching every case one case at a time, working it through and finding the right answer in the law itself. And that is what I would hope to emulate.

I, of course, as a woman, am incredibly grateful to the pathbreaking work of Justice Sandra Day O'Connor and Justice Ruth Bader Ginsburg as well.

Senator GRASSLEY. You have commented in interviews about the different personalities and question-asking styles of the Justices on the Supreme Court. What do you envision as an appropriate demeanor for a federal judge?

Ms. MILLETT. I think the most important thing for a federal judge to do at the bench is to engage the lawyers in a reasonable and fair manner. I find that when I go to court on behalf of clients, those clients want to see the judges engaged in a respectful way, not overriding, not overbearing, but discussing the important legal issues in the case. That is the process that people want to see, and so I would try to strike the balance that way.

Senator GRASSLEY. You have written, "My strong personal views are that the freedom and autonomy of the individual to exercise

her faith free from unwanted governmental interference have helped to make the United States the strong country that it is." Does that statement still accurately reflect your personal views of religious freedom? And if so, how would this affect your duties on the bench?

Ms. MILLETT. I certainly am a big believer in religious freedom, but all of the liberties that are protected by our Constitution. We have a Constitution that envisions limited government that works for the people; the people do not work for it. It belongs to the people. And I think my full understanding and appreciation for our limited government, the limited role of courts within our limited Federal Government, is what I would bring to bear on the bench if I were confirmed.

Senator GRASSLEY. A recent conflict between religious freedom and federal law is mandated by the *Affordable Care Act* that employers provide contraception and abortion coverage as part of their employee health insurance plans. For some employers, this presents a particularly difficult question of whether to abide by the law or go against their conscience.

If a case were to come before you involving this question, how would you take into consideration the First Amendment rights of these employers and mandates? And I think maybe I better back up because I do not want you to say you cannot answer the question because you might have a case before you. I am talking very generally between religion and conscience of somebody that has to abide by the law. How would you take into consideration the First Amendment rights of these employers and mandates?

Ms. MILLETT. Right. I would certainly—and I appreciate that. Without referencing any particular case, in any such religious freedom case there are important precedents from the U.S. Supreme Court to apply that involve—there are cases like the recent *Hosanna-Tabor* case from the Supreme Court that have recognized the role of religious autonomy. There are other cases like *Smith* v. *Employment Division* which have addressed the application of general laws to religious practitioners. So I would have to survey—what I would do is survey Supreme Court precedent in the First Amendment area and apply it to the particular case as it came before me.

Senator GRASSLEY. This will probably have to be my last question. In a 2009 panel at Georgetown University Law School Supreme Court Institute, you made the following statement about Justice Sotomayor: "The fact that people say she is an activist judge because she did not protect the personal individual right to bear arms is really to be laughed away."

That statement has raised some concerns about your views on the Second Amendment, so this gives you an opportunity to explain to the Committee your views in a very general way on that Second Amendment.

Ms. MILLETT. And thank you for the opportunity to clarify. My comment there in particular was with respect to a case called *Maloney* that Justice Sotomayor had been on when it was decided in the Second Circuit. And in that case, what I was referring to was the fact that the Second Circuit had done what judges are supposed to do, and that was apply controlling Supreme Court prece-

dent, including the Supreme Court's Footnote 23 in the *Heller* decision to say it is not for us on the Second Circuit to first say whether the Second Amendment is an individual right incorporated into the 14th Amendment. Of course, the Supreme Court answered that question shortly thereafter in the *McDonald* case. So all Justice Sotomayor did in that case was what judges should do, and that is wait for the Supreme Court to overturn its own precedent. But I note that in the *Stevens* case, I had the support of the National Rifle Association. I talked in my briefing very much about the importance of the individual right there to engage in hunting and expression while hunting, the combination.

Senator GRASSLEY. Okay. Thank you.

Thank you, Mr. Chairman.

Senator SCHUMER. Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. Millett, thank you for being here. You have argued more cases before the Supreme Court than any other woman. Is that correct?

Ms. MILLETT. Actually someone passed me at the end of April.

Senator FRANKEN. I am wrong, then.

[Laughter.]

Senator FRANKEN. Okay. Thanks.

[Laughter.]

Senator FRANKEN. My advice is really do not say I am wrong again.

[Laughter.]

Ms. MILLETT. I am under oath, though.

[Laughter.]

Senator FRANKEN. Okay. I will try to be careful then.

[Laughter.]

Senator FRANKEN. Let me ask a question where you cannot possibly contradict me.

[Laughter.]

Senator FRANKEN. Since you have argued before the Supreme Court more than any other woman but one, how will that inform you about being on the other side of it in terms of how you conduct the question-and-answer sessions? And what have you learned from that?

Ms. MILLETT. Thank you. I have learned a lot. It has been a great privilege to litigate cases in the U.S. Supreme Court, and I am grateful that clients have trusted me with those very important matters that they have.

You know, what I have learned is that—I know a lot of people talk about how active the Supreme Court is in questioning, but as a lawyer speaking on behalf of clients, we really value that opportunity to engage with them and wrestle with the difficulties in the law. Now, there is a balance between questioning and getting too active. I think the Chief Justice recently commented on that to make sure—we want to make sure the lawyers can get their story in because it is their client's day in court. So you have to find a balance between engaging the lawyers so that you can learn from each other about the proper legal answers, but understanding the duty to give everyone their full and fair day in court.

Senator FRANKEN. And when you are doing that, are you as an advocate before the Court under a time limit? I mean, there is a given amount of time, right?

Ms. MILLETT. There is, absolutely.

Senator FRANKEN. So is there a tension between trying to get a word in and strategically just waiting until the Justices in that case have just talked themselves out so you can take a moment and talk? Is there a strategic way to do that?

Ms. MILLETT. There is absolutely—there are strategic ways. I do not want to give them all away right here, but I will tell you that it is—I cannot wait normally for them to stop talking, so you have to find ways to respectfully engage them in the dialogue.

Senator FRANKEN. Okay. There was a question about an activist judge and Justice Sotomayor in her confirmation hearings being activist because she had ruled that way on the Second Amendment. But would it not have been more activist actually to rule the other way?

Ms. MILLETT. Well, I think that is an important observation that you are making, because the point I was trying to explain was that all the Second Circuit did in that case was say—a case where they were asking to hold that the Second Amendment individual right was incorporated into the 14th Amendment as against the States. The Supreme Court, as they said in *Heller* Footnote 23, you know, they said—they cited their own precedent and said, "We have held that it applies only against the Federal Government." So the Second Circuit was duty bound to apply that as well as a recent Second Circuit decision. One panel is bound by another panel in a court of appeals.

So that panel really had its hands tied, so it left the decision where it needed to be and where the Supreme Court ultimately resolved it in the *McDonald* case, and that was for the Court to overrule its own precedent.

Senator FRANKEN. So as a circuit court judge, it is really activist when what you are doing is overturning stare decisis; in other words, when you are—when the Supreme Court has decided something and you contradict that decision, isn't that what being activist is in a sense?

Ms. MILLETT. It is certainly—you know, judges on lower federal courts are bound by Supreme Court precedent. When you have on-point Supreme Court holdings, particularly as recent as *Heller* Footnote 23, and you have a panel—panels are bound by other panels unless the Court goes en banc. So both of those are meant to be restraints on the judges.

Senator FRANKEN. My time is up, but I would point out that is why saying that, to call what then-Judge Sotomayor did "activist" is actually almost the opposite of what she, in fact, did.

Ms. MILLETT. I would agree.

Senator FRANKEN. Okay. Thank you.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you, Senator Franken.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman. And thank you for joining us today and for bringing your nice family with you. I look forward to asking Ms. Millett a few questions, but before I do so, I

want to address an issue that Senator Grassley mentioned briefly a few minutes ago, and that is this administration's push to fill three additional spots on the DC Circuit at a time when, based on a standard set several years ago by Senator Democrats, there was no need, no pressing need certainly, to fill those vacancies.

On July 27, 2006, a number of my Democratic colleagues, including several current Members of this Committee, signed a letter arguing that an additional nominee to the DC Circuit "should under no circumstances be considered must less confirmed by this Committee before we first address the very need for that judgeship." The letter argued that the DC Circuit's caseload simply did not justify filling an additional judgeship for that court.

Based on that objection and despite Peter Keisler's stellar record and the fact that he had really broad-based bipartisan support throughout the legal profession, Democrats in the Senate blocked his nomination to the DC Circuit. And today I believe we find ourselves in much the same situation that we found ourselves in 2006.

Ms. Millett has an impressive record. There is no question about that. But before we consider, much less confirm, her nomination, we must look carefully at the need for an additional judgeship on the DC Circuit. And I believe any objective evidence-based look at the court, at that court, makes plain that it simply does not need an additional judge at this time.

No one who is familiar with the DC Circuit's current workload can honestly say that the court is overworked or in need of an additional judge. While other federal circuit courts struggle to keep up with rising caseloads, in each of the last several years the DC Circuit has canceled regularly scheduled argument dates due to lack of pending cases. Especially at a time when other circuit court vacancies need to be filled, and the administration has failed to put forward judicial nominees for seats that are considered judicial emergencies, it raises questions for the administration to focus so heavily on a court that does not need additional judges.

The administration appears to be pushing to confirm additional unneeded judges to this court because of that court's important role reviewing executive actions. The DC Circuit has primary responsibility to review administrative actions taken by many federal departments and agencies. The court's decisions, including its recent invalidation of the President's unconstitutional recess appointments, often have significant political implications. With this administration's controversial executive agenda, including recently announced plans to effect climate change through Executive actions, the President appears to have targeted the DC Circuit in the hope that he can stack the DC to his advantage.

Both Democrats and Republicans have repeatedly stated that the DC Circuit has too many authorized judgeships. I believe the best approach is to reallocate the DC Circuit's unneeded judgeships to other federal appellate courts whose caseloads are many times higher. Senate bill 699, the *Court Efficiency Act*, of which I am a cosponsor, would do exactly that.

So setting aside that for a moment, I want to turn briefly to your judicial philosophy. You said a minute ago that you do not have a judicial philosophy. That sometimes worries me. That usually would have been a concern to me because I think no one should

come to a judgeship, especially one of this importance, without a judicial philosophy. But fortunately you follow that up with something that suggested that you have one, and one that seems me to be a good one.

You embellish, first of all, that one of your role models as a jurist would be Judge Tang in the Ninth Circuit for whom you clerked, and you said that he starts from the assumption that there is a right answer in the law, that you can find the answer based on the text. So do you stand by that? Is that something that would inform your decision making as a jurist if you were to be confirmed to this position?

Ms. MILLETT. Certainly I would—and thank you for the question to allow me to elaborate on that. The text and precedent in any given case, because sometimes the text is ambiguous and you need to look at precedent, or sometimes precedent is given new light to the meaning of the text. But the two of those together, that is what I would call myself most loyally. I would be a loyalist to text and precedent, I think is the best I can do. I am not sure if that counts as a philosophy or just a way of doing business, but it is what Judge Tang taught me.

Senator LEE. Fantastic. When you were initially asked about judicial role models, you brought up Chief Justice John Marshall, and I think if we had a nickel for every time we hear that one as the first choice, we would all be wealthy. So that is why it was good that you added to that by adding the judge for whom you clerked.

You also mentioned that as a woman you particularly admire Justice Sandra Day O'Connor and Justice Ruth Bader Ginsburg. And yet those two do not necessarily have the same judicial philosophy. Why did you select those two?

Ms. MILLETT. Well, I picked them in part because I just have great admiration. As someone who was in law school at the time Justice Sandra Day O'Connor—a young lawyer at the time—was nominated as the first woman on the Supreme Court, it was an important affirmation to me of the message that you can do what you want to do as a lawyer and that this country's—you know, the promises of the Constitution are very real and very concrete. So she and Justice Ginsburg, with all her work helping to establish equal rights for women, are simply people who are very important in a very sort of "rubber meets the road" way for me in my legal career.

Senator LEE. Thank you, Mr. Chairman. I see my time has expired.

Senator SCHUMER. Senator Coons.

Senator COONS. Thank you, Chairman Schumer. Thank you, Ms. Millett. Congratulations on your nomination, and welcome to you and your family and supporters and friends.

In April, I had the distinct privilege of chairing the confirmation hearing for Sri Srinivasan, who is now, of course, a confirmed judge serving on the DC Circuit. And at the time, I noted that it would be hard to imagine a candidate who was better equipped with a breadth and depth of legal experience as a law clerk, as a government attorney, as a private advocate. And in reviewing your record, it is apparent we did not have to imagine you. Here you are. Your

experience and your qualifications make you an exceptional candidate, and I want to thank you and your family for your willingness to serve.

In my view, your record of advocacy is marked by excellence, not partisanship, and I think it is evident in the bipartisan letter of support the Committee received on your behalf signed by many former Solicitors General, including Garre, Olson, Clement, and Starr. And I sincerely hope that this Committee and the Senate will treat your nomination with due respect and in regular order, just as it did when confirming judges to the vacancies in the 9th, 10th, and 11th seats to the DC Circuit in the prior administration.

But let me focus on you. If confirmed, you would be the fourth active female judge in the DC Circuit, bringing the circuit court to near parity, making it the circuit court with the second highest proportion of women judges. You have spoken about diversity on the bench. You just answered a question from Senator Lee about it.

Would you tell us why you think gender diversity, as well as diversity in terms of race or other forms of background, is vital for the judiciary, given your opening comment that you have been the voice of your clients and, if seated on the bench, you would be the voice of the rule of law without regard to background or personal experience or faith or other critical features?

Ms. MILLETT. The importance of diversity runs two ways, in my view. It runs into the court because the most important trait for any judge, in my view, is to be open-minded and impartial and have a full appreciation not just of what you know but what you do not know. And I think that diversity in all forms—I noted Justice Sotomayor when she was nominated had patent experience. I may have been the only person who focused on that aspect of diversity. But diversity in all forms simply increases open-mindedness amongst people. And then diversity work outwards. In the same way that Justice O'Connor's nomination did for me, it is an open symbol to everyone in the country that opportunities here are based on merit and hard work, not race, gender, ethnicity, religion, or any of those lines.

Senator COONS. I was struck in reviewing your very extensive resume of Supreme Court cases that you have actually lost your fair share of cases in which you have appeared. How important is it to be right? And if you are outvoted on a three-judge panel, do you conclude your legal analysis was wrong?

Ms. MILLETT. Well, thank you for the reminder.

[Laughter.]

Senator COONS. I was just sticking up for Senator Franken.

[Laughter.]

Ms. MILLETT. I always do my best.

I think the role of a lawyer, of course, is to put on the best argument you can for a client, but I respect the role of the judges or justices in the system. They make the call. I make the case; they make the call. If I were to be confirmed as a judge, I would know that I am now a call maker, and that is an incredibly weighty and serious responsibility. And I would exercise it—I am an open-minded person, and I would listen closely to colleagues. But if, at the end of the day, law and precedent told me the answer was different

from colleagues, even if they were more senior, that is what I would be duty bound to enforce. And I suspect if you ask some of these people in the audience, they will tell you that I am capable of sticking to my positions when I need to.

Senator COONS. Parenting and judicial decisions often have——

[Laughter.]

Senator COONS. Let me if I might, with the indulgence of the Chair, ask one last question about a particular case that was of interest to me. In 2008, you represented victims of torture at the hands of the Somali Government in *Samantar* v. *Yousuf*. In that case, you argued—and I believe you convinced all nine Justices—that the grant of immunity in the Foreign Sovereign Immunities Act pertains really to foreign governments and their instrumentalities, not to individual officials who might be sued in their individual capacity. You talked about how you would handle reversal. There has been, in my view, some movement in the law on this. Since your representation in *Samantar*, the Supreme Court has decided several cases that are sharply limited to liability of foreign citizens in U.S. courts for egregious violations. In *Mohamad* v. *Palestinian Authority*, the Supreme Court held that *Torture Victims Protection Act* applied only to individuals and not to corporations. In *Kiobel* v. *Royal Dutch Petroleum*, the Supreme Court ruled that the Alien Tort Statute, which was enacted all the way back in 1789 and had been used for more than 30 years to reach foreign perpetrators of torts in violation of the Law of Nations, could not be used except in rare cases with a close nexus to the United States.

Given your representation in *Samantar*, do *Mohamad* and *Kiobel* represent marked departures from settled law? What do you believe is motivating this new approach to the interpretation of human rights law? And what is your view about its potential trajectory, if that is appropriate?

Ms. MILLETT. Well, I would not want to express a view on trajectory because those are precisely the types of questions that could come before me, were I to be confirmed to the court. The questions in *Kiobel* were different than the ones that I was raising in the *Samantar* v. *Yousuf* case. So each of them were decided as matters of statutory construction.

The *Kiobel* case is part of a body of law where the Supreme Court has become very interested in examining extraterritoriality limitations on statutes, and obviously, were I to be confirmed, I would adhere to all Supreme Court precedent and also, you know, follow the text of statutes, whether existing ones or, if the Congress were to respond to decisions, the new text enacted by Congress. Whichever text is before me, that is what I would apply.

Senator COONS. Thank you. I see my time is up. Thank you.

Senator SCHUMER. Senator Cruz, if you have questions.

Senator CRUZ. Thank you, Mr. Chairman.

Ms. Millett, thank you for being here. Thank you for your able testimony. You and I have known each other a long time, and you are a talented and skilled appellate advocate. You are someone who has earned high respect in the Supreme Court bar, which is a community where earning respect there means something. And so I congratulate you on your nomination and your able testimony this morning.

I will also note that you find yourself in the midst of a broader battle and a battle on issues many of which are unconnected to your professional background and qualifications, but issues that, sadly, have consumed the DC Circuit for decades.

There are a lot of political games when it comes to judicial nominations. Both sides have decried the political games concerning judicial nominations but, unfortunately, the DC Circuit, second only to the U.S. Supreme Court, has been a battleground on both sides for the politicization of judicial nominations. And a number of excellent nominees have been named to the DC Circuit previously by Republican Presidents. And our friends on the Democratic side of the aisle have chosen to prevent their nominations from going forward and to prevent them for what I believe were partisan reasons.

Peter Keisler, who has been discussed already in this hearing, who is a talented and able lawyer, and yet our friends on the Democratic side of the aisle did not allow that nomination to proceed.

Miguel Estrada, someone whom you and I both know well, is another superbly talented appellate lawyer, someone whose nomination was made at the beginning of the Bush administration, and the Democrats in the Senate repeatedly acted to stop his nomination from proceeding. Most tellingly, a senior Democrat then on this Committee in writing, in memos that became public, stated that Miguel Estrada's confirmation must be prevented "because he is Hispanic," which in my view was troubling, was cynical, was nakedly partisan, because Miguel was viewed, I think with good reason, as having a significant prospect of being the first Hispanic Supreme Court nominee, and so Senate Democrats wanted to make sure Miguel did not get anywhere near the DC Circuit so that he would not be allowed to build a judicial record that could serve as a predicate to going to the Supreme Court.

Now, right now the DC Circuit is evenly divided among active judges with four Republicans and four Democrats. And you find yourself one of three nominees from the President. The President and senior Democrats on this Committee have made clear that they want to pick a fight on the DC Circuit. They want to pick a fight on the DC Circuit, and, unfortunately, I believe part of this pressure, part of the effort of stopping qualified Republican nominees and then deciding to pick a fight now is a desire to pack the Court.

The DC Circuit has been a court that has been holding this administration accountable and, in particular, holding rulemaking accountable that has been contrary to federal law. And I believe there is an activist base that is pressuring the President, that is pressuring senior Senate Democrats, to get judicial nominees on the DC Circuit to protect the regulations coming from this administration. And I think any effort to pack the Court because the administration does not like the outcomes of judges applying the law fairly should be decried.

And so there are workload issues that I think need to be discussed, but I think there is a broader context that is irrespective of your fine qualifications, but to be honest, was irrespective of Miguel Estrada's qualifications or Peter Keisler's.

And so I think this is going to be a continued issue of discussion and significant agreement on the Senate, because I think partisan

politics has driven this Committee's approach to the DC Circuit for over a decade. I think that is unfortunate. I would far rather see a situation where able judges were confirmed irrespective of that. But it is not consistent with our responsibility to allow one party to prevent qualified judges from going to the court and at the same time to enable packing the court to reach preferred outcomes.

So I thank you for being here, and I think it is regrettable the overall context of this dispute, which, as I said, is irrespective of your very fine professional qualifications. Thank you.

Senator SCHUMER. Thank you, Senator Cruz.

Thank you, Ms. Millett. We very much appreciate your being here and answering questions, and we are now ready to move on to the next panel.

Ms. MILLETT. Thank you all.

Senator SCHUMER. Will Ms. Brown, Ms. Wolford, and Mr. Woods have their seats? I am going to make my introDCion. I am here in my role as New York Senator, not so much as chairing this hearing, to introduce our two fine nominees from New York, and let me begin by doing that.

Can we have a little order in the room? Let us close the door, please.

[Pause.]

Senator SCHUMER. Okay. I think we are ready to start. Can we close that door back there, please? Thank you. Great.

SCHUMER, HON. CHARLES E., A U.S. SENATOR FROM THE STATE OF NEW YORK, PRESENTING GREGORY HOWARD WOODS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK AND ELIZABETH A. WOLFORD, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

It is my distinct honor to introduce two eminently qualified nominees to the Committee, both from New York: Greg Woods and Elizabeth Wolford.

Mr. Woods and Ms. Wolford are the 17th and 18th nominees for district court judgeships in the State of New York that I have had the pleasure of recommending to the President in the last four years. Despite New York's deep bench of legal talent, the search for qualified candidates for federal judgeships is not an easy one. As I have said multiple times, I look not just for exceptional talent and skill, but for moderation of viewpoint and temperament and, all else being equal, for diversity so that our bench in New York truly resembles the people it serves.

Throughout their careers, Mr. Woods and Ms. Wolford have not only displayed tremendous legal talent but committed themselves to helping their respective communities. And as my colleagues will see, Mr. Woods and Ms. Wolford represent the best of the legal profession and are well equipped to serve on the district courts for the Southern and Western Districts of New York.

Although Mr. Woods is a nominee for the Southern District of New York, Senator Coons will take pleasure in knowing that he originally hails from Delaware, and I saw Senator Coons greet you personally, Mr. Woods.

After graduating magna cum laude from Williams College, he attended Yale Law School where he distinguished himself as its top writer and oralist. Yet his passion for public service led him to take his first job out of law school at the Department of Justice, where he worked as a trial attorney in the Commercial Litigation Branch of the Civil Division. In this capacity, Mr. Woods focused on fighting fraud and maintaining the integrity of our public programs and private institutions.

Despite his relative youth—at least relative to most of us here today on this panel—Mr. Woods' work in the private sector is similarly impressive. As an associate and partner at the top new law firm of Debevoise & Plimpton for over a decade, Mr. Woods participated in some of the largest, most complex financing deals and acquisitions. Still, despite his active practice, he found time to give back to New York and the Nation, serving on Debevoise's pro bono committee and on the boards of various community organizations.

To name a few accomplishments, he helped nonprofits navigate tax policy, assisted small businesses obtaining financing so they could grow and create jobs, and secured asylum for an African dissident facing torture at home.

Mr. Woods has since returned to Washington, and he currently serves as General Counsel at the Department of Energy, overseeing its vast legal portfolio. And prior to this, he was Deputy General Counsel at the Department of Transportation, where he similarly honed his experience in regulation and litigation.

By any and all accounts, Mr. Woods is a brilliant legal mind who exemplifies the spirit of public service we seek in our district courts.

Now, second, I have the privilege of introducing another dedicated and skilled attorney, Elizabeth Wolford, before this Committee today. Born in the great city of Buffalo, she moved east and grew up in Rochester and attended Colgate University, a little further east on the Erie Canal. After studying law at Notre Dame, she again returned to New York, following in her father's footsteps to practice law in Rochester.

Ms. Wolford has been a remarkable leader in the Rochester legal community ever since she graduated law school, working as an associate and partner at the Wolford law firm with her family. Her clients include some of Rochester's most recognizable institutions, including the University of Rochester, Rochester Institute of Technology, Excellus, and Eastman Kodak. Her practice spans every area of law from criminal proceedings to contract actions, providing her with the expansive expertise that is essential as a judge.

Ms. Wolford has been a tireless advocate for her clients as well as for the Rochester community. In addition to serving on countless charitable boards, she has a noteworthy history of pro bono representation. The court on which she may soon sit even awarded her its Special Service Award in recognition of her advocacy in civil rights matters. And I am very proud to say that, upon confirmation, Ms. Wolford would be the first female judge on the U.S. District Court for the Western District of New York. I have always believed in diversity on the bench. It is important that America's courts reflect the diversity of us as a people, and the Western District is long overdue in this respect.

Ms. Wolford has been a powerful and principled community leader for over two decades, and I feel confident she will excel in her new role.

I want to thank both of you for your willingness to be here today, thank your families—without whom I know you would not be here—and I look forward to hearing from our nominees. Of course, Ms. Brown, you had two very fine introducers earlier today, so I need say no more. They did a great job.

So will the witnesses please stand to be sworn? And please state your names.

Mr. WOODS. Gregory Woods.

Ms. WOLFORD. Elizabeth Wolford.

Ms. BROWN. Debra Brown.

Senator SCHUMER. 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. WOODS. I do.

Ms. WOLFORD. I do.

Ms. BROWN. I do.

Senator SCHUMER. Thank you. You may be seated.

Now, we will call on each of you for a brief opening statement, if you wish, and certainly the introduction of your beautiful families who will be seated—"arrayed" behind us is the right word. First, Mr. Woods.

STATEMENT OF GREGORY HOWARD WOODS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. WOODS. Thank you very much, Senator. First, I would like to thank Chairman Leahy, Ranking Member Grassley, and you, Senator, both for your recommendation and for chairing this hearing, and the other Senators on the Committee for considering my nomination.

I do have a number of family members here: my wife, Mary; my two children, Ainsley Mae and James, who are fifth and third graders—or sixth and fourth graders, excuse me, in New York City schools. They are down here from camp.

My father, Gregory Woods; my mother, Kathy Woods.

I have a number of friends here with me, too, from around the world. Two I just want to mention by name: my DC roommate, Lieutenant Commander Moet, who is here, and my fantastic assistant, Kathy Dickerson, both of whom see me more or as much as all the members of my family.

Senator SCHUMER. Great. Will you all please rise so we can greet you personally? Thank you so much for coming.

[The biographical information of Mr. Woods follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gregory Howard Woods III

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.

   United States Department of Energy
   1000 Independence Avenue, S.W.
   Washington, DC 20585

   Residence: New York, New York

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

   1969; Lewes, Delaware

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.

   1992 – 1995, Yale Law School; J.D., 1995

   1987 – 1991, Williams College; B.A. (*magna cum laude* with Honors), 1991

   Summer 1988, University of Pennsylvania; no degree

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

2012 – present
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585
General Counsel

2009 – 2012
United States Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20540
Deputy General Counsel

1998 – 2009
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Equity Partner (2004 – 2009)
Associate (1998 – 2004)

1995 – 1998
United States Department of Justice
Civil Division, Commercial Litigation Branch, Civil Fraud Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Law Clerk (1995)
Trial Attorney (1995-1998)

Summer 1994
Philadelphia District Attorney's Office
1421 Arch Street
Philadelphia, Pennsylvania 19102
Legal Intern

August 1994
Professor Carlos Nino
Centro de Estudios Institucionales
Av. Puerredon 538, Fifth Floor
Buenos Aires, Argentina
Research Assistant

Summer 1993
Dechert Price & Rhoads
1717 Arch Street
Philadelphia, Pennsylvania 19103
Summer Associate

1992
Germantown Historical Society
5503 Germantown Avenue
Philadelphia, Pennsylvania 19144
Community Service Fellow

September 1991 – February 1992
Philadelphia Museum of Art
26th & Benjamin Franklin Parkway
Philadelphia, Pennsylvania 19130
Admissions Employee

Other Affiliations (uncompensated):

2004 – 2007, 2011 – 2012
Williams College
880 Main Street
Williamstown, Massachusetts 01267
Trustee (2011 – 2012)
Tyng Bequest Administrator (2004 – 2007)

2009 – 2012
Union Settlement Association
237 East 104th Street
New York, New York 10029
Director

2007 – 2009
Practicing Attorneys for Law Students Program, Inc.
42 West 44th Street
New York, New York 10036
Director

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

   I did not serve in the military. I registered for selective service upon turning 18.

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

   United States Department of Transportation, Secretary's Partnering for Excellence Award (2010)

United States Department of Transportation, General Counsel's Team Awards (2010)

United States Department of Transportation, Senior Executive Service (2009)

Ranked in "Band Three" in "Banking and Finance" in Chambers USA (2009)

BTI Client Service All-Star Team for Corporate Transactions (2008)

Ranked as an "up and coming" lawyer in "Banking and Finance" in Chambers USA (2007, 2008)

Ranked as a leading lawyer in "Securitization and Derivatives" in Legal 500 United States (2007)

Yale Law School, The Thurman Arnold Appellate Competition Prize for the Best Oralist in Moot Court (1995)

Yale Law School, The Potter Stewart Appellate Competition Prize for Best Overall Written and Oral Advocacy in Moot Court (1995)

Yale Law Journal, Slating Committee Member (1995)

Yale Law Journal, Essays Editor (1994)

Samuel S. Fels Fund Community Service Fellowship (1994)

Williams College, Class of 1960 Scholar in Art History (1991)

Williams College, Carl E. Weston Prize for Distinction in Art (1991)

Williams College, Deans List (1988 – 1991)

Williams College, Stephen Tyng Scholar (1987 – 1991)

Mellon Foundation Undergraduate Fellow in the Humanities (1989, 1990)

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

American Bar Association

New York City Bar Association
Banking Law Committee (2003 – 2006)
Committee on Minorities in the Profession (2006 – 2009)

New York State Bar Association

10. **Bar and Court Admission**:

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

Pennsylvania, 1995 (inactive)
New York, 2000

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, 2010

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.

Practicing Attorneys for Law Students Program, Inc.
Board Member (2007 – 2009)

Union Settlement Association
Board Member (2009 – 2012)

Williams College
Tyng Bequest Administrator (2004 – 2007)
Trustee (2011 – 2012)

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.

Deconstructing Equal and Ratable Security Clauses, in THE PRIVATE EQUITY REP. (Debevoise & Plimpton LLP, New York, N.Y.), Winter 2009. Copy supplied.

With David W. Wicklund, *Defaulting Lender Provisions: Reforms to Benefit Everyone*, INT'L FIN. L. REV., February 2009. Copy supplied.

With David W. Wicklund, *"Defaulting Lenders" New Ideas for a New World, in* PRIVATE EQUITY ACQUISITION FINANCING SUMMIT 2009 (Practising Law Institute, New York, N.Y.) (2009). Copy supplied.

With Peter B. Alderman, William B. Beekman, David A. Brittenham, Paul D. Brusiloff & Pierre Maugue, *Delaware Chancery Court Blocks Realogy Exchange Offer*, CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), December 22, 2008. Copy supplied.

With David A. Brittenham, Richard F. Hahn & George E.B. Maguire, *Lehman Commercial Paper, Inc. Chapter 11 Filing*, CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), October 6, 2008. Copy supplied.

With David W. Wicklund, *Cracking the Crunch: Leveraging a Target's Existing Debt to Finance a Buy-Out*, PRATT'S J. BANKR. L., September 2008. Copy supplied.

With Andrew Sommer, *Tender Returns*, THE DEAL, July 2007. Copy supplied.

With Andrew Sommer, *The Tender Offer Returns: What Does It Mean for*

Private Equity Buyers, THE PRIVATE EQUITY REP. (Debevoise & Plimpton LLP, New York, N.Y.), Winter/Spring 2007. Copy supplied.

With David A. Brittenham, *Just in Case: Bridge Loan Nuts and Bolts in* DEBEVOISE & PLIMPTON LLP, THE PRIVATE EQUITY PRIMER (2006). Copy supplied.

With Paul Brusiloff & Eric Heller, *Rights that Second Lien Lenders Can Exert in Ch. 11*, DOW JONES DAILY BANKR. REV., August 2005. Copy supplied.

With Paul Brusiloff, *Second Lien Financing: A Ten-Point Primer for the Borrower (and its Sponsor) on Intercreditor Dynamics*, THE PRIVATE EQUITY REP. (Debevoise & Plimpton LLP, New York, N.Y.), July 2005. Copy supplied.

How Securities Laws Could Trap US Bank Lenders, INT'L FIN. L. REV., January 2005. Copy supplied.

With William B. Beekman & A. David Reynolds, *Revised Article 9 Enacted by New York State Legislature*, CLIENT UPDATE (Debevoise & Plimpton LLP, New York, N.Y.), June 22, 2001. 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.

Union Settlement Association, 2011 Annual Report. (I was not involved in the preparation of this report and did not review or approve it, but I served on the Board of Directors of the organization during a period covered by the report.) Copy supplied.

Union Settlement Association, 2010 Annual Report. (I was not involved in the preparation of this report, but I served on the Board of Directors of the organization during a period covered by the report.) Copy supplied.

Union Settlement Association, 2009 Annual Report. (I was not involved in the preparation of this report and did not review or approve it, but I served on the Board of Directors of the organization during a period covered by the report.) Copy supplied.

Committee on Minorities in the Profession, New York City Bar, *Best Practices Standards For the Recruitment, Retention, Development, and Advancement of Racial/Ethnic Minority Attorneys*, April 2008. 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.

Letter from Gregory H. Woods, General Counsel, Dep't of Energy, to The Honorable Lisa Madigan, Attorney General, State of Illinois (January 28, 2013). Copy supplied.

Letter from Gregory H. Woods, General Counsel, Dep't of Energy, to The Honorable William Sorrell, Attorney General, State of Vermont (January 25, 2013). Copy supplied.

Letter from Gregory H. Woods, General Counsel, Dep't of Energy, to Mr. Robert Weisenmiller, Chair, California Energy Commission (January 23, 2013). Copy supplied.

Letter from Gregory H. Woods, General Counsel, Dep't of Energy, to The Honorable Eric Schneiderman, Attorney General, State of New York (January 22, 2013). Copy supplied.

Letter from Gregory H. Woods, General Counsel, Dep't of Energy, to The Honorable Ellen F. Rosenblum, Attorney General, State of Oregon (January 22, 2013). Copy supplied.

Letter from Gregory H. Woods, General Counsel, Dep't of Energy, to The Honorable Martha Coakley, Attorney General, State of Massachusetts (January 22, 2013). Copy supplied.

Semiannual Regulatory Agenda, 78 Fed. Reg. 1570 (January 8, 2013). Copy supplied.

Energy Conservation Program for Consumer Products: Association of Home Appliance Manufacturers Petition for Reconsideration, 77 Fed. Reg. 76952 (December 31, 2012). Copy supplied.

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material: Technical Amendments, 77 Fed. Reg. 71689 (December 4, 2012) (to be codified at 10 C.F.R. Pt. 710). Copy supplied.

Reducing Regulatory Burden, 77 Fed. Reg. 47328 (August 8, 2012) (request for information regarding existing regulations). Copy supplied.

Reducing Regulatory Burden, Notice of extension of public comment period, 77 Fed. Reg. 31548 (May 29, 2012). Copy supplied.

Reducing Regulatory Burden, 77 Fed. Reg. 28518 (May 15, 2012) (request for information). Copy supplied.

Testimony of Gregory H. Woods before the Senate Committee on Energy and Natural Resources regarding my nomination to be General Counsel of the U.S. Department of Energy, September 15, 2011. Transcript supplied and video of the hearing is available at http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=4a7889c1-c166-1a7e-4013-61954ff13064.

Testimony of Gregory H. Woods, Deputy General Counsel, U.S. Department of Transportation, before the House Oversight and Government Reform Committee concerning the suspension and debarment actions at the Department of Transportation, March 18, 2010. Transcript supplied.

Letter from Bradley K. Sobel, Chair, Committee on Banking Law, New York City Bar, to the Federal Reserve Bank, requesting that the Board issue a final revision of its proposed interpretation and supervisory guidance on the Anti-Tying restrictions of Section 106 of the Bank Holding Act (March 31, 2006). Copy supplied.

Letter from Bradley K. Sobel, Chair, Committee on Banking Law, New York City Bar, to the Financial Accounting Standards Board, responding to request for information by the staff of the Financial Accounting Standards Board regarding setoff rights and isolation, (May 10, 2004). Copy supplied.

Letter from Bradley K. Sobel, Chair, Committee on Banking Law, New York City Bar, to the Board of Governors of the Federal Reserve System, commenting on the proposed interpretation and supervisory guidance on the Anti-Tying restrictions of Section 106 of the Bank Holding Act (September 30, 2003). 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.

December 3, 2012: Speaker, Remarks to National Association of State Energy Officials Board of Directors, Washington, DC. PowerPoint supplied.

March 3, 2011: Speaker, U.S. Department of Transportation, presentation on Final Rule under 49 CFR part 26, Washington, DC. Notes supplied.

November 4, 2010: Moderator, American Bar Association 2010 Administrative Law Conference, Washington, DC. I moderated a presentation on the Recovery Act. I have no notes, transcript or recording. The American Bar Association is located at 321 North Clark Street, Chicago, IL 60654.

September 27-28, 2010: Speaker, U.S. Department of Commerce, U.S./China Transparency Dialogue, Washington, DC. PowerPoint supplied.

July 16, 2010: Moderator, U.S. Department of Transportation, Innovative Finance for Surface Transportation, Washington, DC. I moderated a panel presentation regarding the Department's financing programs. I have no notes, transcript or recording. The U.S. Department of Transportation is located at 1200 New Jersey Avenue, S.E., Washington, DC 20590.

February 27, 2009: Speaker, Private Equity Acquisition Financing Summit, Practising Law Institute, New York, NY. PowerPoint Supplied.

November 13, 2008: Panelist, Practicing Attorneys for Law Students, "What You Can Do with a Law Degree," New York, NY. I was a panelist in a discussion about career opportunities for practicing and non-practicing attorneys. I have no notes, transcript or recording. Practicing Attorneys for Law Students is located at 42 West 44th Street, New York, NY 10036.

October 16, 2008: Panelist, National Black Law Students Association Annual Academic Retreat, Columbia Law School, New York, NY. As a panelist, I spoke with a group of primarily African-American law students regarding career development. I have no notes, transcript or recording. National Black Law Students Association is located at 1225 11th Street N.W., Washington, DC 20001.

January 29, 2008: Panelist, Practicing Attorneys for Law Students, "Pathways to Partnership," Kaye Scholer LLP, New York, NY. I was a panelist in a discussion regarding career development for associates of color at New York law schools. I have no notes, transcript or recording. Practicing Attorneys for Law Students is located at 42 West 44th Street, New York, NY 10036.

January 18, 2008: Speaker, Private Equity Acquisition Financing Summit, Practising Law Institute, New York, NY. PowerPoint supplied.

November 20, 2006: Speaker, Private Equity Acquisition Financing Summit, Practising Law Institute, New York, NY. PowerPoint supplied.

March 4, 2004: Speaker, Community Development Venture Capital Alliance, presentation on "Lender Liability: Issues and Answers," New York, NY. PowerPoint supplied.

November 2001: Panelist, International Bar Association, "Stockholders Agreements," Cancun, Mexico. I was a panelist for a discussion about stockholders agreements and comparable instruments in other countries. I discussed the form and structure of U.S. shareholders agreements and compared them with the comparable instruments described by the other panelists. I have no notes, transcript or recording. International Bar Association is located at 4th Floor, 10 St Bride Street, London EC4A 4AD, United Kingdom.

September 21, 2001: Speaker, "Introduction to Revised Article 9," Seminar hosted by Debevoise & Plimpton, New York, NY. PowerPoint supplied.

Approximately 2006 to 2008: Panelist, Practicing Attorneys for Law Students, Mock Interview Workshop, City Bar Association, New York, NY. As a panelist, I spoke in two separate years to a large audience of young lawyers regarding career opportunities as part of a panel discussion. I have no notes, transcript or recording. Practicing Attorneys for Law Students is located at 42 West 44 Street, New York, NY 10036.

I have also spoken at a number of hiring and career related events at law schools as a member of Debevoise & Plimpton's hiring committee. For several years, I participated in a panel presentation for Yale University undergraduates regarding careers in law, hosted by Debevoise & Plimpton. I have no notes, transcripts or recordings for these panels.

I have thoroughly searched on-line resources, my calendar and my memory to produce the list above and, to the best of my knowledge, the list is accurate and complete.

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.

While at Debevoise & Plimpton, I did a number of interviews with financial journalists, but it was not my practice to keep a record of all of the interviews. Most of the interviews that I can remember were related to particular deal structures and financing issues. I have included below all those articles that I could find after thoroughly searching on-line resources, my calendar and my memory.

Still Half Full, MERGERS & ACQUISITIONS, THE DEALMAKER'S JOURNAL, May 1, 2008. Copy supplied.

Daniel Andrews, *Down, But Not Out*, INT'L FIN. L. REV., October, 2007. Copy supplied.

Great Inventions, INT'L FIN. L. REV., December, 2006. Copy supplied.

David M. Toll, *Second-Lien Lenders: Noisy Partners in Chapter 11*, DOW JONES CORPORATE FILINGS ALERT, August 25, 2005. Copy supplied.

Broc Romanek, *The Risks of Loans Being Considered Securities*, TheCorporateCounsel.net, July 26, 2005. Audio recording supplied.

Date Uncertain: "Who Makes a Good Finance Lawyer?" Interview for the Debevoise & Plimpton LLP recruiting website. 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.

April 2012 – present: General Counsel, United States Department of Energy; 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.

Volunteer for Obama for America. I worked on get-out-the-vote efforts in Ohio from November 4 through November 6, 2012.

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 for a judge.

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

I have never practiced alone.

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

1995 – 1998
United States Department of Justice
Civil Division, Commercial Litigation Branch, Civil Fraud Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Law Clerk (1995)
Trial Attorney (1995 – 1998)

1998 – 2009
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Equity Partner (2004 – 2009)
Associate (1998 – 2004)

2009 – 2012
United States Department of Transportation
1200 New Jersey Avenue, S.E.

Washington, DC 20540
Deputy General Counsel

2012 – present
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585
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 not served as a mediator or arbitrator in an alternative dispute resolution proceeding.

b. Describe:

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

During my years at the Department of Justice, from 1995 to 1998, I was a civil litigator focused on prosecuting contract fraud actions under the False Claims Act. I also litigated a civil action against the directors and officers of a failed financial institution on behalf of the FDIC. In addition, I coordinated agency action under the Program Fraud Civil Remedies Act.

The character of my practice changed when I joined Debevoise & Plimpton in 1998 as a member of the firm's corporate department. At Debevoise, my practice was almost exclusively transactional, with the exception of pro bono matters. For most of my years as an associate at the firm, I worked on a broad variety of corporate transactions—mergers and acquisitions, joint ventures, and financing. During the later years of my practice as an associate, my practice focused more on financing transactions, and I devoted myself principally to finance and restructuring matters after becoming a partner in 2004.

The character of my practice changed again after I joined the Department of Transportation as Deputy General Counsel in August 2009. My practice at the Department of Transportation spanned the full spectrum of the legal and regulatory issues before the Department of Transportation, including litigation, rulemaking, acquisition and contracting matters, financial assistance, finance, legislation, ethics and employment matters.

In April 2012, I joined the Department of Energy as its General Counsel. My practice at the Department of Energy involves all of the legal and

regulatory issues before the Department of Energy, including litigation, rulemaking, acquisition and contracting matters, financial assistance, finance, legislation, ethics, employment matters, and intellectual property.

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

During my years at the Department of Justice, I was a civil litigator. Nearly all of the cases that I investigated and litigated arose under the False Claims Act. I also litigated a civil action against the directors and officers of a failed financial institution on behalf of the FDIC. In addition, I coordinated agency action under the Program Fraud Civil Remedies Act. The United States of America was my client.

At Debevoise & Plimpton, I represented a range of clients. The following is a select list of my typical clients during my later years at the firm for which I worked on publicly-disclosed transactions: Arcos Dorados, SA (the owner and operator of the McDonald's franchise in Latin America); Capital Group; The Carlyle Group; Clayton, Dubilier & Rice, Inc.; ING Barings; International Paper; iPayment Holdings; Iowa Telecommunications; Kelso & Company; Merrill Lynch Private Equity; Net Servicos de Comunicacao S.A. (Brazilian cable provider); New York City Investment Fund; Oaktree Capital Markets; Providence Equity Partners; Rank Group Limited; Remington Arms Company; TCW/Crescent Mezzanine Management; and Verizon

My practice at the Department of Transportation spanned the full spectrum of the legal and regulatory issues before the Department of Transportation, including litigation, rulemaking, acquisition and contracting matters, financial assistance, finance, legislation, ethics and employment matters. The Department of Transportation was my client.

My practice at the Department of Energy involves all of the legal and regulatory issues before the Department of Energy, including litigation, rulemaking, acquisition and contracting matters, financial assistance, finance, legislation, ethics, employment matters, intellectual property, and international law. The Department of Energy is my client.

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

During my time at the Department of Justice, from 1995 through 1998, my practice was exclusively civil litigation, practicing before federal courts. I appeared in court occasionally during that time.

During my years at Debevoise & Plimpton, between 1998 and 2009, my practice focused on corporate matters. I was involved in two pro bono matters that involved litigation—one an asylum case before an immigration law judge and another matter representing a litigant as part of the Southern District's pro bono mediation program, in which a magistrate judge served as mediator. I also consulted periodically with respect to litigation led by other lawyers at the firm involving issues with respect to which I had expertise.

When I returned to government service, my client was first the Department of Transportation and is now the Department of Energy. My practice at these agencies involved the full spectrum of the legal and regulatory issues before them.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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 tried any cases. I settled all of the cases that I closed while at the Department of Justice.

As a summer intern at the Philadelphia District Attorney's Office during the summer of 1994, I tried portions of short misdemeanor cases and one juvenile felony case in bench trials under the supervision of Assistant District Attorneys.

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 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.

    During my time in private practice, I was a transactional attorney. I have provided the contact information for opposing counsel and co-counsel outside of my firm in a number of more recent significant transactional matters below in response to Question 18. I have not been able to find a complete list of the cases that I handled as a trial attorney at the Department of Justice. I requested a list from a former colleague who still works at the Department of Justice but the list that I received is incomplete. Many of the cases assigned to me were filed under seal and, for many, the United States declined to intervene in the case. I am including below several of the cases that I can recall and that I have been able to confirm were not filed under seal or with respect to which the seal has been lifted or which are otherwise publicly available. I am not including references to investigations that did not lead to litigation and cases in which the United States ultimately declined to intervene. Given the passage of time, I do not have contact information for all of the lawyers involved in these cases, but I have included below the names and phone numbers of the lawyers whom I can recall.

    1. Federal Deposit Insurance Corporation v. Beale, et al. (D. Mass., 94-40022, Gorton, J.)

    I represented the Federal Deposit Insurance Corporation in a civil action alleging that the directors and executives of a failed financial institution had breached their fiduciary duties to that institution. I took responsibility for the case from a more senior trial attorney. I completed discovery for the case, and deposed most of the principal defendants. I negotiated settlements with the defendants. Opposing counsel included Jeffrey F. Jones, formerly of Edwards Angell Palmer & Dodge, now College Counsel for Williams College, 880 Main Street, Williamstown, MA 01267, (413) 597-4860. Co-counsel on the case was Rosemary Filou, now Trial Attorney, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549, (202) 551-4813.

2. United States ex rel. O'Keefe v. McDonnell Douglas Corporation (E.D. Mo., 93CV02188 GFG, Gunn, J.)

This case involved allegations that the defendant had intentionally inflated labor costs in connection with the Advanced Tactical Aircraft (the A-12). The case was significant both because of the amount of potential damages at issue and because a loss for the defendant carried with it the risk of suspension or debarment of the contractor at the cusp of its proposed acquisition by Boeing. I took principal responsibility for one set of allegations against the defendant. I investigated those allegations, working with a team of federal investigators. I conducted and defended a large number of depositions for the case and prepared the United States' expert witness. I led settlement discussions for the case. I participated in the briefing of the case, and wrote the United States' motion for summary judgment. I prepared the case for trial. We were poised to go to trial, but the judge passed away shortly before we were to begin and the trial was postponed. I left the Department of Justice before the case was resolved. Opposing counsel included Stephen H. Rovak, SNR Denton, One Metropolitan Square, Suite 3000, St. Louis, MO 63102, (314) 259-5886, and Roger K. Heidenreich, SNR Denton, One Metropolitan Square, Suite 3000, St. Louis, MO 63102, (314) 259-5805. Co-counsel and the senior Justice Department lawyer on the case was Stanley Alderson, Trial Attorney, United States Department of Justice. I could not locate his current contact information.

3. United States ex rel. Dobrowolski v. United Telecontrol Electronics (D.N.J.)

The plaintiff in this *qui tam* suit alleged that the defendant failed to inspect components for the Maverick missile launcher and disguised cracks in components of the missile system. Co-counsel was The Honorable Robert Kirsch, New Jersey Superior Court, Elizabethtown Plaza, Elizabeth, NJ 07207, (908) 659-4741. I do not recall the identity of opposing counsel.

4. United States ex rel. Willis v. Hughes Aircraft Co., et al. (S.D. Miss., No. 93-cv-693, Barbour, J.); United States ex rel. McDonald v. Hughes Aircraft Co., et al. (S.D. Miss., No. 94-cv-445, Barbour, J.)

The plaintiffs in these *qui tam* suits alleged that the defendant failed to properly test certain electronic components of the Mark 48 torpedo, which was used in U.S. submarines. I represented the United States in an action to recover damages for the alleged defects. I worked with investigators from the Defense Criminal Investigative Service and the Naval Criminal Investigative Service. I do not remember the details of the process, but I know that we ultimately negotiated a partial settlement with the defendants and that a share of the negotiated settlement was paid to the *qui tam* relator who originally referred the case. I do not recall the identity of opposing counsel.

5. United States ex rel. Fox v. Frazier, M.D., et al. (E.D. Wash., 95-cv-00274-AAM, McDonald, J.)

The relator in this *qui tam* suit alleged that the defendants, a group of nephrologists, routinely overbilled Medicare and Medicaid for dialysis. I was the principal attorney representing the United States in a civil action seeking damages against the defendants. I directed the investigation of the case with agents from the Secret Service. I led the United States' decision to intervene in the case and the unsealing of the complaint. Working together with the local United States Attorney's Office, I worked to settle the case against one of the defendants. I do not know the final disposition of the case with respect to the other defendants. I do not recall the identity of opposing counsel.

6. Asylum Matter

I represented an individual from an African country in a petition for asylum in a pro bono matter when I was at Debevoise & Plimpton. Our client was a political leader who had been tortured by the governing regime in his home country. The client legally entered the United States and petitioned for asylum. Co-counsel and I represented the client from inception through final resolution. The client was granted asylum after briefing and an administrative hearing. My co-counsel, another associate at my firm, and I interviewed the client and drafted the asylum petition. Co-counsel was Roderick Devlin, now of Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166, (212) 627-0076.

7. Onodu v. Office of Domestic Violence and Emergency Intervention Services, A Subdivision of the Human Resources Administration (S.D.N.Y., 00cv9608-NRB-JCF, Buchwald, J.)

I represented an individual who alleged that he had been discriminated against by his employer. My client originally brought his case *pro se*. I negotiated a resolution of the case on behalf of my client after several mediation sessions. I believe that opposing counsel was Debbie Sharp, Counsel, New York City Law Department, 100 Church Street, New York, NY 10007, (212) 788-0908. The case was assigned to Magistrate Judge Francis, who acted as mediator.

8. Hearth, Patio & Barbecue Association, et al. v. United States Dep't of Energy, No. 10-1113 (D.C. Cir. filed Feb. 8, 2013) (Henderson, Brown and Randolph, JJ.)

This case involved a petition for review of two rules promulgated by the Department of Energy under the Energy Policy and Conservation Act in November 2011. The case raised the question of whether or not the Department appropriately included certain decorative products within the scope of its regulations. I participated in the decisions regarding the government's position in the litigation and am named on the briefs for the United States. Co-counsel were

H. Thomas Byron, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530, (202) 514-8151; Steven Skubel, Assistant General Counsel at the Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-5579; and Daniel Cohen, Assistant General Counsel at the Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9523. Opposing counsel included John A. Hodges, Eric Andreas and Thomas R. McCarthy, Wiley Rein LLP, 1776 K Street, N.W., Washington, DC 20006, (202) 719-7000; and Barton D. Day, William D. Blakely and Lauren DeSantis-Then, Polsinelli Shughart PC, 1152 15th Street, N.W., Washington, DC 20005 (202) 783-3300. I had no direct contact with opposing counsel in the case.

9. American Public Gas Association v. United States Dep't of Energy, No. 11-1485 (D.C. Cir.) (Henderson, Griffith and Kavanaugh, JJ.)

This case involves a petition for review of a direct final rule issued by the Department of Energy in October 2011. Among other things, the case questions the validity of the process used by the Department in finalizing this rule and alleges that the Department's action was arbitrary and capricious. I participated in the decisions regarding the government's position in the litigation and am named on the briefs for the United States. Co-counsel are H. Thomas Byron, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530, (202) 514-8151; Steven Skubel, Assistant General Counsel at the Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-5579; and Daniel Cohen, Assistant General Counsel at the Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9523. Opposing counsel included William T. Miller, Randolph Lee Elliott and Jeffrey K. Janicke, Miller, Balis & O'Neil, P.C., 1015 15th Street, N.W., Washington, DC 20005, (202) 296-2960. I had no direct contact with opposing counsel in the case.

10. North American Electric Reliability Corporation, 141 FERC 61,242 (December 20, 2012) (Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur and Tony T. Clark)

This matter involves the imposition by the North American Electric Reliability Corporation of a monetary penalty on the Southwestern Power Administration, a component of the Department of Energy. The matter raises questions of U.S. sovereign immunity. I participated in the decisions regarding the government's position in the litigation and the United States' petition for rehearing. Co-counsel are Eric Fygi, Deputy General Counsel at the Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-4219; and Steven Porter, Assistant General Counsel at the Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-4219.

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.)

United States Department of Justice

In addition to litigation matters that I personally handled, I also handled the investigation and resolution of a number of allegations of fraud that are not described above. Some of the investigations resulted in a determination that the United States would not intervene in the case. In my investigations, I coordinated the work of investigators from agency Inspector General's offices, DCIS, NCIS, the Secret Service and the FBI. In addition to cases for which I had primary responsibility, I also oversaw matters that were pursued directly by departments of the United States under the authority of the Program Fraud Civil Remedies Act.

Debevoise & Plimpton

During my time as a corporate lawyer, I worked on a number of significant transactions. Much of my practice as a partner involved representation of borrowers and lenders in financing transactions, but I also worked on a broad range of other matters, including joint ventures and mergers and acquisitions. Many of the transactions on which I worked were significant because of their size. They were also significant because of the novel legal and structuring issues involved in the transactions. For example, I represented The Carlyle Group in a number of transactions, including its acquisition of Booz Allen & Hamilton – one of the largest private acquisition financings to be completed in the immediate wake of the financial crisis. I also represented parties in a number of significant international transactions, including the transfer of the McDonalds' franchise in Latin America, which was awarded the M&A deal of the year award by LatinLawyer.

United States Department of Transportation

As Deputy General Counsel at the Department of Transportation, I had broad responsibilities with respect to the legal and regulatory affairs of the Department. The Office of General Counsel has units that deal with the Department's rulemaking authority, litigation, grant and procurement law, aviation law, international law, employment and personnel matters, ethics, the Freedom of Information Act, privacy matters and legislation. The office also enforces compliance with consumer protection and disability laws and regulations in the aviation industry. I developed experience in each of these units. For example, I worked on the Department's implementation of the Recovery Act. I also led teams on a number of particular initiatives and projects with significant legal implications, like the improvement of the Department's suspension and debarment proceedings, the Department's Open Government initiative, and specific

projects for which the Department provided funding, like the renovation and redevelopment of Denver's historic Union Station.

United States Department of Energy

As General Counsel at the Department of Energy, I have broad responsibilities with respect to the legal and regulatory affairs of the Department. The Office of General Counsel includes units that deal with the Department's regulations, litigation, grant and procurement law, international law, employment and personnel matters, ethics, the Freedom of Information Act, privacy matters, legislation, environmental law, intellectual property, and legal issues specific to fossil, electricity and nuclear energy. My office also enforces compliance with federal appliance standards. I have ultimate oversight responsibilities with respect to all of those areas.

I have not performed work as a lobbyist 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.

    None.

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

    If confirmed, I 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 confirmed, I would recuse myself from any case in which I had previously participated as an attorney. I would also recuse myself from matters involving the United States Department of Transportation and the United States Department of Energy where appropriate. I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. I would review, on a case-by-case basis, the existence of a potential conflict of interest arising from any personal or former client relationships or financial interests, and would apply generally applicable principles and rules concerning ethics and conflicts of interest in conducting such an inquiry and assessing whether a recusal is warranted.

    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 consult applicable rules, canons, and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any other materials addressing conflicts of interest and appearances of conflicts of interest, with an eye toward developing a general framework to be applied in any case, supplemented by case-specific supplemental inquiries where warranted.

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

    Because I have worked in government service for the last several years, my pro bono activities have been restricted. Until April 2012, however, I was a board member of The Union Settlement Association, which is a broad-based social services organization that serves East Harlem. I was also a board member of Williams College, a non-profit liberal arts college in Williamstown, Massachusetts, until April 2012. I did not provide either of

these organizations with legal representation, but I did devote time and resources to the organizations and their missions.

When I was a partner at Debevoise & Plimpton, I devoted a significant amount of time to working with Practicing Attorneys for Law Students (PALS), an organization devoted to serving the needs of minority law students in the New York area law schools. During the time that I worked with PALS, the program expanded to provide more support and instruction to young associates at New York's law firms. In addition to my service as a board member of the organization, I worked to get Debevoise lawyers involved in PALS' programs as mentors and to assist the program in its annual career day. While I was at Debevoise, I spoke with students who were targeted by PALS about navigating life as a law student and succeeding as an associate in New York law firms.

I worked on a number of pro bono matters, some in which I acted as principal attorney, some in which I was the supervising and sponsoring partner. In my most recent significant pro bono matter as a partner at Debevoise & Plimpton, I acted as counsel to the New York City Investment Fund, a subsidiary of the Partnership for New York City, to provide a loan to the Freelancers Union. Over the course of my time as a partner, I spent significant time working for the New York City Investment Fund to help it raise new financing to invest in small New York City businesses located in the City's empowerment zones and other developing areas, at deeply discounted rates.

I also spent time on a variety of other transactional non-profit work. For example, I worked with the Community Development Venture Capital Alliance, a coalition of "double bottom-line" investors, who make investments in community businesses both to develop the community and to make a profit. I also put together a team and worked to incorporate and establish a non-profit organization to provide mentoring and supporting services to teenagers in inner cities throughout the United States. I was the sponsoring partner for three other not-for-profit formation and tax exemption applications. I also worked on at least eight other pro bono matters in a consulting role, generally dedicating a small amount of time with respect to specific questions. Most of those projects involved relatively small investments of my time, but provided leverage for the firm's associates to provide pro bono service.

As an associate at Debevoise, I was a member of the firm's pro bono committee and helped coordinate pro bono opportunities for other associates at the firm and to implement the firm's pro bono policies. I devoted a significant amount of my hours representing an applicant for asylum referred to the firm by Human Rights First, which ultimately resulted in the approval of the asylum request. I also represented a client referred to me through the Southern District's mediation project, leading to a settlement and dismissal of the underlying claim.

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 2011, I contacted Senator Schumer's office regarding my interest in pursuing a judicial appointment. That spring, I submitted my application to the Senator's Judicial Screening Committee and was interviewed by the Committee in New York, New York on May 23, 2011. In late May or early June 2011, I interviewed with Senator Schumer's staff in Washington, DC, and on June 10, 2011, I interviewed with the Senator in New York, New York. On August 2, 2011, the President submitted my nomination to be General Counsel for the Department of Energy, and I was not recommended to fill the then-current judicial vacancies.

In mid-February 2013, Senator Schumer's office contacted me and inquired if I was still interested in serving in the judiciary. On February 26, 2013, Senator Schumer's office informed me that the Senator had decided to recommend me for nomination. Since February 28, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 5, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. 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
Woods, Gregory H.	Southern District of New York	05/10/2013
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
United States District Court Judge	☑ Nomination Date 05/09/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 4/30/2013
7. Chambers or Office Address		
United States Department of Energy 1000 Independence Avenue, S.W. Washington, D.C. 20585		

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.	Member, Board of Trustees	Williams College
2.	Member, Board of Directors	Union Settlement Association
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 03/1999	Continuing participation in 401(k) plan sponsored by Debevoise & Plimpton LLP.
2. 01/2005	Continuing participation in 401(k) plan sponsored by Debevoise & Plimpton LLP.
3. 01/2005	Debevoise & Plimpton LLP Cash Balance Retirement Plan for Partners.

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Woods, Gregory H.	Date of Report 05/10/2013

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	Golson Realty Corporation--Salary
2.	2013	Golson Realty Corporation--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 7	Name of Person Reporting Woods, Gregory H.	Date of Report 05/10/2013

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
Woods, Gregory H.	05/10/2013

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 Federal Money Market Fund	A	Dividend	K	T	Exempt				
2. Vanguard Infla-Protected Sec.	A	Dividend	J	T					
3. Vanguard Prime Money Market	A	Dividend	K	T					
4. Vanguard Total Bond Mkt Index	B	Dividend	J	T					
5. Vanguard Wellington Fund	A	Dividend	J	T					
6. Vanguard Selected Value Fund	A	Dividend	J	T					
7. Vanguard Windsor Fund	A	Dividend	K	T					
8. Vanguard Mid-Cap Growth Fund	A	Dividend	J	T					
9. Vanguard Morgan Growth Fund	A	Dividend	K	T					
10. Vanguard Explorer Fund	A	Dividend	J	T					
11. Vanguard Health Care Fund	A	Dividend	J	T					
12. Vanguard US Value Fund	A	Dividend	J	T					
13. Vanguard Total Int'l Stock Index	A	Dividend	K	T					
14. Vanguard Inst Index Fund	C	Dividend	M	T					
15. Vanguard Retire Savings Trust III	A	Dividend	J	T					
16. Vanguard Extended Mkt Index	A	Dividend	J	T					
17. Blackrock Large Cap Growth Fund C	B	Dividend	K	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
Page 5 of 7

Name of Person Reporting	Date of Report
Woods, Gregory H.	05/10/2013

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. Merrill Lynch CMA NY Municipal Money	A	Dividend	O	T					
19. CREF Stock Account		None	J	T					
20. CREF Growth Account		None	J	T					
21. CREF Social Choice Account		None	J	T					
22. Cash Balance Plan (Defined Benefit Plan from Debevoise)	D	Interest	L	T					
23. JPMorgan Chase Cash Accounts	A	Interest	M	T					
24. New York 529 College Savings Direct Plan									
25. --Aggressive Age-Based Option: Growth Portfolio		None	L	T					
26. --Moderate Age-Based Option: Moderate Growth Portfolio		None	L	T					
27. --Conservative Age-Based Option: Conservative Growth		None	L	T					
28. --Inflation-Protected Securities Portfolio		None	L	T					
29. MGJ Realty Corporation (Common Stock of Private Corp.)	E	Distribution	L	W					
30. Golson Realty Corporation (Common Stock of Private Corp.)	G	Distribution	O	W					
31. Golson Realty Corporation (Note of Private Corp.)	F	Interest	O	U					

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

Name of Person Reporting	Date of Report
Woods, Gregory H.	05/10/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Woods, Gregory H.	Date of Report 05/10/2013

IX. CERTIFICATION.

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

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

Signature: s/ Gregory H. Woods

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		205	443	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities –see schedule	1	294	067	Notes payable to relatives			
Unlisted securities – see schedule	1	360	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule		425	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		8	500				
Cash value-life insurance							
Other assets itemize:							
Debevoise & Plimpton Cash Balance Plan		61	718				
Thrift Savings Plans		113	517				
				Total liabilities			0
				Net Worth	3	468	245
Total Assets	3	468	245	Total liabilities and net worth	3	468	245
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	
Blackrock Large Cap Growth Fund	$ 25,387
CREF Growth Account	4,037
CREF Social Choice Account	4,021
CREF Stock Account	1,450
FIA Card Services NA R.A.S.P.	122
Merrill Lynch CMA NY Municipal Money Market Fund	648,478
NY 529 Conservative Growth Portfolio	60,733
NY 529 Growth Portfolio	51,975
NY 529 Inflation-Protected Securities Portfolio	60,152
NY 529 Moderate Growth Portfolio	55,764
Vanguard Explorer Fund	12,313
Vanguard Extended Market Index Fund	6,916
Vanguard Federal Money Market Fund	46,131
Vanguard Health Care Fund	7,660
Vanguard Inflation Protected-Securities Fund	5,177
Vanguard Institutional Index Fund	124,639
Vanguard Mid-Cap Growth Fund	15,960
Vanguard Morgan Growth Fund	27,428
Vanguard Prime Money Market Fund	49,101
Vanguard Retirement Savings Trust	3,580
Vanguard Selected Value Fund	3,025
Vanguard Total Bond Market Index Fund	25,845
Vanguard Total International Stock Index Fund	26,253
Vanguard U.S. Value Fund	5,275
Vanguard Wellington Fund	7,028
Vanguard Windsor Fund	15,617
Total Listed Securities	$ 1,294,067

Unlisted Securities	
Golson Realty Corp. stock	$ 520,000
Golson Realty Corp. notes	740,000
MGJ Realty Corp.	100,000
Total Unlisted Securities	$ 1,360,000

Real Estate Owned	
Second residence residence	$ 400,000
Undeveloped lot	25,000
Total Real Estate Owned	$ 425,000

AFFIDAVIT

I, Gregory H. Woods, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 14, 2013
(DATE)

(NAME)

The foregoing instrument was acknowledged before me this 14th day of MAY 2013, by GREGORY H. WOODS, known to me to be the person(s) whose name(s) are subscribed to within the instrument and acknowledged execution of the same for the purpose therein contained.

Sylvia J. Turner
Notary Public, State/County of DISTRICT OF COLUMBIA
My commission expires: 08/31/2015

SYLVIA J. TURNER
Notary Public, District of Columbia
My Commission Expires August 31, 2015

SYLVIA J. TURNER NOTARY PUBLIC DISTRICT OF COLUMBIA

Senator SCHUMER. Ms. Wolford.

STATEMENT OF ELIZABETH A. WOLFORD, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

Ms. WOLFORD. Thank you, Senator. Thank you, Senator Schumer, for recommending me for this position. I want to thank the President for the nomination. It really is quite an honor.

I want to thank the Committee Ranking Member Grassley for participating in scheduling this hearing here today.

I do have some family members that I would like to acknowledge who have made the trip here.

My mother and father, Mike and Bea Wolford. I practice law with my dad and have done that for over 20 years now.

My brother, Jim Wolford, is here. He is also one of my law partners, and he is here with two of his children, my niece and nephew, Christine and Thomas Wolford.

My brother, John, is also here. He did not go into the practice of law. He served in the Air Force, actually, as a pilot for 14 years and retired at the rank of major after serving in Iraq and Afghanistan. And he is here with his two children, my niece and nephew, Madigan and Michael.

So thank you.

Senator SCHUMER. Thank you. If you all would please rise so we can greet you? Thank you all for coming, and it is great to see all the kids here so proud of their parents. It is a wonderful thing.

[The biographical information of Ms. Wolford follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Elizabeth Ann Wolford

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

   United States District Judge for the Western 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.

   Office: The Wolford Law Firm LLP
   600 Reynolds Arcade Building
   16 East Main Street
   Rochester, New York 14614

   Residence: Honeoye Falls, New York

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

   1966; Buffalo, 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.

   1989 – 1992, Notre Dame Law School; J.D., 1992

   1985 – 1989, Colgate University; B.A., 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.

   1993 – present
   The Wolford Law Firm LLP

(formerly known as Wolford & Leclair LLP and Michael R. Wolford & Associates)
600 Reynolds Arcade Building
16 East Main Street
Rochester, New York 14614
Partner (2002 – present)
Associate (1993 – 2001)

Summer 1991
Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Summer Associate

Summer 1989
Kelly Services
100 Meridian Centre Drive
Rochester, New York 14618
Temporary Employee

Summer 1989
Tad Services
Present Address Unknown
Temporary Employee

Other Affiliations (Uncompensated):

2010 – present
Volunteer Legal Services Project of Monroe County, Inc.
One West Main Street
Fifth Floor
Rochester, New York 14614
Board of Directors

2007 – present
Foundation of the Monroe County Bar
One West Main Street
Tenth Floor
Rochester, New York 14614
Board of Directors (2007 – present)
President (2010 – 2012)

2005 – 2010
Sojourner House at Pathstone
30 Millbank Street
Rochester, New York 14619
Board of Directors

1998 – 1999, 2001 – 2005
Greater Rochester Association for Women Attorneys (chapter of the Women's Bar Association of the State of New York)
279 Castlebar Road
Rochester, New York 14610
Board of Directors (1998 – 1999, 2001 – 2005)
President (2003 – 2004)

1998 – 1999
Rochester Inns of Court
No physical address
Secretary

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.

   Root/Stimson Award, New York State Bar Association (to be awarded June 22, 2013)

   Recognition in area of Litigation - Labor and Employment, Best Lawyers in America (2011 – present)

   Recognition in area of Commercial Litigation, Best Lawyers in America (2007 – present)

   Listed in Super Lawyers Magazine (2007 – present)

   President's Award, Monroe County Bar Association (2012)

   Empire State Counsel Program Recognition for 2011, New York State Bar Association (2012)

   Leader in the Law Award, The Daily Record (2010)

   Top 25 Female Attorneys in Upstate New York List, Super Lawyers Magazine (2007 – 2009)

Hanna S. Cohn Mentoring Award, Greater Rochester Association for Women Attorneys (2008)

Forty Under 40 Award, Rochester Business Journal (2006)

Outstanding Young Attorney of the Year, New York State Bar Association (2003)

Special Service Award, United States District Court, Western District of New York (2000)

Up and Coming Young Attorney Recognition, The Daily Record (1999)

President's Award, Greater Rochester Association for Women Attorneys (1999)

Research & Projects Editor, Notre Dame Law Review (1991 – 1992)

Staff Member, Notre Dame Law Review (1990 – 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.

Foundation of the Monroe County Bar
- President (2010 – 2012)
- Board of Directors (2007 – present)
- Nominating Committee
  - Chair (2012 – present)
- Development Committee
- Executive Committee
- Grants Committee
- Jazz for Justice Committee

Greater Rochester Association for Women Attorneys, a Chapter of the Women's Bar Association of the State of New York
- President (2003 – 2004)
- Mentoring Committee
  - Chair (2002 – 2003)
- Board of Directors (2001 – 2005; 1998 – 1999)
- Women's Bar Association of the State of New York
  - Delegate (2001 – 2004)
- Program Committee
  - Co-Chair (1998 – 1999)
- Judicial Evaluation Committee
- Membership Committee
- Nominating Committee
- Herstory Lecture Series Committee

Litigation Counsel of America
Fellow

Monroe County Bar Association
Litigation Section
Co-Chair (2008 – 2010)
Federal Courts Subcommittee
Chair (2007 – 2008)
Judiciary Committee
Secretary (2001 – 2002)
Bench & Bar Committee
Fee Arbitration Committee
Nominating Committee
Solo/Small Firms Committee
Young Lawyers Section

New York State Bar Association
Mock Trial Tournament,
East High School Coach (2002 – 2004)
Health Law Section
Commercial and Federal Litigation Section

Seventh Judicial District
Gender Fairness Committee (2003 – present)

In addition, I have been a member of the American Bar Association intermittently over the years, although I am not currently a member.

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, 1993
Illinois, 1992 (inactive)

There have been no lapses in membership, although as indicated, my membership in Illinois is 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 Second Circuit, 2001

United States District Court for the Western District of New York, 1993
United States District Court for the Northern District of New York, 1997
United States Bankruptcy Court for the Western District of New York, 2011

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.

Rochester Inns of Court
Secretary (1998 – 1999)
Program Chair (1999 – 2000)

Sojourner House at Pathstone
Board of Directors (2005 – 2010)

United Way of Greater Rochester, Women United Committee, Young Leaders Club

Volunteer Legal Services Project of Monroe County, Inc.
Board of Directors (2010 – present)
Campaign for Justice Cabinet (2004 – 2005)

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

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

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

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

The Constitutionality Of Recess Appointments, THE DAILY RECORD, TRIALS & TRIBULATIONS, Feb. 7, 2013. Copy supplied.

Truth About The Supreme Court Health Care Decision: Only Your Mother Can Make You Eat Your Broccoli, THE DAILY RECORD, TRIALS & TRIBULATIONS, July 3, 2012. Copy supplied.

Raising The Bar, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Spring/Summer 2012. Copy supplied.

With Audrey P. Peartree, *Commentary: Raise The Bar Appeal Asks Attorneys To Give Back*, THE DAILY RECORD, May 1, 2012. Copy supplied.

ROCing The Foundation, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Winter/Spring 2012. Copy supplied.

Jury Service By Deaf Or Hard-Of-Hearing Individuals, THE DAILY RECORD, TRIALS & TRIBULATIONS, Jan. 4, 2012. Copy supplied.

Foundation Raises $34K, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Fall/Winter 2011. Copy supplied.

Commentary: Let's Keep Raising The Bar!, THE DAILY RECORD, Aug. 12, 2011. Copy supplied.

Universal Health Care Coverage – Is It Constitutional?, THE DAILY RECORD, TRIALS & TRIBULATIONS, June 2, 2011. Copy supplied.

Let's Keep Raising The Bar!, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Summer/Fall 2011. Copy supplied.

Raising The Bar In 2011!, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Spring/Summer 2011. Copy supplied.

Join The Foundation At Jazz For Justice On April 1, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Winter 2011. Copy supplied.

Discovery Of Social Networking Sites, THE DAILY RECORD, TRIALS & TRIBULATIONS, Nov. 4, 2010. Copy supplied.

We Raised The Bar! Thank You!, MONROE COUNTY BAR ASSOCIATION, THE DOCKET NEWSLETTER, Fall 2010. Copy supplied.

Editorial, THE DAILY RECORD, June 2010. Copy supplied.

Attorney Advertising Regs Struck Down, THE DAILY RECORD, TRIALS & TRIBULATIONS, Apr. 1, 2010. Copy supplied.

Legal Malpractice Plaintiffs Face Tough Road, THE DAILY RECORD, TRIALS & TRIBULATIONS, Oct. 1, 2009. Copy supplied.

New York Attorneys' New Rules, THE DAILY RECORD, TRIALS & TRIBULATIONS, Mar. 5, 2009. Copy supplied.

A New Act To Combat Genetic Discrimination, THE DAILY RECORD, TRIALS & TRIBULATIONS, May 1, 2008. Copy supplied.

No More Last Minute Cross-Motions, THE DAILY RECORD, LITIGATION CORNER, Sept. 6, 2007. Copy supplied.

Painful Lessons Learned From Incorrect Use Of Federal Court Electronic Filing System, THE DAILY RECORD, LITIGATION CORNER, July 6, 2006. Copy supplied.

Representing Repugnant Clients: Every Lawyer's Duty?
AMERICAN BAR ASSOCIATION'S GP SOLO, No. 7, Vol. 22, Oct./Nov. 2005. Copy supplied.

Don't Waive Your Client's Right To Jury Trial, THE DAILY RECORD, LITIGATION CORNER, Sept. 1, 2005. Copy supplied.

Physicians Are Limited In Challenging Wrongful Termination, THE DAILY RECORD, LITIGATION CORNER, Jan. 6, 2005. Copy supplied.

Message From The President, GREATER ROCHESTER ASSOCIATION FOR WOMEN ATTORNEYS, HONORA NEWSLETTER, May 2004. Copy supplied.

Reflecting On My Term As GRAWA President, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, May 13, 2004. Copy supplied.

Applying The Principles In 'Brown' To Same-Sex Marriages, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Apr. 30, 2004. Copy supplied.

Taking A Unique Approach To Tackling Gender Diversity, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Apr. 8, 2004. Copy supplied.

Confidence In The Judiciary Is Fundamental To Profession, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Mar. 11, 2004. Copy supplied.

Gender Balance In Management Can Improve The Bottom Line, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Feb. 12, 2004. Copy supplied.

Message From The President, GREATER ROCHESTER ASSOCIATION FOR WOMEN ATTORNEYS, HONORA NEWSLETTER, Jan. 2004. Copy supplied.

Attorney's Role To Protect Justice System, Educate Public, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Jan. 9, 2004. Copy supplied.

'Herstory' Lecture Series – Consider Tickets For A Holiday Gift, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Dec. 11, 2003. Copy supplied.

Female Partners Still In The Minority, But Perhaps By Choice, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Nov. 13, 2003. Copy supplied.

GRAWA's Mission Provides Solid Reason to Become Member, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Sept. 11, 2003. Copy supplied.

New Initiatives, Exciting News From GRAWA, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, Aug. 14, 2003. Copy supplied.

Participation In Mentoring Reminds Us Why We Became Lawyers, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, July 10, 2003. Copy supplied.

New Officers Welcomed For 2003 Membership Year, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, June 12, 2003. Copy supplied.

GRAWA High Achievers Include Recent Judicial Appointments, THE DAILY RECORD, GRAWA PRESIDENT'S MESSAGE, May 1, 2003. Copy supplied.

Locking Out Women Is Wrong For Golf Club, Its Supporters, ROCHESTER DEMOCRAT & CHRONICLE, Mar. 24, 2003. Copy supplied.

Note, *Lender Liability Under CERCLA: Interpreting The Security Interest Exemption Using Common-Law Principles Of Lender Liability*, 67 NOTRE DAME L. REV. 1161 (1992). Copy supplied.

In addition to the above, I was the Research & Projects Editor of the Notre Dame Law Review for Volume 67, and a Staff Member for Volume 66. I edited some of the published material contained in those volumes, although I am not able to specifically identify the articles contained in those volumes that I edited.

Also, when I was in college, I served on the college newspaper from approximately 1985 to 1987. I wrote news articles in connection with my service on that newspaper, but I have not been able to locate any copies of those 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 served as a board member of the Volunteer Legal Services Project of Monroe County, Inc., since 2010. During my tenure as a board member, the Volunteer Legal Services Project of Monroe County, Inc., issued annual reports. I do not recall having any direct involvement in the preparation of the reports, but I have attached copies of the annual reports where I was able to locate copies out of an abundance of caution:

Volunteer Legal Services Project of Monroe County, Inc., Annual Report Fiscal Year 2012. Copy supplied.

Volunteer Legal Services Project of Monroe County, Inc., Annual Report Fiscal Year 2011. Copy supplied.

I served as a board member of the Sojourner House at Pathstone from 2005 to 2010. I have included copies of the annual reports issued during this period out of an abundance of caution, although I do not recall any involvement in the preparation or approval of these reports:

Sojourner House at Pathstone, Annual Report, 2009-2010. Copy supplied.

Sojourner House, Annual Report, 2007-2008. Copy supplied.

Sojourner House, Annual Report, 2006-2007. Copy supplied.

In addition, as a member of the Greater Rochester Association for Women Attorneys, I served as a delegate to the Women's Bar Association of the State of New York ("WBASNY"), from June 1, 2001 to May 31, 2004. As a delegate, I attended WBASNY meetings on approximately a quarterly basis, and as part of my responsibilities, I would cast votes as a delegate representing the interests of the Greater Rochester Association for Women Attorneys. To the best of my recollection, I was not directly involved in the preparation of any of the reports, memoranda, or policy statements of WBASNY. WBASNY has confirmed that their records confirm that I was not directly involved. However, I did locate a copy of a letter that was sent to the New York State Office of Court

Administration by the President of WBASNY in February 2004, and my name is listed on the letterhead used for that letter as President of the Greater Rochester Association for Women Attorneys. I do not recall being involved in the preparation of this letter. A copy of the letter is supplied.

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

To the best of my recollection, I have not provided any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, to public bodies or public officials.

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

April 25, 2013: I spoke at a continuing legal education program entitled "Advice from the Experts: Successful Strategies for Winning Commercial Cases in New York State Courts." The event was sponsored by the Monroe County Bar Association and held in Rochester, New York. Notes supplied.

June 28, 2012: I spoke at the ground breaking ceremony for the lobby of the Telesca Center for Justice held in Rochester, New York. I recognized various dignitaries and thanked those who made the lobby renovation possible. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Telesca Center for Justice is 1 West Main Street, Rochester, New York 14614.

June 21, 2012: I spoke at the Annual Installation Dinner of the Monroe County Bar Association held in Rochester, New York. I thanked the President of the Monroe County Bar Association, my family and my colleagues upon receipt of the President's Award. I have no notes, transcript or recording. The address of the Monroe County Bar Association is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

May 16, 2012: I spoke at a continuing legal education program entitled "Covenants Not To Compete." The event was sponsored by the Monroe County Bar Association and held in Rochester, New York. PowerPoint with notes supplied.

April 24, 2012: I spoke at the Law Day Luncheon of the Monroe County Bar Association held in Rochester, New York. Notes supplied.

March 23, 2012: I spoke at the Jazz for Justice event of the Foundation of the Monroe County Bar held in Rochester, New York. I welcomed attendees to the event as President of the Foundation of the Monroe County Bar. I have no notes, transcript or recording. The address of the Foundation of the Monroe County Bar is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

February 10, 2012: I spoke at a continuing legal education program entitled "Ethical Principles." The event was sponsored by The Wolford Law Firm LLP and was held in Rochester, New York. PowerPoint with notes supplied.

December 2, 2011: I spoke at a continuing legal education program entitled "New York Rules of Professional Conduct." The event was co-sponsored by The Wolford Law Firm LLP and held in Canandaigua, New York. PowerPoint with notes supplied.

September 22, 2011: I spoke at the Donor Appreciation Event of the Foundation of the Monroe County Bar held in Rochester, New York. I announced the amount raised to date and thanked the donors and others who made the campaign a success. I have no notes, transcript or recording, but press coverage is supplied. The address of the Foundation of the Monroe County Bar is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

June 22, 2011: I spoke at the Annual Installation Dinner of the Monroe County Bar Association held in Rochester, New York. Notes supplied.

June 8, 2011: I spoke at the Diversity Clerkship Reception of the Monroe County Bar Association held in Rochester, New York. I remarked about the importance of the Diversity program and announced the grant provided by the Foundation of the Monroe County Bar. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Monroe County Bar Association is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

April 29, 2011: I spoke at the Law Day Luncheon of the Monroe County Bar Association held in Rochester, New York. Notes supplied.

April 1, 2011: I spoke at the Jazz for Justice event of the Foundation of the Monroe County Bar held in Rochester, New York. I welcomed attendees to the event as President of the Foundation of the Monroe County Bar. I have no notes, transcript or recording. The address of the Foundation of the Monroe County Bar is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

March 9, 2011: I spoke at a continuing legal education program entitled "Boilerplate Contract Provisions: Corporate v. Litigation Perspective," sponsored by the Monroe County Bar Association and held in Rochester, New York. PowerPoint with notes supplied.

January 13, 2011: I spoke at a continuing legal education program entitled "Amendments to Rule 26 of the Federal Rules of Civil Procedure." The event was sponsored by The Wolford Law Firm LLP and held in Rochester, New York. Notes and PowerPoint supplied.

October 27, 2010: I spoke at the Donor Appreciation Event of the Foundation of the Monroe County Bar held in Rochester, New York. Notes supplied.

June 22, 2010: I spoke at the Annual Installation Dinner of the Monroe County Bar Association held in Rochester, New York. Notes supplied.

June 11, 2010: I chaired a continuing legal education program entitled "Civil Practice Update 2010." The event was sponsored by the Monroe County Bar Association and held in Rochester, New York. I introduced the speaker, but I have no notes, transcript or recording. The address of the Monroe County Bar Association is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

May 20, 2010: I spoke at the Annual Meeting of the Litigation Section of the Monroe County Bar Association held in Rochester, New York. I conducted the business of the Litigation Section (i.e. election of officers, etc.) and then served as moderator for a program concerning best practices before the Appellate Division, Fourth Department, coordinating a question and answer session involving Appellate Division Justices and the Clerk of the Court. I have no notes, transcript or recording. The address of the Monroe County Bar Association is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

June 12, 2009: I chaired a continuing legal education program entitled "Civil Practice Update 2009." The event was sponsored by the Monroe County Bar Association and held in Rochester, New York. I introduced the speaker, but I have no notes, transcript or recording. The address of the Monroe County Bar Association is 1 West Main Street, Tenth Floor, Rochester, New York 14614.

May 29, 2009: I spoke at a continuing legal education program entitled "New York Rules of Professional Conduct." The event was sponsored by The Wolford Law Firm LLP and held in Rochester, New York. PowerPoint with notes supplied.

April 30, 2009: I spoke at a continuing legal education program entitled "Civil Litigation in Federal Court," sponsored by the Monroe County Bar Association and held in Rochester, New York. Notes supplied.

March 17, 2009: I spoke at the Annual Meeting of the Litigation Section of the Monroe County Bar Association held in Rochester, New York. Notes supplied.

November 15, 2005: I spoke at a continuing legal education program entitled "A View from the Bench: Covenants-Not-To-Compete & Equitable Relief," sponsored by the Monroe County Bar Association and held in Rochester, New York. Notes supplied.

May 12, 2004: I spoke at the Annual Installation Dinner of the Greater Rochester Association for Women Attorneys held in Rochester, New York. Notes supplied.

April 2004: I spoke at the Annual Meeting of the Greater Rochester Association for Women Attorneys held in Rochester, New York. Notes supplied.

February 23, 2004: I spoke at the Seventh Judicial District Admission Ceremony held in Rochester, New York. I congratulated the new admittees and encouraged them to become involved in GRAWA and participate in GRAWA's mentoring program. I have no notes, transcript or recording, but press coverage is supplied. The address of the Seventh Judicial District is 545 Hall of Justice, Rochester, New York 14614.

November 14, 2003: I spoke at a continuing legal education program entitled "Representing Physicians, Nurses and Allied Health Care Professionals in Disciplinary Proceedings." The event was sponsored by the New York State Bar Association and held in Rochester, New York. Notes supplied.

September 18, 2003: I spoke at the New Members Reception of the Greater Rochester Association for Women Attorneys held in Rochester, New York. My remarks welcomed new members to the organization, recognized those members who had practiced for 25 years, and addressed the upcoming events that the organization would be hosting. I have no notes, transcript or recording. The address of the Greater Rochester Association for Women Attorneys is 279 Castlebar Road, Rochester, New York 14610.

September 16, 2003: I spoke at the Paralegal Association of Rochester Fall Kickoff Event held in Rochester, New York. I discussed the similarities between the Paralegal Association and GRAWA, highlighted some findings from GRAWA's recent survey, and discussed some key factors to achieving success with any organization. I have no notes, transcript or recording, but press coverage is supplied. The address of the Paralegal Association of Rochester is P.O. Box 20106, Rochester, New York 14602.

May 21, 2003: I spoke at the Annual Installation Dinner of the Greater Rochester Association for Women Attorneys held in Fairport, New York. Notes supplied.

May 21, 2003: I spoke at the Women in the Law Collection Dedication Ceremony held in Rochester, New York. I highlighted the history of the establishment of the collection and thanked those responsible. I have no notes, transcript or recording, but press coverage is supplied. The address of the Women in the Law Collection is at the Appellate Division Law Library, M. Dolores Denman Courthouse, 50 East Avenue, Rochester, New York 14604.

January 22, 2003: I spoke at the New York State Bar Association presentation of the Outstanding Young Attorney of the Year Award held in New York City, New York. I expressed my honor and thanks for receiving the award. I have no notes, transcript or recording, but press coverage is supplied. The address of the New York State Bar Association is 1 Elk Street, Albany, New York 12207.

September 2002: I spoke at the New Members Reception of the Greater Rochester Association for Women Attorneys held in Rochester, New York. I spoke about the mentoring program. I have no notes, transcript or recording, but press coverage is supplied. The address of the Greater Rochester Association for Women Attorneys is 279 Castlebar Road, Rochester, New York 14610.

July 8, 1999: I spoke at a continuing legal education program entitled "Practical Legal Research and Analysis for the Paralegal in New York" held in Rochester, New York. Handouts are 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.

2013 Up & Coming Attorneys, THE DAILY RECORD, Apr. 18, 2013. Copy supplied.

Denise M. Champagne, *Wolford Recommended For Federal Bench*, THE DAILY RECORD, Mar. 5, 2013. Copy supplied.

Brian Tumulty, *Wolford Named Federal Bench Aspirant*, ROCHESTER DEMOCRAT & CHRONICLE, Mar. 5, 2013. Copy supplied.

Television Interview concerning United Way's "ROC the Day", R News Rochester (Dec. 9, 2011). Neither the television station nor I have a copy or transcript of this interview.

Brian Sharp, *Online Giving Program Set To Launch,* ROCHESTER DEMOCRAT & CHRONICLE, Dec. 7, 2011. Copy supplied.

Denise M. Champagne, *Is County Liable For Recycling Center Injury?*, THE DAILY RECORD, Nov. 29, 2011. Copy supplied.

Denise M. Champagne, *ROCing And Raising Funds For Bar Programs*, THE DAILY RECORD, Nov. 23, 2011. Copy supplied.

David Andreatta, *Court: Injured Worker Can Sue County*, ROCHESTER DEMOCRAT & CHRONICLE, Nov. 19, 2011. Copy supplied.

David L. Shaw, *Planners Of Housing Project File Lawsuit*, FINGER LAKES TIMES, June 4, 2011. Copy supplied.

David L. Shaw, *City-Town Sewer Legal Battle Comes To An End*, FINGER LAKES TIMES, Mar. 17, 2011. Copy supplied.

Jazz For Justice Committee Hard At Work, THE DAILY RECORD, Mar. 1, 2011. Copy supplied.

The Nathaniel Award & Leaders In Law, THE DAILY RECORD, Nov. 2010. Copy supplied.

Forty Under 40 Class Of 2006 Updates, ROCHESTER BUSINESS JOURNAL, Nov. 6, 2009. Copy supplied.

Elizabeth Stull, *New Filing Guidelines*, THE DAILY RECORD, July 2, 2009. Copy supplied.

Diana Louise Carter, *West-Siders Want Parking*, ROCHESTER DEMOCRAT & CHRONICLE, Jan. 25, 2009. Copy supplied.

Elizabeth Stull, *Obama's Pick For AG Could Transform DOJ, Attorneys Say*, THE DAILY RECORD, Jan. 21, 2009. Copy supplied.

Elizabeth Stull, *Evidence Rule 502 Hailed By Attorneys*, THE DAILY RECORD, Sept. 11, 2008. Copy supplied.

Elizabeth Stull, *Greater Rochester Assn. For Women Attorneys Honors Area Leaders*, THE DAILY RECORD, May 22, 2008. Copy supplied.

Mary Chao, *At 51, Wolford Took The Plunge To Independence*, ROCHESTER DEMOCRAT & CHRONICLE, Aug. 5, 2007. Copy supplied.

Mary Staropoli, *Nonprofit Board Service Helps Community And You*, ROCHESTER DEMOCRAT & CHRONICLE, July 29, 2007. Copy supplied.

Where Are They Now?, THE DAILY RECORD, 2007. Copy supplied.

Her Future, HER MAGAZINE, Apr./May 2007. Copy supplied.

Untitled, ROCHESTER BUSINESS JOURNAL, Nov. 3, 2006. Copy supplied.

GRAWA's Law Day Effort To Benefit Campaign For Justice, THE DAILY RECORD, Apr. 26, 2006. Copy supplied.

GRAWA Mentoring Program Kicks Off New Year, THE DAILY RECORD, Oct. 18. 2005. Copy supplied.

Structured Technologies, Inc. Lends Helping Hand To GRAWA, VLSP To Improve Wills Clinic Capacity, THE DAILY RECORD, July 25, 2005. Copy supplied.

Lecture Series Proceeds Benefit Shelter For Battered Women, THE DAILY RECORD, July 1, 2004. Copy supplied.

Michael Zeigler, *Center Of The Storm*, ROCHESTER DEMOCRAT & CHRONICLE, June 21, 2004. Copy supplied.

Michael Zeigler, *Two Judges Receive Awards*, ROCHESTER DEMOCRAT & CHRONICLE, May 1, 2004. Copy supplied.

Commentary: Have You Considered Joining The United Way's Young Leader's Club, THE DAILY RECORD, Feb. 12, 2004. Copy supplied.

Will Astor, *Even Winners Are Losers In Ongoing Hospital Fray*, ROCHESTER BUSINESS JOURNAL, July 11, 2003. Copy supplied.

Jill Miller, *Wolford Takes Helm Of GRAWA*, THE DAILY RECORD, June 20, 2003. Copy supplied.

Mary Chao, *N.Y. Bar Honors Local Lawyer*, ROCHESTER DEMOCRAT & CHRONICLE, Mar. 27, 2003. Copy supplied.

Anita Edwards Farney, *Advocating For Justice*, THE DAILY RECORD, July 28, 1999. Copy supplied.

In addition to the above, I recall being interviewed by the *Finger Lakes Times* concerning litigation handled by our firm on behalf of the Town of Geneva, but I have not been able to locate copies of the articles other than as referenced above.

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

I have not held judicial office.

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

   i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

    I have not served as a judge.

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

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

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

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

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

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

    I have not held any public office, either elected or appointed, nor have I been an unsuccessful candidate or nominee.

    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 volunteered for political campaigns as set forth below. I have never been compensated for any of these political activities.

    I have worked as a volunteer for Representative Louise M. Slaughter. I have hosted or helped organize fundraising events for Representative Slaughter in 1999, May 2002, and October 2003. From 2002 to 2004, I served as Chair of Representative Slaughter's Campaign Finance Committee.

I worked as a volunteer for my sister-in-law Kelly C. Wolford's campaign in 2010 for County Court Judge in Monroe County.

I served as a member of the Campaign Committee for Honorable Gail Donofrio's reelection to Monroe County Family Court in 2008.

I assisted with the campaign for Brighton Town Council of Sheila Gaddis. My primary role was to help organize and plan a fundraising breakfast held on September 6, 2007.

I assisted with a fundraising event held in May 2006, for Honorable Evelyn Frazee, Supreme Court Justice of the Seventh Judicial District, in connection with her reelection in November 2006.

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 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.

1993 – present
The Wolford Law Firm LLP
(formerly known as Wolford & Leclair LLP and Michael R. Wolford & Associates)
600 Reynolds Arcade Building
16 East Main Street
Rochester, New York 14614
Partner (2002 – present)
Associate (1993 – 2001)

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 was selected to serve as a member of the Fee Arbitration Committee of the Monroe County Bar Association, and I served on that Committee for several years. To the best of my recollection, the time frame was approximately 2001 through 2004. The Committee is responsible for resolving fee disputes between clients and attorneys. As part of the process, the dispute is assigned to a member of the Committee who attempts to mediate the dispute. If the mediation is not successful, the matter then proceeds to arbitration before other Committee members. My best recollection is that I mediated approximately ten disputes, and I arbitrated approximately five disputes as part of my service on this Committee. However, I have not been able to locate any records of this work in order to confirm these numbers.

I have also served for over ten years as an arbitrator through the Seventh Judicial District Arbitration program. Arbitrators assigned to handle matters through this program typically preside over disputes set for trial where the amount at issue involves a small monetary value ($6,000 or less). I have served as an arbitrator approximately eight times through this program, and my recollection is that the disputes have primarily involved breach of contract actions. The last time that I served as an arbitrator through this program was in 2007, and during that year, I arbitrated three cases: *Thaney & Associates CPA's PC v. Parousia, Inc.* (a breach of contract action involving accounting services); *American Wildlife Control v. Cordaro* (a breach of contract action involving pest control services); and *Cook v. Anderson* (a breach of contract action involving legal services).

b. Describe:

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

I have practiced with The Wolford Law Firm LLP (or its predecessor firm) since I began practicing law. The firm has always practiced exclusively in the area of litigation, including both criminal and civil matters.

When I first started practicing in 1993, I worked on a variety of litigation matters, including both criminal and civil matters. I had primary responsibility for a number of smaller matters under the supervision of a more senior attorney, and I also worked on more complex pieces of litigation with more senior attorneys in the office. The criminal matters that I worked on during my initial years of practice included defending against a criminal prosecution of a corporate client by the New York State Attorney General's office, representing an individual defendant in connection with a bail hearing, and a number of smaller criminal matters.

The civil matters that I worked on during my initial years of practice included personal injury actions, tort litigation, representing hospitals and health care practitioners in connection with health care litigation, commercial litigation involving limited partnerships and other corporate entities, breach of contract actions, civil rights actions, litigation involving real property disputes, employment litigation matters, and legal malpractice and professional liability actions.

As I gained more experience, I took on more responsibility in connection with the litigation handled by our office and gained more of a direct relationship with clients. I now primarily focus my practice in the areas of commercial and employment litigation, including breach of contract matters, breach of fiduciary duty claims, unfair competition and trade secret misappropriation claims, covenant-not-to-compete litigation, claims under the Uniform Commercial Code, claims under New York's Business Corporation law, defense of employment discrimination claims, defense of professional liability claims including attorney malpractice claims, and tax assessment litigation. I became responsible for handling one of our corporate client's employment litigation in various parts of the country. I also continue to be involved in a wide variety of litigation matters such as personal injury litigation, disputes concerning real property, and trusts and estates litigation. In addition, throughout my career, our firm has handled criminal matters, and I have assisted when needed on those matters.

Once I became a partner of the firm, I also became responsible for various management and administrative tasks and those responsibilities have increased in recent years. For example, I help manage the firm's personnel and financial matters and I manage our firm's information technology systems.

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

My clients are businesses and educational institutions with offices in the Upstate New York area, including Eastman Kodak Company, Exelis, Inc. (formerly ITT Defense), the University of Rochester, and Rochester Institute of Technology. I also represent a number of individuals and law firms in the Upstate New York area.

When I first started practicing, I handled a wide variety of litigation matters, including both criminal and civil matters. As I have gained more experience, my practice has become more specialized in the areas of commercial and employment litigation, although I continue to devote a portion of my practice to a wide variety of different types of litigation 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.

100% of my practice has been in litigation. Throughout my career, I have appeared in court occasionally, although those appearances are frequent when required by the needs of a particular case.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 38%
   3. other courts: 0%
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

I have tried nine cases in courts of record to verdict, judgment or final decision. I was sole counsel on three cases, chief counsel on three cases, and associate counsel on three cases. I also was chief counsel on a jury trial that settled prior to the verdict.

i. What percentage of these trials were:
   1. jury: 40%
   2. non-jury: 60%

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. *ITT Industries Space Systems, LLC v. Alliant Techsystems, Inc.*, No. 6:08-cv-06057 (W.D.N.Y. filed Feb. 7, 2008).

I served as lead counsel representing the plaintiff in this breach of contract action alleging over $14 million in damages arising from defective clock driver multi-chip modules supplied by the defendant for commercial satellites being built by the plaintiff. Initially our firm was retained as local counsel, but prior to the commencement of depositions and extensive discovery, our firm became sole counsel. I managed and coordinated the extensive document discovery, conducted and defended depositions of numerous witnesses, worked with various expert witnesses to prepare reports, and drafted and filed various motions related to discovery issues, including one related to claims that the defendant engaged in spoliation of evidence related to an expert witness. The case involved complicated legal issues concerning whether the contracts at issue were governed by the Federal Acquisition Regulation, as well as complex engineering issues related to the defective satellite parts. After extensive discovery and motion practice, the matter was successfully resolved in May 2010, pursuant to a confidential settlement. The case was pending before United States District Judge David G. Larimer and United States Magistrate Jonathan W. Feldman.

Counsel for defendant:

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Steven M. Sitek, Esq.
Bassford Remele PA
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(612) 333-3000

Bernadette W. Catalana, Esq.
Lavin, O'Neil, Ricci, Cedrone & DiSipio
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Co-counsel for plaintiff (until May 2009):

Thomas O. Mason, Esq.
Williams Mullen, P.C.
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McLean, VA 22102
(703) 760-5227

2. *Exelis Inc. v. SRC Inc. et al.*, No. 5:12-cv-0858 (N.D.N.Y. filed May 24, 2012).

I am the lead attorney representing the plaintiff in this action alleging breach of contract, breach of fiduciary duty, trade secret misappropriation and unfair competition. The case involves claims that plaintiff's former employees shared confidential information with their current employer who is competing with the plaintiff for a $50 million government contract related to a cross domain development solution. I prepared the pleadings in the case, prepared and filed a motion for expedited discovery, and prepared and filed a motion for a preliminary injunction. Over the course of several days in October 2012, the application for a preliminary injunction was tried before the District Court. I gave an opening statement, presented the testimony of four witnesses, delivered a closing argument, and prepared a post-hearing legal memorandum. The Court issued a decision finding that the plaintiff had a likelihood of success on the merits and that an adverse inference and possibly additional sanctions should be implemented at the time of trial against certain of the defendants who had willfully destroyed evidence, but it denied the application for a preliminary injunction on the ground that the plaintiff had failed to demonstrate irreparable harm. Discovery in the case is ongoing under the supervision of United States Magistrate Thérèse Wiley Dancks, and various additional motions remain pending before United States District Judge Glenn T. Suddaby.

Counsel for defendants:

Edward R. Conan, Esq.
Louis Orbach, Esq.
Kate I. Reid, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
110 West Fayette Street
Syracuse, NY 13202
(315) 218-8000

3. *Eastman Kodak Co. et al. v. Camarata et al.*, No. 6:05-cv-06384 (W.D.N.Y. filed July 25, 2005), *reported at* 238 F.R.D. 372 (W.D.N.Y. 2006) & 2006 WL 3538944 (W.D.N.Y. 2006).

I am the primary counsel who has represented the plaintiffs Eastman Kodak Company and certain of its subsidiaries ("Kodak") in the above-referenced litigation. I am also the primary attorney who represented Kodak in related civil litigation with the Town of Greece, New York (*The Town of Greece et al. v. Eastman Kodak Co. et al.*, No. 06-CV-6570 (W.D.N.Y. filed Nov. 8, 2006)) and related bankruptcy adversary proceedings (*Eastman Kodak Co. v. Camarata,* AP No. 2-12-02006 (W.D.N.Y. filed Mar. 22, 2012) & *Eastman Kodak Co. v. Schwab,* AP No. 2-11-02069 (W.D.N.Y. filed Aug. 8, 2011)). I was also the primary attorney who represented Kodak in connection with the initial criminal investigation by the U.S. Attorney's Office and F.B.I. and ultimately worked with those offices to represent our client's interests in the related criminal proceeding (*United States v. Schwab et al.*, No. 6:05-cr-06161 (W.D.N.Y. filed Dec. 8, 2005)). The case involves a fraudulent kickback scheme involving over $14 million of Kodak's moneys paid to outside property consultants/appraisers who then paid a portion of those moneys to Kodak employees and a municipal tax assessor. Kodak has asserted claims pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1961 *et seq.* and related state law claims. I worked with forensic accountants and the authorities to uncover the scope of the scheme, conducted document and deposition discovery, argued various motions in the civil action including a motion for an attachment and injunction, and prepared a motion for summary judgment against some of the defendants. I ultimately negotiated a resolution of the civil action against some of the defendants which, along with the criminal convictions and related forfeitures, has resulted in Kodak being reimbursed over $7 million. The civil case as to the other defendants is pending before United States District Judge David G. Larimer and United States Magistrate Marian W. Payson.

Counsel for defendant Constance Roeder:

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DerOhannesian & DerOhannesian
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(518) 465-6420

Counsel for Schwab defendants:

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Counsel for Letman defendants:

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Counsel for Finnman defendant:

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Counsel for Nicolo defendants:

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Chad D. Seigel, Esq.
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Counsel for Camarata defendants:

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Easton Thompson Kasperek Shiffrin LLP
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Counsel for Durley defendants:

Terrence A. Grady, Esq.

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Counsel for Ackerman defendants:
Scott M. Green, Esq.
Sole Practitioner
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4. *Gronski v. County of Monroe*, No. 04/09982 (Supreme Ct., Monroe Cnty., NY filed Aug. 26, 2004), *reported at* 73 A.D.3d 1439 (4th Dep't 2010), *lv. granted*, 15 N.Y.3d 708 (2010), *rev'd*, 18 N.Y.3d 374 (2011), *rearg. denied*, 19 N.Y.3d 856 (2012).

Our firm represents the plaintiffs (husband and wife) in this negligence action arising from serious personal injuries occurring at the Monroe County Recycling Center, when a bale of corrugated paper weighing nearly a ton fell on plaintiff Gronski who worked as a mechanic for the company that operated the Center. My role in this case has been primarily related to the appellate work associated with the summary judgment motion filed by the County. The trial court granted summary judgment, and the Appellate Division, Fourth Department, affirmed that judgment, dismissing our clients' lawsuit. I was the lead attorney who handled the successful appeal to the New York Court of Appeals. In a 4-3 decision, the Court of Appeals reversed the grant of summary judgment and remanded to the trial court. This decision is now cited and relied upon by the New York Pattern Jury Instructions. The case is pending at the trial court level before Monroe County Supreme Court Justice Thomas A. Stander.

Counsel for defendant:

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Gibson, McAskill & Crosby LLP
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(716) 856-4200

5. *Town of Geneva v. City of Geneva*, No. 100897 (Supreme Ct., Ontario Cnty. filed Apr. 4, 2008), No. 102387 (Supreme Ct., Ontario Cnty. filed Feb. 13, 2009), No. 104444 (Supreme Ct., Ontario Cnty. filed Mar. 26, 2010), No. 105966 (Supreme Ct., Ontario Cnty. filed Feb. 16, 2011), *reported at* 63 A.D.3d 1544 (4th Dep't 2009).

I was the lead attorney representing the municipal plaintiff ("the Town") in this litigation alleging that the municipal defendant ("the City") violated New York's General Municpal law by arbitrarily setting the rate charged to the Town for treatment of sewage discharge at the City's wastewater treatment plant. Four lawsuits were ultimately commenced by the Town against the City and the City asserted counterclaims against the Town. The trial court initially dismissed the litigation, but I successfully prepared and argued an appeal of that decision to the Appellate Division, Fourth Department, and the lawsuit was reinstated. I then conducted and defended numerous depositions and prepared written discovery. Upon the completion of discovery I prevailed against the City's summary judgment motion directed to the Town's claims for unjust enrichment and violations of the General Municipal law, and I obtained dismissal of a counterclaim asserted by the City. The case proceeded to a jury trial in March 2011. After jury selection, opening statements, and the testimony of witnesses, the case was favorably resolved and the City and the Town entered into an agreement setting the appropriate charges for sewer fees. That agreement continues in place today. The case was pending at the trial court level before Ontario County Acting Supreme Court Justice Frederick G. Reed.

Counsel for defendant:

H. Todd Bullard, Esq.
Harris Beach PLLC
99 Garnsey Road
Pittsford, NY 14534
(585) 419-8800

6. *Wilbern v. Eastman Kodak Company*, No: 6:04-cv-06589 (W.D.N.Y. filed Nov. 29, 2004), *reported at* 670 F.Supp.2d 192 (W.D.N.Y. 2009) & 232 F.R.D. 452 (W.D.N.Y. 2005).

I am the lead attorney who has represented the defendant Eastman Kodak Company ("Kodak") in this case alleging race discrimination. After conducting discovery and depositions, I successfully prepared and argued a motion for summary judgment. Plaintiff pursued an appeal to the Second Circuit, but in the meantime, Kodak settled a class action lawsuit involving former African American employees. I filed a motion before the Second Circuit to dismiss the appeal on the ground that the plaintiff's claims were barred by the class action settlement because he failed to opt out of the settlement. The Second Circuit remanded to the District Court to decide the issue of whether the class action settlement barred plaintiff's continued pursuit of his individual claims. The matter was tried before the District Court, related to the issue of whether the plaintiff was provided with adequate notice of the class action settlement. I presented the testimony of six witnesses, cross-examined the plaintiff, argued evidentiary and other legal issues, and submitted a post-hearing legal

memorandum. Due to the filing of a Chapter 11 petition by Eastman Kodak Company, the matter has been stayed and no decision has been rendered concerning the issues tried before the District Court. The case is pending before United States District Judge David G. Larimer, and Judge Jonathan W. Feldman was the United States Magistrate on the case.

Counsel for plaintiff:

Van Henri White, Esq.
Sole Practitioner
18 Grove Place
Rochester, NY 14605
(585) 271-6780

7. *Torvec, Inc., et. al. v. CXO on the GO of Delaware, LLC, et al.*, No. 05/11028 (Supreme Ct., Monroe Cnty., NY filed Sept. 30, 2005), No. 07/1979 (Supreme Ct., Monroe Cnty., NY filed Feb. 13, 2007), *reported at* 38 A.D.3d 1175 (4th Dep't 2007) & 38 A.D.3d 1177 (4th Dep't 2007).

Our firm represented the corporate plaintiff and two of its principals in connection with this breach of contract litigation related to a consulting agreement. The case involved issues related to the enforceability under New York's Business Corporation law of certain contract provisions restricting the selection of corporate officers. At the time our firm became involved in the litigation, partial summary judgment had been granted against our client. I was one of the primary attorneys involved in the matter. I prepared the successful brief to the Appellate Division, Fourth Department, obtaining a reversal of the partial summary judgment. I also prepared written discovery and conducted depositions in connection with the litigation and argued motions related to the litigation. I ultimately negotiated a resolution of the litigation pursuant to a confidential settlement. The case was pending at the trial court level before several Monroe County Supreme Court Justices: Hon. David D. Egan, Hon. David M. Barry, and Hon. Ann Marie Taddeo.

Counsel for defendants/counterclaim plaintiffs:

Carolyn G. Nussbaum, Esq.
Nixon Peabody LLP
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(585) 263-1558

Counsel for counterclaim defendant Sullivan:

Philip G. Spellane, Esq.
Harris Beach PLLC

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(585) 419-8800

8. *Gelbard v. The Genesee Hospital et al.*, No. 94/3451 (Supreme Ct., Monroe Cnty., NY filed Apr. 14, 1994), *reported at* 211 A.D.2d 159 (4th Dep't 1995), *aff'd*, 87 N.Y.2d 691 (1996); 255 A.D.2d 882 (4th Dep't 1998), *lv. denied*, 93 N.Y.2d 916 (1999); 270 A.D.2d 866 (4th Dep't 2000), *lv. denied*, 95 N.Y.2d 756 (2000); 289 A.D.2d 1035 (4th Dep't 2001).

Our firm represented the defendant hospital and its chief of anesthesia in defense of claims for breach of contract and defamation brought by a physician whose medical staff privileges had been terminated. I began working on the case almost as soon as I began practicing, and I ultimately took on more responsibility as the case progressed. I assisted the lead counsel with the internal hearing conducted by the hospital. Once the litigation was commenced, I prepared the motion to dismiss based upon New York Public Health Law §2801-b. That motion was denied by the trial court, but I prepared the successful brief to the Appellate Division, Fourth Department and the successful brief to the Court of Appeals. I became extensively involved in depositions and discovery conducted in the case, and ultimately drafted and argued various motions and appeals in the case, including those related to the Health Care Quality Improvement Act, 42 U.S.C. §§11111 *et seq.*, and its immunity provisions. After years of litigation, I successfully obtained summary judgment in our clients' favor dismissing plaintiff's claims. The case was pending at the trial court level before Monroe County Supreme Court Justice Evelyn Frazee, and later before Monroe County Supreme Court Justice William Polito.

Counsel for plaintiff:

Donald W. O'Brien, Esq.
Woods Oviatt Gilman LLP
700 Crossroads Building
Two State Street
Rochester, NY 14614
(585) 987-2800

9. *Lizardo et al. v. Denny's, Inc. et al.*, No. 97-cv-1234 (N.D.N.Y. filed Aug. 21, 1997), *reported at* 270 F.3d 94 (2d Cir. 2001).

Our firm represented Denny's, Inc. in defense of a civil rights action brought by Asian American and African American students at Syracuse University who alleged that they had been discriminated against while waiting to be seated in the early morning hours at a Denny's restaurant in Syracuse, New York. Also named as defendants was the company that owned the franchise restaurant and the County of Onondaga. I was one of the primary attorneys who worked on this

case. I conducted numerous depositions, prepared the successful motion for summary judgment, and argued the appeal before the Second Circuit Court of Appeals that affirmed the grant of summary judgment. The case was pending before United States District Judge Frederick Scullin, Jr. and United States Magistrate Gustav DiBianco.

Counsel for co-defendants:

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Joanna Gozzi, Esq.
Onondaga County Attorney
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Counsel for plaintiffs:

Thomas C. Hartzell, Jr., Esq.
Finucane and Hartzell
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Pittsford, NY 14534
(585) 267-5526

John Roberti, Esq.
Kaye, Scholer, Fierman, Hays & Handler, LLP
425 Park Avenue
New York, NY 10022
(212) 836-8000

10. *Mahotep v. DeLuca et al.*, No. 6:94-cv-06211 (W.D.N.Y. filed May 2, 1994).

Our firm was appointed by the court to represent a former inmate in this civil rights case after dissension had arisen between the plaintiff and his prior counsel. In March 2000, we were assigned to handle the matter. After completing discovery, the case was tried from July 10, 2000 through July 17, 2000. The jury returned a verdict in plaintiff's favor awarding compensatory and punitive damages. I sat second chair to Michael R. Wolford, Esq., at the trial. I assisted with jury selection, gave the opening statement, examined and cross-examined witnesses, prepared and argued various evidentiary motions, prepared proposed jury instructions, and participated in the charge conference. As a result of our

work on this case, Mr. Wolford and I each received a Special Service Award from the United States District Court, Western District of New York. The case was tried before United States District Judge David G. Larimer.

Counsel for defendants:

Emil J. Bove, Jr., Esq.
Office of New York State Attorney General
144 Exchange Boulevard
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(585) 327-3222

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 served as President of the Greater Rochester Association for Women Attorneys from 2003 through 2004, and I was actively involved in that organization for several years both before and after my term as President. I was instrumental in establishing a mentoring program for the organization, and during my tenure as President we were successful in dramatically increasing membership of the organization to record levels. I have continued to support the organization throughout my legal career.

    During more recent years, I have become actively involved with the Monroe County Bar Association, and I have served in various leadership roles with that organization. Most recently, I completed a two-year term as President of the Foundation of the Monroe County Bar, the charitable arm of the Monroe County Bar Association. During my tenure as President we raised record amounts as part of our annual "Raise the Bar" fundraising campaign, and we launched a now-annual fundraising event entitled "Jazz for Justice." The Foundation supports various programs in the community that benefit lawyers and their clients in specific meaningful ways, including the Rochester Legal Clerkship Diversity Program intended to increase diversity in the legal community by enlisting law firms and other legal employers to hire law students from diverse backgrounds as summer law clerks after the first year of law school. The Foundation also supports other similar worthwhile programs, including Rochester Teen Court (a diversion program for first-time youthful offenders) and the Deaf Equal Access Fund (intended to assist attorneys in hiring interpreters for deaf or hard-of-hearing clients).

    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.

None.

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

    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.

    If confirmed, I do not have any such plans, commitments or agreements.

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

    See Financial Disclosure Report.

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

    See Financial Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My father and brother are partners with The Wolford Law Firm LLP. If confirmed, I would recuse myself from any cases in which The Wolford Law Firm LLP is a party or is representing a party.

       Additionally, my sister-in-law is the First Assistant District Attorney for Monroe County. I also represent a number of clients who litigate matters in federal court.

If confirmed, I would handle any matters involving actual or potential conflicts of interest related to my sister-in-law's position and former clients, as well as any other issue, in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

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 handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. Further, upon learning of any situation that a party or observer might perceive or identify as an actual or potential conflict of interest, I would alert the parties to the situation in question and solicit their views. I would also consult with judicial colleagues on those issues.

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 consistently been involved in pro bono activities since I began to practice law. In 2000, our firm received pro bono awards from both the New York State Bar Association and the Volunteer Legal Services Project of Monroe County, Inc. for its pro bono activities. That same year, I received a Special Service Award from the United States District Court for the Western District of New York for handling a pro bono civil rights trial. In May 2012, I received the New York State Bar Association's Empire State Counsel Program Recognition for 2011, a program providing special recognition to New York State Bar Association members who provide 50 hours or more of free legal services to the poor in a given year. I am currently a member of the board of the Volunteer Legal Services Project of Monroe County, Inc., the Rochester legal community's pro bono organization, and I have been recognized by that organization on a number of occasions by being listed on its pro bono honor roll.

The most recent cases that I have handled on a pro bono basis are described below.

MSN v. Schojan was a case commenced in the Commercial Division of Monroe County Supreme Court, Seventh Judicial District. From September 2011 to May 2012, I represented the defendant Ms. Schojan, who was terminated after working for less than six weeks as a branch manager for MSN (a temporary staffing agency). She subsequently found work with a competitor of MSN, and was sued for allegedly breaching the restrictive covenant. While the motion for summary judgment that I filed was pending, the matter was settled and the action discontinued.

Mercy Flight v. Cavalier is a case currently pending in the Wayne County Supreme Court. The case was initially commenced in the Canandaigua City Court but I successfully moved to dismiss the case for lack of jurisdiction. Ms. Cavalier is being sued because her son was transported on an emergency basis to Strong Memorial Hospital by Mercy Flight (an emergency helicopter service). Her son's health insurance, which had been procured through Ms. Cavalier's former husband, has refused to pay for the costs of the transportation and Mercy Flight has sued Ms. Cavalier.

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 January 10, 2012, I sent an application to the chair of the screening committee for Senator Charles E. Schumer. I interviewed with the committee on January 26, 2012, and I interviewed with Senator Schumer on February 15, 2013, in New York, NY. On March 4, 2013, I was notified by Senator Schumer's office that he would be recommending me to the President for nomination. Since that date, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 2, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 16, 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
Wolford, Elizabeth A.	U.S. District Court, Western District of N.Y.	05/16/2013
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 Status	☑ Nomination Date 5/16/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 04/30/2013
7. Chambers or Office Address		
600 Reynolds Arcade Building - Rochester, New York 14614		

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	The Wolford Law Firm LLP
2.	Past President and Member Board of Directors	Foundation of the Monroe County Bar
3.	Member Board of Directors	Volunteer Legal Services Project
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 Wolford, Elizabeth A.	Date of Report 05/16/2013

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	Self-employment earnings from The Wolford Law Firm LLP	$175,000.00
2. 2012	Self-employment earnings from The Wolford Law Firm LLP	$215,000.00
3. 2013	Self-employment earnings from The Wolford Law Firm LLP	$61,963.00
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 Wolford, Elizabeth A.	Date of Report 05/16/2013

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.	M & T Bank	Personal Loan	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Wolford, Elizabeth A.	Date of Report 05/16/2013

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. Artisan Mid Cap Value Fund	A	Int./Div.	K	T					
2. Jensen Quality Growth Fund	A	Int./Div.	K	T					
3. Kinetics Paradigm Fund	A	Int./Div.	J	T					
4. Oakmark Equity & Income Fund	A	Int./Div.	J	T					
5. Oakmark International Fund	A	Int./Div.	K	T					
6. Paradigm Value Fund	A	Int./Div.	K	T					
7. Permanent Portfolio Fund	A	Int./Div.	K	T					
8. Ranier Small/Mid Cap Fund	A	Int./Div.	K	T					
9. Yachtman Focused Fund	A	Int./Div.	K	T					
10. Hartford Mid Cap Fund	A	Int./Div.							
11. Wasatch 1st Source Inc.	A	Int./Div.							
12. The Wolford Law Firm LLP		None	N	W					
13. M&T Bank Cash Accounts	A	Interest	J	T					
14.									
15.									
16.									
17.									

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

Name of Person Reporting	Date of Report
Wolford, Elizabeth A.	05/16/2013

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

Name of Person Reporting	Date of Report
Wolford, Elizabeth A.	05/16/2013

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/ Elizabeth A. Wolford

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	600	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured		29	234
Listed securities – see schedule		210	124	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		28	354
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		421	619
Real estate owned – personal residence		550	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance							
Other assets itemize:							
The Wolford Law Firm LLP		300	000				
				Total liabilities		479	207
				Net Worth		615	517
Total Assets	1	094	724	Total liabilities and net worth	1	094	724
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	
Artisan Mid Cap Value Fund	$ 28,243
Jensen Quality Growth Fund	25,517
Kinetics Paradigm Fund	12,978
Oakmark Equity & Income Fund	12,508
Oakmark International Fund	29,321
Paradigm Value Fund	25,662
Permanent Portfolio Fund	23,350
Ranier Small/Mid Cap Fund	26,326
Yachtman Focused Fund	26,219
Total Listed Securities	$ 210,124

AFFIDAVIT

I, Elizabeth A. Wolford, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 16, 2013
(DATE)

(NAME)

Victoria D. Gleason
(NOTARY)

NOTARY PUBLIC * STATE OF NEW YORK
VICTORIA SCHMIDT GLEASON, ESQ.
Monroe County / Reg. #: 01GL6170973
My Commission Expires: July 16, 20 15

Senator SCHUMER. Ms. Brown.

STATEMENT OF DEBRA M. BROWN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI

Ms. BROWN. Thank you, Senator, for providing the opportunity for me to recognize those persons that have supported me throughout this process and without whom I would not be sitting here today.

I would like to first thank President Barack Obama for the nomination. It is a high honor, and I am very humbled by it.

Thank you, Chairman, and thank you to the Ranking Member and all the Members of the Senate Judiciary Committee for the opportunity for this hearing, and thank you, Senator Schumer, for presiding.

I want to extend special gratitude to my home State Senators for their very kind words and their presence here today among their very busy schedules.

I would like to recognize my family members. First, starting with my very, very, very proud parents, Ruthie Brown and Willie James Brown, who traveled here from Yazoo City, Mississippi. Three of my five sisters are here: my sister, Pamala Feehan, who traveled from Fort Myers, Florida; my sister, Ingrid Brown, who traveled here from Memphis, Tennessee; my sister, Celeste Larkins, who is here from Frisco, Texas; and my niece, Tylar, who is Celeste's daughter, is here also from Frisco, Texas. And I must say that I believe her excitement and enthusiasm for this occasion is very close to surpassing mine.

[Laughter.]

Ms. BROWN. At the point right after she found out about my nomination, I think it was about every 15 minutes at least she told me how awesome this occasion was, my nomination, and I definitely agree with her.

I also have here a cousin, Tamara Brown, who lives here in the DC area.

Finally, I would like to thank my law firm family, Wise, Carter, Child & Caraway. They have been a great support. They have been patient with me throughout this process, and I very much appreciate their dedication to me and allowing me to pursue this goal.

Thank you, Senator.

Senator SCHUMER. Thank you. Will your nice family and friends and supporters please stand? Welcome. Great to see you, and I see your niece smiling from one ear to the other.

[Laughter.]

Senator SCHUMER. Please be seated.

[The biographical information of Ms. Brown follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Debra Marie Brown

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

   United States District Judge for the Northern District of Mississippi

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

   Wise Carter Child & Caraway, P.A.
   401 East Capitol Street
   Heritage Building, Suite 600
   Jackson, Mississippi 39201

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

   1963; Yazoo City, Mississippi

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

   1994 – 1997, University of Mississippi School of Law; J.D., 1997
   1981 – 1987, Mississippi State University; B. Arch., 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.

   Summer 1995, Summer 1996, 2012 – present
   Wise Carter Child & Caraway, P.A.
   401 East Capitol Street
   Heritage Building, Suite 600
   Jackson, Mississippi 39201

Shareholder (2012 – present)
Summer Associate (Summer 1995, Summer 1996)

1997 – 2012
Phelps Dunbar LLP
4270 I-55 North
Jackson, Mississippi 39211
Counsel (January 2012)
Partner (2004 – 2011)
Associate (1997 – 2004)
Summer Associate (Summer 1995, Summer 1996)

Fall 1996
Professor Barbara Phillips-Sullivan
University of Mississippi Law School
481 Coliseum Drive
University, Mississippi 38677
Research Assistant

Winter Break from 1995 – 1996
Office of the Attorney General of Mississippi
Criminal Division
550 High Street, Suite 1200
Jackson, Mississippi 39201
Law Student Clerk

Fall 1995
Yerby Conference and Continuing Education Center
689 Grove Loop
University of Mississippi
University, Mississippi 38677
Administrative Aide

1993 – 1994
The Ryland Group
5575 Sterrett Place, Suite 300
Columbia, Maryland 21044
Architectural Coordinator

1992 – 1993
RGIS
2900 Linden Lane, Suite 20
Silver Spring, Maryland 20906
Inventory Associate

1992
Cedar Associates
9610 Pennsylvania Avenue
Upper Marlboro, Maryland 20772
Architectural Associate

1991
Design & Production
7110 Rainwater Place
Lorton, Virginia 22079
Exhibit Designer

1990 – 1991
Conran's
3222 M Street, NW
Washington, DC 20016
Sales Associate

1990 – 1991
Baker & Associates, A Division of Michael Baker Engineers
1420 King Street
Alexandria, Virginia 22314
Architectural Associate

1987 – 1990
Devrouax & Purnell, Architects-Planners
717 D Street, NW, Suite 500
Washington, DC 20004
Architectural Associate

1987
Rounds VanDuzer Associates
467A North Washington Street
Falls Church, Virginia 22046
Architectural Intern

1987
Charles Szoradi
2822 28th Street, NW
Washington, DC 20008
Architectural Intern

Other Affiliations (Uncompensated):

2011 – present
Mississippi Center for Justice

5 Old River Place, Suite 203
Jackson, Mississippi 39202
Chair, Board of Directors (2012 – present)
Member, Board of Directors (2011 – present)

2010 – present
Mississippi State University School of Architecture
P.O. Box AQ
Mississippi State, Mississippi 39762
Member, Advisory Council

2007 – present
Operation Shoestring
1711 Bailey Avenue
Jackson, Mississippi 39283
Secretary, Board of Directors (2012 – present)
Member, Board of Directors (2007 – present)

1997 – present
Metro Jackson Black Women Lawyers Association
P.O. Box 382
Jackson, Mississippi 39205
Treasurer (2006 – present)

1997 – 2011
Mississippi Women Lawyers Association
P.O. Box 862
Jackson, Mississippi 39205
President (2003 – 2004)
Member, Board of Directors (2000 – 2004)

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

   I have not served in the U.S. Military. I was not required to register for selective service.

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

   Professional:

   Fellow of the Young Lawyers Division, Mississippi Bar Association (2007 – present)

Model Contractor Development Program Award, Mississippi Development Authority (2011)

Mississippi's 50 Leading Business Women List, *Mississippi Business Journal* (2008)

Outstanding Service Award, Jackson Young Lawyers (2004)

Academic:

Mississippi Law Journal, Associate Editor and Articles Editor (1995 – 1997)

Mississippi Bar Foundation Scholarship Recipient (1995)

Alpha Rho Chi Medal, Mississippi State School of Architecture (1987)

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

American Bar Association (1998 – present)

Bar Association of the Fifth Federal Circuit (2007 – present)

Capitol Area Bar Association (formerly Hinds County Bar Association) (1997 – 2011)
Diversity Committee Co-Chair, 2009 – 2010

Charles Clark Inn of Court (2011 – present)

Federal Bar Association (1999 – 2012)

Jackson Young Lawyers (1997 – 2002)
Child Advocacy & Tutoring Committee, Chair (1999 – 2002)

Magnolia Bar Association/Magnolia Bar Foundation (1997 – present)
High School Mock Trial Committee (2002 – 2004)
Continuing Legal Education Committee, Co-Chair (2005)

Metro Jackson Black Women Lawyers Association (1997 – present)
Continuing Legal Education Coordinator (2005 – present)
Retreat Committee (2005 – present)
Treasurer (2006 – present)

Mississippi Bar Association (1997 – present)
Fellow, Young Lawyers Division (2007 – present)
High School Mock Trial Competition Co-Chair (1999 – 2002)

Mississippi Women Lawyers Association (1997 – 2011)
President (2003 – 2004)
Member, Board of Directors (2000 – 2004)

National Bar Association (2009 – present)
Region V Fundraising Committee (2012 – present)

10. **Bar and Court Admission**:

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

1997, Mississippi

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 Fifth Circuit, 1997
United States District Court for the Southern District of Mississippi, 1997
United States District Court for the Northern District of Mississippi, 1997
All state courts in the State of Mississippi, 1997

There have been no lapses in membership.

11. **Memberships**:

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

Leadership Mississippi (Class of 2008 – 2009)

Mississippi Center for Justice (2011 – present)
Chair, Board of Directors (2012 – present)
Member, Board of Directors (2011 – present)

Mississippi State School of Architecture Advisory Council (2010 – present)

Operation Shoestring (2007 – present)

Secretary, Board of Directors (2012 – present)
Member, Board of Directors (2007 – present)

Surety Association of Mississippi (2010 – 2012)

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

To the best of my knowledge, no organization listed above currently discriminates or 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.

Calling The Bluff: Exploring Anonymity As A Means To A Colorblind Electoral System, 66 Mississippi Law Journal 547 (1997). Copy supplied.

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

I have been a member of the Board of Directors of the Mississippi Center for Justice since September 2011. During that time, the Center issued an Annual Report titled, "Advancing racial and economic justice in the Mississippi Delta." 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.

February 26, 2013: Introductory Speaker, Mississippi Center for Justice meeting with local business leaders regarding the launch of a program designed to mitigate the adverse effects of payday lending in Mississippi, Jackson, Mississippi. Notes supplied.

January 31, 2013: Introductory Speaker and Program Moderator, Mississippi Center for Justice's opening of Indianola office, Indianola, Mississippi. Notes supplied.

June 13, 2012: Introductory Speaker, Mississippi Center for Justice's 2012 "Mississippi on the Potomac" Reception, Washington, DC. Notes supplied.

November 3, 2011: Speaker, "Claims and Disputes Resolution," Model Contractor Development Program, Mississippi Development Authority, Tupelo, Mississippi. PowerPoint presentation supplied.

October 27, 2011: Program Moderator, Metro Jackson Black Women Lawyers Association's reception celebrating the appointment of E.J. Russell to the Mississippi Court of Appeals and honoring all African-American women judges in Mississippi, Jackson, Mississippi. I delivered the welcome, moderated the reception program, and made closing remarks regarding the occasion. I have no notes, transcript, or recording. The address of Metro Jackson Black Women Lawyers Association is Post Office Box 382, Jackson, Mississippi 39205.

June 5, 2010: Presenter, "Girl Power" session of the Magnolia Bar Foundation Boys and Girls Law Camp, Tougaloo, Mississippi. The session consisted of an interactive discussion with the girls attending the Law Camp about self-esteem issues, different messages relayed by one's clothing and manner of dress, and dressing appropriately for various occasions. I have no notes, transcript, or recording. The address of the Magnolia Bar Foundation is Post Office Box 2792, Jackson, Mississippi 39207.

February 26, 2010: Panel Speaker, "Integrating Pro Bono and Public Service Into Private Practice," 17th Annual Evelyn Gandy Lecture Series, University of

Mississippi Continuing Legal Education, Ridgeland, Mississippi. PowerPoint supplied.

June 6, 2009: Presenter, "Girl Power" session of the Magnolia Bar Foundation Boys and Girls Law Camp, Tougaloo, Mississippi. The session consisted of an interactive discussion with the girls attending the Law Camp about self-esteem issues, different messages relayed by one's clothing and manner of dress, and dressing appropriately for various occasions. I have no notes, transcript, or recording. The address of the Magnolia Bar Foundation is Post Office Box 2792, Jackson, Mississippi 39207.

February 11, 2009: Panel Speaker, "Strategies for Getting Key Assignments & Surviving," "My Life as a Lawyer" Lecture Series, Corporate Counsel Women of Color, Southern University School of Law, Baton Rouge, Louisiana. Notes supplied.

June 7, 2008: Presenter, "Girl Power" session of the Magnolia Bar Foundation Boys and Girls Law Camp, Tougaloo, Mississippi. The session consisted of an interactive discussion with the girls attending the Law Camp about self-esteem issues, different messages relayed by one's clothing and manner of dress, and dressing appropriately for various occasions. I have no notes, transcript, or recording. The address of the Magnolia Bar Foundation is Post Office Box 2792, Jackson, Mississippi 39207.

Approximately 2008: Moot Court Judge, Moot Court Competition at Mississippi College School of Law, Jackson, Mississippi. I have no notes, transcript, recording or materials. The address of Mississippi College School of Law is 131 East Griffith Street, Jackson, Mississippi 39201.

2007: Speaker, "Maintaining Privilege and Work Product with Expert Communications," Magnolia Bar Association Continuing Legal Education, Jackson, Mississippi. I have no notes, transcript, or recording, but the content of the presentation was virtually the same as my presentation at the November 10, 2006 event in Chicago, Illinois. The address of the Magnolia Bar Association is 2115 West Capitol Street, Jackson, Mississippi 39209.

June 9, 2007: Presenter, "Girl Power" session of the Magnolia Bar Foundation Boys and Girls Law Camp, Tougaloo, Mississippi. The session consisted of an interactive discussion with the girls attending the Law Camp about self-esteem issues, different messages relayed by one's clothing and manner of dress, and dressing appropriately for various occasions. I have no notes, transcript, or recording. The address of the Magnolia Bar Foundation is Post Office Box 2792, Jackson, Mississippi 39207.

November 10, 2006: Speaker, "Maintaining Privilege and Work Product with Expert Communications," Metro Jackson Black Women Lawyers Association/

Magnolia Bar Association Continuing Legal Education, Northwestern University School of Law, Chicago, Illinois. PowerPoint presentation supplied.

June 3, 2006: Presenter, "Girl Power" session of the Magnolia Bar Foundation Boys and Girls Law Camp, Tougaloo, Mississippi. The session consisted of an interactive discussion with the girls attending the Law Camp about self-esteem issues, different messages relayed by one's clothing and manner of dress, and dressing appropriately for various occasions. I have no notes, transcript, or recording. The address of the Magnolia Bar Foundation is Post Office Box 2792, Jackson, Mississippi 39207.

October 21, 2005: Speaker, "The Nuts and Bolts of Electronic Discovery," Metro Jackson Black Women Lawyers Association/Magnolia Bar Association Continuing Legal Education, Las Vegas, Nevada. PowerPoint supplied.

Approximately March 2005: Mock Trial Judge, Magnolia Bar Association's High School Mock Trial Competition, Jackson, Mississippi. I also served in the same function on at least three occasions in subsequent years. I have no notes, transcript, or recording. The address of the Magnolia Bar Association is 2115 West Capitol Street, Jackson, Mississippi 39209.

Approximately 2005: Speaker, "Taking and Defending Effective Depositions in Mississippi," Lorman Education Services, Continuing Legal Education, Jackson, Mississippi. I presented the ethics hour of the program regarding ethical issues that may arise in depositions and how to resolve them. I have no notes, transcript, or recording. The address of Lorman Education Services is P.O. Box 509, Eau Claire, Wisconsin 54702.

May 2004: Introductory Speaker, Mississippi Women Lawyers Association's Outstanding Woman Lawyer Award reception and program, Jackson, Mississippi. I welcomed all attendees, remarked about the occasion of the presentation of the 2004 Outstanding Women Lawyer Award, and announced the award winner. I have no notes, transcript, or recording. The address of the Mississippi Women Lawyers Association is Post Office Box 862, Jackson, Mississippi 39205.

April 30, 2004: Panel Speaker, "Rising Above the Glass Ceiling: A Black Female Partner Perspective," Magnolia Bar Association Annual Meeting, Biloxi, Mississippi. I was a speaker on a panel of African-American women who had recently become partners in their law firms in Jackson, Mississippi. We discussed topics ranging from whether the glass ceiling still exists and developing a strategy for advancement to navigating office politics and effective rainmaking. I have no notes, transcript, or recording. The address of the Magnolia Bar Association is 2115 West Capitol Street, Jackson, Mississippi 39209.

May 2003: Introductory Speaker, Mississippi Women Lawyers Association meeting, Jackson, Mississippi. I announced the nominees for the 2003

Outstanding Woman Lawyer Award and provided biographical information about each nominee. I have no notes, transcript, or recording. The address of the Mississippi Women Lawyers Association is Post Office Box 862, Jackson, Mississippi 39205.

May 2003: Introductory Speaker, Mississippi Women Lawyers Association's Outstanding Woman Lawyer Award reception and program, Jackson, Mississippi. I introduced the nominees for the 2003 Outstanding Woman Lawyer Award and provided biographical information about each nominee. I have no notes, transcript, or recording. The address of the Mississippi Women Lawyers Association is Post Office Box 862, Jackson, Mississippi 39205.

Approximately March 2003: Mock Trial Judge, Mississippi Bar Association's High School Mock Trial Competition, Jackson, Mississippi. I also served in the same function on at least two occasions in subsequent years. I have no notes, transcript, or recording. The address of the Mississippi Bar Association is 643 North State Street, Jackson, Mississippi 39202.

Approximately 2003: Program Moderator, Mississippi Women Lawyers Association meeting, Jackson, Mississippi. I moderated a panel of women lawyers on the topic of balancing work life with personal life. I have no notes, transcript, or recording. The address of the Mississippi Women Lawyers Association is Post Office Box 862, Jackson, Mississippi 39205.

Approximately 2002 – 2004: Introductory Speaker, Mississippi Women Lawyers Association bi-monthly meetings, Jackson, Mississippi. I likely would have introduced speakers at the bi-monthly meetings from approximately September 2002 to September 2003 while my board member responsibilities included finding and coordinating speakers. I also would have made opening remarks at the bi-monthly meetings from September 2003 to September 2004 while I was serving as president. I have no notes, transcript, or recording. The address of the Mississippi Women Lawyers Association is Post Office Box 862, Jackson, Mississippi 39205.

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.

Lynne Jeter, "What If They Had Chosen A Different Path…???; 50 Leading Business Women 2008," Mississippi Business Journal, Sept. 29, 2008. Copy supplied.

Lynne Jeter, "Debra Brown, Phelps Dunbar, LLP, Partner," 50 Leading Business Women 2008, Special Publication of the Mississippi Business Journal, Sept. 29, 2008. Copy supplied.

Jimmie Gates, "Apartment Complex Settles Shooting Suit," The Clarion-Ledger, Sept. 7, 2008. Copy supplied.

Jimmie Gates, "Bill Looks To Digitize Court Records," The Clarion-Ledger, March 13, 2006. Copy supplied.

Approximately March 2002: I was interviewed in Jackson, Mississippi, by a news reporter from a local television station, WLBT, regarding the Mississippi Bar Association's High School Mock Trial Competition. I have been unable to locate a transcript or recording.

Jimmie Gates, "Former Judge Reprimanded For Conduct," The Clarion-Ledger, July 21, 2000. Copy supplied.

Gina Holland, "Retired Trucker Wins Blues Legend's Royalties," New Orleans Times Picayune, June 17, 2000. Copy supplied.

Gina Holland, "Supreme Court Reprimands Adams County Judge," Associated Press State & Local Wire, Apr. 20, 2000. Substantially similar versions of this article were reported by different news sources under different titles. 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 been a judge.

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

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

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

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

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

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

I have never held public office. I have never been a candidate for elective office or been nominated for appointed office.

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

I have never held office in, or rendered services to, any political party or election committee.

I was one of the hosts of a fundraising event several years ago in association with the re-election campaign of Judge Patricia Wise, Chancellor in the Fifth Chancery Court District of Mississippi, which was held at the home of the Wilson family in Madison, Mississippi.

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 clerk to a judge.

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.

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Partner (2004 – 2011)
Counsel (January 2012)

2012 – present
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Shareholder

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

I have not served as a mediator or arbitrator.

b. Describe:

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

My practice for the past 15 years has been civil litigation in a private law firm setting with two different firms. I began practicing as an associate attorney with Phelps Dunbar, a regional firm, primarily in the area of commercial litigation, with the majority of that practice in the financial and insurance context. The remainder of my litigation practice as an associate was fairly diverse, including administrative matters before the state judicial performance commission and state licensing boards, a limited amount of tort and personal injury defense, some construction litigation, and pro bono domestic law work. As I moved from junior to senior associate and then to partner with Phelps Dunbar, the emphasis on commercial litigation continued, but the number of financial and insurance related cases decreased, with an increase in construction-related matters, and additional limited practice in the areas of premises liability, product liability, workers compensation, bankruptcy litigation, and intellectual property. After the move to my present firm, Wise Carter, in early 2012, I continued to focus on construction litigation, but I also expanded into the areas of employment law and medical malpractice.

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

The majority of the clients in my litigation practice have been mid- to large-sized businesses, including local, national and, at times, international businesses. Early in my practice, these clients were banks and mortgage companies, as well as property and casualty insurers, and later included an international automotive supplier, commercial property managers, and a county airport. I also represented some individual clients, including state court judges, architects, contractors, and pro bono clients. My construction law practice for the past 14 years has typically consisted of the representation of construction sureties or general contractors, with limited representation of subcontractors. Upon my move to Wise Carter a year ago, my client base has expanded to the representation of owners in the construction context, as well as hospitals and other medical providers in the areas of employment litigation and construction 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.

Essentially 100% of my practice has been litigation, and 100% of that has been civil litigation. I have generally appeared in various state and federal courts and before administrative bodies occasionally over the years of my practice.

i. Indicate the percentage of your practice in:
   1. federal courts: 48%
   2. state courts of record: 50%
   3. other courts: 0%
   4. administrative agencies: 2%

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.

To the best of my recollection, I have tried a total of 12 cases to verdict or judgment, three of which were tried to a jury. Of those, I was sole counsel on two, chief counsel on one, one of two co-counsel on eight, and associate counsel on one.

i. What percentage of these trials were:
   1. jury: 25%
   2. non-jury: 75%

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

I 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. *Jeanes-Kemp, LLC v. Johnson Controls, Inc.*, Civil Action No. 1:09-cv-723, 2012 WL 627515 (S.D. Miss. Feb. 24, 2012); Honorable David Bramlette; 2009 - 2012.

I was co-counsel for the defendant, Johnson Controls, Inc., in a suit filed in the Chancery Court of Harrison County, Mississippi, and removed to the United States District Court for the Southern District of Mississippi. The plaintiff, Jeanes-Kemp, LLC, sought a declaratory judgment, removal of clouds on title, over $2.7 million in compensatory damages, and punitive damages based on allegations that the defendant wrongfully filed and maintained a construction lien against a multi-million dollar real estate development project in Pass Christian, Mississippi. Late in the litigation, the plaintiff, through counsel, advised that I would be deposed with respect to a legal opinion concerning the lien's validity that I provided to the defendant after the construction lien was filed. I was deposed and called to testify as a witness at trial regarding the opinion. After a bench trial in which I participated as a witness only, the Court entered judgment in the defendant's favor dismissing the claims with prejudice.

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2. *Rogers v. The CIT Group/Equipment Financing, Inc., et al.*, 455 B.R. 524 (Bankr. S.D. Miss. 2011); Honorable Edward Ellington; 2003 - 2011.

I was co-counsel for two plaintiffs in two separate suits initially filed in 2003 in the Chancery Court of Scott County, Mississippi, against The CIT Group/Equipment Financing, Inc. (the CIT Group), Koch Foods of Mississippi, LLC, and Koch Farms of Mississippi, LLC. The plaintiffs, former owners of the B.C. Rogers Poultry companies, alleged that the CIT Group made material representations to them which caused them to issue irrevocable standby letters of

credit totaling $3 million to secure a sale/leaseback transaction the CIT Group entered with the B.C. Rogers Poultry companies, and that the CIT Group wrongfully drew upon them. The plaintiffs asserted claims for intentional and negligent misrepresentation, conspiracy, breach of the duty of good faith and fair dealing, and breach of lease, among others. The cases were removed, consolidated and referred to the Bankruptcy Court of the Southern District of Mississippi, to be adjudicated within the B.C. Rogers companies' bankruptcy cases. They were further consolidated with a declaratory judgment action that the CIT Group had filed against the B.C. Rogers companies, with the debtors' Bankruptcy Trustee substituted for the debtors as a party. The plaintiffs settled their claims with the Koch companies. After the CIT Group's motion for summary judgment was denied in 2009, the case was tried in April 2010 before Southern District Bankruptcy Judge Edward Ellington. The court issued its opinion on August 19, 2011, against the plaintiffs and entered judgment accordingly.

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3. *Overstreet v. Contigroup Companies, Inc.*, 462 F.3d 409 (5th Cir. 2006); Honorable Keith Starrett (District Judge); 2004 - 2006.

I was co-counsel for the defendant, Contigroup Companies, Inc., in a suit filed in state court and removed to the United States District Court for the Southern District of Mississippi. The plaintiff, a Mississippi chicken farmer, alleged fraudulent inducement and wrongful termination of her contract to raise chickens for the defendant. The defendant's motion to stay the case and compel arbitration was denied on grounds that the arbitration clause and the contract were unconscionable due to the plaintiff's financial condition. The decision regarding arbitration was appealed, and I presented oral argument before the Fifth Circuit.

The Fifth Circuit reversed the ruling against arbitration and remanded with instructions that the case be ordered to arbitration. The case settled before arbitration.

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4. *Martin v. Countrywide Home Loans, Inc.*, Civil Action No. 2:99CV2214PG (S.D. Miss.); Honorable Charles W. Pickering; 1999-2003.

I was co-counsel for the defendant, Countrywide Home Loans, Inc., in a suit for compensatory and punitive damages in which the plaintiffs alleged that Countrywide's failure to pay their homeowner's insurance premium with escrowed funds caused the cancellation of their policy and the denial of a claim under the policy for the theft of personal property. The case was tried to a jury. The jury found for plaintiffs but also found contributory negligence by the plaintiffs, and a verdict for plaintiffs entered in the amount of $33,220. After post-trial motions, the defendant appealed and the plaintiffs cross-appealed. The case was settled before the deadline for appeal briefs was set.

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5. *In re Estate of Johnson*, 767 So.2d 181 (Miss. 2000); Honorable Jon M. Barnwell; 1998-2000; and *Anderson v. Lavere*, 895 So.2d 828 (Miss. 2004); Honorable Ashley Hines; 2000-2010.

I was co-counsel for the grandson and half-sister of the last surviving sibling of the blues musician, Johnson, in an appeal of the chancery court's determination of Johnson's heirs at law. The appeal challenged the ruling that a claimed illegitimate son of Johnson's was the sole heir to Johnson's estate. The estate was opened in 1989, 51 years after Johnson's death. Johnson was indigent at the time he died but his estate began to receive royalty payments from the use of his music two years after it was opened. The Mississippi Supreme Court ultimately affirmed the chancery court's determination that the illegitimate son was the sole heir to Johnson's estate.

Before the appeal was decided, Thompson's grandson and half-sister sued the illegitimate son and others in state circuit court regarding the rights to certain photographs of Johnson that were part of Thompson's estate. I was also co-counsel in this case on their behalf. The defendants' motion to dismiss was granted on grounds that res judicata barred their claims. The Mississippi Supreme Court reversed and remanded on appeal. The matter is still in litigation.

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6. *Hood v. Madison County Human Resources Agency, et al.*, Civil Action No. 3:09CV415 (S.D. Miss.); Honorable Daniel Jordan; 2009-2011.

I was co-counsel for two lenders, Defendants SCDF Loan and Technical Assistance Fund, Inc., and Southern Cooperative Development Fund, Inc., in a case where the Mississippi Transportation Commission sought to void the lenders' interest in certain real property and improvements and have the Commission's alleged interest declared superior. The Commission alleged that the lenders improperly encumbered the property due to an alleged federal interest in the property arising from federal grant funds. Dismissal was requested on the lenders' behalf early on based on the Commission's lack of standing and because the circumstances indicated no basis for any alleged federal interest or any interest prior in time to that of the lenders. After motions for summary judgment were filed on the lenders' behalf, along with motions for sanctions, the matter settled in the lenders' favor.

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7. *Delphi Automotive Systems, LLC v. Lextron Corporation,* Civil Action No. 3:03-cv-0035 (S.D. Miss.); Honorable Henry T. Wingate; 2003-2006.

I was co-counsel for the plaintiff, Delphi Automotive Systems, LLC, against Lextron Corporation, one of its parts suppliers, in a case that began as a replevin and breach of contract action after the supply contract between them was terminated. Lextron counterclaimed on allegations of bad faith breach of contract, breach of fiduciary duty, fraud, misrepresentation, tortious interference with prospective economic advantage, conversion, and unfair trade practices. SouthTrust Bank, Lextron's lender and whose representatives were witnesses in the case, attempted to conduct discovery in the matter relevant to its separate state court action filed against various Delphi entities alleging it had been induced to loan over $4 million to Lextron based on an alleged misrepresentation by Delphi of Lextron's financial condition. After a protracted and contentious discovery period, with multiple discovery and dispositive motions filed, Delphi gave notice of its Chapter 11 bankruptcy filing two weeks before trial was set to commence. The action, and SouthTrust's separate state court case, were first stayed and then administratively dismissed until such time as the bankruptcy matters were resolved. Lextron and SouthTrust filed claims in the bankruptcy case pending in the United States Bankruptcy Court for the Southern District of New York, where they were nominally resolved.

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8. *Mississippi Commission on Judicial Performance v. Sanders*, 749 So.2d 1062 (Miss. 1999).

I was co-counsel for a state court judge against whom the Mississippi Commission on Judicial Performance initiated proceedings on allegations of the judge's abuse of contempt powers and unlawful expungement of two felony convictions. One of the defenses asserted was the Commission's selective prosecution of African-American judges. After a hearing, the majority of the Commission recommended to the Mississippi Supreme Court that the judge be publicly reprimanded, with one member recommending removal from office. The Mississippi Supreme Court, finding statistical racial disparity in the Commission's proceedings against African-American judges but holding that it was insufficient to make a case of selective prosecution, accepted the Commission's recommendation to publicly reprimand the judge.

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9. *The Duco Company v. IndyMac, Inc.*, No. 2:98CV168, 1999 WL 33537162 (N.D. Miss. Nov. 17, 1999); Honorable Eugene M. Bogen; 1998-1999.

I was co-counsel for the defendant, IndyMac, Inc., in a suit filed in the Chancery Court of DeSoto County and removed to the United States District Court for the Northern District of Mississippi, Delta Division. The plaintiff, a business engaged in residential remodeling, alleged that the defendant wrongfully terminated a Dealer Purchase Agreement under which the defendant purchased debt instruments from the plaintiff or made loans to the homeowner to pay for work performed by the plaintiff. After a bench trial, the Court ruled that the plaintiff was entitled to recover from the defendant the gross profit loss of the plaintiff resulting from the defendant's failure to fund certain loans but that the defendant was entitled to a setoff for the amount it paid to settle the claims of a homeowner based on the plaintiff's defective work. Judgment was entered accordingly.

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10. *State of Mississippi by and through Mississippi State Tax Commission v. American Management Systems, Inc.*, Cause No. 1999-382, Circuit Court of Hinds County, Mississippi (2000); Honorable James Graves; 1999 - 2000.

I was co-counsel for the plaintiff, the Mississippi State Tax Commission, in this breach of contract suit, which sought $234 million in actual damages and $750 million in punitive damages for American Management Systems' alleged failure to timely deliver an automated and integrated state tax software system. At the

time of suit, the Commission had terminated the contract and paid American Management Systems $6 million of the $11.2 million contract price. As a young lawyer, my primary responsibility in the case was working with experts on the Commission's behalf through the discovery process. At trial, the jury awarded the Commission a total of $474 million in damages—$299.5 million in compensatory damages and $175 million in punitive damages—an amount that is reportedly one of the largest jury verdicts in Mississippi. Shortly after the verdict was entered, the parties negotiated a settlement with American Management Systems and its insurers.

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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 served in a variety of leadership roles in the legal community. I was the President of the Mississippi Women Lawyers Association for the 2003-2004 term and on its Board of Directors from 2000 to 2004. I was Co-Chair of the Mississippi Bar Association's

High School Mock Trial Competition from 1999 to 2002, and I served on the Magnolia Bar Association's High School Mock Trial Competition Committee from 2002 to 2004. The Magnolia Bar Foundation hosts a Law Camp every summer for boys and girls aged 13-16, and I presented the "Girl Power" session of the Camp from 2006 to 2010. From 1999 to 2002, I chaired the Child Advocacy Committee of Jackson Young Lawyers, and coordinated and participated in its primary activity of tutoring children after school at a local Boys and Girls Club every week. Over the years, I have also served on various committees of the Metro Jackson Black Women Lawyers Association and have coordinated its annual retreat and CLE programs, along with special events and projects.

Throughout my career, I have handled cases before administrative bodies. I have been co-counsel on at least four administrative matters filed against Mississippi state court judges by Mississippi's judicial performance agency, all of which proceeded to administrative hearings and some of which received media attention. In 2010, as co-counsel for a San Francisco restaurant and bar, I obtained a favorable summary judgment ruling before the Trademark Trial and Appeal Board canceling the federal registration for a certain mark of a well-known New York restaurant and bar that caters to and is frequented by popular celebrities. The ruling also resulted in the Trademark Trial and Appeal Board's denial of the New York restaurant's federal registration of similar marks.

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.

    None.

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

    None.

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

    If 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 confirmed for the position, I would recuse myself from any case in which I had participated while in private practice or in which any member of my family was involved. In addition, I would recuse myself from any matters in which my firm appeared in accordance with the relevant rules and Code of Conduct.

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

       If confirmed, I would handle all matters involving actual or potential conflicts of interest through thoughtful application of the Code of Conduct for United States Judges and pertinent advisory opinions.

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.

    For every year since I was licensed to practice law, I have handled pro bono cases through the Mississippi Volunteer Lawyers Project (MVLP), which is a formal association of the Mississippi Bar Association and the Legal Services Corporation offices in Mississippi. The pro bono cases I have handled through MVLP generally consist of guardianships, birth certificate corrections, and name changes. The amount of time I have dedicated to the handling of pro bono matters through MVLP has varied each year, with the range between 20 to 40 hours annually.

I have also handled a non-MVLP pro bono case that involved assisting an out-of-state resident in obtaining a Mississippi birth certificate, which is the single case on which I expended the most pro bono hours. The Mississippi Department of Health refused to issue the certificate and contested the client's petition on grounds that the certificate that the client represented as being provided to her when she was young and had all of her life was fraudulently obtained. The Department of Health relied in large part on the fact of the client's arrest in another state for the charge of violating the federal statute prohibiting the making of a false statement in a passport application before my representation of her began, although the charge had been dismissed with prejudice due to the absence of evidence establishing the element that she knowingly and willfully intended to make a false statement. The matter proceeded to trial on which I was sole counsel for the client. The court ruled that the client had provided sufficient evidence for the issuance of the birth certificate and entered judgment accordingly.

Several years ago, thirteen private law firms in Mississippi, in association with the Mississippi Volunteer Lawyers Project, developed a comprehensive pro bono manual as a resource for Mississippi attorneys who handle pro bono cases. I was the contact person for my firm with respect to the development of the manual, and I prepared the manual's section on child custody matters along with one of my colleagues. I have also participated in a panel discussion on the subject of integrating pro bono service into private practice. Finally, I have served as the Pro Bono Coordinator in each firm where I have practiced law.

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 December 2012, I was informed by staff members for Senator Thad Cochran and Senator Roger Wicker that I had been recommended for the position of United States District Judge for the Northern District of Mississippi left vacant due to the death of Judge Allen Pepper. Since February 11, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 19, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 16, 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
Brown, Debra M.	United States District Court - Northern District of MS	05/16/2013
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**
United States District Judge	☑ Nomination Date 05/16/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 04/30/2013
7. Chambers or Office Address		
401 East Capitol Street Heritage Building, Suite 600 Jackson, Mississippi 39201		

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.	Shareholder	Wise Carter Child & Caraway, P.A.
2.	Chair and Member of Board of Directors	Mississippi Center for Justice
3.	Secretary and Member of Board of Directors	Operation Shoestring
4.	Treasurer	Metro Jackson Black Women Lawyers Association
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Brown, Debra M.	Date of Report 05/16/2013

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	Wise Carter Child & Caraway, P.A.	$52,416.00
2. 2012	Wise Carter Child & Caraway, P.A.	$144,186.00
3. 2012	Phelps Dunbar LLP	$12,808.00
4. 2011	Phelps Dunbar LLP	$201,651.00

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.	
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 Brown, Debra M.	Date of Report 05/16/2013

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.	Bancorp South	Mortgage on Hinds County, Mississippi, rental property	L
2.	Sallie Mae	Student loan	J
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Brown, Debra M.	05/16/2013

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. Rental Property, Hinds County, Missisippi	A	Rent	M	W	Exempt				
2. American Funds EuroPacific Growth Fund	A	Dividend	J	T					
3. Invesco Mid Cap Core Equity Fund	A	Dividend	J	T					
4. Invesco American Franchise Fund	A	Dividend	J	T					
5. John Hancock Small Company Growth Fund	A	Dividend	K	T					
6. Fidelty Contrafund	A	Dividend	J	T					
7. Fidelity Puritan Fund	A	Dividend	K	T					
8. Fidelity Freedom K Income Fund	B	Dividend	K	T					
9. Fidelity Freedom K 2000 Fund	B	Dividend	K	T					
10. Fidelity Freedom K 2010 Fund	A	Dividend	K	T					
11. Fidelity Freedom K 2020 Fund	A	Dividend	K	T					
12. Fidelity Spartan 500 Index Fund	A	Dividend	K	T					
13. PIMCO Total Return Fund	B	Dividend	K	T					
14. Wells Fargo Stable Value Fund	A	Dividend	K	T					
15. Bancorp South Accounts	A	Interest	L	T					
16. Suntrust Bank Accounts	A	Interest	M	T					
17. Magnolia Federal Credit Union Account	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Brown, Debra M.	05/16/2013

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. Personal Loan to Aurora Baugh, note receivable		None	J	V					

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
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
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
Brown, Debra M.	05/16/2013

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

Name of Person Reporting	Date of Report
Brown, Debra M.	05/16/2013

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/ **Debra M. Brown**

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		242	626	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		282	529	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	009
Due from relatives and friends		3	725	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		606	000
Real estate owned – see schedule		750	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		32	705	Education loan		14	746
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		624	755
				Net Worth		686	830
Total Assets	1	311	585	Total liabilities and net worth	1	311	585
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 EuroPacific Growth Fund	$ 14,616
Invesco Mid Cap Core Equity Fund	10,532
Invesco American Franchise Fund	3,531
John Hancock Small Company Growth Fund	18,395
Fidelity Contrafund	11,215
Fidelity Puritan Fund	16,453
Fidelity Freedom K Income Fund	49,321
Fidelity Freedom K 2000 Fund	49,135
Fidelity Freedom K 2010 Fund	20,804
Fidelity Freedom K 2020 Fund	20,835
Fidelity Spartan 500 Index Fund	26,889
PIMCO Total Return Fund	21,029
Wells Fargo Stable Value Fund	19,774
Total Listed Securities	$ 282,529

Real Estate Owned	
Personal residence	$ 620,000
Rental property	130,000
Total Real Estate Owned	$ 750,000

Real Estate Mortgages Payable	
Personal residence	$ 542,000
Rental property	64,000
Total Real Estate Mortgages Payable	$ 606,000

AFFIDAVIT

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

MAY 16, 2013
(DATE)

(NAME)

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 62111
PEGGY A. McLAIN
Commission Expires
Feb. 17, 2017
RANKIN COUNTY

Peggy A. McLain
(NOTARY)

Senator SCHUMER. Okay. Well, I am going to ask general questions for all of our nominees here, so I will ask you the question and then we will move from my—well, from Mr. Woods to Ms. Wolford to Ms. Brown.

First, tell us a little bit about why you want to be a judge and how you believe your experiences up to this point will help you do the job. Mr. Woods.

Mr. WOODS. Thank you, Senator Schumer.

I think as an attorney there is—I believe highly in the importance of public service. As a lawyer, I think that there is nothing more important that we can do as practicing lawyers to serve the public than to act as judges.

My personal experience, I think I have acquired the skills necessary to do the job. In my case, I also had a broad range of experiences with different areas of law and practice. And I think that is beneficial to the bench, hopefully particularly so in New York City, which is such a commercial capital of the United States. My experience as a commercial and financial lawyer hopefully will help contribute to my work on the bench, if I am confirmed.

Senator SCHUMER. Thank you.

Ms. Wolford.

Ms. WOLFORD. Thank you, Senator. I obviously worked for the same legal employer for over 20 years, so there were not a lot of positions that I would have ever considered leaving for. But the district court judgeship, I think, is one of the most interesting, challenging positions that one could hold in the legal profession, and it also provides a great opportunity for public service. I have been interested in public service my whole career, but this would allow me an opportunity to really give back to the community and to the public in a way that I have not yet been able to.

Senator SCHUMER. Great.

Ms. Brown.

Ms. BROWN. I believe serving as a federal judge is one of the highest honors that I can imagine. The federal courts are important to citizens every day of their life. It touches them in small and large ways. And the courts, more than anything, belong to the citizens. And for me to be a public servant and be a part of that scheme is just incredible in my mind.

I think I prepared myself, given my 16 years of litigation experience. More than anything, it has taught me work ethic. It has taught me to be organized. It has taught me to be respectful of everyone that I come in contact with, from opposing counsel to, of course, the court, the witnesses, the jury, everyone involved in that process.

It also has taught me to be a good organizer and to manage things very carefully. It has taught me patience and how to listen very well. And for all those reasons, I think that I have the qualities to be on the federal bench.

Senator SCHUMER. Thank you. And now we will start with Ms. Brown and move the other way, just to mix it up a little.

To each of you, what do you believe are the most important characteristics for a judge to have? Ms. Brown.

Ms. BROWN. I believe one of the most important characteristics is for a judge to respect his or her position. From that, I believe

flows all of the other attributes that I admire in judges: patience, courteousness, definitely adherence to the rule of law and adherence to judicial precedents. I believe judges also should be modest in a sense and carry themselves well both in the court and outside the court, that they should have unyielding integrity and courage for those occasions when maybe their decisions are not popular or when they feel pressures from various groups or parties to rule in a manner that may be contrary to the law.

For all of those traits, I believe that those are things that make a very successful judge, make a judge be more respected and help citizens respect the courts and the decisions that they have to make.

Senator SCHUMER. Thank you.

Ms. Wolford.

Ms. WOLFORD. Thank you, Senator. Ms. Brown offered a very good summary of the qualifications that are necessary for a judge to hold. I agree that respect is one of the most critical aspects, respect for the law, respect for the parties, and respect for the position. And, in addition, I think open-mindedness and patience are critical to be an effective judge.

Senator SCHUMER. And Mr. Woods.

Mr. WOODS. Thank you. I agree wholeheartedly with my colleagues. I would say fidelity to the rule of law, intellectual curiosity, hard work, dedication to do the work necessary to get the right answer, and modesty, and I would say humility, to be open-minded and to treat the parties that appear before you with dignity and respect.

Senator SCHUMER. Thank you.

Senator Grassley. My time has expired.

Senator GRASSLEY. I will probably submit some questions for answer in writing.

Senator SCHUMER. Without objection.

Senator GRASSLEY. Thank you, but I do want to ask some now.

Senator SCHUMER. Go right ahead.

Senator GRASSLEY. Since you served as General Counsel at the Department of Energy, and this is not going over decisions you made there that I am finding fault with, it is just that you—when you had your confirmation hearing, or as General Counsel your job was to ensure the Department complies with the obligations under the law. And how would you grade yourself on that performance? And then before you answer that question, let me ask you the second and last question. At that confirmation hearing, you agreed to a full review of all the Department of Energy current authorizations and to help identify if there are any areas duplicative or perhaps unnecessary. Did you keep that commitment? But then in regard to your possible judgeship, would you explain how that experience would affect your decision making as a judge?

Mr. WOODS. Great. Thank you very much, Senator. As a judge, Senator, I think I would approach every issue that came before me on the facts of the case in front of me, and I would look to applicable precedent to reach the hopefully correct decision in that case or controversy.

Senator, my job as General Counsel at the Department of Energy requires me to be an advocate on behalf of my client, and I com-

pletely recognize that the role of a judge is different from that of an advocate. And as a judge, I would ensure that I followed the process that I just described.

Senator GRASSLEY. Do you think that you did what you promised the Committee you would do, that you were able to review those areas where there was duplication and do something about things that were unnecessary?

Mr. WOODS. Thank you, Senator. I believe that Senator Murkowski asked me if I would work with her on any efforts that she wanted to undertake, and, Senator, I believe that many of the requests that Senator Murkowski has asked of us I have accommodated.

Senator GRASSLEY. Okay. Ms. Wolford, one of the questions I ought to ask you, since you are leaving a law firm now, what recusal policies would you implement in regard to your firm?

Ms. WOLFORD. Thank you for that question, Senator. I would recuse myself from any matter that the Wolford law firm was handling or in which it was a party. Both my father and brother are with the firm and will continue to be with the firm, and it would be inappropriate for me to handle any matter in which the firm was appearing.

Senator GRASSLEY. I think your questionnaire said that only five percent of your litigation experience has been involved with criminal matters. So you are going to have to obviously do both civil and criminal as a judge. What experience do you have with criminal law? And probably more importantly, what steps have you taken or will you take to familiarize yourself with the area of criminal law?

Ms. WOLFORD. Thank you for that question, Senator. I have had some exposure to criminal law as part of my practice, but there is no question that it is five percent, as I indicated in the questionnaire, and I absolutely have to get up to speed in that area of the law.

First of all, I will read anything I can to come up to speed, including materials that I have already received from the Federal Judicial Center. And there is one thing I have learned, Senator, in my over 20 years of practice, is that there is absolutely no substitute for hard work. And that certainly will not change if I am fortunate enough to be confirmed.

Senator GRASSLEY. I will go to Ms. Brown. I want to give you a chance to respond to something you wrote when you were in law school, how it applies today. You wrote from the *Mississippi Law Journal*, and I think it was arguing that conservatives do not actually want a colorblind electoral system that they say they want because that would mean the system will be "infiltrated by members of various races who are comparably capable of performing the tasks of government."

You can explain that any way you want to, but I would have this specific question: Do you still feel that, as you put in that article, "in order to treat some people equally, we must treat them differently"? Do you still feel that way?

Ms. BROWN. Thank you for that question, Senator. As you pointed out, I did write that article many years ago while I was in law

school. It was the backdrop for a hypothetical electoral scheme that I wanted to explore, more as a theoretical piece.

The quote that you mention, I believe, is part of the backdrop leading up to my proposed hypothetical model. I believe that the quote that you mentioned is something that—and, you know, I gathered together lots of commentary and theorists on the issue and basically cited to them as part of the backdrop.

I do believe, although I do believe my personal beliefs would not influence any decision I had on the bench, that we as a society should take a very thoughtful look at race and any type of diversity issues here in the Nation, and that it would bode us all well to do that.

I believe the article also concluded as well that not only conservatives would like this model that I propose, but neither would liberals, because I think somewhere we need to meet in the middle in that regard.

Senator GRASSLEY. Again, as I asked Ms. Wolford about your having such great work in civil matters, do you have experience in criminal law? And then, last, if you have not had that experience, how would you familiarize yourself with that in your work if you are confirmed?

Ms. BROWN. My litigation practice has been 100 percent civil. I have not had any criminal experience at all. I, however, would immerse myself in the federal procedure rules and the federal statutes, look at the Sentencing Guidelines. I think that preparation and study is the way to achieve that goal.

I also would consult with—we have some federal judges in Mississippi who had absolutely no criminal experience at all, and I would consult with them about how to efficiently and effectively get up to speed so that I would be prepared to rule on those matters.

Senator GRASSLEY. Okay. Thank you, Mr. Chairman.

Senator SCHUMER. Well, thank you, Senator Grassley. I thank all three witnesses. I would just ask unanimous consent—there are 21 letters that I have here in support of Patricia Millett. I would ask unanimous consent to add them to the record, including letters from Carter Phillips and Peter Keisler, who are attorneys; Douglass Maynard of the New York Police Department; Chuck Canterbury, president of the Fraternal Order of Police; and 37 assistant deputy and acting attorneys general who signed the letter. Without objection.

[The letters appear as submissions for the record.]

Senator SCHUMER. We want to thank the witnesses. We want to thank their beautiful families and proud families for being here.

The record is going to remain open for seven days for people to submit questions in writing which you may be asked to submit to us, and speaking, I think, on behalf of the whole Committee, whatever the outcome is, we are proud of all three of you.

Mr. WOODS. Thank you.

Ms. WOLFORD. Thank you.

Ms. BROWN. Thank you, Senator.

Senator SCHUMER. With that, the hearing is adjourned.

[Whereupon, at 11:48 a.m., the Committee was adjourned.]

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Judicial Nominations
July 10, 2013

Yesterday the Judiciary Committee held a respectful, productive hearing for the President's nominee to be FBI director. I hope we will do the same this morning as we welcome four of President Obama's qualified judicial nominees. I am confident that, if we have a fair hearing today, we will agree that these nominees are deserving of bipartisan support.

Patricia Millett, who is nominated to one of three vacancies on the District of Columbia Circuit, has distinguished herself as an appellate advocate who served in the Office of the Solicitor General under both President Clinton and President Bush. She has argued 32 cases before the Supreme Court, and another 36 before Federal courts of appeal. She is also no stranger to this Committee, having testified here in 2008 at the request of Committee Republicans.

Earlier this week, the Senate voted unanimously to confirm Wyoming Attorney General Gregory Phillips to the Tenth Circuit. With his confirmation, the number of pending appeals per active judge on that court dropped from 150 to 135. The D.C. Circuit currently has 177 pending appeals per active judge. Despite that higher caseload, some Senate Republicans argue that the D.C. Circuit's caseload is too low, and that three of its judgeships should be eliminated. Most of these Senators voted to confirm Attorney General Phillips, even though his confirmation means that the Tenth Circuit will now have the lowest caseload in the country, just as earlier this year they supported the confirmation of Jane Kelly to the Eighth Circuit, which gave that court the lowest caseload in the country. I hope those Senators will reconsider their double-standard and not play politics with an independent branch of government.

The Committee also welcomes Gregory Woods, nominated to the Southern District of New York, Debra Brown, who is nominated to the Northern District of Mississippi, and Elizabeth Wolford, who is nominated the Western District of New York. All have the support of their home state Senators.

I want to again commend Senators on both sides for the way yesterday's hearing was conducted, and I look forward to continued bipartisan cooperation on the consideration of President Obama's nominees.

# # # # #

Questions for the Record for all nominees
Senator Ted Cruz
7/10/13 "Judicial Nominations" Hearing

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

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

Patricia Ann Millett
Nominee, United States Circuit Judge for the D.C. Circuit

1. You have extensive appellate experience, particularly before the Supreme Court of the United States. Certainly during that time you have reflected on the judges or Justices before whom you have appeared. Please describe for us some traits or judicial philosophy that you would like to emulate as a judge, if confirmed.

2. You wrote an amicus brief in the case of *United States v. Windsor* arguing that the Bipartisan Legal Advisory Group (BLAG) did not have Article III standing and furthermore that the Supreme Court did not have jurisdiction because the United States had suffered no injury sufficient to invoke Article III standing. Given your argument that BLAG lacked standing, what recourse do you see available for Congress when the executive branch decides to stop defending a lawfully enacted statute?

3. You have spoken in various forums about the values and importance of diversity, and addressed that issue in your nomination hearing. You noted diversity works outward, as a symbol to everyone in the country that opportunities here are based on merit and hard work, not race, gender, ethnicity, religion, or any of those lines; and that diversity increases open-mindedness. In panel discussions regarding Justice Sotomayor's stance that her decisions would be different as a Latina woman than what a white man would decide, you defended her invocation of diversity as a strong positive value, and were somewhat critical about the nominations process not being a forum for sophisticated discussion about diversity. Could you further explain your view regarding the role of diversity on the bench and how it does or should influence adjudicating cases or the outcome of a case?

4. You drafted an amicus brief in the Supreme Court case of *Fisher v. University of Texas at Austin*. In it you wrote that the facts of American life have not so drastically changed in the years since *Grutter* was decided to warrant its reexamination.

   a. Is this statement representative of your beliefs about the legality of affirmative action programs? Please explain.

   b. Please explain your views on the constitutionality of affirmative action programs, specifically in higher education.

5. When is it appropriate for the federal government to preempt state law? If confirmed, what sources and approaches would you utilize to assess whether Congress or the Executive Branch in fact intended to preempt state law and acted within the scope of their authority in doing so.

6. Do you ascribe to the concept of a living Constitution? Please explain.

7. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

8. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

9. At your hearing, I asked about First Amendment rights and government mandates. From a different perspective, what is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

10. Do you believe that the death penalty is an acceptable form of punishment?

11. Do you believe there is a right to privacy in the U.S. Constitution?

    a. Where is it located?

    b. From what does it derive?

    c. What is your understanding, in general terms, of the contours of that right?

12. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"? Please explain.

13. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

14. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

15. What assurances can you give this Committee that you will not allow political persuasions to play a role in your judicial making philosophy?

16. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

17. Miguel Estrada has a professional background similar to yours. Much of the objection to his nomination was focused on the request that internal Solicitor General memoranda be provided to the Committee. Do you think that was an appropriate request, and would it be appropriate for you to provide similar materials to the Committee in support of your nomination? Please explain.

18. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

19. What would be your definition of an "activist judge"?

20. What is the most important attribute of a judge, and do you possess it?

21. Previously, you have made comments about allowing cameras in the courtroom, stating, "When I think about it objectively and take my personal interests out of the picture, I think cameras should be there." Would you support legislation that allows for cameras in federal courtrooms, including the Supreme Court, and if allowed, what actions would you undertake to ensure cameras were operated in your courtroom? Please explain.

22. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

23. 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?

24. In general, Supreme Court precedents are binding on all lower federal courts. 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?

25. 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?

26. 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?

27. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

28. What weight should a judge give legislative intent in statutory analysis?

29. 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.

30. 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?

31. 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?

32. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what

individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

33. Please describe with particularity the process by which these questions were answered.

34. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Gregory Woods
Nominee, U.S. District Judge for the Southern District of New York

1. According to your questionnaire, it appears that other than a law school internship at the Philadelphia District Attorney's Office your practice has focused solely on civil matters. As a district judge, you will be asked to preside over both civil and criminal cases.

   a. What experience do you have with criminal law?

   b. What steps have you taken to familiarize yourself with the area of criminal law?

   c. What steps do you plan to take to get up to speed, should you be confirmed?

2. According to your questionnaire, you have not tried any cases to verdict or final judgment. Can you please elaborate on your trial and litigation experience for the committee?

3. During your hearing, I asked you to grade your performance as General Counsel for the Department of Energy, specifically how you did your job of ensuring that the Department complies with its obligation under law. I did not receive an answer to this question; please grade your performance in this area.

4. Did you keep your commitment to do a full review of all of Department of Energy's current authorizations and to help identify if there are any areas that are duplicative and perhaps unnecessary?

   a. Please elaborate on what you have accomplished.

5. In 1986, I authored an update the Federal False Claims Act which reinvigorated the qui tam provisions and has helped recover over $30 billion in taxpayer dollars. Your background materials indicate that while at the Department of Justice you have handled a number of False Claims Act cases.

   a. Could you please briefly describe your experience with the False Claims Act, in general, and specifically any work you did with qui tam whistleblowers?

   b. During the litigation of False Claims Act cases you handled, did you ever prepare memoranda advocating for or against intervening in a case filed by a qui tam whistleblower?

c. In your experience, did you ever receive approval to intervene in a matter, only to have that approval reversed and subsequently withdrawn?

d. If you were to receive such a subsequent declination, would you find that unusual?

e. What is your view regarding the constitutionality of the False Claims Act and its qui tam provisions?

f. What factors should a judge consider when determining whether or not to award a portion of the government's recovery to qui tam whistleblowers, or determining the amount to award?

g. If confirmed, will you ensure that qui tam whistleblowers are afforded all the rights and privileges authorized by the False Claims Act?

6. What is the most important attribute of a judge, and do you possess it?

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

8. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

9. 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?

10. 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.

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. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

14. What is your understanding of the workload in the Southern District of New York? If confirmed, how do you intend to manage your caseload?

15. 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?

16. 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?

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Elizabeth A. Wolford
Nominee, U.S. District Judge for the Western District of New York

1. In a 2004 column discussing legislation that prohibited same-sex couples from entering into civil marriages but allowed them to form civil unions, you wrote that "the principle of Brown v. Board of Education stands for the proposition that the beliefs of the majority have no usefulness when dealing with issues of civil rights."

    a. Can you please explain what you meant by that statement?

    b. Is it your opinion that "beliefs of the majority" are never "useful" when dealing with a major issue such as the redefinition of marriage?

    c. If confirmed, as a judge, what deference would you give to the "beliefs of the majority" as expressed through the legislative process?

2. What is the most important attribute of a judge, and do you possess it?

3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

4. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

5. 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?

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

10. What is your understanding of the workload in the Western 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. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

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

Debra M. Brown
Nominee, U.S. District Judge for the Northern District of Mississippi

1. What is the most important attribute of a judge, and do you possess it?

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

3. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. 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?

4. 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?

5. 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.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

8. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

9. What is your understanding of the workload in the Northern District of Mississippi? If confirmed, how do you intend to manage your caseload?

10. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

11. 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?

12. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

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13. Please describe with particularity the process by which these questions were answered.

14. Do these answers reflect your true and personal views?

Questions for the Record for all nominees
Senator Ted Cruz
7/10/13 "Judicial Nominations" Hearing
Responses of Patricia Millett

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: While I have the greatest respect for the Supreme Court's members, I cannot claim familiarity with any particular judicial philosophies the Justices might possess. Nor do I have a judicial philosophy myself, as I have devoted my career to the practicalities of litigating as an advocate for a broad array of clients. I can, however, describe the methodology for adjudication that I would bring to the bench if confirmed. I would build primarily on lessons learned from the judge for whom I clerked, Judge Thomas Tang, who taught me to work each case diligently to find the right answer. I would approach each case with a fully open mind, review carefully the underlying (judicial or administrative) decision, study closely the relevant text (*e.g.*, constitutional, statutory, regulatory, or contractual), examine the record and procedural posture of the case (including verifying jurisdiction, standing, and related considerations), review and analyze relevant case law, study the briefs, listen thoughtfully to the views of attorneys and judicial colleagues, and on that basis come to the right decision to the best of my ability. I would then strive to articulate the reasoning clearly and cogently in opinion writing.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I believe that the Constitution should be interpreted with loyalty to text and precedent. The text is an enduring rulebook for governance, while precedent illuminates its application to particular cases. If confirmed, I would adhere to Supreme Court and D.C. Circuit precedent about the role of original text and intent in applying the Constitution to cases before me.

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 court of appeals judge, I would have no capacity to overrule precedent except (i) as a member of the court's en banc process, or (ii) in the rare circumstance when intervening Supreme Court precedent is so directly on point and indistinguishable as to render prior D.C. Circuit precedent "clearly an incorrect statement of current law," *United States v. Dorcely*, 454

F.3d 366, 373 n.4 (D.C. Cir. 2006). My understanding is that, in the latter circumstance, the panel decision is circulated to the full court prior to publication to ensure concurrence. If I were confirmed, when serving as a member of an en banc court, I would adhere to Supreme Court and D.C. Circuit precedent governing when departures from stare decisis are permitted. That precedent focuses on settled expectations and reliance interests, the proven unworkability of precedent, and the erosion of the authority undergirding the prior ruling. In addition, principles of stare decisis are most weighty in the statutory context because the legislature has the capacity to correct any error.

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 statement 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" is, as noted, from the Supreme Court's decision in *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 552 (1985). The *Garcia* decision and subsequent decisions addressing state sovereignty and constitutional limitations on congressional power, like *New York v. United States*, 505 U.S. 144 (1992), are binding precedent to which I would adhere in adjudicating cases.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The extent of Congress's Commerce Clause power has been addressed in cases such as *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Raich*, 545 U.S. 1 (2005), and I would adhere to those precedents in adjudicating cases were I to be confirmed. Those cases spell out three particular categories of activities that fall within Congress's Commerce Clause power: (1) the use of the channels of interstate commerce, (2) the regulation and protection of the instrumentalities of interstate commerce, or persons or things in interstate commerce, and (3) activities that, in the aggregate, have a substantial effect on interstate commerce. I note that, in a concurring opinion in *Raich*, Justice Scalia expressed the view that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." 545 U.S. at 37 (Scalia, J., concurring in the judgment).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The starting point for considering judicially enforceable limits on executive orders and actions is the Supreme Court's decision in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952), and in particular the tripartite analysis outlined in Justice Jackson's concurring opinion. That opinion explains that executive authority is at its greatest when the "President acts pursuant to an express or implied authorization of Congress," *id.* at 635 (Jackson, J., concurring); and it is at its nadir when the President acts in a manner "incompatible with the expressed or implied will of Congress," *id.* at 637 (Jackson, J., concurring). In the absence of any congressional direction, the President must act pursuant to an independent executive power or concurrent power. *Id.* at 637. The Supreme Court's decision in *Medellín v. Texas*, 552 U.S. 491 (2008), also identified a federalism limitation on the Executive's power in the context of a non-self-executing treaty. Executive actions in the form of regulatory action are subject to substantive statutory limitations on the scope and terms of the legislative delegation, the Administrative Procedure Act, and precedent governing the scope of agency action like *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), and *Gonzales v. Oregon*, 546 U.S. 243 (2006). I would adhere to governing Supreme Court and D.C. Circuit precedent in any case raising questions concerning the scope of executive authority.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Chavez v. Martinez*, 538 U.S. 760 (2003), the Supreme Court reconfirmed that "[o]nly fundamental rights and liberties which are 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' qualify for [substantive due process] protection," *id.* at 775. That is the precedent that I would apply were I to be confirmed. *See also McDonald v. City of Chicago*, 130 S. Ct. 3020, 3034 (2010) (a right is fundamental for purposes of incorporation into the Fourteenth Amendment when it is "fundamental to *our* scheme of ordered liberty and system of justice") (emphasis in original).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny (whether strict scrutiny or intermediate scrutiny) under the Equal Protection Clause to a narrow set of classifications like race, ethnicity, gender, religion, and illegitimacy. Classifications that trigger strict scrutiny are

those that so rarely have any relevance to the achievement of a legitimate governmental objective that the Supreme Court considers statutory reliance on such a classification to more likely reflect prejudice or stereotyping. Classifications subject to intermediate scrutiny (like gender) are those that are sometimes relevant, but that, in the Supreme Court's judgment, commonly do not provide a legitimate basis for differential treatment. Were I to be confirmed, I would adhere to binding Supreme Court and D.C. Circuit precedent on any such question should it come before me.

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 noted, in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Supreme Court predicted that, by 2028, "the use of racial preferences will no longer be necessary to further the interest" of promoting diversity in public institutions of higher education, *id.* at 343. Were I to be confirmed, the constitutional test that I would apply to analyze the constitutionality of considerations of race in university admissions is the strict scrutiny test prescribed by *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

Senator Chuck Grassley
Questions for the Record

Patricia Ann Millett
Nominee, United States Circuit Judge for the D.C. Circuit

1. **You have extensive appellate experience, particularly before the Supreme Court of the United States. Certainly during that time you have reflected on the judges or Justices before whom you have appeared. Please describe for us some traits or judicial philosophy that you would like to emulate as a judge, if confirmed.**

   Response: I admire many traits in Judge Tang, for whom I clerked, as well as in other judges and justices before whom I have appeared. In my view, the most critical traits for a judge to have are an open and impartial mind, an unyielding devotion to the rule of law, a desire to faithfully steward a fair and evenhanded system of justice, respect both for the lawyers and parties who appear before the court and for judicial colleagues, a rigorous analytical mind, and the ability to communicate legal decisions in clear and cogent writing.

2. **You wrote an amicus brief in the case of *United States v. Windsor* arguing that the Bipartisan Legal Advisory Group (BLAG) did not have Article III standing and furthermore that the Supreme Court did not have jurisdiction because the United States had suffered no injury sufficient to invoke Article III standing. Given your argument that BLAG lacked standing, what recourse do you see available for Congress when the executive branch decides to stop defending a lawfully enacted statute?**

   Response: I co-wrote that brief as an advocate in support of the court-appointed *amica curiae*. In that capacity, the Supreme Court specifically directed us to present the best arguments available for two propositions: (i) that the Bipartisan Legal Advisory Group (BLAG) lacked Article III standing in the case, and (ii) that the Executive Branch's agreement with the court below that the Defense of Marriage Act is unconstitutional deprived the Court of jurisdiction to decide the case. *See* Order, *United States v. Windsor*, 133 S. Ct. 814 (Dec. 11, 2012). In the *Windsor* decision, the Supreme Court did not answer the question of whether BLAG had standing. *See United States v. Windsor*, 133 S. Ct. 2675, 2688 (2013) ("[T]he Court need not decide whether BLAG would have standing to challenge the District Court's ruling and its affirmance in the Court of Appeals on BLAG's own authority."). Accordingly, it remains an open question whether Congress may defend the constitutionality of a law when the Executive Branch declines to defend it. *See also id.* at 2712-2714 (Alito, J., dissenting) (expressing the view that, in certain circumstances, Congress would have standing to defend the constitutionality of a statute when the Executive Branch declines to defend it). In addition, Congress could appear, as it commonly does, as

amicus curiae in a case to present a constitutional defense of a law. Finally, Congress has its traditional Article I powers to respond, in a system of checks and balances, to the Executive Branch's actions.

3. **You have spoken in various forums about the values and importance of diversity, and addressed that issue in your nomination hearing. You noted diversity works outward, as a symbol to everyone in the country that opportunities here are based on merit and hard work, not race, gender, ethnicity, religion, or any of those lines; and that diversity increases open-mindedness. In panel discussions regarding Justice Sotomayor's stance that her decisions would be different as a Latina woman than what a white man would decide, you defended her invocation of diversity as a strong positive value, and were somewhat critical about the nominations process not being a forum for sophisticated discussion about diversity. Could you further explain your view regarding the role of diversity on the bench and how it does or should influence adjudicating cases or the outcome of a case?**

   Response: First, I believe that diversity on the bench takes many forms and extends not just to characteristics like race, ethnicity, and gender, but also to such factors as experiential diversity in one's professional life (public and private sector work, areas of substantive expertise, second careers), military service, and hardships overcome. Second, diversity on the bench communicates to the public equality of opportunity and evenhandedness of the rule of law. It also builds trust in the judicial process. Third, ensuring that judges approach cases with fully open minds is critical to preserving the rule of law and ensuring that the judiciary stays within the proper limits of its role in a limited federal government. Diversity enhances open-mindedness, and when judges approach each case with fully open minds, they are best equipped to render decisions directed entirely by text, precedent, and the rules of legal analysis prescribed by case law.

4. **You drafted an amicus brief in the Supreme Court case of *Fisher v. University of Texas at Austin*. In it you wrote that the facts of American life have not so drastically changed in the years since *Grutter* was decided to warrant its reexamination.**

   a. **Is this statement representative of your beliefs about the legality of affirmative action programs? Please explain.**

      Response: I wrote that brief on behalf of the law firm's clients, the former commissioners and general counsel of the Federal Communications Commission and the Minority Media and Telecommunications Council, and the views expressed in that brief are the clients' views. In my practice, my role has always been to give my clients a voice in the legal system; I would not consider it appropriate to use my clients' cases to voice any personal views of my own.

b. **Please explain your views on the constitutionality of affirmative action programs, specifically in higher education.**

Response: The constitutionality of considerations of race in university admissions must be analyzed under the strict scrutiny test prescribed by *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

5. **When is it appropriate for the federal government to preempt state law? If confirmed, what sources and approaches would you utilize to assess whether Congress or the Executive Branch in fact intended to preempt state law and acted within the scope of their authority in doing so.**

Response: To preempt state law, Congress must exercise properly one of its enumerated powers under the Constitution, thereby triggering (most commonly) the Supremacy Clause under the Constitution if state law conflicts with the federal law. Preemption can be express by the terms of a statute. Preemption also can be implied if compliance with both state and federal law is impossible, or if state law stands as a barrier to the objects and purposes of federal law. To determine whether Congress intended to preempt state law, I would analyze the relevant federal statutory authority, the contradictory state law, and precedent, including Supreme Court and D.C. Circuit cases addressing the application of a presumption against preemption and the proper framework for analysis when compliance with both federal and state law is deemed impossible, *see, e.g.*, *Mutual Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013); *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011); *Wyeth v. Levine*, 555 U.S. 555 (2009).

6. **Do you ascribe to the concept of a living Constitution? Please explain.**

Response: I recognize that the phrase "living Constitution" can have different meanings for different people. In my view, the Constitution is, most fundamentally, a bargain or contract between the people of the United States and the federal government, prescribing the limited powers assigned to the federal government, identifying some limitations on state and local governments, and reserving the balance of rights and authority to the people and the States. While the factual circumstances and scenarios to which the Constitution's terms must be applied can change over time, the terms of that fundamental bargain as expressed in the Constitution's text do not change.

7. **What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?**

Response: If confirmed, my approach in applying the Constitution to contemporary statutory and regulatory issues would be (i) to determine at the outset whether the case is properly

before the court (verifying standing, jurisdiction, ripeness, and procedural barriers to the suit), (ii) to apply principles of constitutional avoidance where applicable, (iii) to analyze the relevant constitutional text and the arguably conflicting statutory provisions, (iv) to ensure that any regulatory action falls within the scope of delegated authority, (v) to consult and apply relevant precedent of the Supreme Court and D.C. Circuit, (vi) to consider for whatever persuasive value they might have the opinions of other circuits, and (vii) to study carefully the briefs and arguments of the parties and the views of other judges.

8. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

Response: A judge's personal opinions should have no role in interpreting the Constitution.

9. At your hearing, I asked about First Amendment rights and government mandates. From a different perspective, what is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

Response: The Supreme Court reaffirmed in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), that " 'there is room for play in the joints between' the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause," *id.* at 713-714 (citation omitted). Were I to be confirmed, that is the precedent I would apply in analyzing governmental activities in this area.

10. Do you believe that the death penalty is an acceptable form of punishment?

Response: Starting with *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court has repeatedly held that the death penalty is permissible when applied in accordance with the Constitution's requirements. In addition, the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution textually presuppose capital punishment when they require "due process of law" before a person is "deprived of life." U.S. CONST., Amend. V; *see* U.S. CONST. Amend. XIV (requiring "due process of law" before a State can "deprive any person of life"); *see also* U.S. CONST., Amend. V ("No person shall be held to answer for a capital *** crime, unless on a presentment or indictment of a Grand Jury[.]").

11. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Constitution has a number of provisions that protect the interests of individuals in autonomy or privacy from governmental regulation, and there is Supreme

Court precedent interpreting and applying those provisions to which I would adhere, were I to be confirmed.

a. Where is it located?

Response: The First Amendment's protections enforce zones of privacy in association, religious exercise, and speech. The Third and Fourth Amendments enforce the privacy of the home and bodily integrity against governmental entry or intrusion without a duly authorized warrant (or a recognized emergency exception to the warrant requirement). The Supreme Court has also found that the Due Process Clause protects certain types of intimate decisionmaking that are deeply rooted in the Nation's history, legal traditions and practices—for example, the rights to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), to direct the education of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), to have marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965), to use contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972), and to refuse life-saving nutrition and hydration, *see Washington v. Glucksberg*, 521 U.S. 702 (1997) (discussing *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261 (1990)).

b. From what does it derive?

Response: Please see the constitutional provisions discussed in the answer to Question 11(a), above.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see the answer to Question 11(a), above.

12. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"? Please explain.

Response: The starting point in any case arising under the Constitution or asserting a constitutional right would be the actual text of the Constitution itself and precedent interpreting that text from the Supreme Court or D.C. Circuit. Were I to be confirmed, I would apply all relevant precedent of the Supreme Court in deciding cases arising under the Constitution without impermissibly reading between the lines.

13. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

Response: Judges adjudicating constitutional cases should adhere to the Constitution's text and governing precedent from the Supreme Court and their circuit.

14. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court has not yet decided what standard of scrutiny applies to federal or state gun laws, although footnote 27 of *Heller* noted that rational basis review would not be appropriate. *District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008) ("If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect."). Following *Heller* and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), the D.C. Circuit adopted a two-step approach to analyzing Second Amendment challenges, under which the court first determines whether the regulation governs conduct that falls within the scope of the Second Amendment's fundamental individual right to bear arms and, if it does, next determines the level of scrutiny based on the nature of the regulation. *See Heller v. District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011) (applying intermediate scrutiny). Like challenges under the First Amendment, the D.C. Circuit has determined that the level of scrutiny "depends on the nature of the conduct being regulated, and the degree to which the challenged law burdens" the right protected by the Amendment. *Heller*, 670 F.3d at 1257; *see also Schrader v. Holder*, 704 F.3d 980, 989 (D.C. Cir. 2013). "[A] regulation that imposes a substantial burden on the [Amendment's] core right of self defense *** must have a strong justification, whereas a regulation that imposes a less substantial burden "should be proportionately easier to justify." *Schrader*, 704 F.3d at 989. I would adhere to Supreme Court and D.C. Circuit precedent in this area should I be confirmed.

15. What assurances can you give this Committee that you will not allow political persuasions to play a role in your judicial making philosophy?

Response: Any personal opinions, political or otherwise, have never played a role in my representation of clients, nor would they have any role whatsoever in my judicial decisionmaking were I to be confirmed. I was drawn to the law as a career because I believe devotedly in the justice system—and the carefully calibrated and balanced governmental system—that our Constitution creates. That justice system has endured and enjoys the trust of the people it serves precisely because it engenders faith that decisions are made based on the fair, impartial, and evenhanded application of the law, not personal predilections. Were I so fortunate as to be confirmed to be a steward of that justice system, I would not and could not betray the public's, the parties', or the Framers' trust in that process by injecting any personal or political preferences into my decisionmaking.

16. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: Were I to be confirmed, my methodology in deciding cases would be to approach each case with a fully open mind, to review carefully the underlying (judicial or administrative) decision, to study closely the relevant text (*i.e.*, constitutional, statutory, regulatory, or contractual), to examine the record and procedural posture of the case (including verifying jurisdiction, standing, and related considerations), to review and analyze relevant case law, to study the briefs, to listen thoughtfully to the views of attorneys and judicial colleagues, and on that basis to come to the right decision to the best of my ability. I would then strive to articulate the reasoning clearly and cogently in opinion writing.

Fully appreciating the gravity of the task for which I have been nominated, I expect that, if I were confirmed, the transition would bring challenges, starting with establishing my chambers and becoming acclimated to the court's distinct processes and procedures and the execution of my role in that system.

17. Miguel Estrada has a professional background similar to yours. Much of the objection to his nomination was focused on the request that internal Solicitor General memoranda be provided to the Committee. Do you think that was an appropriate request, and would it be appropriate for you to provide similar materials to the Committee in support of your nomination? Please explain.

Response: Any such memoranda belong not to me, but to the Justice Department and the Office of the Solicitor General as the custodial clients of my work. Any such request would have to be directed to those entities. While the decision to turn over any such work thus would not be mine but the client's, I share the concerns expressed by Miguel Estrada and (I believe) every past Solicitor General in my lifetime that such disclosure of internal memoranda might harm the litigating positions of the federal government and might also have a chilling effect on the Office of the Solicitor General's ability to obtain the confidential advice needed to conduct litigation in the best interests of the United States.

18. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: Justice Breyer's opinion in *Brown* was a dissent and thus is not binding precedent that an appeals court judge would need to follow. With respect to going outside the record: (1) the Supreme Court has ruled that, in applying the law, judges are duty-bound to apply the full body of law bearing on asserted claims and not confine themselves to the cases cited by the parties in the record, *see Elder v. Holloway*, 510 U.S. 510 (1994); (2) in administrative law cases, the Supreme Court has ruled that judicial review is strictly confined to the agency record and may not be supplemented through litigation, *see SEC v. Chenery Corp.*, 332 U.S. 194 (1947); and (3) with respect to the facts of a case, I would expect that the parties would develop the factual record in the district court, and, were I to be confirmed, I would hew to Supreme Court and D.C. Circuit precedent concerning the scope of the record for appellate decisionmaking.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: Cases must be decided on the basis of the factors made relevant by constitutional or statutory text and precedent. In *Brown*, California was required to show that its law satisfied strict scrutiny because it was a content-based regulation of speech. In attempting to demonstrate a compelling interest in regulating speech based on its content, California relied on psychological and sociological scientific studies in an effort to establish a linkage between violent video games and criminal and other socially harmful behavior. The majority opinion in *Brown* ruled that the "State's evidence [wa]s not compelling" because "[n]early all of the research is based on correlation, not evidence of causation." *Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729, 2739 (2011) (internal quotation marks and citation omitted).

19. What would be your definition of an "activist judge"?

Response: There are two types of judicial decisionmaking that would exceed the proper bounds of a judge's role. First, it is improper and exceeds the prescribed bounds of adjudication for a judge to fail to hew to limitations on the judicial role prescribed by the Constitution, statute, and case law. The federal government is a government of limited, enumerated powers, and the federal judiciary's role is limited still further. Failure to enforce

limitations on jurisdiction, standing, ripeness, or the fact-finding provinces of juries and trial courts would be examples of rulings that would transgress the proper judicial role. Second, it is also improper and in excess of the judicial function for a judge to inject personal opinion or private views into the decision of a case, rather than resolving the case based on the analysis of text and precedent.

20. What is the most important attribute of a judge, and do you possess it?

Response: In my opinion, the most important attribute for a judge to possess is to have an open mind, including a willingness to listen and think carefully and circumspectly. The rule of law and the preservation of a fair and impartial justice system that people can trust depend at their foundation on judges coming to each case without preconceptions or personal views, and considering carefully what the law says (in terms of relevant textual direction and precedent), what the parties say, and what judicial colleagues say. I possess that attribute.

21. Previously, you have made comments about allowing cameras in the courtroom, stating, "When I think about it objectively and take my personal interests out of the picture, I think cameras should be there." Would you support legislation that allows for cameras in federal courtrooms, including the Supreme Court, and if allowed, what actions would you undertake to ensure cameras were operated in your courtroom? Please explain.

Response: I personally support the principle of enhanced access for people to *their* judicial system, including through the use of cameras. I note, in that regard, that the D.C. Circuit has decided to provide for the same-day releases of audio recordings of oral arguments beginning in September 2013. *See* United States Court of Appeals for the District of Columbia Circuit, News Release – Audio Recordings of Oral Arguments, http://www.cadc.uscourts.gov/internet/home.nsf/Content/Announcement++News+Release++Audio+Recordings+of+Oral+Arguments (last visited July 20, 2013). With respect to the appropriateness of any particular piece of legislation, that would depend on how the law balances countervailing considerations in the judicial process (such as juror anonymity, protection for confidential information, and similar considerations). If I were to be confirmed, I would share my views with judicial colleagues. But I also recognize that appellate courts are collegial bodies and that such a decision would be made by the court as a whole, not by an individual judge.

22. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: Collegiality is a signature aspect of appellate decisionmaking. The requirement of collective decisionmaking underscores the importance of appellate decisions to the law. It also ensures the impartial and evenhanded enforcement of the rule of law, as well as the stability and durability of judicial decisions. Finally, making appellate decisions based on jointly shared judicial judgments enhances public respect for those rulings. Beyond that, the best decisions are the most informed and carefully thought out decisions, and working through legal questions in a collective, collaborative manner provides the best framework for fully considering and analyzing all of the relevant legal authorities.

Because I would cherish the collegial nature of deliberations and decisionmaking, if confirmed I would approach each case with openness to the perspectives, analyses, and concerns of fellow panel members. I would also endeavor to ensure that all discussions and even disagreements are undertaken in a respectful and conscientious manner.

23. 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: The appropriate temperament for a judge is one of deep respectfulness and openness to the views and insights of others. Respect must always be shown to the parties and litigants, and to the public whom the justice system serves. Respect for colleagues—whether respectful agreement or disagreement—is vital. And respect for the rule of law must always predominate.

24. In general, Supreme Court precedents are binding on all lower federal courts. 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 fully committed to adhering to precedent of the U.S. Supreme Court and the D.C. Circuit. Any personal views have no place in judicial decisionmaking.

25. 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: The sources to which I would turn in deciding an issue of first impression are: (i) the relevant text, whether constitutional, statutory, or regulatory; (ii) the body of law and related precedent from the Supreme Court and D.C. Circuit; (iii) decisions of other circuit courts or, if relevant, state appellate courts, that involve related issues (while these sources

would not be binding, they might constitute persuasive authority); (iv) arguments of attorneys in the briefs submitted to the court and the cases that they cite; (v) analysis of the issue at oral argument and by judicial colleagues on the case; and (vi) secondary sources deemed appropriate for consideration by precedent, such as the FEDERALIST PAPERS.

26. 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 are binding on lower appeals courts, and I would adhere to such precedent regardless of whether I considered it erroneous. Likewise, a panel of the D.C. Circuit is bound by prior panel decisions within that Circuit. If I believed a panel had erred, my recourse would be to humbly reconsider my own views and to learn from the new decision. If still concerned about the outcome, I could suggest rehearing en banc. But unless and until that occurs, I would dutifully follow circuit precedent. The legal system simply cannot work and cannot provide for the stable, evenhanded administration of justice if judges fail to adhere to binding precedent on those terms.

27. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: It is the solemn duty of the judicial branch to declare a federal law unconstitutional if, and only if, it transgresses the limits that the Constitution imposes on the legislative power. That is a grave duty that should be undertaken only when necessary. The starting point should be the presumption of constitutionality that applies to all duly enacted laws. In addition, a judge must ensure, at the outset, that the case appropriately presents the constitutional issue by analyzing threshold matters like jurisdiction, standing, and ripeness. Precedent governing the appropriateness of facial versus as-applied challenges should also be followed. Finally, principles of constitutional avoidance, like those outlined by Justice Brandeis in his concurring opinion in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936), should be applied when appropriate because they are an important limitation on the judicial power.

28. What weight should a judge give legislative intent in statutory analysis?

Response: The best evidence of legislative intent is the text of a statute itself, and that text should control unless it is too ambiguous to answer the question presented. If such ambiguity arises in an administrative-law case, then principles of *Chevron* deference would govern deference to an agency's interpretation of legislative purpose and intent. *See Chevron,*

U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984). In addition, any Supreme Court or D.C. Circuit precedent addressing the statute's meaning, purpose, and operation would be applied to resolve the ambiguity. I would also adhere to Supreme Court and D.C. Circuit precedent governing whether and when legislative history may be considered to answer any remaining textual ambiguity.

29. 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: The Constitution defines the relationship between the people of the United States and their federal government (and, at times, state governments), and thus it is an organic document, the meaning of which should be determined with reference to the authorized domestic sources of authority, which are primarily text, precedent, and original documents like the FEDERALIST PAPERS. Accordingly, international law should not play any role unless text or precedent specifically provide for it, such as might occur with the Law of Nations Clause, U.S. CONST., Article I, § 8, cl. 10.

30. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I can provide assurance and evidence of my impartiality and ability to disregard personal views in three ways: First, I have represented a broad spectrum of clients over the course of more than two decades of practice—both prosecutions and criminal defendants; big businesses, small businesses, trade associations, and individual employees; civil rights plaintiffs and civil rights defendants; and every level of government from the federal government to States to local governments to Indian tribes. My personal views, if any, have never played a role in the vigorousness of my advocacy on a client's behalf, and I would bring that experience to the bench. Second, while I have represented a diverse array of clients, I know that they all have one thing in common: they want nothing more than a fair and impartial judicial process that they can trust. Trust in impartial adjudication is the coin of the realm for the judicial process because, as FEDERALIST 78 explained, the judiciary has "neither force nor will." I could never betray that trust; I know how vitally important it is to the litigants that come to court each day. Third, were I to be confirmed, I would take the judicial oath which would bind me irrevocably to that complete impartiality to which the people are entitled and that the Constitution requires.

31. 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: A court of appeals judge has no capacity to overrule precedent except as a member of the court's en banc process, or in the rare circumstance when intervening Supreme Court precedent is so directly on point and indistinguishable as to render prior circuit precedent "clearly an incorrect statement of current law." *United States v. Dorcely*, 454 F.3d 366, 373 n.4 (D.C. Cir. 2006). My understanding is that such panel decisions are circulated to the full court prior to publication to ensure concurrence.

If confirmed, when serving as a member of an en banc court, I would adhere to Supreme Court and Circuit precedent governing when departures from stare decisis are and are not permitted, focusing on the effect of unsettling expectations and disturbing reliance interests, the workability of precedent, and the erosion of decisional law undergirding the prior ruling. Mere disagreement with the prior decision's outcome is emphatically not enough to warrant overturning precedent. Stability in the law is far too important for that. Finally, principles of stare decisis are most weighty in the statutory context because the legislature has the capacity to correct any error.

32. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: I have not had any contact with the AAJ or the AAJ Judicial Task Force, and to my knowledge no individual or representative of that group has approached me regarding the nomination on behalf of that organization.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

33. Please describe with particularity the process by which these questions were answered.

Response: I reviewed the questions carefully and thoughtfully, undertook needed research, and drafted answers. I submitted those answers for review by a Justice Department attorney in the Office of Legal Policy. I made subsequent revisions and finalized my answers for submission.

34. Do these answers reflect your true and personal views?

Response: Yes, these answers are my own true and personal views.

Questions for Judicial Nominees
Senator Ted Cruz
Responses of Gregory Woods

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is founded on the principle of strict adherence to the rule of law. I believe that judges should base their decisions firmly on existing law and precedent, and that decisions should be limited to issues properly before the court. While I have deep respect for the U.S. Supreme Court as an institution, I have not studied the judicial philosophies of each of the individual Justices of the Court. As a result, I cannot identify a particular Justice whose philosophy 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: The Supreme Court has looked to the original intent and the original public understanding of the Constitution. *See, e.g. United States v. Heller*, 554 U.S. 570 (2008); *Crawford v. Washington*, 541 U.S. 36 (2004); *Alden v. Maine*, 527 U.S. 706 (1999). If I am confirmed to serve as a district court judge, I will follow Supreme Court and applicable circuit court precedent in deciding particular cases before me.

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 to serve as a district court judge, I will not overrule binding precedent. I will follow Supreme Court and relevant circuit court precedent in deciding the cases before me. If a decision that is precedent today is overruled subsequently by a higher court of competent jurisdiction, I will follow the new precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: If I am confirmed to serve as a district court judge, I will follow the Supreme Court's ruling in *Garcia* and any subsequent Supreme Court or applicable circuit court decisions with respect to the proper approach to the protection of State sovereign interests.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has defined the limits of Congress' authority to regulate in reliance on the Commerce Clause: "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, i.e., those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (citations omitted). In *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court observed that "*Lopez*'s review of Commerce Clause case law demonstrates that in those cases where we have sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor." *Morrison* at 611. If I am confirmed to serve as a district court judge, I will follow Supreme Court and applicable circuit court precedent with respect to the extent of Congress' Commerce Clause power.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: As the Supreme Court has stated, "[t]he President's authority to act, as with the exercise of any government power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Jackson, J., concurring). These limitations on the President's authority are judicially enforceable.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that the "Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If I am confirmed to serve as a district court judge, I will follow Supreme Court and applicable circuit court precedent with respect to the identification of "fundamental" rights for purposes of the substantive due process clause.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has identified certain classifications as requiring heightened scrutiny, such as classifications based on race, national origin and gender. The Supreme Court has also mandated strict scrutiny of state action that impinges on personal rights protected by the Constitution. If I am confirmed as a district court judge, I will follow Supreme Court and applicable circuit court precedent with respect to classifications that should 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).

Response: I do not have a basis to evaluate whether or not the Supreme Court will draw this conclusion in the future. If I am confirmed to serve as a district court judge, I will follow the Supreme Court's holding in *Grutter* and any other applicable controlling precedent to the case before me.

Senator Chuck Grassley
Questions for the Record

Gregory Woods
Nominee, U.S. District Judge for the Southern District of New York

1. **According to your questionnaire, it appears that other than a law school internship at the Philadelphia District Attorney's Office your practice has focused solely on civil matters. As a district judge, you will be asked to preside over both civil and criminal cases.**

   a. **What experience do you have with criminal law?**

   Response: Other than during the internship described above, criminal issues have arisen only occasionally as ancillary matters in the course of my practice. A small number of the cases that I worked on as a Trial Attorney at the Department of Justice involved parallel criminal proceedings.

   b. **What steps have you taken to familiarize yourself with the area of criminal law?**

   Response: I have begun to refresh my knowledge of criminal procedure by reviewing the Federal Rules of Criminal Procedure and a treatise in that area. I also plan to begin the dedicated study described below.

   c. **What steps do you plan to take to get up to speed, should you be confirmed?**

   Response: If I am confirmed to serve as a district court judge, I will do all of the work necessary to master this area of my responsibilities. I have had the opportunity to practice in several areas of law other than criminal law; I am a quick learner, and I know that there is no substitute for hard work. If I am confirmed to serve as a district court judge, I expect to continue taking the following specific steps: First, I am reviewing the Federal Rules of Criminal Procedure. Second, I will continue to read relevant treatises in the areas of criminal procedure and criminal law. Third, I will read the seminal cases that I identify from my review of the treatises. Fourth, I will take advantage of the training offered to incoming federal judges by the Administrative Office of the United States Courts. Fifth, I will draw upon the deep expertise of colleagues on the bench of the Southern District of New York to prepare me for that portion of my docket.

2. **According to your questionnaire, you have not tried any cases to verdict or final judgment. Can you please elaborate on your trial and litigation experience for the committee?**

   Response: As General Counsel of the Department of Energy, I supervise the work of

litigation counsel and participate in decision-making with respect to litigation that affects my agency; the Department of Justice generally litigates in court on behalf of the agency. As Deputy General Counsel of the Department of Transportation, I had similar responsibilities. During my time as a Trial Attorney in the Commercial Litigation Branch of the Civil Division of the United States Department of Justice, I worked full-time as a litigator. I conducted discovery, conducted and defended depositions, appeared in court and worked on motions. I prepared for trial, but my cases were resolved before trial. During my years in private practice, I did not personally litigate matters, with the exception of a pro bono matter, but I contributed my expertise to litigation matters involving my practice area.

3. **During your hearing, I asked you to grade your performance as General Counsel for the Department of Energy, specifically how you did your job of ensuring that the Department complies with its obligation under law. I did not receive an answer to this question; please grade your performance in this area.**

   Response: I believe that I have done my job very well. I would grade my performance highly, and I believe that my colleagues would also rate my performance as strong. I did my job of ensuring that the Department complied with its obligations under law in a number of ways. First, by providing strong leadership of the dedicated team of attorneys who work for me, by establishing clear expectations regarding the fulfillment of our obligations as agency counsel, and by supporting them in their work. Second, by expecting careful and complete legal analysis from my team. Third, by careful review and analysis of the specific legal issues that I am personally involved in. I hope that I have performed particularly well by leading by example—the care and diligence with which I approach my work, and by setting a positive tone at the top—projecting my commitment to sound legal analysis and professional conduct to my team.

4. **Did you keep your commitment to do a full review of all of Department of Energy's current authorizations and to help identify if there are any areas that are duplicative and perhaps unnecessary?**

   Response: Under my leadership, members of my staff regularly provide technical assistance to members of Congress upon request, and this would include continuing to work with Senator Murkowski, Ranking Member of the Senate Committee on Energy and Natural Resources, in her efforts to repeal unnecessary authorities. I believe that agencies have a responsibility to work with members of Congress to assist in the drafting of clear statutory text. I strongly support that function of my office, but refer such matters to career attorneys on my staff. I have not been personally involved in responding to requests for this assistance at my agency, but I am not aware that my office has failed to respond to any such request during my tenure.

   a. **Please elaborate on what you have accomplished.**

      Response: While the Office of General Counsel provides technical assistance on projects of this nature through inquiries from members of Congress, unfortunately,

we have not had the resources to undertake our own independent review of all of the Department of Energy's statutory authorities.

5. **In 1986, I authored an update the Federal False Claims Act which reinvigorated the qui tam provisions and has helped recover over $30 billion in taxpayer dollars. Your background materials indicate that while at the Department of Justice you have handled a number of False Claims Act cases.**

   a. **Could you please briefly describe your experience with the False Claims Act, in general, and specifically any work you did with qui tam whistleblowers?**

      Response: I began my legal career as a Trial Attorney in the Civil Fraud Section of the Justice Department. Nearly all of my work involved cases arising under the False Claims Act. A very large number of the cases that I handled originated with complaints by *qui tam* whistleblowers. I worked with whistleblowers or their counsel in the investigation and litigation of those cases. I worked with a broad array of relators in a variety of matters—from a sheet metal worker concerned about fraud in a major defense contract to a doctor concerned about improper billing practices in his new clinic. I learned firsthand from those experiences how important whistleblowers are in bringing potentially fraudulent behavior to light—government could not hire enough investigators to replace them. I also learned how courageous many of them are. Most of the whistleblowers with whom I worked were relatively low-level employees, who put their careers and reputations on the line to stand up to behavior by supervisors and peers that they believed to be wrong. I believe that the whistleblower provisions of the Act, particularly its whistleblower protection provisions, are an essential component of the Act's success.

   b. **During the litigation of False Claims Act cases you handled, did you ever prepare memoranda advocating for or against intervening in a case filed by a qui tam whistleblower?**

      Response: Yes.

   c. **In your experience, did you ever receive approval to intervene in a matter, only to have that approval reversed and subsequently withdrawn?**

      Response: No.

   d. **If you were to receive such a subsequent declination, would you find that unusual?**

      Response: Yes.

   e. **What is your view regarding the constitutionality of the False Claims Act and its qui tam provisions?**

Response: I understand that federal courts have held the False Claims Act and its *qui tam* provisions to be constitutional. *See Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000) (holding that private individuals have standing to bring suit in federal court on behalf of the United States).

f. **What factors should a judge consider when determining whether or not to award a portion of the government's recovery to qui tam whistleblowers, or determining the amount to award?**

Response: The False Claims Act establishes factors for a judge to consider in making this determination. 31 U.S.C. § 3730(d) describes those factors. If I am confirmed to serve as a district court judge, I will follow the relevant statutory provisions and any applicable appellate court precedent in making such a determination.

g. **If confirmed, will you ensure that qui tam whistleblowers are afforded all the rights and privileges authorized by the False Claims Act?**

Response: Yes. If I am confirmed to serve as a district court judge, I will honor *qui tam* whistleblowers' rights and privileges under the False Claims Act in any such case that may come before me.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe that there are many important attributes for a judge, including moderation and restraint, intellect, a strong work ethic and humility. While all of these traits work best together, I believe that the first is most important because it promotes adherence to the rule of law, and, thus, helps to ensure the predictability and reliability of our judicial system. I believe that I possess that attribute.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should render objective, impartial and fair decisions. A judge should also treat all who come before him or her with dignity and respect. I believe that the most important element of judicial temperament is moderation. A moderate, restrained temperament supports the judge's ability to render impartial and fair judgments in all cases, solely on the basis of the law and facts presented in the case. Such a temperament is also valuable because it projects the impartiality and fairness of the judge's decisions to the litigants and others who appear before him or her. I believe that I meet this standard.

8. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes. I am committed to following the precedents of higher courts faithfully and giving them full force and effect.

9. **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 to serve as a district court judge, my job will be to render fair, objective, impartial judgments based on the law and facts of the case before me. I am deeply committed to that obligation. If confirmed, I will always work to provide clear, reasoned explanations of decisions, which should also assure litigants that the basis of a given decision is the law and the facts of the case, not bias or other outside influence.

10. **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: Yes. The Supreme Court has ruled that the death penalty is constitutional with specified limitations.

    If I am confirmed to serve as a district court judge, I will follow governing law and apply it fairly to the facts of the case before me, and, if called upon to impose a death penalty, I would impose that sentence without objection.

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 a case of first impression involving statutory construction, I will look to the text of the statute. If the statutory text is not ambiguous, I will follow the plain meaning of the text. If the text is ambiguous, I will follow Supreme Court and appropriate circuit court precedent to determine the appropriate canon of statutory construction under the circumstances.

12. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: A federal court may declare a statute to be unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). Courts should approach such issues cautiously, with due respect for the decisions of Congress. Generally, courts follow the canon of constitutional avoidance and avoid reaching a constitutional question in the interpretation of a statute if an acceptable alternative construction of the statute exists. If I was confirmed to serve as a district court judge, I would follow Supreme Court and appropriate circuit court precedent with respect to this issue and would declare a statute unconstitutional if required by precedents.

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No.

14. 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: I understand that the workload in the Southern District of New York is very demanding. If I am confirmed to serve as a district court judge, I will actively manage my caseload. My approach will include the regular use of status conferences to establish a program for the speedy adjudication of the case. I will establish reasonable schedules for discovery, motions and trial, and I will expect the parties to adhere to those schedules absent special circumstances. I will work to decide motions within a specified period of time, so that my chambers does not become a source of delay. I will work with the magistrate judges in the Southern District of New York to help manage discovery matters and any other matters capable of referral. Where feasible, I will encourage mediation and work to help parties resolve their matters through settlement. I will use pretrial conferences to try to narrow and define issues to be presented at trial and to provide an opportunity for the parties to consider settlement. If I am confirmed to serve as a district court judge, I hope to draw upon my colleagues on the bench in the Southern District of New York to adopt a comprehensive set of best practices.

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that judges have an essential role in controlling the pace and conduct of litigation. My answer to Question 14, above, describes a number of specific steps that I will take to control my docket if I am confirmed to serve as a district court judge.

16. 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 I am confirmed to serve as a district court judge, I will base my decisions on the facts presented to me and will be guided by applicable law and precedent. I believe that my professional experience has prepared me well to do the substantive legal work required, with diligent effort. I also believe that I have the temperament to be able to provide the fair, impartial and objective decisions that will be required of me if I am confirmed to serve as a district court judge. I believe that the most difficult part of this transition for me will be developing my command of criminal law and procedure, an area in which I have not practiced in the past.

17. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: I have not had any contact with the AAJ, the AAJ Judicial Task Force or any individual or group I know to be associated with the AAJ.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: I am not aware of any such endorsements or promised endorsements.

18. **Please describe with particularity the process by which these questions were answered.**

    Response: I received these questions on July 17, 2013. I drafted responses to the questions and provided them to the Office of Legal Policy of the Department of Justice. I discussed those responses with an official of that office. I made revisions to my responses and authorized their submission to the Committee on July 22, 2013.

19. **Do these answers reflect your true and personal views?**

    Response: Yes.

Response of Elizabeth A. Wolford
Nominee to be United States District Judge for the Western District of New York
to the Questions for Judicial Nominees
from Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I believe that a judge should be fair and impartial, treat all litigants with respect and patience, and decide only the matter before the court with faithful adherence to the law and binding precedent. I have not studied the Justices of the Supreme Court so as to be able to identify and analogize to their judicial philosophies, although I would note that a District Judge would be bound to follow the precedent of the Supreme Court and a District Judge's personal views or philosophy should play no part in his or her decisionmaking.

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 a District Judge is faced with a Constitutional question, he or she should look to whether there is any binding precedent from the Supreme Court or the Court of Appeals for their Circuit. 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 I am confirmed as a District Judge, I would follow United States Supreme Court precedent, including any binding precedent where the Court used originalism to interpret the Constitution.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If I am confirmed as a District Judge, I would be bound by controlling precedent and I would have no authority to overrule it.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: This decision by the Supreme Court is binding on lower courts, and therefore I would abide by it if confirmed as a District Judge, regardless of my personal views, if any.

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 general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce; (2) instrumentalities of interstate commerce and the persons or things in interstate commerce; and (3) activities that substantially affect interstate commerce. In *United States v. Lopez*, 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court articulated limitations on the reach of the Commerce Clause power to certain non-economic activities. In *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia observed that "Congress may regulate even noneconomic activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring). If confirmed and faced with a case that presented a challenge to the constitutionality of a statute on the grounds that it extended to non-economic activity, I would need to research carefully the issue to ensure that my decision was consistent with controlling precedent.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has recognized that the President's ability to issue executive orders or executive actions must "stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The courts may limit a President's attempt to exercise executive powers in excess of that authority as articulated by the Supreme Court.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has recognized certain rights as "fundamental" for purposes of the substantive due process doctrine when they are "objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court applies heightened scrutiny in evaluation of suspect classifications, such as race and national origin. The Supreme Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as fundamental.

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 on the issue of racial preferences in public higher education, including the Supreme Court's recent decision in *Fisher v. University of Texas at Austin*, 81 U.S.L.W. 4503 (2013), regardless of any personal views or expectations.

Senator Chuck Grassley
Questions for the Record

Elizabeth A. Wolford
Nominee, U.S. District Judge for the Western District of New York

1. **In a 2004 column discussing legislation that prohibited same-sex couples from entering into civil marriages but allowed them to form civil unions, you wrote that "the principle of Brown v. Board of Education stands for the proposition that the beliefs of the majority have no usefulness when dealing with issues of civil rights."**

   a. **Can you please explain what you meant by that statement?**

      Response: In *Brown v. Board of Education of Topeka, Shawnee Co., Kansas,* 347 U.S. 483 (1954), the Supreme Court overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896), and held that the laws of four states, presumably representing the views of the majority of persons in those states, were unconstitutional because they violated the constitutionally protected civil rights of the minority in those states, more specifically the right to equal protection. According to the principle set forth by the Supreme Court in *Brown*, even if the majority was opposed to the notion of allowing racially integrated schools, the Constitution did not allow this majority view to be imposed upon the minority. In other words, if a right is constitutionally guaranteed, then it deserves constitutional protection even if it is unpopular.

   b. **Is it your opinion that "beliefs of the majority" are never "useful" when dealing with a major issue such as the redefinition of marriage?**

      Response: No.

   c. **If confirmed, as a judge, what deference would you give to the "beliefs of the majority" as expressed through the legislative process?**

      Response: If confirmed, I would faithfully adhere to established precedent and appropriately defer to the legislative process regardless of my personal opinion. If faced with a constitutional challenge to a duly enacted statute, a court should endeavor to uphold the constitutionality of the statute, if possible, and a statute should only be declared unconstitutional if it clearly violates the Constitution or if the legislature clearly acted beyond its constitutional authority.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe respect is the most important attribute of a judge, and more specifically respect for the law, respect for the litigants, respect for the justice system, and respect for the position. While a judge should have many other attributes to be effective and fair, I believe

that this fundamental notion of respect is critical to possessing all other necessary attributes, and I believe that I 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?**

   Response: An appropriate judicial temperament is fundamental to the effective operation of a court. Without appropriate temperament, the public's confidence in the judicial system is jeopardized. I believe that an appropriate judicial temperament is reflected by patience, open mindedness, transparency, the ability to listen carefully, and decisiveness. I believe that I possess these qualities.

4. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

5. **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: The ability of a judge to decide cases fairly based upon established precedent, without the influence of any biases or political views, is fundamental to the integrity of our judicial system. 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 based on my personal opinions. During my over twenty years of practice, I have represented clients from all different backgrounds with different views and opinions, and I have endeavored to zealously advocate on behalf of each of those clients without regard to whether their views or position matched my own.

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 Supreme Court has held that the death penalty is constitutional, and if confirmed, I would apply the relevant Supreme Court and Second Circuit precedents to any case where death was a potential punishment.

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: If I am fortunate enough to be confirmed and I am faced with a case of first impression involving the interpretation of a statute, I would first look to the text of the statute. If the plain language and structure of the text did not yield a clear answer, I would look to precedents of the Supreme Court, the Court of Appeals for the Second Circuit, and other Circuit Courts of Appeals (in that order) interpreting analogous provisions.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A court should attempt to decide a case without reaching a constitutional question. If that is not possible, a court should endeavor to uphold the constitutionality of the statute, if possible, and a statute should only be declared unconstitutional if it clearly violates the Constitution or if Congress clearly acted beyond its constitutional authority.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No.

10. **What is your understanding of the workload in the Western District of New York? If confirmed, how do you intend to manage your caseload?**

Response: It is my understanding that judges in the Western District of New York have a heavy workload. If confirmed, I would endeavor to effectively manage my caseload by working diligently, making judicious use of Magistrate Judges, setting and maintaining reasonable schedules in all matters, encouraging and attempting to facilitate mediation or settlement when appropriate, and striving to decide all matters promptly.

11. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, judges play an important role in controlling the pace and conduct of litigation, and I believe that it is critical to the administration of justice that matters be resolved fairly, promptly and efficiently. If confirmed, I would take the steps described in my response to Question 10 to control and manage each case on my 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?**

Response: If confirmed, I would resolve legal issues by looking to relevant Constitutional or statutory provisions and any precedent from the Supreme Court and the Court of Appeals for the Second Circuit, and I would resolve factual issues by looking to the admissible evidence in the record. While I will need to familiarize myself with areas of the law with which I have

not had as much experience as other areas, such as criminal law, I believe that the most difficult part of the transition will be adapting to the somewhat isolating nature of being a judge which I anticipate will be very different than working with a team of lawyers advocating on behalf of a client.

13. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: No, I have not had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group who has identified themselves to me as associated with the AAJ regarding my nomination.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: No, I am not aware of any such endorsements or promised endorsements.

14. **Please describe with particularity the process by which these questions were answered.**

    Response: I received the questions on July 17, 2013, and prepared responses that day and the following day. On July 21, 2013, I discussed my responses with a representative of the Department of Justice and I authorized the Department of Justice to transmit my responses to the Committee.

15. **Do these answers reflect your true and personal views?**

    Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz
Responses of Debra Brown

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: A judge should execute all judicial duties with respect for the position, impartiality, fairness, integrity, and discipline, and apply the law to the facts of each case or controversy in accordance with judicial precedent and applicable procedural rules. I believe these same principles generally guide the judicial philosophies of United States Supreme Court Justices. Because I am not familiar with the specific judicial philosophies of any Supreme Court Justice, however, I am unable to analogize in a general, all-encompassing sense, the judicial philosophy of any one 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: A district court judge should interpret the Constitution based on precedent established by the United States Supreme Court. Where the United States Supreme Court has utilized the theory of originalism, in whatever form, to interpret the Constitution, a district court judge is bound to apply such precedent, which I would do if confirmed as a district court judge.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: A district court judge should adhere to precedent and is not at liberty to overrule precedent no matter when that precedent is established.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: As a binding opinion of the United States Supreme Court, I would adhere to the precedent established by *Garcia*, regardless of whether I agree or disagree with its holding or the statement quoted, if confirmed as a district court judge.

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 generally "upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." *United States v. Morrison*, 529 U.S. 598, 613 (2000); *see also United States v. Lopez*, 514 U.S. 549, 559 (1995). The concurring opinion by Justice Scalia in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), nonetheless states that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed as a district court judge and faced with a question regarding the scope of the Commerce Clause, I would evaluate such question against the precedent of these opinions.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The United States Supreme Court has concluded that "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Therefore, the judicially enforceable limits on the President's ability to issue executive orders or executive actions apply to those instances when the executive order or executive action is not authorized by Congress or the Constitution.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is "fundamental" for purposes of the substantive due process doctrine, as held by the United States Supreme Court, when "objectively 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). If confirmed as a district court judge, I would follow the precedent of the United States Supreme Court.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Precedent of the United States Supreme Court has identified certain classifications subject to heightened scrutiny under the Equal Protection Clause. A classification is subject to "strict scrutiny" if it differentiates persons on the basis of race, national origin or alienage, or when state laws infringe upon personal rights protected by the Constitution. A classification is

subject to an "intermediate level" of scrutiny if it differentiates persons on the basis of gender or illegitimacy of birth. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (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: I will follow binding Supreme Court precedent on the issue of the necessity of racial preferences in public higher education, including *Grutter*, if confirmed as a district court judge, independent of any personal expectations or views I may have.

Senator Chuck Grassley
Questions for the Record

Debra M. Brown
Nominee, U.S. District Judge for the Northern District of Mississippi

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is sincere respect for the position of judge. When a judge truly respects the position, I believe the judge will necessarily execute all judicial duties with impartiality, fairness, integrity, and discipline, and apply the law to the facts of each case or controversy in an even-handed manner consistent with judicial precedent and applicable procedural rules. I have always sincerely respected the position of a judge and, if confirmed as a district court judge, will continue to respect the position in carrying out my duties.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge, consistent with the role of a public servant, should be respectful of all parties involved in the judicial process, including litigants, counsel, juries, and court staff, and should be courteous, patient, open-minded, unbiased, and an attentive listener. I believe the element of respect is most important because from it flows all those qualities in a judge demonstrating good temperament. I meet this standard.

3. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. 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.

4. **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: A judge is bound to apply the law to the facts of each case or controversy impartially, without bias, and independent of any outside influences, including political, economic, or philosophical influences. If confirmed as a district court judge, I would do so without hesitation.

5. **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 ruled upon the constitutionality of the death penalty. If confirmed as a district court judge, I will apply the precedent of the United States Supreme Court in that regard, with my personal belief regarding the death penalty as a form of punishment playing no role.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If the case of first impression involved the interpretation of a statute, I would utilize the canons of statutory construction, which would include an examination of the statute's plain language; application of the plain language if not ambiguous; and if the plain language is ambiguous, to consult and analyze decisions in analogous situations of, in order of priority, the United States Supreme Court, Fifth Circuit Court of Appeals, other Circuit Courts of Appeals, and parallel federal courts. If the case of first impression does not involve the interpretation of a statute, I would consult and analyze decisions in analogous situations of, in order of priority, the United States Supreme Court, Fifth Circuit Court of Appeals, other Circuit Courts of Appeals, and parallel federal courts.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Because a federal court is bound to apply the laws as properly enacted by Congress, a federal court should only declare a statute enacted by Congress unconstitutional when the statute violates an express provision of the Constitution or when Congress was without authority to enact the statute.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

   Response: No. The Constitution should be interpreted based upon its text as well as the precedent of the United States Supreme Court.

9. **What is your understanding of the workload in the Northern District of Mississippi? If confirmed, how do you intend to manage your caseload?**

   Response: Based on statistical information, I understand that approximately 1,000 cases were filed in 2012 in the Northern District of Mississippi, divided fairly equally among the divisions, and that approximately 1,100 cases were pending as of December 31, 2012. If confirmed as a district court judge, I will manage my caseload by assessing each case filed to determine how it could most efficiently and effectively proceed to resolution. The assessment of each case would include a determination of whether it is susceptible to early resolution; should or must be placed over other cases in priority; may be amenable to settlement, early on or at later stages; and the amount of time it may appropriately and

realistically take to be litigated. I would also strive to resolve as expeditiously as possible all issues, including discovery matters, which could potentially delay the progress of the case; employ the assistance of the assigned magistrate judge; and supervise the progress of the case with status conferences at appropriate intervals.

10. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

    Response: Yes, I believe that judges may properly control the pace and conduct of litigation in their courts. If confirmed as a district court judge, I would do so by, among other things, evaluating the most efficient and effective means for each case to proceed to resolution; supervising the progress of cases with status conferences at appropriate intervals and making any adjustments necessary to keep the case on track; promptly ruling on all motions, including dispositive motions filed; emphasizing to parties and counsel deadlines set in the case; and promptly resolving all issues that could potentially delay the progress of the case.

11. **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: In reaching a decision in cases before me, if confirmed as a district court judge, I would look for guidance to the binding precedent of the United States Supreme Court, the Fifth Circuit Court of Appeals, and parallel federal courts in my jurisdiction, and thoughtfully apply such precedent to the facts of the case or controversy presented. I would expect the most difficult part of my transition from advocate to judge to be the criminal docket since my practice has been entirely civil. Through the intense study of criminal statutes and procedures, and consultation with other judges, among other things, I will be dedicated to achieving a successful transition.

12. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

       Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

13. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on July 17, 2013, by e-mail from a Department of Justice representative and began drafting responses that evening. On July 18, 2013, I completed the drafting of responses and sent them to the Department of Justice representative from whom they had been received, and spoke with that representative by phone on July 21, 2013.

14. Do these answers reflect your true and personal views?

Response: Yes.

Magnolia Bar Association
P. O. Box 648
Jackson, MS 39205
Telephone: (601) 353-2540

July 15, 2013

The Honorable Patrick Leahy
The Honorable Charles Grassley
United States Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The Magnolia Bar Association is honored and excited to submit this brief statement in support of the nomination of Attorney Debra M. Brown of Jackson, Mississippi to the position of United States District Judge for the Northern District of Mississippi. Ms. Brown is the exact type of lawyer who should be considered for our nation's esteemed judiciary as she brings every relevant skill set to the table for consideration.

Fellow practitioners, who have observed Ms. Brown first hand, praise her excellent work ethic, exemplary work product and full appreciation of and respect for the letter of the law. She possesses almost two decades of experience as an excellent court room litigator in the areas of general litigation and construction law. Over the years, she has focused on building her litigation skills and consequently, sustained excellent results for her clients.

In the Association's opinion, Ms. Brown clearly meets and exceeds the established criteria to serve as an Article III judge. Based on her legal acumen, strongest adherence to the highest ethical standards, professional and civic work in Jackson and her commitment to our community and State, there is no doubt that she would fulfill her duties as a federal jurist with pride, enthusiasm, commitment, humility and with full appreciation of the rights granted by the United States Constitution.

Without reservation, the Magnolia Bar Association, fully and enthusiastically supports her nomination.

Sincerely,

Ashley N. Wicks

Ashley N. Wicks
Magnolia Bar President

cc: The Honorable Roger Wicker

PHELPS DUNBAR

July 17, 2013

99999-9999

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Debra M. Brown to the United States District Court for the Northern District of Mississippi

Dear Senators Leahy and Grassley:

We write to express our enthusiastic and unqualified support of President Barack Obama's nomination of Debra M. Brown to the United States District Court for the Northern District of Mississippi.

Ms. Brown possesses the intellect, experience, temperament and integrity to serve with distinction as a federal judge. As her former law partners and colleagues who have worked with her for more than fourteen years, we have witnessed first-hand her strong work ethic, flawless character, exceptional litigation skills, and unwavering commitment to the legal profession and her community.

Ms. Brown has been an active member of many state, local and national bar associations, often serving in leadership roles. She has also dedicated a significant amount of time assisting less fortunate members of our community, not only regularly providing pro bono legal services to those unable to afford legal representation but also working with various organizations dedicated to improving the plight of children and families in Mississippi, and achieving racial and economic justice in our State.

Ms. Brown's nomination to be a Federal District Court Judge is an historic one in Mississippi history. No African-American woman has heretofore been nominated to be an Article III Judge in Mississippi and, upon confirmation, Ms. Brown will be the first African-American woman to serve as an Article III Judge in the history of our State. As the first two

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601-352-2300 | 601-360-9777 Fax | phelpsdunbar.com

July 17, 2013
Page 2

African-American judges to serve on the Mississippi Supreme Court, we believe it is important that both the state and federal judiciary in Mississippi reflect the composition of the citizens they serve. We can think of no more qualified or deserving person than Debra Brown to make history in this regard with respect to Mississippi's federal bench.

For these reasons, we urge that Ms. Brown be reported favorably out of the Senate Judiciary Committee and that she then be promptly confirmed.

Respectfully,

Reuben V. Anderson Fred L. Banks, Jr.

cc: Senate Judiciary Committee

METRO JACKSON BLACK WOMEN LAWYERS ASSOCIATION
Post Office Box 382
Jackson, Mississippi 39205

July 17, 2013

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Debra M. Brown to the United States District Court for the Northern District of Mississippi

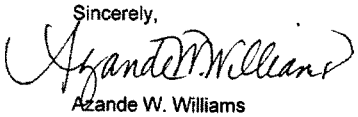
Dear Senators Leahy and Grassley:

On behalf of Metro Jackson Black Women Lawyers Association, an association comprised primarily of African-American women lawyers in the State of Mississippi, this letter is submitted in enthusiastic support of the nomination of Debra M. Brown for a seat on the United States District Court for the Northern District of Mississippi.

Debra Brown has been an active member of our Association since her graduation from law school in 1997. Based on our experiences with her over the years, she possesses the background, intellect, commitment, and integrity to serve with distinction on the federal bench. Her confirmation would be an historic event in our state as she would be the first African-American woman in Mississippi to serve as an Article III Judge. Also, upon confirmation, Ms. Brown would be only the second woman in Mississippi to be appointed as a District Court Judge. Diversity in the federal courts is not only important to our immediate community but to our nation as a whole.

We wholeheartedly endorse Debra Brown's nomination without hesitation and recommend her swift confirmation.

Sincerely,



Azande W. Williams
Treasurer

cc: Senate Judiciary Committee

MISSISSIPPI STATE UNIVERSITY

COLLEGE OF ARCHITECTURE ART + DESIGN

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662.325.2202
662.325.8872
[redacted]

SCHOOL OF ARCHITECTURE

July 15, 2013 (11:00 AM CT) **SENT Via Electronic Mail to:** Senator Roger Wicker [redacted]

Senator **Patrick Leahy**, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator **Charles Grassley**, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support *for* Nomination of **Debra M. Brown**
United States District Court for the Northern District of Mississippi

Dear Senators Leahy and Grassley:

On behalf of the Mississippi State University School of Architecture in the College of Architecture, Art + Design in Starkville, Mississippi, this letter is submitted in full support of President Barack Obama's nomination of Debra M. Brown to the United States District Court for the Northern District of Mississippi.

Ms. Brown is a 1987 graduate of MSU's School of Architecture, where she exemplified excellence, leadership and service throughout her architectural student career. Active in a number of organizations, she served as Secretary of the School of Architecture's Student Association and President of the Society of Black Artists at MSU, and was an officer of the School of Architecture's student chapter of the American Institute of Architecture Students, the National Association of Minority Architects, and the Construction Specifications Institute. Ms. Brown was often recognized for her academic and professional talents, receiving among other honors, scholarships provided by the American Institute of Architects Scholarship and Mississippi State University. She was the recipient of the Alpha Rho Chi Medal for her graduating class, which is awarded to the senior architectural student who, as determined by the School of Architecture's faculty, exhibited the most affinity for leadership, performed willing service for the School of Architecture, and indicated promise of professional merit through attitude and personality.

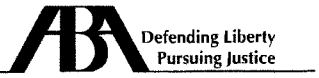
After practicing architecture in the Washington, D.C. area for a number of years, during which she worked on a variety of private and public projects, Ms. Brown returned to her home state of Mississippi to enter law school at the University of Mississippi, where she obtained her juris doctor degree in 1997. Continuing to exhibit excellence, leadership, and service in her profession and community, Ms. Brown has served as President of the Mississippi Women Lawyers Association, Treasurer of Metro Jackson Black Women Lawyers Association, Chair of the Child Advocacy Committee of Jackson Young Lawyers, and on the High School Mock Trial Committees of the Mississippi Bar and the Magnolia Bar. Named one of Mississippi's Leading Business Women of 2008 and a recipient of Jackson Young Lawyers' Outstanding Service Award, she is on the Board of Directors of the Mississippi Center for Justice and Operation Shoestring, and is an active and vital member of the School of Architecture Advisory Council.

The School of Architecture at Mississippi State University is delighted and honored to support Ms. Brown's nomination by the President to be a Federal Judge in North Mississippi, and urges her prompt confirmation by the Senate. She is an esteemed alumnus of our program, and the School of Architecture (and Mississippi State University) is confident in her future successes.

Respectfully,

Michael A. Berk AIA F. L. Crane Professor of Architecture
Director --- School of Architecture

cc: Senate Judiciary Committee
Dr. Mark Keenum, President – Mississippi State University



Please respond to:
Judy Perry Martinez, Esq.
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

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

May 17, 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 Debra M. Brown
To the United States District Court for the Northern District of MS

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Debra M. Brown who has been nominated for a position on the United States District Court for the Northern District of Mississippi. As a result of our investigation, the Committee is of the opinion that for this position Ms. Brown is Unanimously Qualified.

A copy of this letter has been provided to Ms. Brown.

Sincerely,

Judy Perry Martinez
Chair

cc: Debra M. Brown, Esquire (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 17, 2013.

June 24, 2013

RECEIVED JUL 0 3 2013

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

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

Dear Chairman Leahy and Senator Grassley:

I am writing to support Patricia Millett's confirmation as a judge on the United States Court of Appeals for the District of Columbia Circuit. I have worked with many talented and successful lawyers during my thirty-year tenure at the National Chamber Litigation Center, the public policy law firm of the Chamber of Commerce of the United States, from which I recently retired as Executive Vice President. I have known Patricia Millett since first working with her on an *amicus* brief for the Chamber in early 2008. She worked with me on other Chamber briefs, numerous moot courts, and other projects since then.

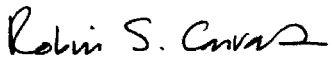
Patricia Millett is an outstanding appellate lawyer. She would be an exceptional appellate court judge. Patricia is a non-ideological, non-partisan, "lawyer's lawyer," who has proven herself to be a trusted advisor to business with a practical appreciation of the challenges faced by businesses, large and small. She is open-minded, fair, even-tempered and superbly qualified to serve on the District of Columbia Circuit.

Patricia's legal work was always of exceptionally high quality, with rigorous analysis conveyed through eloquent and powerful writing. She was a highly valued and sought after moot court judge at the Chamber. Her sharp analysis of the issues consistently helped guide and frame the arguing attorney's oral argument preparation. She came to every mock argument thoroughly prepared and asked probing questions with grace and good manners.

While always seeking to advance the interests of her clients, Patricia does so in a way that is consistent with her vision of a fair and impartial judicial system. Clearly her devotion to her work springs in large measure from her passion for making the legal process work the best it possibly can. I am confident that, if she is confirmed, this dedication would make her a jurist committed to the fair and even-handed administration of the law for all parties who appear before her.

I respectfully urge the Judiciary Committee to recommend Patricia Millett's confirmation to the full Senate and that the Senate vote in favor of her confirmation.

Sincerely,



Robin S. Conrad

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
152 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

July 2, 2013

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of the nomination of Patricia Millett to the United States Court of Appeals for the District of Columbia Circuit, and urge prompt consideration and confirmation of her nomination.

As a group, we have worked on cases before the United States Supreme Court, the federal Courts of Appeals, and the federal District Courts. Many of us have served with Pattie on cases as co-counsel or opposing counsel, or have worked with her on panels, in teaching law students, or in bar association activities. As a result, we know Pattie and her fine work very well. Over the years, we have been consistently impressed with her deep understanding of the law, her intellectual curiosity, and her fairmindedness. For these reasons, we believe her to be well qualified and well suited to serve on this court.

Over the past 20 years, Pattie has argued 32 cases before the United States Supreme Court, and even more in the federal appeals courts. She embodies the evenhandedness, impartiality, and objectivity required for the federal judiciary, as evidenced by her more than 10 years of service in the Solicitor General's office in both the Clinton and Bush Administrations. For the last two and a half years, she has led the Supreme Court practice at Akin Gump, and is widely regarded as one of the top appellate lawyers in the country.

Over the course of her career, she has handled numerous appellate cases, having served as an Assistant to the Solicitor General and in the Department of Justice's Civil Appellate Division. In private practice, she has represented a variety of clients, including business interests and several civil rights claimants, and her work has spanned administrative law, statutory construction, commercial litigation, constitutional matters and criminal appeals.

Pattie has also been very generous in her involvement in the legal community and as a mentor to younger lawyers. She is a Fellow of the American Academy of Appellate Lawyers and the American Bar Foundation, a member of the Board of Trustees of the Supreme Court Historical Society and the Lawyers Committee for Civil Rights, and active in area bar associations. She has been named an outstanding lawyer by several publications, including National Law Journal and the Am Law Litigation Weekly.

Given her tremendous skills and talents, we urge the Judiciary Committee and the full Senate to promptly review and confirm Patricia Millett for the D.C. Circuit Court of Appeals.

Please do not hesitate to contact any of us if you have any questions.*

Sincerely,

Floyd Abrams
Partner, Cahill Gordon & Reindel, LLP

Eric Angel
Executive Director, Legal Aid Society of the District of Columbia

Jeffrey A. Bartos
Guerrieri, Clayman, Bartos & Parcelli, P.C.

Stuart M. Benjamin
Douglas B. Maggs Professor of Law
Duke Law School

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Member, Miller & Chevalier Chartered

Dori Bernstein
Georgetown University Law Center

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Kathryn Bucher
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Plato Cacheris
Partner, Trout Cacheris, PLLC

* Please note that all organizational affiliations are listed for identification purposes only.

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University of Washington Law School

Robert Corn-Revere
Partner, Davis Wright Tremaine

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Partner, Orrick, Herrington & Sutcliffe, LLP

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Managing Partner, DiMuro Ginsberg, P.C.

Viet D. Dinh
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Founding Partner, Bancroft, PLLC

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Law Office of H. Bartow Farr

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Former Chief Judge, U.S. Court of Appeals for the Federal Circuit (Ret.)

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Neil S. Siegel
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Duke Law School

Paul M. Smith
Partner, Jenner & Block LLP

Mary Lou Soller
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NATIONAL CONGRESS OF AMERICAN INDIANS

July 2, 2013

Hon. Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Hon. Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter in Support of Patricia Ann Millet, Nominee to the U.S. Court of Appeals for the D.C. Circuit

Dear Chairman Leahy and Ranking Member Grassley:

I write on behalf of the National Congress of American Indians to thank the Senate Committee on the Judiciary for its support for D.C. Circuit Court of Appeals nominee Patricia Ann Millet. NCAI feels Ms. Millet is highly qualified for this judicial appointment and we are extremely confident in her ability to uphold the tenets of justice and perform at a high level in her capacity as federal circuit court judge.

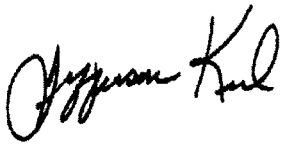
Ms. Millet graduated *magna cum* laude from Harvard Law School in 1988. Since then, she has worked diligently and developed a distinguished resume. She served in the Solicitor General's Office for more than 11 years through both the Clinton and George W. Bush Administrations, and has argued more cases before the U.S. Supreme Court than any other woman – the majority of these cases being argued while within the Office of the Solicitor General. While there, she received outstanding accolades for her work, including the Attorney General's Distinguished Service Award for representing the interests of the United States Government before the Supreme Court in July 2004.

In private practice, Ms. Millet has represented a wide variety of clients including large businesses, individual pro bono plaintiffs, and Indian tribes. She currently leads Akin Gump's Supreme Court practice and co-heads the firm's national appellate practice.

Ms. Millet is a qualified individual that stands ready to serve an important post within our judicial system. The D.C. Circuit—widely regarded as one of the most important courts in the nation—decides significantly complex issues, many of which are appealed to the U.S. Supreme Court. Currently, three of the court's 11 seats are vacant. Recently, the Administration—acting under its constitutional obligation to fill federal vacancies—put forth three highly qualified individuals to serve in these vacancies, Ms. Millet being one of those individuals. We thank the Senate Committee on the Judiciary for taking action to hold a hearing on July 10, 2013 to confirm Ms. Millet and help improve court efficiency and overall justice in the D.C. Circuit.

Thank you for your time and consideration. If you have any further questions or concerns, please contact Derrick Beetso, NCAI Staff Attorney, at (202) 466-7767 or dbeetso@ncai.org.

Sincerely,



Jefferson Keel, NCAI President

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

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Fax: 202.783.0857
www.lawyerscommittee.org

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July 3, 2013

The Honorable Patrick Leahy
437 Russell Senate Bldg.
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) wholeheartedly supports President Obama's nomination of Patricia Ann Millett to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). Ms. Millett will be an invaluable addition to the federal judiciary. Ms. Millett's dedication and experience will undoubtedly assist in promoting public confidence in a just and objective judicial system. Ms. Millett currently heads Akin Gump's Supreme Court practice, co-heads the firm's national appellate practice, and continues to work alongside the Lawyers' Committee on pro bono cases. Ms. Millett has served on the Lawyers' Committee Board of Trustees since 2010.

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. We are celebrating our 50th anniversary this year as we continue our quest of "Moving America Toward Justice." The principal mission of the Lawyers' Committee is to secure through the rule of law equal justice under law, particularly in voting rights, community development, employment, educational opportunities, and fair housing and fair lending.

Ms. Millett has argued a total of 32 cases before the U.S. Supreme Court. Her most recent argument was on March 18, 2013, as the Lawyers' Committee's co-counsel *in Arizona v. Inter-Tribal Council, Inc.*, where she, the Lawyers' Committee, and other partners contended that Arizona has violated the National Voter Registration Act of 1993 (NVRA) by refusing to accept federal mail-in voter registration forms that do not provide proof of citizenship specified by Arizona law. Ms. Millett's pro bono effort on behalf of the Inter Tribal Council of Arizona yielded a strong victory in a 7-2 decision on June 17, 2013. The Supreme Court ruled that by requiring additional proof of citizenship beyond that required by the federal voter registration form, Arizona's Proposition 200 conflicts with and is preempted by the NVRA. In the

Lawyers' Committee's intensive experience working with Ms. Millett on this matter, she demonstrated her qualifications to serve as a D.C. Circuit judge. She was meticulous and rigorous in interpreting language in the United States Constitution and the NVRA. In addition, she was painstakingly thorough in dissecting every relevant legal and factual argument made by both sides in their Supreme Court and lower court briefs.

The Lawyers' Committee proudly supports Patricia Millett, and we believe her strong work ethic, legal acumen, and tenacity will be an asset to the D.C. Circuit. She will be a tremendous judge who will interpret the law thoughtfully and fairly. We hope that her nomination will create the much-needed momentum to fill the remaining vacancies in the federal judiciary.

Sincerely,

Barbara R. Arnwine
President and Executive Director

Jon M. Greenbaum
Chief Counsel and Senior Deputy Director

July 2, 2013

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
437 Russell Senate Bldg
Washington, D.C. 20510

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Dear ~~Chairman~~ Pat Leahy:

I write, in my personal not official capacity, to urge, encourage, and exhort the Committee's approval and the Senate's confirmation of my friend, Patricia Ann Millett, to the position of Judge, United States Court of Appeals, District of Columbia Circuit.

I have known Pattie and her wonderful family for more than five years and can say, with a certainty that comes from personal familiarity, that she possesses the temperament, skill, intellect, and experience to be a truly exceptional federal judge. Pattie is a remarkable woman, marvelously balancing the demands of leading the country's top appellate practice at Akin Gump with being a loving and engaged wife and mother, a very active church member, and a committed community volunteer.

Pattie's professional credentials are first class. After earning her undergraduate degree *summa cum laude,* she received her J.D. *magna cum laude* from Harvard Law. Pattie then won a coveted two-year clerkship with the Ninth Circuit Court of Appeals, marking the beginning of an impressive public service career. Next came a string of significant successes at the Justice Department, where Pattie spent 4 years litigating in the Civil Division and then 11 as an Assistant to the Solicitor General. Seventeen years in public service provided Pattie the perfect grounding in the theory and practice of law that assures superlative success as a federal judge.

Pattie's extraordinary accomplishments as a legal advocate are too numerous to list here but one stands out and deserves mention: she has argued 32 cases before the United States Supreme Court, the second most by a woman lawyer in history. Her many laurels include being named to the *National Law Journal*'s list of 100 Most Influential Lawyers in America, *The Best Lawyers in America*, to *Chambers USA: America's Leading Lawyers for Business*, and as one of Washington's *Super Lawyers*.

I understand that the President designated Pattie to fill the position left vacant upon Chief Justice John Robert's accession to the high court. That is quite apropos. During his confirmation hearing, Chief Justice Roberts underscored the importance of impartiality and fairness in the judicial process. I know Pattie shares these views with the Chief and would bring them with her to every case she will hear from the bench.

Indisputably, Pattie possesses top-flight legal qualifications for the position to which the President nominated her; indeed, the American Bar Association unequivocally said so. But it is Pattie's extraordinarily fine character – which I have seen and know well -- that will make her a great judge.

I would be pleased to amplify further. I can be reached at 703-477-0592.

Sincerely,

Stuart W. Bowen, Jr.

July 3, 2013

By Hand Delivery

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
152 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are former Solicitors General of the United States, and we write in support of the nomination of Patricia Millett for a seat on the United States Court of Appeals for the District of Columbia Circuit. Each of us has substantial first-hand knowledge of Ms. Millett's professional skills and personal integrity. It is our uniform view that she is supremely qualified for this important position.

Ms Millett served for 15 years in the United States Department of Justice — first as an appellate attorney in the Civil Division during the George H. W. Bush Administration and then for 11 years in the Solicitor General's office, during the Clinton and George W. Bush Administrations. Since leaving the Department, she has co-led and then led the Supreme Court practice at Akin Gump. Over the course of her distinguished career, Ms. Millett has argued 32 cases in the Supreme Court and many more in the courts of appeals — in matters that span a broad range of federal-law issues, from constitutional challenges to administrative review, statutory-interpretation disputes, and commercial and criminal law questions. With deep experience in both private and government practice, she will bring an appreciation of both sides of the many important disputes before the District of Columbia Circuit.

Within the Bar, Ms. Millett has been a leader among her peers, and a mentor to many other lawyers, through her teaching visits to law schools and her work with a number of professional associations, including the Coke Appellate Inn of Court, the Supreme Court Institute, and the Opperman Institute for Judicial Administration.

Ms. Millett has a brilliant mind, a gift for clear, persuasive writing, and a genuine zeal for the rule of law. Equally important, she is unfailingly fair-minded.

We understand there is an ongoing debate about the optimal number of active Judges for the District of Columbia Circuit, and this letter takes no position on that issue. But if additional judges are to be confirmed, we think Ms. Millett's qualifications and character make her ideally suited for a position on that distinguished Court. Please do not hesitate to contact any of us if you have any questions.

Sincerely,

Kenneth W. Starr (Solicitor General, 1989-1993)
Drew S. Days III (Solicitor General, 1993-1996)
Walter E. Dellinger (Acting Solicitor General, 1996-1997)
Seth P. Waxman (Solicitor General, 1997-2001)
Theodore B. Olson (Solicitor General, 2001-2004)
Paul D. Clement (Solicitor General, 2005-2008)
Gregory G. Garre (Solicitor General, 2008-2009)

By: Seth P Waxman /kw
Seth P. Waxman

Dan Schweitzer
[redacted] • **Bethesda, MD 20814**

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July 3, 2013

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I write in support of Patricia Millett's nomination for a seat on the United States Court of Appeals for the District of Columbia Circuit. As the Supreme Court Counsel for the National Association of Attorneys General for the past 17 years, I have had the opportunity to work closely with Ms. Millett on cases important to the law enforcement community. Based on that experience, I can attest that she is not only an exceptionally gifted legal analyst of unwavering integrity — she also has a profound understanding of how court decisions impact law enforcement officers' safety and their ability to protect our communities.

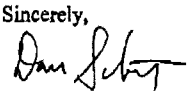
During her tenure as Assistant to the Solicitor General, Ms. Millett argued seven cases in the Supreme Court on behalf of the United States as amicus curiae in support of a State or one of its political subdivisions. Most of the arguments involved significant law enforcement matters, such as the constitutionality of traffic checkpoints for narcotics interdiction (*City of Indianapolis v. Edmond*); the constitutionality of traffic checkpoints to obtain information to help investigate a crime (*Illinois v. Lidster*); federal habeas corpus review sought by prisoners whose convictions were upheld by state appellate courts (*Gonzales v. Crosby* and *Fry v. Pliler*); and the validity of rules designed to ensure prison safety (*Shaw v. Murphy*).

I had the opportunity to see Ms. Millett argue those cases and, before then, participate in the moot courts I organized for the State and local-government attorneys who argued those cases on her side. What I saw was a person who truly understood what hangs in the balance in these cases: how the traffic checkpoint upheld by the Court in *Illinois v. Lidster* can be the difference in saving the life of a kidnapped child; and how the prison rules upheld in *Murphy* reduce the chances that an inmate will be able to attack a prison guard. I also saw a person who understood that to be a successful advocate you have to understand the other side's arguments — in these cases, the freedom the Constitution grants us from overly intrusive government conduct.

I do not know, of course, how Ms. Millett would rule on the many difficult cases she would hear were she to be confirmed as a judge. But I do know that she would assess each case objectively, thoughtfully, and with careful consideration of the competing interests at stake.

Patricia Millett has extraordinary credentials that make her particularly well-suited to the federal appellate bench. I enthusiastically recommend that the she be confirmed as a judge on the D.C. Circuit Court of Appeals.

Sincerely,



Dan Schweitzer*

cc: Senate Judiciary Committee

* Please note that this letter was written in my personal capacity, and not on behalf of the National Association of the Attorneys General.

Lisa Soronen
[redacted]
Alexandria, Virginia 22302

July 3, 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
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am writing in support of Patricia Millett's nomination to the United States Court of Appeals for the District of Columbia Circuit.

I know Patricia through my work at the State and Local Legal Center (SLLC). For the last 30 years, the SLLC has filed *amicus curiae* briefs in the United States Supreme Court in cases affecting state and local government. Members of the SLLC include the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, and the International City/County Management Association. Associate members include the International Municipal Lawyers Association and the Government Finance Officers Association.

I have worked closely with Patricia in my two years as the SLLC's Executive Director. For example, we collaborated on *Filarsky v. Delia*, a case involving whether contract government attorneys are eligible for qualified immunity, where she represented the part-time government lawyer. In that case, I observed her exceptional legal talents by reading her brief, observing one of her moot courts, and attending her Supreme Court oral argument. Patricia is a brilliant oral advocate, an excellent writer, a flexible thinker, and both fair and open-minded.

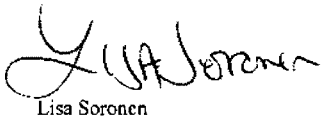
She also acted as a "Justice" in an SLLC Supreme Court moot court in *Reichle v. Howards*, involving a First Amendment retaliatory arrest made by a Secret Service agent. At this moot court, I witnessed firsthand Patricia's ability to see a case from every angle, weigh the strengths and weaknesses of each position, and cut to the heart of the argument—even in a case she was not all that familiar with. In a very short period of time, she was able to understand and appreciate how cases affect state and local government.

Among a group of extremely talented Supreme Court lawyers, two qualities make Patricia stand out and indicate she will be an excellent judge. First, she is a tireless advocate for her clients, a hallmark quality of any good lawyer. I am confident that she will bring that same total dedication to her position as a federal judge.

Second, Patricia is a helpful colleague who is committed to public service. In the summer of 2012, Patricia was a speaker in an SLLC webinar covering the Supreme Court's October 2011 Term. Over 1,000 sites attended the webinar. And I always know I can call on Patricia if an SLLC member or I need advice. When I asked Patricia if she could suggest a *pro bono amicus* brief writer on short notice in a case she was not involved in, she immediately inquired within her firm and found an author for the SLLC brief. Her good character and public-mindedness will be invaluable tools as she decides significant issues affecting many lives from the federal bench.

In short, Patricia embodies the very best qualities of a preeminent Supreme Court advocate. As a federal judge she will do the same. Her departure would be a huge loss for the Supreme Court bar, but a tremendous gain for the D.C. Circuit.

Sincerely,



Lisa Soronen

Executive Director, State and Local Legal Center

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July 8, 2013

VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Women's Bar Association's Endorsement of Patricia Ann Millett for Judge, U.S. Court of Appeals for the District of Columbia Circuit**

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Women's Bar Association of the District of Columbia (WBA), I am writing to express the WBA's renewed support for the nomination of Patricia Millett to the U.S. Court of Appeals for the District of Columbia Circuit.

Our principal goal in endorsing judicial candidates is to ensure the appointment of qualified judges and, consistent with that goal, to increase the number of judges who support the mission of the WBA. We consider, in our recommendations, the candidate's background, level of experience, connection to the District of Columbia; record of public service, a demonstrated commitment to the equality of all litigants, and an attention to women's needs and concerns.

We evaluate each candidate for endorsement by reviewing his or her resume and other supporting documentation, and discussing the candidate's skills and character with references. We ask each person contacted specific questions regarding the candidate's qualifications, integrity, temperament, experience, and commitment to the concepts of equal opportunity and equal justice under law.

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbadc.org Web: www.wbadc.org

The WBA previously endorsed Ms. Millett for the U.S. Court of Appeals in April 2009. Upon receiving her new application, we updated our research and spoke to Ms. Millett's legal peers. This process has once again led us to the conclusion that Ms. Millett is one of the most highly experienced and qualified appellate advocates in the United States. She graduated from Harvard Law School *magna cum laude* and clerked for Judge Thomas Tang of the United States Court of Appeals for the Ninth Circuit, the first Asian-American court of appeals judge in the United States.

In her practice, she has argued almost three dozen appellate cases across the country, including in the District of Columbia Circuit. She has also argued 32 cases in the U.S. Supreme Court and has briefed scores of cases in that court. Through her work, important judicial victories have been obtained upholding the constitutionality of the Americans with Disabilities Act, the Family and Medical Leave Act, the Religious Land Use and Institutionalized Persons Act, and sex-offender registries; enforcing anti-discrimination laws; providing police with the tools to locate missing children; and protecting the privacy rights of grieving family members.

Ms. Millett's exceptional talent and skill have been widely recognized. She was awarded the Justice Department's Distinguished Service Award – one of the Department's most prestigious awards – for representing the interests of the United States before the Supreme Court. She has also been inducted as a Fellow of the American Academy of Appellate Lawyers, a Fellow of the American Bar Foundation, a Board Member of the Dwight D. Opperman Institute of Judicial Administration, a Board Member of the Lawyers Committee for Civil Rights, a Judicial Fellows Commissioner, a member of the Board of the Supreme Court Historical Society, and a member of the Outside Advisory Board for the Supreme Court Institute.

Currently, as head of Akin Gump's Supreme Court Practice and co-chair of the Appellate Practice Group, she is frequently consulted to provide expert commentary on appellate advocacy and Supreme Court practice and speaks regularly to law students.

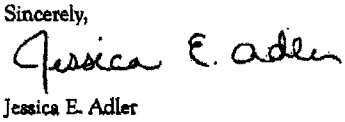
Importantly, Ms. Millett has devoted much of her career to serving the public and, during her time in the Justice Department, fought hard to sustain the constitutionality and enforceability of important civil rights legislation like the Family and Medical Leave Act and the Americans with Disabilities Act. In private practice, she has taken on multiple *pro bono* projects, representing and providing counsel to the indigent, civil rights plaintiffs, and others who would otherwise lack effective access to the appellate process. She has also been actively involved in serving her community, working as a literary tutor in Washington, DC and combating homelessness and poverty in Northern Virginia for years.

In short, in the view of the Women's Bar Association, Ms. Millett's wide-ranging appellate experience, devotion to the public interest, proven commitment to ensuring equal access to justice and the judicial system, and understanding of the importance of a judicial system that respects the diversity of Americans and their life experience make her an exceptional candidate for the federal bench.

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbadc.org Web: www.wbadc.org

Ms. Millett has shown a sustained dedication to the ideals of the WBA and we commend her excellent work in furtherance of these ideals. For this and the reasons stated above, the WBA is proud to support Ms. Millett's nomination and encourages the Senate to take prompt action to confirm her to the U.S. Court of Appeals for the District of Columbia Circuit. If you have any questions regarding this letter of support, please contact me at 202-898-0055 or at president@wbadc.org.

Sincerely,



Jessica E. Adler
President

cc: Patricia A. Millett, Esq.
Co-Chairs, WBA Judicial and Executive Endorsement Committee:
Ms. Sasha Battle
Ms. Rachel Levinson Waldman
Ms. Elizabeth Marvin
WBA Board of Directors

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
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CALIFORNIA VALLEY MIWOK TRIBE

10601 N. Escondido Pl., Stockton, CA 95212 Ph: (209) 931.4567 Fax: (209) 931.4333
Website: http://www.californiavalleymiwoktribe-nsn.gov **Email:** office@cvmt.net

RECEIVED JUL 08 2013

July 08, 2013 TIME SENSITITVE

Transmitted via Fax to: Majority Office (202) 224-9516, Minority Office (202) 224-9102

Hon. Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Hon. Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write on behalf of California Valley Miwok Tribe to thank the Senate Committee on the Judiciary for its support for D.C. Circuit Court of Appeals nominee Patricia Ann Millet. We feel Ms. Millet is highly qualified for this judicial appointment and we are extremely confident in her ability to uphold the tenets of justice and perform at a high level in her capacity as federal circuit court judge.

Ms. Millet is a qualified individual that stands ready to serve an important post within our judicial system. The D.C. Circuit—widely regarded as one of the most important courts in the nation—decides significantly complex issues, many of which are appealed to the U.S. Supreme Court. Currently, three of the court's 11 seats are vacant. Recently, the Administration—acting under its constitutional obligation to fill federal vacancies—put forth three highly qualified individuals to serve in these vacancies, Ms. Millet being one of those individuals.

Ms. Millet graduated *magna cum* laude from Harvard Law School in 1988. Since then, she has worked diligently and developed a distinguished resume. She served in the Solicitor General's Office for more than 11 years through both the Clinton and George W. Bush Administrations, and has argued more cases before the U.S. Supreme Court than any other woman – the majority of these cases being argued while within the Office of the Solicitor General. While there, she received outstanding accolades for her work, including the Attorney General's Distinguished Service Award for representing the interests of the United States Government before the Supreme Court in July 2004.

Once again, we thank the Senate Committee on the Judiciary for taking action to hold a hearing on July 10, 2013 to confirm Ms. Millet and help improve court efficiency and overall justice in the D.C. Circuit. If you have any further questions or concerns, please feel free to contact me at (209) 931-4567.

Sincerely,

Silvia Burley

Silvia Burley, Chairperson

CALIFORNIA VALLEY MIWOK TRIBE
A Federally Recognized Native Sovereign Nation

Silvia Burley
Chairperson

10601 North Escondido Place
Stockton, CA 95212-9231
Phone: 209.931.4567 Fax: 209.931.4333
s.burley@californiavalleymiwoktribe-nsn.gov
Main Office Email: office@cvmt.net
http://californiavalleymiwoktribe-nsn.gov

THE SUQUAMISH TRIBE
OFFICE OF TRIBAL COUNCIL
LEONARD FORSMAN, CHAIRMAN

Post Office Box 498
Suquamish, WA 98392-0498
Phone (360) 598-3311
Fax (360) 598-6295

RECEIVED JUL 0 9 2013

8 July, 2013

Hon. Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
FAX: 202-224-9516

Hon. Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
FAX: 202-224-9102

re: Suquamish Tribe's Support for Patricia Ann Millet, U.S. Court of Appeals Nominee

Dear Chairman Leahy and Ranking Member Grassley:

The Suquamish Tribe supports the nomination of Patricia Ann Millet as judge on the U.S. Court of Appeals for the D.C. Circuit and thanks the Senate Committee on the Judiciary for its support of her nomination. The Tribe thinks Ms. Millet is highly qualified for this judicial appointment and we are extremely confident in her ability to uphold the tenets of justice and perform at a high level in her capacity as federal circuit court judge.

In addition to her other qualifications, Ms. Millet has experience in Indian law and litigation, including environment, natural resources, and land for Indian tribes. Ms. Millet stands ready to serve an important post within the federal judicial system. The D.C. Circuit, widely regarded as one of the most important courts in the nation, decides significantly complex issues, many of which are appealed to the U.S. Supreme Court. Currently, three of the court's eleven seats are vacant. Recently, President Obama nominated Ms. Millet and two other highly qualified individuals to serve as judges on that court.

Ms. Millet graduated *magna cum laude* from Harvard Law School in 1988. Since then, she has worked diligently and developed a distinguished resume. She served in the Solicitor General's Office for more than 11 years through both the Clinton and George W. Bush Administrations and has argued more cases before the U.S. Supreme Court than any other woman. The majority of these cases were argued while she was within the Office of the Solicitor General. While there, she received outstanding accolades for her work, including the Attorney General's Distinguished Service Award for representing the interests of the United States Government before the Supreme Court in July 2004.

Once again, the Suquamish Tribe thanks the Senate Committee on the Judiciary for taking action to hold a hearing on July 10, 2013 to confirm Ms. Millet and help improve court efficiency and overall justice in the D.C. Circuit. If you have any further questions or concerns, please feel free to contact me at the above address.

Sincerely,

Leonard Forsman
Chairman

Major General Carl H. McNair, Jr., USA (Ret.)
[redacted]
Springfield, Virginia 22152
[redacted]

July 8, 2013

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

Dear Senator Leahy,

Forgive my intrusion, but I am writing in support of the nomination of Ms. Patricia Ann Millett to the US Court of Appeals for the DC Circuit who is scheduled for Confirmation before the Senate Committee on the Judiciary later this week. As a soldier who has served our country on four continents, both in peace and in war, for over 32 years, not counting my four years at West Point, I have commanded at every level from Lieutenant through General Officer. During that time, I have been exposed to countless legal issues, disciplinary as well as fiscal and contractual, with thousands of soldiers and large bases under my command, not to mention three assignments on the Department of the Army Staff, with numerous opportunities to testify before Senate and House Committees on Army budgets, end strengths, and force readiness.

Hence, I appreciate and respect the tremendous responsibility which you and your fellow Senators have in such hearings as that before you this week. I simply wanted to offer you a couple of brief insights concerning Ms. Millett and her dedication and devotion to our nation, her family and her faith - and above all, her commitment to her profession of law, as few others might evidence. Her credentials are impeccable as an attorney who has presented complex cases before the highest courts in the land, 32 before the Supreme Court and approximately 36 in the courts of appeals. Her legal experience on the "court side" of her profession is likewise incomparable – assistant to the Solicitor General of the United States, four years in the Department of Justice's Civil Division, Appellate Staff, and clerked for two years for Judge Thomas Tang, on the US Court of Appeals for the 9th Circuit. She has truly had a stellar career and is eminently qualified to serve on the US Court of Appeals, a distinct asset for our nation and our citizens on such a distinguished Court.

Beyond all this however, sir, she is a devoted mother, spouse and community leader in her children's schools, neighborhood and church. And that is perhaps where I know her best - having served as Lay Leader and Trustee of the church where she and her husband, Bob, himself a Navy veteran of 22 years' service, have worshipped for many years. If I were to pick the "All American Family" from our congregation of more than 2000, it would be Patricia Ann Millett and Robert King. Where she gets the time in the same 24 hour day we are all allotted, I cannot imagine and I expect your friends tell you the same thing due to the pace of your Senatorial duties – plus travel back and forth to your constituents in Vermont. Patricia's energy is boundless, her outreach limitless in many ways, speaking to our church members on the privilege of practicing law in the greatest nation on earth and visiting the home-bound on her Sunday afternoons, cheering them up and boosting their spirits. Few have done as much – none have done more. Such balance between service to her career calling, family and community is seldom found today and I hope will add yet another dimension to your committee's consideration of this outstanding young woman for the office to which she now aspires.

Her service on the Court of Appeals for the DC Circuit will be a credit to the Court and to her dedication to God and Country, while embracing the spirit and the letter of the law envisioned by our forefathers – with Liberty and Justice for all.

Respectfully,

Carl H. McNair, Jr.
Major General, US Army (RET)

Lilly Ledbetter

July 8, 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
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Confirmation of Patricia Millett to the D.C. Circuit

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to express my support for Patricia Millett as a nominee to the D.C. Circuit. My experience with the federal court system shows the importance of having judges who understand both the law and the real world. I am convinced that Ms. Millett has the learning and experience to understand both. You should confirm her.

This Committee was kind enough to invite me to testify before it about my experience being discriminated against in the workplace, only to have the vindication given to me by a jury of my peers taken away by federal judges who either did not understand, or did not care, about what it is like for a person in the real world to experience and fight back against discrimination. Those judges were plenty smart enough. But what they lacked was common sense and an appreciation of how ordinary people live and work in the real world. We need more judges who are both smart and sensible, who will interpret the law as Congress intended so that can actually function effectively.

Pattie Millett has those smarts and that common sense. She is one of the most experienced and respected members of the Supreme Court Bar, a profession that, like the tire industry, has long been dominated by men. At the same time, she knows what it is like being a working mom. She's raised two kids while both she and her husband worked in public service – part of the time while her husband was deployed in the military. And she's continued to experience the every day issues working moms face, while heading up

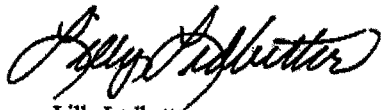
the Supreme Court practice at a large private law firm.

She has shown how that kind of experience can properly be applied to solving legal problems. For example, while at the Justice Department, she represented the federal government in pushing for a sensible interpretation of the Constitution when states argued that the Eleventh Amendment prohibited Congress from giving full remedies to women discriminated against just because they were trying to both work and care for sick family members. The Supreme Court agreed, with Chief Justice Rehnquist adopting her position in his opinion for the Court.

That does not mean that Ms. Millett has an agenda or would not apply the law as written. She worked under both Democratic and Republican administrations when she was in the Justice Department. She has represented victims of civil rights abuses as well as the Government and corporations. She has argued on behalf of the prosecution and the defense in criminal cases. Along the way, she has earned admirers of all political stripes, who recognize her as a fair-minded person who understands that lawyers and judges have an important role to play but that it is ultimately the legislatures and the people who make the law.

But sometimes the law is unclear, and when it is, judges have to exercise some judgment. I would rather have that judgment exercised by someone who knows a little bit about the world real people live in and who cares about the lives of the people the law is designed to protect. I think Pattie Millett is that kind of person. She deserves a place on the D.C. Circuit and the American people deserve to have her there.

Sincerely,



Lilly Ledbetter

TIMOTHY K. LEWIS
[redacted]
WASHINGTON, DC 20001-4564 [redacted]

RECEIVED JUL 0 8 2013

July 8, 2013

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Senator Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
437 Russell Senate Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Re: Patricia Millett

Dear Senators Leahy and Grassley,

I write in support of the President's nomination of Patricia Millett to serve on the United States Court of Appeals for the District of Columbia.

I am a former federal judge, having served on the United States Court of Appeals for the Third Circuit and the United States District Court for the Western District of Pennsylvania. Since I left the bench I have been Of Counsel at Schnader Harrison Segal & Lewis.

I was twice appointed to the federal bench by the first President Bush. The day after I was sworn in, I registered as an Independent because I did not want my judicial views to be misinterpreted as reflecting a fealty to any political party. I didn't have one. And I have remained true to that tenet in my post-judicial life: I testified before your Committee on behalf of my former colleague, Sam Alito, at his confirmation hearing for the Supreme Court along with other former and current Third Circuit judges; and I have written in support of both Democratic and Republican nominees for district and circuit courts. So I know you will appreciate that what I offer on behalf of Pattie Millett has nothing to do with party affiliation or politics: this is strictly about competence, integrity and, intellectual honesty.

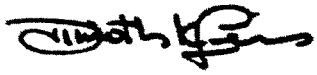
I have worked with Pattie Millett, I have sat on a CLE panel with her, and I have spent hours talking to her about what it means to serve as a federal judge. Each encounter has left me more convinced than the last that she will make an outstanding contribution to our nation and to the law should she be confirmed.

As you know, she has argued over 30 cases before the Supreme Court. She is widely regarded as one of the finest appellate advocates in the United States. She is, quite simply, a brilliant lawyer. She has exquisite judgment, and she has won the respect of everyone I know who has worked with her, including judges and justices she has appeared before.

I can assure you from my years on the Third Circuit that intellectual honesty – a faithful application of the law without preconception – is the lifeblood of appellate judging. The decisions circuit court judges render must reflect their best effort to apply precedent consistently and honestly, and to interpret the law without regard to personal proclivities or beliefs. This is what Pattie Millett will bring to the bench, along with an abiding integrity, and wisdom forged through a life experience that includes a deep sense of faith, raising two children while her husband was deployed, and at all times exceeding the highest professional standards.

As a former judge who understands the honor of serving in that esteemed role; as a lawyer deeply committed to enhancing the quality of our federal judiciary; and as a citizen interested in seeing democratic government achieve its highest ideals wherever possible, I urge you to confirm Patricia Millett. She will be an outstanding judge, and our nation deserves no less than your unanimous consent to this nomination.

Respectfully,



Hon. Timothy K. Lewis

July 8, 2013

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

Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Patricia Millett

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of the President's choice of Patricia Millett to be a Judge on the United States Court of Appeals for the District of Columbia Circuit.

Each of us has served in the Department of Justice and been active members of the appellate and Supreme Court bar in private practice in Washington, D.C. We have had the privilege and pleasure of working with Patti on cases and watching her in action, both when she was at the Department and during her subsequent time in private practice. She is, quite simply, one of the finest appellate attorneys in the country -- a brilliant writer and a devastatingly effective oral advocate, a smart and sophisticated thinker about the law, and a highly dedicated professional who devoted much of her career to public service and who then maintained a successful pro bono commitment while in private practice. We know that she would bring the same exceptional level of skill and dedication, and a strong underlying sense of fairness, to the responsibilities of a judge.

We are aware that there is an ongoing debate over whether additional judges on the D.C. Circuit are warranted, and we do not seek in this letter to take a position on that question. We write instead to express our view that, if and when the Senate determines to fill an additional vacancy, Patti Millett is a superb choice whom we support without reservation.

Sincerely,

Carter G. Phillips

Peter D. Keisler

Hispanic Bar Association
of the Commonwealth of Virginia (HBA-VA)
"Fraternity, Advocacy, and Justice"
WWW.HBA-VA.ORG

Ofelia L. Calderon, President
J. Maretlino Jr., Vice-President
Gil Sanchez, Secretary
Michael A. Rosas, Treasurer

July 9, 2013

Via Facsimile Only

RECEIVED JUL 09 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

FAX (202) 224-3479

The Honorable Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

FAX (202) 224-6020

RE: Patricia A. Millett, Nominee for Judge,
U.S. Court of Appeals for the D.C. Circuit

Dear Chairman Leahy and Ranking Member Grassley:

The Hispanic Bar Association of Virginia ("HBA-VA") had the distinct pleasure to previously evaluate Patricia A. Millett when she was considered for nomination to a prior judicial vacancy. It has come to our attention that she has been nominated by President Obama to serve as a Judge on the U.S. Court of Appeals for the D.C. Circuit. Our organization deems Ms. Millett to be an outstandingly qualified and gifted candidate for this judicial position and therefore, for the reasons as stated in the body of this letter, rates her as **HIGHLY RECOMMENDED**, our top rating.[1]

[1] Our evaluation is based in part on material gathered and submitted when Ms. Milllett was previously considered but not nominated for a position on the U.S. Court of Appeals for the 4th Circuit.

Biographical Information and Qualifications

Patricia A. Millett earned a B.A. summa cum laude with highest distinction in political science in 1985 from the University of Illinois and her J.D. magna cum laude in 1988 from Harvard Law School. She is a member of the District of Columbia and Virginia Bars, and an inactive member of the Massachusetts Bar. Ms. Millett currently co-heads the Supreme Court practice of the law firm of Akin, Gump, Strauss , Hauer & Feld, LLP since September 2007. Ms. Millett's legal areas of emphasis include statutory construction issues; administrative law; federalism and congressional power; religion (Free Exercise Clause, Establishment Clause, statutory protections); civil rights; Americans with Disabilities Act; access to information; Fourth Amendment; national security; and immigration law.

From August 1996 to September 2007, Ms. Millett served as an assistant to the Solicitor General in the Office of the Solicitor General at the U.S. Department of Justice, in Washington, D.C. During that time, she argued 25 cases before the U.S. Supreme Court and she briefed more than 50 cases. She represented the United States Government before the U.S. Supreme Court through: (1) the briefing of approximately 50 merits cases in the Supreme Court, (2) arguing 25 cases before the Court; (3) filing numerous petitions for writs of certiorari and briefs in opposition to certiorari, and (4) preparing stay papers and other case-related filings for the Court. She coordinated the federal government's litigation positions in federal district courts and courts of appeals. While at the Solicitor General's office her areas of emphasis included: (1) federalism and congressional power (defending the constitutionality of the Family and Medical Leave Act, Americans with Disabilities Act, Age Discrimination in Employment Act, Religious Freedom Restoration Act, Religious Land Use and Institutionalized Persons Act; sex offender registries), (2) religion (Free Exercise Clause, Establishment Clause, statutory protections; defended the constitutionality of the text of the Pledge of Allegiance), (3) civil rights (application of Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Spending Clause legislation), (4) access to information, (5) Fourth Amendment, (6) national security, (7) immigration, (8) administrative law, and (9) statutory construction.

She was the recipient of the following notable awards: (1) Attorney General's Distinguished Service Award for representing the interests of the United States Government before the Supreme Court, July 2004; and (2) Environmental and Natural Resources Division, Special Commendation for Assistance and Support in the Activities of the Division, Sept. 2005. Prior to her employment with the Office of the Solicitor General, Ms. Millett worked for four years in the Department of Justice's Civil Division, Appellate Staff, where she represented the United States Government before federal courts of appeals through the briefing of more than 25 merits cases, and arguing 19 cases, including one en banc case, and three cases in state appellate courts (including two state supreme courts), involving a wide range of civil matters.

She served on the Associate Attorney General task force coordinating major constitutional litigation for the government. Before that, she clerked for two years for

the late Judge Thomas Tang, on the U.S. Court of Appeals for the 9th Circuit. She also worked for two years in the litigation department of Miller & Chevalier in Washington, D.C., where it is noted she briefed and helped prepare a Supreme Court oral argument in a pro bono death penalty case and in subsequent habeas corpus proceedings, wherein the sentence was ultimately commuted.

Her court admissions include: U.S. Supreme Court, U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, District of Columbia, and Federal Circuits. Her professional associations include: Board Member, Dwight D. Opperman Institute of Judicial Administration; Fellow, American Academy of Appellate Lawyers (Amicus Committee; Aggregate Litigation & Appeals Committee); Virginia Bar Association; Virginia Women Attorney's Association; D.C. Bar Association; Women's Bar Association of DC; Edward Coke Appellate Inn of Court; American Constitution Society; American Bar Association, Litigation Section; Faith and Politics Institute.

Analysis and Recommendation

Patricia A. Millett has argued 32 cases (more than any woman in practice today) before the U.S. Supreme Court. This distinction alone elevates her as the candidate with the most meaningful appellate experience evaluated by the HBA-VA. Her appellate experience is deeper and wider than this distinction alone. She has been on brief in at least another 25 cases before the U. S. Supreme Court and further has briefed and argued numerous cases before federal courts of appeals, and also state appellate courts. She was originally appointed to her position at the Solicitor General's Office during the Clinton administration. Her boss during the period of 1997-2001 was former Solicitor General Seth Waxman who had this to say when contacted by the HBA-VA as part of its pre-interview background investigation: "Patti is just fantastic -- really a perfect candidate in terms of intellect, experience, temperament, and judgment. She's also a delightful colleague."

The HBA-VA is further impressed by how Ms. Millett managed the transition of service under different administrations. In approximately 90% of the cases handled by the Solicitor General, the change in the political winds made little difference in the position the Solicitor General would normally take because they involved such subjects as defending federal civil rights statutes from constitutional attack, tax matters, law enforcement and the like. She was by all accounts deemed the consummate professional by two administrations with contrasting policy differences, a testament to her legal prowess. Her receipt in 2004 of the Attorney General's Distinguished Service Award further attests to the professional high regard with which she was held by a Republican administration even though originally hired by a Democratic administration. She well passed the test of adversity when encountering views inconsistent with her own, by unflinchingly providing what she believed was the proper advice to her client, working to build a better consensus, while at the same time never compromising her personal ethics or morals. These demonstrated skills would serve her well on the U.S. Circuit Court of Appeals for the D.C. Circuit, where widely divergent views require participation in a collaborative process while at the same time the fortitude to resist ideology based decision-making.

Throughout her interview Ms. Millett displayed thoughtful, crisp and prescient answers to questions about the issues of the day. She clearly loves the law and it is noted that she would be making a significant personal financial sacrifice if she were appointed to the D.C. Circuit. She is very personable and engaging and stated that she has not yet gotten used to her law firm compensation, making a return to public service less of a concern. She is opposed to judicial activism if by that one means resistance to the will of the people as expressed through their elected representatives within the bounds of the Constitution. Ms. Millett displayed a keen consciousness that her window on the law is not the only one and that it is important for a judge to consider the perspective of others before arriving at the most just decision possible. Ms. Millett was familiar with all the appellate issues of the day, making study of the law beyond her areas of current practice.

She handled difficult questions posed to her directly, carefully and thoughtfully. For instance she was questioned regarding the disparity in the percentage of African-Americans in prison when compared to the percentage of African-Americans in the U.S. population as a whole, and whether this meant the system of criminal justice contained fundamental flaws. Ms. Millett indicated that the problem is complex and likely the result of a confluence of factors such as political decisions about whom to prosecute, the lack of resources for the defense in some jurisdictions, mandatory minimums, the previously mandatory sentencing guidelines, and a myriad of social factors such as poverty. She shared some of her personal experiences with the issue, such as volunteering at a homeless shelter and witnessing the effect the grinding poverty cycle may have on children at the earliest stages in their life. Ms. Millet also answered without prejudging the issue the question of what is to be done with the prisoners of Guantanamo. She identified the issue as incredibly complicated mixing legal and political considerations. She displayed the appropriate humility one would expect of a jurist in giving deference to the executive before interjecting the judiciary into foreign policy. She indicated that she would need more information to make a good judgment since obviously she is not privy to classified or other information from the parties concerned. Nevertheless she identified models that could be considered in dealing with persons who are enemy combatants including Nuremberg-type trials, the Military Courts Martial process, or the federal district courts. She acknowledged that the actual forum selected is more of a political call than one appropriate to the judiciary. Ms. Millett disclosed that she is not an "originalist" in terms of the framework she applies to analyzing the law, pointing to the example of Guantanamo as but one legal issue where the Constitution requires analysis and interpretation of the applicable law.

A review of a limited sampling of Ms. Millett's writing and cases, discloses her to be a gifted writer with impeccable research and writing skills. In oral arguments before the Supreme Court, she displays a command of her subject-matter, clear and concise organization, and superp verbal advocacy. She graciously shares her knowledge whether by speaking on appellate advocacy issues in forums nationwide, or by writing, including in such real time forums as the SCOTUS Blog. She is a

Ms. Millett has received numerous recent accolades including the following:

- Named to *National Law Journal list of 100 Most Influential Lawyers in America (2013)*
- Law 360 MVP for Appellate Practice (2012)
- Ms. Millett was named by *Washingtonian magazine as one of Washington's 100 Most Powerful Women (2011-2012), in which the magazine reported that she "is known as a persuasive writer and an eloquent arguer"*
- *Washington's Best Lawyers for her Supreme Court work (2011)*
- Named by the *National Law Journal as one of Washington's Most Influential Women Lawyers (2010)*
- *Am Law Litigation Daily as "Litigator of the Week" (2010) for her successful, closely watched and highly publicized argument before the 2nd Circuit in the matter of Securities and Exchange Commission v. Galleon Group, et al.*
- *Chambers USA: America's Leading Lawyers for Business (2009-2013) - appellate law*
- *The Best Lawyers in America (2012) - appellate practice*
- Ms. Millett been listed by *Washingtonian magazine and Benchmark Appellate as a top lawyer in the areas of Supreme Court and appellate practice*
- Washington D.C. *Super Lawyers (2009-2013).*

In engaging in the previous background investigation of Ms. Millett, the HBA-VA contacted noted Harvard Law School professor Lawrence Tribe. The HBA-VA believes that his comments provide the best summary of Ms. Millett's qualifications:

> For many years, I observed with growing admiration her work at the Solicitor General's Office, on whose behalf she made many superlative arguments at the Supreme Court.
>
> More recently, as a consultant to the Akin Gump firm at which Ms. Millett has become a partner, I have worked closely with her on a number of complex appellate cases, have shared the podium with her on numerous occasions in panel discussions and in other formats, and have seen her mind operate at close range. My respect and admiration for her have been solidified by this expe

open-mindedness that leaves no doubt in my mind that she would have a perfect judicial temperament - one that would both display and attract the admiration both of the legal community and of the parties appearing before her;
* She writes and thinks with great speed, clarity, insight, and analytical power; and
* She impresses me, and everyone I know who has encountered her, as a truly exceptional lawyer and a thoroughly decent, fair-minded, non-discriminatory and altogether generous human being.

It is for these reasons that I commend Patricia Millett without any reservation or hesitation for a presidential appointment as a federal judge in the U.S. Court of Appeals...

The HBA-VA agrees with professor Tribe's assessment as well as those of representatives of two administrations through which Ms. Millett served the United States with distinction and is pleased therefore to confer our highest endorsement upon Patricia A. Millett. She is **Highly Recommended** for the position of Judge on the U.S. Court of Appeals for the D.C. Circuit.

Respectfully submitted,

David Bernhard
Judicial Screening Committee
[redacted]n

On behalf of Ofelia L. Calderon,
President, HBA-VA

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

9 July 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 Mr. Chairman and Senator Grassley,

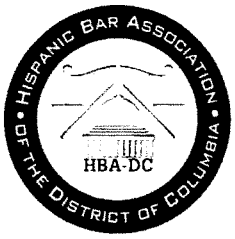
I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for the nomination of Patricia A. Millett's nomination for a seat on the U.S. Court of Appeals for the District of Columbia Circuit.

After a clerkship with the Honorable Thomas Tang at the U.S. Court of Appeals for the Ninth Circuit, Ms. Millett joined the Civil Division, Appellate Section, of the U.S. Department of Justice in 1992. In 1996, she became Assistant to the U.S. Solicitor General, and argued seven cases before the U.S. Supreme Court. Several of these cases addressed State and local law enforcement issues–the constitutionality of traffic checkpoints for drug interdiction or other investigative purposes, *habeas corpus* reviews sought by incarcerated offenders and the validity of rules protection the safety of correctional institutions. In the course of these cases, as well as throughout her career, Ms. Millett showed a real understanding, not just of the issues, but how those issues would impact officer safety and the law enforcement mission.

Since leaving the Office of the Solicitor, Ms. Millett has been in private practice, but her experience, expertise and fair-mindedness as an attorney strongly recommend her to the Federal bench. On behalf of the more than 330,000 members of the FOP, I am pleased to endorse her nomination and urge the Committee to favorably report her to the Senate floor. If I can provide any further information about our support for Ms. Millett, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President



HISPANIC BAR ASSOCIATION
OF THE DISTRICT OF COLUMBIA
P.O. Box 1011 | Washington, D.C. 20013-1011
www.hbadc@hbadc.org

July 9, 2013

Via Electronic Mail and U.S. Mail

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
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Endorsement of Patricia A. Millett

Dear Chairman Leahy and Ranking Member Grassley:

The Hispanic Bar Association of the District of Columbia ("HBA-DC") grants its endorsement to Patricia A. Millett to serve as a judge in the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit."). Based on Ms. Millett's long-term service to the community and her professional qualifications honed before various appellate courts, including the Supreme Court, we believe that she would be a valuable contribution to the D.C. Circuit.

The HBA-DC undertakes a careful review of individuals who seek its endorsement. We ensure that candidates for endorsement meet the letter and the spirit of our endorsement policy, which includes such criteria as demonstrated professional qualifications, personal traits, and demonstrated commitment to the District of Columbia community and minority communities.

Ms. Millett possesses the requisite professional experience to serve as a judge in the D.C. Circuit. She previously clerked for Judge Thomas Tang in the U.S. Court of Appeals for the 9th Circuit and worked at the Department of Justice for over thirteen years, including assignments with the Office of the Solicitor General and the Civil Division's Appellate Section. Her private sector experience is similarly impressive, including her current position as head of Akin Gump Strauss Hauer & Feld LLP's Supreme Court practice and as co-head of the firm's national appellate practice. In total, Ms. Millett has argued 32 cases before the U.S. Supreme Court and

approximately 36 in the courts of appeals. She is only the second woman to have argued more than 30 cases before the U.S. Supreme Court.

More importantly, HBA-DC is impressed with Ms. Millett's community service. She has served on the boards of several legal and public service organizations, including the Lawyers Committee for Civil Rights Under the Law, the Georgetown University Law Center's Supreme Court Institute, and the Supreme Court Historical Society. On two occasions, she received awards from Akin Gump Strauss Hauer & Feld, LLP for her pro bono service representing indigent criminal defendants and other clients in civil rights cases in the Supreme Court and courts of appeals. Ms. Millett also has served as a literacy tutor for nearly 20 years. Additionally, she has been involved in homeless ministries through her church that sometimes required her to sleep overnight as a monitor. Her work with homeless shelters began when she clerked for Judge Tang and has continued to include meal preparations at the Hypothermia Shelter and the weekly delivery of fresh produce to various shelters.

In sum, the HBA-DC is pleased to endorse Patricia A. Millett to serve as a judge in the U.S. Court of Appeals for the D.C. Circuit. If we can be of further assistance in the nomination process, please let us know.

Sincerely,

David Diaz /HJF

David Diaz
Co-Chair, Endorsements Committee
Hispanic Bar Association of DC

cc: Patricia A. Millett
Jaime Areizaga-Soto, President, HBA-DC
Sergio Oehninger, Co-Chair, HBA-DC Endorsements Committee

July 9, 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
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write to express our strong support for Patricia Millett's nomination to be a Judge of the United States Court of Appeals for the District of Columbia Circuit. All of the undersigned are alumni of the Office of the Solicitor General who have served there with Ms. Millett, worked with her before that when she was an Attorney in the Civil Division or in private practice, or worked with her or litigated against her since. We thus have first-hand knowledge of Ms. Millett's dedication, intellect, professionalism, and integrity. We hold a broad range of political, policy, and jurisprudential views, but we speak as one in offering our unqualified support of Ms. Millett's nomination.

Experienced, hard working, thoughtful, smart, principled, modest, and fair-minded, Ms. Millett is everything one should seek in a judicial candidate. With 32 Supreme Court arguments and even more court of appeals arguments behind her, Ms. Millett is one of the most experienced appellate advocates around. She brings vigor, enthusiasm, and a profound intellect to every matter she works on. She is principled in her approach to the law while always being respectful of colleagues and adversaries who may not share her views. Based on our experience with her, we have no doubt that Ms. Millett has the qualities—the character, temperament, ethic, dedication, and intellect—that will make her an asset to the federal judiciary.

We hope this information will be of assistance to the Committee in its consideration of Ms. Millett's nomination. We thank you for your time and attention, and urge you to confirm her.

Donald B. Ayer	Deputy Solicitor General, 1986-1988
Lisa Blatt	Assistant to the Solicitor General, 1996-2009
Richard P. Bress	Assistant to the Solicitor General, 1994-1997
Louis R. Cohen	Deputy Solicitor General, 1986-1988

Edward C. DuMont	Assistant to the Solicitor General, 1992-1996, 1997-2001
Roy Englert	Assistant to the Solicitor General, 1986-1989
Mark Evans	Assistant to the Solicitor General, 1972-1976
H. Bartow Farr, III	Assistant to the Solicitor General, 1976-1978
James A. Feldman	Assistant to the Solicitor General, 1989-2006
David C. Frederick	Assistant to the Solicitor General, 1996-2001
Irving L. Gornstein	Assistant to the Solicitor General, 1994-2007
Douglas Hallward-Driemeier	Assistant to the Solicitor General, 2004-2009
Toby Heytens	Assistant to the Solicitor General, 2007-2010
Dan Himmelfarb	Assistant to the Solicitor General, 2002-2007
Alan Horowitz	Assistant to the Solicitor General, 1979-1986; Tax Assistant to the Solicitor General, 1986-1990
William M. Jay	Assistant to the Solicitor General, 2007-2012
Alan Jenkins	Assistant to the Solicitor General, 1995-1997
Neal Katyal	Deputy Solicitor General, 2009-2011; Acting Solicitor General, 2010-2011
Michael K. Kellogg	Assistant to the Solicitor General, 1987-1989
Jeffrey A. Lamken	Assistant to the Solicitor General, 1997-2003
Paul J. Larkin, Jr.	Assistant to the Solicitor General, 1985-1993
Richard J. Lazarus	Assistant to the Solicitor General, 1986-1989
Michael R. Lazerwitz	Assistant to the Solicitor General, 1988-1991
Robert A. Long	Assistant to the Solicitor General, 1990-1993
Maureen E. Mahoney	Deputy Solicitor General, 1991-1993
Ronald Mann	Assistant to the Solicitor General, 1991-1994
Deanne E. Maynard	Assistant to the Solicitor General, 2004-2009
Carter G. Phillips	Assistant to the Solicitor General, 1984-1986
Andrew J. Pincus	Assistant to the Solicitor General, 1984-1988
Lawrence S. Robbins	Assistant to the Solicitor General, 1986-1990
Charles A. Rothfeld	Assistant to the Solicitor General, 1984-1988
David B. Salmons	Assistant to the Solicitor General, 2001-2007

Richard H. Seamon	Assistant to the Solicitor General, 1990-1996
Stephen M. Shapiro	Deputy Solicitor General, 1981-1983; Assistant to the Solicitor General, 1978-1980
Barbara D. Underwood	Deputy Solicitor General, 1998-2001; Acting Solicitor General, 2001
Paul R.Q. Wolfson	Assistant to the Solicitor General, 1994-2002
Christopher J. Wright	Assistant to the Solicitor General, 1984-1994

POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

July 9, 2013

The Hon. Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Hon. Charles Grassley
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Grassley:

I am writing to support the nomination of Patricia A. Millett to serve on the U.S. Court of Appeals for the District of Columbia Circuit. I believe that Ms. Millett's distinguished career demonstrates an extremely high level of intelligence, strength of character, and commitment to public service. Her experience arguing dozens of cases before the U.S. Supreme Court, federal district and appeals courts, and state courts, combined with her experience writing about the law, lecturing, and serving on a very wide range of legal organizations, show a commitment to the principles of our legal system that is unmatched. Her work on criminal law and criminal justice cases as well as in other areas, including national security, civil rights, and civil law issues, demonstrates a respect for even-handedness and a willingness to consider all aspects of a case.

I hope that as you consider Ms. Millett's nomination you will agree that she would be an important asset to the U.S. Court of Appeals and that you will confirm her nomination. Thank you for your consideration.

Sincerely,

Chuck Wexler
Executive Director

WE PROVIDE PROGRESS IN POLICING

■ 1120 Connecticut Ave., NW Suite 930 Washington, D.C. 20036
Tel: 202-466-7820 Fax: 202-466-7826 TTY: 202-466-2670 www.PoliceForum.org perf@policeforum.org

NATIONAL BAR ASSOCIATION

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Irvine, CA

Patricia A. Rosier
President-Elect
Largo, MD

Twanda Turner-Hawkins
Vice President
Philadelphia, PA

J. Goodwille Pierre
Vice President
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Pamela J. Meanes
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Chicago, IL

Micheal A. Thompson
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Frederick J. Barrow
Parliamentarian
Dallas, TX

Demetris W. Cheatham
Executive Director
Washington, DC

July 10, 2013

The Honorable Patrick Leahy
437 Russel Senate Building
Washington DC 20510

The Honorable Chuck Grassley
135 Hart Senate Office Building
Washington DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

The National Bar Association proudly supports President Obama's nomination of Patricia Ann Millett to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

The NBA is the nation's oldest and largest national network of minority attorneys and judges. It represents approximately 44,000 lawyers, judges, law professors and law students and has over 80 affiliate chapters throughout the United States and around the world.

The NBA was founded on the principles of advancing the science of jurisprudence, preserving the independence of the judiciary, and upholding the honor and integrity of the legal profession. Millett's contributions and commitment to her community encompass the principles our organization was founded on. She has served on the boards of several legal and public service organizations, including the Lawyers Committee for Civil Rights Under the Law, the Georgetown University Law Center's Supreme Court Institue, and the Supreme Court Historical Society.

Millett's distinguished career demonstrates the requisite experience to serve as a judge in the D.C. Circuit. She has argued 32 cases before the Supreme Court and approximately 36 cases before the court of appeals. Currently, she serves as the head of Akin Gump Strauss Hauer & Feld LLP's Supreme Court practice and as co-head of the firm's national appellate practice.

Patricia Millett's commitment to service and the legal profession will serve as a true asset to the federal bench. For all these reasons, the NBA wholeheartedly supports her nomination to the D.C. Circuit.

Sincerely,

John E. Page

John E. Page
70th President, National Bar Association

NATIONAL BAR ASSOCIATION, 1225 11th Street, N.W., Washington, DC 20001 - 4217 • Tel: 202-842-3900 • Fax: 202-289-6170
www.nationalbar.org

Native American Rights Fund

1506 Broadway, Boulder, Colorado 80302-6296 • (303) 447-8760 • FAX (303) 443-7776

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Natalie A. Landreth
Melody L. McCoy

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Natalie A. Landreth
Erin C. Dougherty
Matthew L. Newman

Website: www.narf.org

July 11, 2013

Hon. Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Hon. Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter in Support of Patricia Ann Millet
Nominee to the U.S. Court of Appeals for the D.C. Circuit

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Native American Rights Fund (NARF), I write to urge your support for Patricia Ann Millet to be a judge on the U.S. Court of Appeals for the D.C. Circuit. Without question, Ms. Millet possesses the necessary qualities, qualifications and temperament to be an excellent federal circuit court judge.

The Native American Rights Fund is a national, non-profit legal organization dedicated to securing justice on behalf of Native American tribes, organizations and individuals. Since 1970, NARF has undertaken the most important and pressing issues facing Native Americans in courtrooms across the country, and within the halls of Congress. In coordination with the National Congress of American Indians (NCAI), NARF has directed the work of the Tribal Supreme Court Project (Project) in an effort to improve our advocacy before the U.S. Supreme Court and the lower federal and state courts.

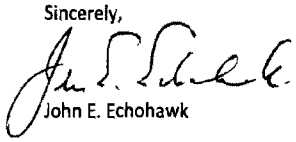
Through this Project, NARF has worked closely with Ms. Millett on several occasions in her capacity as a partner, head of the Supreme Court Practice, and co-leader of the National Appellate Practice at Akin Gump Strauss Hauer & Feld, LLP. She has always displayed the highest level of professionalism expected from attorneys and exhibited the artful skills of an advocate with over 25 years of experience litigating in the appellate courts. Her experience includes 32 oral arguments and scores of briefs before the U.S. Supreme Court, as well as dozens of arguments in the federal circuit courts of appeals. Her cases involve legal issues as

highest level of professionalism expected from attorneys and exhibited the artful skills of an advocate with over 25 years of experience litigating in the appellate courts. Her experience includes 32 oral arguments and scores of briefs before the U.S. Supreme Court, as well as dozens of arguments in the federal circuit courts of appeals. Her cases involve legal issues as diverse as those on the docket of the D.C. Circuit, representing a variety of clients on questions ranging from administrative law, civil and criminal procedure, civil rights, commercial disputes, constitutional law, Indian law and national security.

Ms. Millet is a lawyer's lawyer, graduating *magna cum laude* from Harvard Law School, clerking for Judge Thomas Tang on the U.S. Court of Appeals for the Ninth Circuit, and then serving in the U.S. Solicitor General's Office for more than 11 years through both the Clinton and George W. Bush Administrations. While there, she received outstanding accolades for her work, including the Attorney General's Distinguished Service Award for representing the interests of the United States Government before the Supreme Court.

Ms. Millet is an extremely well-qualified attorney that stands ready to serve an important post within our judicial system. Thus, it is with great pleasure that the Native American Rights Fund fully supports the confirmation of Patricia Ann Millett to serve on the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,



John E. Echohawk

July 17, 2013

(703) 565-5143
mcallen@comptonduling.com

RECEIVED JUL 24 2013

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Nomination of Patricia A. Millett to the United States Court of Appeals for the District of Columbia Circuit

Dear Senators Leahy and Grassley:

As the President of the Virginia Women Attorneys Association (VWAA) it has come to my attention that one of our members, Patricia Ann Millett, has been nominated to the United States Court of Appeals for the District of Columbia Circuit by President Obama. The mission of the VWAA is to assist women attorneys in developing their professional practice and in achieving their potential, to bring about changes in the law and to affect public policy for the benefit of the women of the Commonwealth of Virginia. Ms. Millett has generously responded when called upon by the VWAA, giving of her time, talent and finances to support our organization.

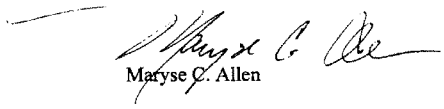
By now you are no doubt informed of Ms. Millett's sterling professional credentials, thus, I will not recount them here except to note that she has argued thirty-two cases before the Supreme Court, more than any other woman save one, and has been repeatedly recognized as one of the best appellate lawyers in the country. In view of her academic record, her leadership role as the head of the Supreme Court practice at Akin Gump Strauss Hauer & Feld and her considerable *pro bono* and community service, there can be little doubt that Ms. Millett is an outstanding candidate for this position.

12701 Marblestone Drive ■ Suite 350 ■ Prince William, Virginia 22192-8307 ■ 703.583.6060 ■ fax 703.583.6066
www.ComptonDuling.com

Currently only three of the eleven seats on the District of Columbia Circuit Court are filled by women. Confirming Patricia Ann Millett would bring needed diversity to the bench.

Very truly yours,

COMPTON & DULING, L. C.



Maryse C. Allen

MCA/ljm

X:\K-L-M\M\MMCA\VWAA\LEAHY-GRASSLEY.DOCX

1200 18th STREET NW, SUITE 501 • WASHINGTON DC 20036
PHONE: 202-296-6889 • FAX: 202-296-6895 • WWW.THEUSCONSTITUTION.ORG

July 17, 2013

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

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that Patricia Millett be reported favorably out of Committee and confirmed promptly to the United States Court of Appeals for the District of Columbia Circuit.

Ms. Millett, a *magna cum laude* graduate of Harvard Law School, is exceptionally well-qualified to serve as a federal appellate judge. Indeed, she is one of the country's most accomplished appellate advocates, having argued nearly three dozen cases before the United States Supreme Court and even more in the lower courts. Currently, she is a partner in Akin Gump Strauss Hauer & Feld, where she heads the firm's Supreme Court Practice Group and Co-Chairs its National Appellate Practice. Ms. Millett's distinguished career has also included a lengthy tenure in public service, in particular eleven years as an Assistant to the Solicitor General during the Administrations of President Bill Clinton and President George W. Bush.

Not surprisingly, given her exemplary record, Ms. Millett's nomination has garnered strong bipartisan support, including from seven former Solicitors General who have served in Democratic and Republican Administrations and have, by their own account, "substantial first-hand knowledge of Ms. Millett's professional skills and personal integrity."[1] These former high-ranking officials, including Ken Starr, Ted Olson, Drew Days, and Walter Dellinger, have described Ms. Millett as "supremely qualified" to serve on the D.C. Circuit, noting that she has "a brilliant mind, a gift for clear, persuasive writing, and a genuine zeal for the rule of law. Equally important, she is unfailingly fair-minded."[2]

In her testimony before this Committee on July 10, Ms. Millett ably demonstrated why prominent lawyers from across the ideological spectrum have advocated her confirmation. Indeed, at Ms. Millett's hearing, Committee members from both sides of the aisle expressly recognized that she is

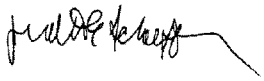
[1] Letter from Kenneth W. Starr, *et al.* to Hon. Patrick Leahy and Hon. Charles Grassley (July 3, 2013).
[2] *Id.*

well-qualified to be a federal appellate judge. Senator Cruz, for example, who noted that he has known Ms. Millett for a long time, described her as a talented and skilled appellate advocate. In light of the bipartisan recognition of Ms. Millett's qualifications, we hope that she is reported favorably out of the Committee with bipartisan support.

Ms. Millett clearly has the qualifications, experience, intellect and temperament to serve with great distinction on the D.C. Circuit. We urge every Senator to support her confirmation.

Respectfully,

Douglas T. Kendall
President



Judith E. Schaeffer
Vice President

cc: All Members, Senate Judiciary Committee

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

Please respond to:
Judy Perry Martinez, Esquire
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

VIA EMAIL AND FIRST CLASS MAIL

June 4, 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 Patricia Ann Millett to the United States Court of Appeals for the District of Columbia Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Patricia Ann Millett who has been nominated for a position on the United States Court of Appeals for the District of Columbia Circuit. As a result of our investigation, the Committee is of the opinion that for this position Ms. Patricia Ann Millett is Unanimously Well Qualified.

A copy of this letter has been provided to Ms. Millett.

Sincerely,

Judy Perry Martinez
Chair

cc: Patricia A. Millett, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 4, 2013.

Please respond to:
Judy Perry Martinez, Esq.
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

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

May 17, 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 Elizabeth A. Wolford
To the United States District Court for the Western District of NY

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Elizabeth A. Wolford who has been nominated for a position on the United States District Court for the Western District of New York. As a result of our investigation, the Committee is of the opinion that for this position Ms. Wolford is Unanimously Qualified, one recusal recorded.

A copy of this letter has been provided to Ms. Wolford.

Sincerely,

Judy Perry Martinez
Chair

cc: Elizabeth A. Wolford, Esquire (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 17, 2013.

CHAIR
Judy Perry Martinez
New Orleans, LA

Mailing Address
2980 Fairview Park Drive
Falls Church, VA 22042

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Suite 1180 North
10 Post Office Square
Boston, MA 02109

SECOND CIRCUIT
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

THIRD CIRCUIT
Robert C. Heim
Lisa Cerdini
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
E. Fitzgerald Parnell, III
Suite 2300
401 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1001 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slowik
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Bank Building
520 Walnut Street
Des Moines, IA 50309-4119

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Ramón A. Abadin
Suite 1200
9155 South Dadeland Boulevard
Miami, FL 33156-2735

D.C. CIRCUIT
Ronald A. Cass
10 60 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Planner
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-662-1761
denise.cardman@americanbar.org

Please respond to:
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Falls Church, VA 22042
Tel: 703-280-4088
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

May 14, 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 Gregory Howard Woods
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 Gregory Howard Woods 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. Woods is Majority-Qualified, Minority-Well Qualified, one recusal recorded.

A copy of this letter has been provided to Mr. Woods.

Sincerely,

Judy Perry Martinez
Chair

cc: Gregory H. Woods, 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 14, 2013.

NOMINATION OF CORNELIA T. L. PILLARD, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT; HON. BRIAN MORRIS, OF MONTANA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA; HON. SUSAN P. WATTERS, OF MONTANA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA; JEFFREY ALKER MEYER, OF CONNECTICUT, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT; AND LANDYA B. MCCAFFERTY, OF NEW HAMPSHIRE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW HAMPSHIRE

WEDNESDAY, JULY 24, 2013

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

The Committee met, pursuant to notice, at 10:03 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Hirono, Grassley, Lee, Cruz, and Flake.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. The Committee will be chaired by Senator Blumenthal, who is on his way, but I want to open it today by welcoming five excellent judicial nominees, and, of course, I do thank Senator Blumenthal for chairing this. He is the former Attorney General of Connecticut and understands these things as well as anyone.

We will first hear from Nina Pillard, who is President Obama's nominee to fill one of the three current vacancies on the DC Circuit.

Professor Pillard has had a distinguished career as a practitioner and as an academic. She earned a unanimous rating of "well qualified" from the ABA Standing Committee on the Federal Judiciary. She has argued nine cases before the Supreme Court and briefed 18 others on behalf of a range of clients. She spent her legal career in public service, in the Office of the Solicitor General and the Of-

fice of Legal Counsel, and at the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund. For the past 13 years, she has worked as professor at my alma mater, Georgetown University Law Center. At Georgetown, she serves as the faculty co-director of the Supreme Court Institute, where she has helped prepare fellow lawyers in dozens of cases. I have been in that mock-up room at Georgetown, and I have had everybody from—Chief Justice Roberts has told me that he would practice cases when he was arguing cases before the Supreme Court there. The law school is a little bit nicer than it was when I went there.

But she is lucky enough to have family in the great State of Vermont. Her sister lives in Charlotte on the shore of our Great Lake, Lake Champlain. I understand she and her family spend quite a bit of time in Vermont, so I am glad to see the family, and she will introduce them when she is sworn in.

I would note that a number of my friends on the other side of the aisle have made comments about the history of the Committee's consideration of nominees to the DC Circuit. It is certainly inaccurate to suggest that there is any comparison between a letter sent eight years ago by Committee Democrats expressing concerns about a particular nominee and the effort now to strip the DC Circuit of three of its 11 judgeships.

The 2006 letter made reference solely to the 11th judgeship, and the caseload issue was raised, in addition to several substantive concerns about the nominee. We did note that, as sometimes happens, Committee Republicans had blocked and opposed President Clinton's nominees to the DC Circuit's 11th seat, even though the caseload was higher during the Clinton administration than during the Bush administration.

When the DC Circuit's caseload was around 190 pending appeals per active judge during the Clinton administration, Senator Grassley and other Republicans opposed filling the 12th and even the 11th seat and delayed the confirmation of Merrick Garland. At that time, even Senator Hatch said that this was "playing politics with judges." Of course, as soon as we had a Republican President, they had no problem filling that 11th seat, and that was when there was 121 pending appeals per active judge at that time.

I would remind my friends on the other side of the aisle that they felt they needed that 11th seat with 121 pending appeals per active judge. Of course, it was a Republican nominating the judge.

But now the caseload is up to 177 pending appeals per active judge, and the need does not seem as great because there is a Democratic President.

You know, the numbers, of course, are far more favorable to President Obama for filling these seats than it was for President Bush. And I would hope that President Obama is not going to be held to a different standard as though somehow he is different than President Bush.

No Senate Democrat opposed the May 2003 confirmation of John Roberts to the DC Circuit, even though it brought the caseload all the way down to its lowest level in the 20 years—111 pending appeals per active judge. So now that the load is much, much higher than when we confirmed John Roberts to the circuit, I hope that

we can start working on Professor Pillard's nomination and those of Patricia Millett and Robert Wilkins.

We also welcome Landya McCafferty, nominated to the District of New Hampshire; Jeffrey Meyer, who is nominated to the District of Connecticut; and Brian Morris and Susan Watters, who are both nominated to judicial emergency vacancies in the District of Montana. All have the support of their home State Senators, both Republicans and Democrats. I hope we can move forward on them.

I will yield first to Senator Grassley, and then I am going to turn the gavel over to Senator Blumenthal. But I know Senator Baucus is here and wants to speak of the nominations in the Big Sky country.

Senator BLUMENTHAL [presiding]. Senator Grassley.

Senator GRASSLEY. I would like to let Senator Baucus go ahead.

Senator BLUMENTHAL. Senator Baucus, Senator Grassley has very graciously yielded to you, so please go ahead. And thank you to Senator Leahy.

PRESENTATION OF BRIAN MORRIS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA, AND SUSAN P. WATTERS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA, BY HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Chairman Leahy, for those comments, and thank you, Senator Grassley, my good friend. We have worked together so much on the Finance Committee. And thank you, Senator Blumenthal.

I am pleased to be here today to introduce two outstanding Montanans to the Committee: Justice Brian Morris and Judge Susan Watters, to serve as United States District Judges for the District of Montana.

One of the most important responsibilities I have is my constitutional role to provide advice and consent on the President's nominations to the federal bench. Over the course of my time here, I have had the opportunity to recommend some of Montana's top legal minds to the federal bench. I approach each vacancy with the same criteria. I want the best. I do not care if they are Republicans, Democrats, liberals, conservatives. I want the best.

I look for individuals with a breadth of legal experience, ethics above reproach, sharp analytical skills, and respect for precedent.

In consultation with Montana's legal community, I recommended Susan Watters and Brian Morris to President Obama. I am certain that their experience, leadership, and prudence will serve Montanans well.

Montana Supreme Court Justice Brian Morris has distinguished himself as one of the brightest legal minds that has ever come out of Montana. Another important distinction: He hails from Butte—Butte, Montana, that is. It is a privilege to introduce him to the Committee today.

Justice Morris is accompanied by his wife, Cherche; two of their children, Max—I think daughter Mekdi could not make it today. I would like to offer my congratulations to Justice Morris and his family. His nomination caps what has already been a prestigious legal career.

Justice Morris earned a football scholarship to Stanford University and graduated with a bachelor's degree and master's degree in economics. In 1991, Justice Morris graduated with distinction from Stanford Law School. At the law school, Justice Morris clerked for Judge John Noonan, Jr., of the Ninth Circuit Court of Appeals. Then he clerked for Chief Justice Rehnquist of the U.S. Supreme Court. After clerking for the Court, Justice Morris worked for one year at The Hague on the U.S.-Iran Claims Tribunal, representing American citizens and businesses who lost property in Iran after the Islamic Revolution.

Following his time in The Hague, Brian returned home to Montana, where he took a job with the Bozeman firm Goetz, Madden & Dunn, handling both criminal law and commercial litigation.

Justice Morris then served for three years as Montana's Solicitor General. In 2004, Justice Morris was elected to the Montana Supreme Court where he has since served. There he has demonstrated all the qualities required of a federal court judge: integrity, fairness, a steady disposition, and superb analytical skills. And despite his lofty credentials, Justice Morris is known for his approachability and down-to-earth nature. After all, he is from Butte.

He has four children and is highly involved with their sports and schools. In addition, on any given day, you might find him or one of his law clerks volunteering to read to students at Smith Elementary School in Helena.

For more than eight years, he has served the people of Montana on the bench and in the community. As a federal judge, I have no doubt that he will continue to perform at the highest possible level.

It is now my privilege to introduce the second nominee from Montana. In Montana, we are especially proud that in 1916, Montanans elected the first woman to the U.S. House of Representatives, Jeannette Rankin, who achieved this remarkable feat four years before women secured the right to vote. We elected the first woman to Congress four years before women had the right to vote.

Today's second nominee, Judge Susan Watters, is another trail-blazing Montanan, another trail-blazing woman. If she is confirmed by the Senate, she will become the first woman to serve as a Federal District Court Judge for the District of Montana.

Judge Watters' husband, Ernie, is here today. I know that Ernie, along with their two daughters—who, by the way surprised our nominee here today by flying into DC just to be here for the hearing. A big surprise for Susan. She had no idea her daughters were coming. They are here today to be with Susan and with Ernie, Susan's husband. I know they are all very proud of her. I congratulate her entire family on this tremendous achievement.

Judge Susan Watters was born and raised in Billings, Montana, and graduated with honors from Eastern Montana College in 1980. Shortly afterward, her two daughters were born. Judge Watters raised two young children while attending the University of Montana Law School, achieving a law degree in 1988.

After law school, she served as deputy county attorney for Yellowstone County. In 1985, Judge Watters opened her own practice where she represented clients in State and federal court. In 1999, Governor Marc Racicot appointed her to sit as a district court judge

for Montana's 13th Judicial District in Billings. And since her appointment, Judge Watters has been re-elected three times, most recently with more than 80 percent of the vote.

During her 14 years on the bench, Judge Watters has presided over thousands of cases and hundreds that have gone to trial. She has overseen civil, criminal, probate, juvenile, and family law cases. Among Judge Watters' most notable achievements is the establishment of the Yellowstone County Family Drug Treatment Court in 2001. Because of its overwhelming success, this court has become a model for other family drug courts across the Nation.

Judge Watters has built a reputation of being fair, hard-working, possessing strong analytical skills and an excellent judicial temperament. She has served the people of Yellowstone County for more than a decade. I am absolutely confident she will bring the same high level of professionalism and dignity to the federal bench.

I appreciate the opportunity to introduce Justice Morris and Judge Watters to this Committee. Not only are they exceptionally qualified, their service is critically needed. The District of Montana holds three full-time Article III judgeships. Two are now vacant. Currently our Chief Judge, Dana Christensen, our only sitting active federal judge, is devoting countless hours traveling from Missoula to Great Falls to help with the docket. Senior Judge Don Molloy is traveling the 345 miles from Missoula to Billings each month to cover his docket. I might remind the Committee this is the same distance as from here to Hartford, Connecticut.

These two vacancies are classified as judicial emergencies by the Administrative Office of the U.S. Courts. I hope the Committee will work diligently and expediently to get these two exemplary nominees to the Senate floor for confirmation.

Senator BLUMENTHAL. Thank you very much, Senator Baucus. Thank you for being here today and so graciously and eloquently introducing these two very well-qualified nominees. And we really appreciate your being here. We know that you have a very busy schedule with the Finance Committee, and I am going to call on Senator Grassley to give his opening statement, and then I will introduce the other nominees. But I hope everyone understands that Senator Baucus probably will not be able to stay for the remainder of the hearing, but we do appreciate you being here. Thank you.

Senator BAUCUS. Thank you, Mr. Chairman. And I know I am beating a dead horse here, but these are two terrific people.

[Laughter.]

Senator BAUCUS. Thank you.

Senator BLUMENTHAL. Thank you. Well, your saying so means a lot. Thank you.

Senator BAUCUS. Thank you.

Senator BLUMENTHAL. Senator Grassley.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I welcome all the nominees. Among the nominations on the agenda today is the nominee for the DC Circuit, and I will make a statement similar to what I made when there was another nomination. And you heard some statistics from Senator Leahy. I want the audience to know that there is an honest dif-

ference of opinion between Senator Leahy and me on this subject of whether or not we need additional judges.

I would point out that the main difference is whether or not you are going to consider pending cases before the DC Circuit or whether you are going to look at how much work is actually getting done by the circuit court. And I look at the filed cases and the terminated cases in my statistics, as opposed to pending cases.

Also, another point I should make you aware of is that there was a seat on this court eliminated during President Bush's administration, and even though I am a Republican, I led that effort to eliminate that one seat because I did not think it was needed at that particular time.

I have indicated on a number of occasions that I believe it is a mistake to move forward with these nominations when there is so much disagreement about whether these seats are even needed. Notwithstanding the disagreement over the workload, the Chairman has indicated that he will move forward with these nominees, and he is Chairman and he sets the agenda, and I have to accept that. But I would like to address a little more detail about why the workload simply does not warrant the additional judges.

First, I would like to remind my colleagues that in 2006 the Democratic majority now, then in the minority, argued that the DC Circuit caseload was too light to justify confirming any additional judges to the bench. Since that time, the caseload has continued to decrease.

In terms of raw numbers, the DC Circuit has the lowest number of total appeals filed annually among all the circuit courts of appeal. In 2005, that number was 1,379, this year 1,193, a decrease of 13 percent. If you look at the number of appeals filed per authorized judgeship, again, the DC Circuit is the lowest. In 2012, the DC Circuit had 108 total appeals filed per authorized judgeship. This is the lowest in the Nation. By comparison, in 2012 the national average was 344, nearly three times as high for the other circuits. In 2005, the total number of appeals filed per authorized judgeship was 115, and again in 2012, that number had fallen to 108.

And what is noteworthy is that the number decreased even though Congress transferred one judgeship to the Ninth Circuit in 2008. Stated differently, the total number of cases filed has fallen so much since 2005 that the number of filings per judgeship has decreased even though we have fewer authorized judgeships today than in 2005.

Perhaps the best numbers to examine are those that measure the workload per active judge. The caseload has decreased so much since 2005 that even with two fewer active judges, the filing levels per active judge are practically the same.

In 2005, with 10 active judges, the court had 138 appeals per active judge. Today, with only eight active judges, it has 149. This makes the DC Circuit caseload level the lowest in the Nation and less than half of the national average.

We have recently confirmed judges in the Eighth and Tenth Circuits. It has been suggested that these circuits have caseloads lighter than the DC Circuit. As I have said in the past, that is not accurate. The DC Circuit has fewer cases filed and fewer cases terminated than either the Eighth or the Tenth Circuit. Cases filed

and cases terminated measure the amount of appeals coming into the court and being resolved by the court, respectively. That is how you determine how busy a court is.

Now, I would like to note that the White House is attempting to rely on pending cases to try to compare the Eighth and Tenth Circuits to the DC Circuit. But what the White House fails to mention is that cases pending measure case backlog. Cases pending does not measure how many cases are being added and removed from the docket.

When looking at how many cases are added or files per active judge, the DC Circuit is the lowest with 149. It is nowhere near the Eighth Circuit's 280 or the Tenth Circuit's 217.

When looking at the numbers of cases being terminated by each court, the DC Circuit is once again the lowest at 149. Again, the Eighth Circuit and Tenth Circuit, 269 and 218, respectively. So an objective review of the caseload reveals that the DC Circuit is very low, and it raises serious doubts regarding whether we need more than eight active judges on the court.

Now, there is no question in my mind that the statistics makes clear that the DC Circuit does not need additional judges, and that is especially true if you use the standards that the Democrats set when they opposed Peter Keisler's nomination to the DC Circuit in 2006.

But in addition to the statistics, I think it is extremely helpful to get input from the judges themselves. By way of background, let me just say that when I chaired the Judiciary Subcommittee on the Courts in the 1990s, I conducted a survey of U.S. courts. Back then I asked judges to provide their perspective on a variety of issues. The insight that the judges were able to provide through that survey was invaluable at that time, and I think using that same method will be valuable this time.

So based on that experience, I recently sent a letter to judges currently serving on the DC Circuit. I asked the judges whether based on their experience the workload of the DC Circuit warranted additional judges. I also asked that those who cared to respond do so anonymously so that they could feel free to speak candidly. The results are not surprising.

The judges themselves confirmed everything that I have been saying about the workload of the course. As one judge put it, "I do not believe the current caseload of the DC Circuit or, for that matter, the anticipated caseload in the near future merits additional judgeships at this time. If any more judges were added now, there would not be enough work to go around."

Another judge wrote, "The court does not need additional judges for several reasons. For starters, our docket has been stable and decreasing, as the public record manifests. Similarly, as the public record also reflects, each judge's work product has decreased from 30-some opinions each year in the 1990s to 20-some and even fewer than 20 opinions each year since."

Again, this is not this Senator saying that the caseload is low. These are judges currently serving. These judges say that if we confirm any additional judges, "there would not be enough work to go around." Who is in a better position than the judges to make

an assessment about the court's workload and the need for additional judges?

I would also remind my colleagues that the court currently has six senior judges. Combined with the eight active judges, that is a total of 14 judges serving on the court. According to one of the judges on the court, the senior judges "will more than likely serve for another decade based upon their respective ages and health." Likewise, another judge noted that the DC Circuit has "an extraordinary number of sitting senior judges, six, who are actually younger than the average age of the U.S. senior judges." Based on this, it is clear that the senior judges on the court are contributing a significant amount of work and will continue to do so for the foreseeable future. They serve because they want to, not because they have to. This is all the more reason why the DC Circuit is the most—has the lowest agenda.

I will have a lot more to say on this subject as we move forward with this nomination, and I yield back. Thank you.

Senator BLUMENTHAL. Thank you, Senator Grassley, for those remarks. I hope that we can move on with the business before us, which is the nominations that we are considering. But I just want to say that I respectfully disagree, Senator. I think that the statistics and numbers that you cited are certainly not the sole or even the best measure of the workload of a court the size and complexity and challenge of cases which are extraordinarily high before the DC Circuit are equally if not more important, and I am going to enter into the record, if there is no objection, statements from present and former members of the court who have commented for the record, not anonymously, their views as to the workload of the court, and that includes former Chief Judge Harry Edwards, Judge Lawrence Silberman, former Chief Judge Patricia Wald, former Chief Judge Douglas Ginsburg, and Chief Justice John Roberts of the U.S. Supreme Court, all indicating very strongly and unequivocally that the workload of this court is certainly a tremendous challenge and growing rather than diminishing.

Having said that, let me introduce now two of my colleagues who very generously have agreed to be here today to introduce their nominees, nominees from their States, and I would begin with Senator Shaheen.

PRESENTATION OF LANDYA B. McCAFFERTY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW HAMPSHIRE, BY HON. JEANNE SHAHEEN, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SHAHEEN. Thank you very much, Mr. Chairman, Ranking Member Grassley, Senator Hirono. I am sorry to be a little late, but delighted to be here this morning to introduce Landya McCafferty, who has been nominated by the President to be the Federal District Court Judge for the District of New Hampshire.

I want to note at the beginning that Landya, if confirmed, will be the first woman to serve on the federal bench in New Hampshire. I have to point that out. But really it is not Landya's gender that matters. It is her professional experience and her personal qualities that really make her stand out.

When word got out in New Hampshire that there would be a vacancy on our federal bench, I heard from lawyers across the State. They recommended Landya McCafferty for this judgeship. And I did not know Landya at the time, but I was very impressed by what I was hearing from others who had worked with her about her skill and experience. I wanted to meet her and I was not disappointed. I was struck by Landya's intellect, by her thoughtfulness, and by her level temperament. She gave straightforward and well-reasoned answers to all of my questions.

In addition to her current position as the U.S. magistrate judge for the District of New Hampshire, her federal court experience includes clerking for two district court judges at the First Circuit Court of Appeals. Her other professional experience includes prosecuting professional misconduct cases as the disciplinary counsel for the New Hampshire Supreme Court Attorney Discipline Office; serving as an appellate and trial attorney in a highly regarded New Hampshire public defender program's amendment working in private practice as a civil litigator.

Landya is also an innovator. As a magistrate judge, she has become a nationally recognized expert and teacher on how to use technology, including iPads, to achieve a more efficient and paperless work flow in the federal court system.

Mr. Chairman, I have no doubt that Landya McCafferty will be an excellent federal district court judge. I urge her confirmation and her expeditious consideration to that appointment.

Thank you very much.

Senator BLUMENTHAL. Thank you, Senator Shaheen. Thank you for being here today.

I will now introduce my colleague from Connecticut, Senator Murphy. He and I have worked very closely together on the nomination, and the introduction that he is going to make is very welcome this morning. Senator Murphy, thank you.

PRESENTATION OF JEFFREY ALKER MEYER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, BY HON. CHRISTOPHER MURPHY, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator MURPHY. Thank you very much, Senator Blumenthal. Thank you, Senator Grassley. Good to see you, Senator Hirono. I appreciate, Senator Blumenthal, your generosity in allowing me to be here before a Committee you are chairing to introduce Jeffrey Meyer, who will be appearing before you as the President's nominee to be a United States district judge in Connecticut. We both have had the pleasure of knowing and getting to know Mr. Meyer, and the reason why we recommended him for this post is because there are few people, I think, that this panel will see that have the unique blend of judicial experience, academic experience, and practical experience that Mr. Meyer brings to this position.

He received both his undergraduate degree and his law degree from Yale in New Haven. He clerked at the Supreme Court for Harry Blackmun and then for Judge James Oakes. He currently is teaching the Supreme Court Advocacy Clinic at Yale Law School as a visiting professor. He also served as an Assistant United States Attorney in Connecticut for almost 10 years, and before that was

the senior counsel of the independent inquiry committee into the United Nations Oil for Food Program.

Aside from his full-time work, Mr. Meyer has been a member of the Connecticut Judicial Ethics Committee since 2008, a member of the Advisory Committee for the selection of Connecticut's Federal Public Defender. He is also a member of the U.S. Attorney's Police and Urban Youth Task Force.

This is a pretty impressive mixture of both experience as an attorney, experience as an academic working specifically on issues related to the federal bar, and really robust involvement in the community that he lives in. We were both very impressed when we got the chance to meet with him with the degree of intellectual thought that he has given to trying to make the federal court system work better for people who interact with it, both plaintiffs, defendants, and lawyers. I think that kind of intellectual thought that he has devoted his career to will lend great weight to the federal bar.

I would just note very quickly that though he will, I am sure, introduce his family who is here with him today, I would give special note to his father, State Senator Ed Meyer, who I served with in the Connecticut General Assembly. Senator Meyer really is one of the pillars of conscience in the State Senate in Connecticut, and he has clearly passed down that trait to his son.

I am very, very pleased to be here to introduce him today, and I thank you for your generosity in allowing me to do it.

Senator BLUMENTHAL. Thank you, Senator Murphy.

I would just round out that introduction by saying I am not going to hold it against Jeff Meyer either that he went to Yale or that he was a law clerk to Justice Blackmun or that he is Ed Meyer's son, with whom I served as well, and I appreciate his being here today. And I might just add that Mr. Meyer not only served as a prosecutor in Connecticut but also served for five years as appeals chief. He led a very significant part of the United States Attorney's Office where I also served, and I know from his reputation there as well as his reputation in the private bar that he was not only aggressive and zealous, but also fair and compassionate in the way that he conducted his prosecutorial duties. I think those qualities are profoundly significant to the service of any judge, and I know that he will bring them to the bench when he is confirmed, as I expect he will be.

And I might just add for the benefit of everyone who is here today that this Committee really regards these nominations processes and this hearing as a very, very significant step in an exacting and demanding process. As I have said before—and I have been practicing as a lawyer in the federal courts for some decades—the district court judge is often the voice and face of justice for countless citizens who bring their grievances or complaints or claims of injustice to our federal judges. And although they can appeal to the circuit court, for many the district court is the place where they seek and receive justice.

And so these appointments of district court judges, in my view, are some of the most significant responsibilities we have as Senators, and I want to thank all of the nominees for their willingness to serve. It is a job that requires extraordinarily hard work, diligence, scholarship, and sensitivity, and personal qualities that I

think they bring to this role that are very profoundly important. So I thank our two colleagues for being here today, and thank you for taking time from your very, very busy schedules. I know both of you are involved in Committee hearings and meetings, and I hope that our nominees and their families and friends and supporters will excuse them today, and certainly we thank you for being here. Thank you, Senator Shaheen, and thank you, Senator Murphy.

I want to introduce the next nominee and ask her to come forward. Cornelia T.L. Pillard has been nominated by the President of the United States to serve on the DC Circuit Court of Appeals, and I must say that I am really very, very honored to introduce her to the Committee today. She is a person of extraordinary professional excellence and has a record of distinguished public service and devotion to the public interest that I think is unmatched, really, among the nominees that this Committee has considered in this role.

The American Bar Association has given Ms. Pillard its highest rating for her qualifications, and anybody who looks at her nomination and her resume knows exactly why. She has served in many of the most important jobs in the law, arguing on behalf of the U.S. Government in the Solicitor General's Office, serving in the Department of Justice's Office of Legal Counsel, and teaching at one of the Nation's leading law schools.

Even before she was nominated for this position on the DC Circuit, she was a figure of profoundly significant stature in the legal profession. Her argument in the landmark case of *United States* v. *Virginia*, for example, produced a 7–1 victory that still serves as a milestone in equal protection jurisprudence. Her advocacy in the *Hibbs* case, which she argued alongside the Bush administration official who led that administration's support for her argument, also led to another enduring Supreme Court opinion, this one by Chief Justice Rehnquist, upholding congressional power to enact the *Family and Medical Leave Act*.

Just as important as her abilities is her commitment to public service. In every job that she has had, Ms. Pillard has stood up for the public interest, for equal protection, for the rights of minorities, and people who sought justice. And in the process, she has shown she understands a very important fact about the law: No one has a monopoly on truth. A lawyer can serve the public by upholding the rule of law in a variety of roles, serving a variety of clients. She has represented the U.S. government, and she has also represented litigants seeking to protect their rights against the government when it intruded or interfered unfairly with those rights.

She has served on the Board of the American Arbitration Association where she worked with the corporate general counsel to make our legal system more efficient and effective. She has experience with the reflection made possible by an academic position where a lawyer really can identify different trends in legal thinking and work to teach students the basic principles that make up our system of justice. And she now serves as faculty director of Georgetown University's Supreme Court Institute.

Attorneys who have watched and seen Ms. Pillard work also agree that she has the talent and temperament to make an exceptional DC Circuit judge.

This Committee has received letters of support for Ms. Pillard from a broad cross-section of the legal profession, including 21 former Office of Legal Counsel attorneys, 25 federal prosecutors and law enforcement officials, 30 retired members of the armed forces, former Director of the FBI William Sessions, and former Bush administration Assistant Attorney General Viet Dinh.

I ask unanimous consent that these letters be submitted for the record.

[The letters appear as submissions for the record.]

Senator BLUMENTHAL. And I would also ask consent to submit an op-ed printed in the record today by somebody who directly benefited from Ms. Pillard's work, Elizabeth Dobbins, who is, I believe, with us today. She is a retired military officer and graduate of the Virginia Military Institute, and she was able to attend VMI and advance her goal of serving our country in the military, thanks to the work that Ms. Pillard has done and did in that case. And as I mentioned, I think she is with us today, and I want to thank her for joining us.

Ms. Pillard, I welcome you here today. As I mentioned, I am honored to introduce you to the Committee, and I want to thank you in advance for your willingness to serve. And my first duty is to ask you to please stand and be sworn. If you would please raise your right hand. Do you affirm that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. PILLARD. I do.

Senator BLUMENTHAL. Thank you. You are free to proceed with an opening statement if you would like and introduce your family.

STATEMENT OF CORNELIA T.L. PILLARD, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Ms. PILLARD. Thank you, Senator Blumenthal. I would like to thank Chairman Leahy and Ranking Member Grassley for scheduling this hearing and Senator Blumenthal for chairing and for his very kind and generous introduction. And I would like to thank all the Senators on the Committee for taking their time out of their very busy schedules to be here—Senators Hirono, Franken, and Whitehouse—and I know others are in and out according to their busy Committee schedules.

I would also like to thank President Obama for this nomination. The system of laws and courts in our country is a precious heritage, and I take my acceptance of this nomination as my pledge to safeguard our great legal traditions.

I also want to introduce several people who are here with us today, my family: my husband, David; my son, Aidan, who is 16. My daughter, Sara, 14, cannot be with us today because she is at summer camp in the Adirondacks, a camp with a long family tradition. Actually, my parents, who are here, initially met each other as counselors at the camp where my daughter is now attending. They do not have television or electronics there, but they told her that they might let her watch the Webcast, so perhaps she is watching us today.

Additional members of my family: my mother, Cornelia Pillard, Cornelia Tierney, is here, and my father, Dr. Richard Pillard. My

stepsister, Minou Elisa Tierney, is here from California as representative of my four siblings.

I would also like to recognize two special guests who are here with us today: Retired Brigadier General Evelyn Foote, who goes by "Pat" Foote, who has spent 30 years in the United States Army and has broken untold barriers for women. She has been a leader in working toward women's equal participation in the military and was an early and consistent supporter of VMI's, the Virginia Military Institute, opening to women, and she is here with us today. We are very honored to have her here.

And seated directly next to her is Elizabeth Dobbins. Elizabeth, who Senator Blumenthal mentioned, is studying to take the bar next week. She is a graduate of the University of Virginia Law School, and she went and did her undergraduate at VMI. So, yes, she is one of those proud VMI women, and so she is also here with us today, and we are very proud to have her.

Finally, I would like to recognize the Georgetown University Law Center dean, Dean William Treanor, and all the colleagues, friends, and supporters, including former students, who are here with us today. I am very pleased to have you here on this very, very important day.

Thank you so much.

[The biographical information of Ms. Pillard follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Cornelia Thayer Livingston Pillard
   (commonly known as Nina Pillard)

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

   Circuit Judge for the United States Court of Appeals for the District of Columbia 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.

   Georgetown University Law Center
   600 New Jersey Avenue, NW, Room 416
   Washington, DC 20001

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

   1961; Cambridge, Massachusetts

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

   1984 – 1987, Harvard Law School; J.D. (*magna cum laude*), 1987

   1979 –1983, Yale College; B.A. (*magna cum laude*, with Distinction in History), 1983

   Fall 1982, Beijing Foreign Language Institute; no degree

   Summer 1982, Beijing Language Institute; no degree

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

1997 – present
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
Professor (2005 – present)
Associate Professor (1997 – 2005)

2012 – 2013
Woodrow Wilson International Center For Scholars
One Woodrow Wilson Plaza
1300 Pennsylvania Avenue, NW
Washington, DC 20004
Fellow
(on leave from Georgetown Law during spring semester 2013)

2008 – 2009
Center for Transnational Legal Studies
Swan House
37-39 High Holborn
London WC1V 6AA
United Kingdom
Academic Co-Director & Professor
(in the employ and on behalf of Georgetown Law)

1998 – 2000
Office of Legal Counsel
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Deputy Assistant Attorney General
(on leave from Georgetown Law)

1994 – 1997
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1989 – 1994
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, New York 10013
(transferred to DC office, 1992 – 1994)
Assistant Counsel

Summer 1986, 1988 – 1989
American Civil Liberties Union
125 Broad Street
New York, New York 10004
Marvin M. Karpatkin Fellow (1988 – 1989)
Summer Intern (Summer 1986)

1987 – 1988
The Honorable Louis H. Pollak
United States District Court for the Eastern District of Pennsylvania
601 Market Street
Philadelphia, Pennsylvania 19106
Law Clerk

1985 – 1987
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant to Professor Laurence Tribe (1986 – 1987)
Legal Methods Instructor for Professors Martha Minow and David Rosenberg (1985 – 1987)

Summer 1985
Kairys & Rudovsky
718 Arch Street, Suite 501
Philadelphia, Pennsylvania 19106
Summer Associate

1983 – 1984
Newsday (Asia Bureau)
San Li He residential complex
JianGuoMenWai
Beijing, People's Republic of China
Researcher and Office Assistant to Bureau Chief Jeff Sommers

1983 – 1984
Administrator Training School
24 BaiWanZhuang DaJie
Beijing, Peoples Republic of China
English Teacher

Other Affiliations (uncompensated):

2002 – present
Supreme Court Institute

Georgetown University Law Center
600 New Jersey Avenue, NW, Room 463
Washington, DC 20001
Faculty Co-Director (2011 – present)
Faculty Advisory Committee (approx. 2002 – 2011)

2005 – present
American Arbitration Association
120 Broadway, 21st Floor
New York, New York 10271
Executive Committee of the Board of Directors (2009 – present)
Board of Directors (2005 – present)

1991 – 1992
Double Discovery Center
Columbia University
Alfred Lerner Hall, Room 306
2920 Broadway
New York, New York 10027
Board of Directors

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

   I have not served in the military. I am 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.

   Public Policy Fellowship, Woodrow Wilson International Center for Scholars (2012 – 2013)

   Visiting Scholar, Institute of Advanced Legal Study, London, United Kingdom (2006)

   Georgetown Public Interest Professor of the Year Award (2005)

   Marvin M. Karpatkin Fellowship, American Civil Liberties Union (1988 – 1989)

   Harvard Law Review Book Review and Commentary Editor (1986 – 1987)

   Harvard Law Review Editor (1985 – 1986)

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

American Association of Law Schools (1997 – present)

American Bar Association (1997 – present)
Chair, Scholars' Reading Group, Standing Committee on the Federal Judiciary (2005, 2006)

Bar Association of the District of Columbia (1992 – present)

Women's Bar Association of the District of Columbia (2013 – 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.

New York, 1989
Massachusetts, 1989 (inactive)
District of Columbia, 1990

There have been no lapses in bar membership, although as indicated, my membership in Massachusetts is inactive.

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

Supreme Court of the United States, 1993
United States Court of Appeals for the Second Circuit, 1990
United States Court of Appeals for the Fourth Circuit, 1989
United States Court of Appeals for the Sixth Circuit, 1989
United States Court of Appeals for the Seventh Circuit, 1989
United States Court of Appeals for the Ninth Circuit, 1992

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Arbitration Association
Executive Committee of the Board of Directors (2009 – present)
Board of Directors (2005 – present)

American Constitution Society
Liberty and Equality Working Group (2004 – 2008)

Center for Transnational Legal Studies
Academic Council (2008 – 2011)

Center for WorkLife Law
Advisory Board (2005 – 2007)

Corporate Social Responsibility in the Electronics Manufacturing Industry: The Implications of Soft Governance for Labor Standards, a research project of the Swiss Network for International Scholars
Associated member (2010 – present)

Double Discovery Center at Columbia University
Board of Directors (1991 – 1992)

Georgetown Law Supreme Court Institute
Faculty Co-Director (2011 – present)
Advisory Board (approx. 2002 – 2011)

Georgetown Journal of Gender and the Law
Board of Academic Advisors (1999 – present)

Grace Choral Society, Brooklyn (approx. 1988 – 1990)

Law Students For Reproductive Justice
Academic Advisory Council (2011 – present)

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

To the best of my knowledge, none of the organizations listed in response to question 11a above currently 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.

Against the New Maternalism, 18 Mich. J. Gender & L. 229 (2012) (with Naomi Mezey). Copy supplied.

Introduction to Center for Transnational Legal Studies symposium, *Why Transnational Legal Education*? (2011). Copy supplied.

Profile of Associate Professor Eloise Pasachoff *in* Community of Scholars (2011). Copy supplied.

Comment, *Fenty Versus Gray: How to Decide*, All Life Is Local Blog (Aug. 24, 2010). Copy supplied.

United States v. Virginia: The Virginia Military Institute, Where the Men are Men and so are the Women, *in* Myriam Gilles & Risa Goluboff, Civil Rights Stories (Foundation, 2008). Copy supplied.

Profile of Associate Professor Alvaro Santos *in* Community of Scholars (2007). Copy supplied.

Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy, 56 Emory L.J. 941 (2007). Copy supplied.

A United States Perspective on Classwide Arbitration, *in* La Justice En March: Du Recours Collectif À L'Arbitrage Collectif (2007). Copy supplied.

The Human Right to Sex Equality at the Work-Family Fault Line, in Samantha Besson, Michel Hottelier and Franz Werro, Les Droits De L'Homme Au Centre – Human Rights Recentred (Schulthess, Zurich 2006). Copy supplied.

Unitariness and Myopia: The Executive Branch, Legal Process, and Torture, 81 Ind. L.J. 1297 (2006). Copy supplied.

Women as Supreme Court Advocates, 26 Sup. Ct. Hist. Soc. Q. 4, at 10 (2005), and 27 Sup. Ct. Hist. Soc. Q. 1, at 10 (2006). Copy supplied.

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993), Entry, *in* 1 Encyclopedia of American Civil Liberties 180 (2006). Copy supplied.

Planned Parenthood of Missouri v. Danforth, 428 U.S. 52 (1976), Entry, *in* 2 Encyclopedia of American Civil Liberties 1172 (2006). Copy supplied.

Reproductive Freedom, Entry, *in* 3 Encyclopedia of American Civil Liberties 1320 (2006). Copy supplied.

The Unfulfilled Promise of the Constitution in Executive Hands, 103 Mich. L. Rev. 676 (2005). Copy supplied.

Plenary Power Underground in Nguyen v. INS: *A Reply to Professor Spiro*, 16 Geo. Imm. L.J. 835 (2002). Copy supplied.

Retroactivity of Legislation (update), Entry, *in* 5 Encyclopedia of the American Constitution (Leonard W. Levy, et al., eds., 2d ed. 2000). Copy supplied.

Taking Fiction Seriously: The Strange Results of Public Officials' Individual Liability Under Bivens, 88 Geo. L.J. 65 (1999). Copy supplied.

Skeptical Scrutiny of Plenary Power: Judicial and Executive Branch Decision Making in Miller v. Albright (with T. Alexander Aleinikoff), 1998 Sup. Ct. Rev. 1. Copy supplied.

Litigating 1985(3) Claims After Bray v. Alexandria Women's Health Clinic, *in* 9 Civil Rights Litigation & Attorney Fees (1993). Copy supplied.

Human Rights Violations in the United States: A Report on U.S. Compliance with the International Covenant on Civil and Political Rights, American Civil Liberties Union, Human Rights Watch (1993). I am credited in the Acknowledgements in my then-capacity as a lawyer in the employment discrimination litigation program at the NAACP Legal Defense & Educational Fund, Inc., with having "assisted" Alice Brown, the author of the chapter dealing with race discrimination. I do not, however, recall how or to what extent I may have assisted with the preparation of that chapter. Copy supplied.

Letter to the Editor, N.Y. Times (with David D. Cole) (Mar. 23, 1989). Copy supplied.

Note, *Plausible Pleadings: Developing Standards for Rule 11 Sanctions*, 100 Harv. L. Rev. 630 (1987). Copy supplied.

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

I have been on the Board of Directors for the American Arbitration Association since 2005. Although I played no role in drafting or editing them, the Annual Reports are available at http://tinyurl.com/kemy8p6.

Supreme Court Institute Annual Reports (2011-2012, 2012-2013). Copies supplied.

I served as Chair of the Scholars' Reading Group for the ABA Standing Committee on the Federal Judiciary in 2005 and 2006. Members of this reading group review writings of U.S. Supreme Court nominees and draft confidential memoranda for the Standing Committee regarding these nominees.

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.

Joint Letter to the Senate Judiciary Committee in Support of the Confirmation of Richard Gary Taranto to be a Circuit Judge, U.S. Court of Appeals for the Federal Circuit (Feb. 16, 2012). Copy supplied.

Joint Letter to the Senate Judiciary Committee Urging Action on the Nomination of Virginia Seitz to be Assistant Attorney General, Office of Legal Counsel (Mar. 15, 2011). Copy supplied.

Brief of the National Women's Law Center and Professors Sameul R. Bagenstos, Erwin Chemerinsky, Samuel Estreicher, Pamela S. Karlan, Cornelia T.L. Pillard, Robert C. Post, Reva Siegel, and Davis A. Strauss as Amici Curiae in Support of Appellant Tana Cummins and in Support of Reversal, *Cummins v. Illinois*, No. 05-3877 (7th Cir.). Copy supplied.

Joint Statement of Principles to Guide the Office of Legal Counsel (Dec. 21, 2004). Copy supplied.

Letter to District of Columbia City Council Member Kevin P. Chavous in Support of the Confirmation of Charles R. Lawrence to the School Board of the District of Columbia (Nov. 27, 2000). 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 compile the list, I consulted my own records, including annual reports to the Dean of my activities, and internet sources. There may, however, have been other speeches or talks that I have been unable to recall or identify, and I have spoken occasionally at minor events for which I did not retain any record.

April 9, 2013: Presenter, "Reinventing Work Law: Codes of Corporate Conduct in the New Global Workplace," Woodrow Wilson International Center for Scholars Fellows' Workshop, Washington, DC. Outline supplied.

October 23, 2012: Commentator, Georgetown Law Faculty Workshop, work in progress by Alvaro Santos, *The Trouble With Identity and Progressive Origins in Defending Labor Law*, Washington, DC. Notes supplied.

October 19, 2012: Panelist, Georgetown Supreme Court Institute Briefing for Georgetown Law alumni at Friends Weekend, Washington, DC. Notes supplied.

October 5, 2012: Speaker, lunch discussion at Georgetown Law Women's Legal Alliance. Along with my co-author, Naomi Mezey, I spoke about our paper *Against the New Maternalism*. I have no notes, transcript or recording. The address of the Women's Legal Alliance is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001.

September 15, 2012: Panelist, Georgetown Supreme Court Institute Briefing for students regarding October Term 2012, Washington, DC. I discussed issues presented by and importance of pending Supreme Court cases. I have no notes, transcript or recording. The address of the Supreme Court Institute is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001.

May 4, 2012: Panelist, Martin Daniel Gould Center for Conflict Resolution at Stanford Law School Second Annual Arbitration Conference, Palo Alto, CA. I discussed the development of the Supreme Court's interpretation of the Federal Arbitration Act as it relates to class claims. Notes supplied.

March 1, 2012: Luncheon Speaker, Georgetown Women's Legal Alliance brownbag to discuss *United States v. Virginia*, Washington, DC. I have no notes,

transcript or recording. The address of the Women's Legal Alliance is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001.

January 7, 2012: Panelist, American Association of Law Schools 2012 Annual Meeting, panel discussion on the Supreme Court and the Future of Arbitration (co-sponsored by the Section of Alternative Dispute Resolution, Section of Civil Procedure and the Section of Litigation), Washington, DC. Outline supplied.

November 17, 2011: Panelist, "*Reed v. Reed* at 40," Washington, DC. Transcript and press coverage supplied and video available at http://www.nwlc.org/videos/reed-v-reed-40-equal-protection-and-women%E2%80%99s-rights.

November 3, 2011: Panelist, Federal Judicial Center Symposium for Federal Judges, "Trends in the United States Supreme Court," Washington, DC. A handout prepared jointly with fellow panelist Paul Clement and my notes are supplied.

October 18, 2011: Moot Court Justice, Leahy Moot Court Competition at Georgetown Law, Washington, DC. I have no notes, transcript or recording, but press coverage is supplied. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington DC 20001.

October 14, 2011: Panelist, Supreme Court Term Preview for Georgetown Law Alumni, Supreme Court Institute, Washington, DC. I discussed issues presented by and importance of pending Supreme Court cases. I have no notes, transcript or recording, but a panel synopsis submitted for the conference is supplied. The address of the Supreme Court Institute is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington DC 20001.

September 19, 2011: Speaker, Supreme Court Institute press briefing: "Anticipating the Supreme Court's October Term 2011: What to Expect," Washington, DC. Notes and press coverage supplied.

May 20, 2011: Panelist, "(Re)Inventing Work Law: Voluntary Codes of Conduct Setting Labor Standards in Global Industries," CTLS Annual Conference, University of Fribourg, Fribourg, Switzerland. My presentation discussed a proposed paper regarding the evolution and importance of soft-law norms governing workers who make goods overseas for suppliers to multinational businesses. I have no notes, transcript or recording. This panel was sponsored by the Center for Transnational Legal Studies, Swan House 37-39 High Holborn London WC1V 6AA United Kingdom.

April 5, 2011: Commentator, Georgetown Law Faculty Workshop on work in progress by Visiting Professor Karen Knop, Washington, DC. Notes supplied.

March 29, 2011: Moderator, Post-Argument Panel Discussion of *Wal-Mart Stores v. Dukes*, Supreme Court Institute, Washington, DC. I have no notes, transcript or recording, but press coverage is supplied. The address of the Supreme Court Institute is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington DC 20001.

March 17-18, 2011: Panelist, "Procedural Fairness in Arbitration: Federal or State Law?" Conference on the Future of Arbitration, George Washington School of Law, Washington, DC. Notes supplied.

March 11, 2011: Panelist, "(Re)inventing Work Law in a Transnational Context" at the Annual Conference of the Association for the Study of Law, Culture and the Humanities (ASLCH), Las Vegas, NV. My presentation discussed the evolution and importance of soft-law norms governing workers who make goods overseas for suppliers to multinational businesses. I have no notes, transcript or recording. This conference was sponsored by the ASLCH, c/o Professor Linda Meyer, Quinnipiac University School of Law, 275 Mount Carmel Avenue, Hamden, CT 06518.

November 22, 2010: Presenter, Faculty workshop at University of Miami School of Law, "(Re)inventing Work Law in a Transnational Context," Coral Gables, FL. My presentation discussed the evolution and importance of soft-law norms governing workers who make goods overseas for suppliers to multinational businesses. I have no notes, transcript or recording. The address of the University of Miami School of Law is 1311 Miller Road, Coral Gables, FL 33146.

October 19, 2010: Panelist, American Constitution Society Briefing on *AT&T Mobility v. Concepcion*, Washington, DC. I have no notes, transcript or recording. Video recording available at http://www.acslaw.org/acsblog/node/17367 and press coverage supplied.

May 21, 2010: Panelist, "The Future of Transnational Legal Education," Center for Transnational Legal Studies annual conference, Turin, Italy. I have no notes, transcript or recording. This panel was sponsored by the Center for Transnational Legal Studies, Swan House 37-39 High Holborn London WC1V 6AA United Kingdom.

May 14, 2010: Panelist, "Class Action Arbitration After Stolt-Nielsen v. Animalfeeds," national teleconference in which I participated from my office in Washington, DC. I discussed potential implications of the decision in *Stolt-Nielsen v. Animalfeeds*, in which I was lead counsel during the Supreme Court's 2009 Term. I have no notes, transcript or recording. The teleconference was sponsored by the American Bar Association Section of Dispute Resolution. The address of the American Bar Association Section of Dispute Resolution is 740 15th Street, NW, 9th Floor, Washington, DC 20005.

April 22, 2010: Panelist, "Litigating in the Marble Palace: The ABC's of Supreme Court Litigation," American Bar Association Section of Litigation Annual Conference, New York, NY. I discussed tips for litigating cases in the Supreme Court. I have no notes, transcript or recording. The address of the American Bar Association Section of Litigation is 321 North Clark Street, Chicago, IL 60654.

April 19, 2010: Commentator, book launch of Philippa Strum, "Mendez v. Westminster: School Desegregation and Mexican American Rights" at Woodrow Wilson International Center for Scholars, Washington, DC. Synopsis of comments and webcast available at http://www.wilsoncenter.org/event/book-launch-imendez-v-westminster-school-desegregation-and-mexican-american-rightsi.

April 15, 2010: Panelist, "A Debate on *Stolt-Nielsen*, Class Arbitration and International Parties," American Bar Association Section of International Law Spring Meeting, New York, NY. This debate discussed potential implications of the Court's *Stolt-Nielsen v. Animalfeeds* decision on international cases. I have no notes, transcript or recording. The address of the American Bar Association Section of International Law is 321 North Clark Street, Chicago, IL 60654.

April 8, 2010: Panelist, "Class Action Arbitrations: The Supreme Court Revisits the Issue in *Stolt-Nielsen v. AnimalFeeds*," American Bar Association Section of Dispute Resolution Annual Conference, San Francisco, CA. I have no notes, transcript or recording. The address of the American Bar Association Section of Dispute Resolution is 740 15th Street, NW, 9th Floor, Washington, DC 20005.

March 19, 2010: Panel presentation of *The New Maternalism* (paper co-authored with Naomi Mezey) at the annual conference of the Association for the Study of Law, Culture & Humanities (ASLCH), Providence, RI. This talk related to what was later published as *Against the New Maternalism*, provided in response to 12(a). I have no notes, transcript or recording. This conference was sponsored by the ASLCH, c/o Professor Linda Meyer, Quinnipiac University School of Law, 275 Mount Carmel Avenue, Hamden, CT 06518.

February 26-28, 2010: Invited Faculty, Annual Peter Jennings Project on Journalism and the Constitution, Philadelphia, PA. I argued a moot court against Kenneth Starr on constitutional issues raised by a hypothetical case on rationing health care; led participants in a Case Analysis Workshop on a pending Supreme Court First Amendment case; and spoke on a panel, "Behind the Scenes: Arguing Before the High Court." Moot court video available at http://www.c-spanvideo.org/program/292300-2 and transcript of panel supplied.

November 13, 2009: Moderator, student-initiated & -planned symposium, "A New Abortion Debate: Emerging Perspectives on Choice, Life and Law" at

Georgetown University Law Center, Washington, DC. The panel I moderated focused on comparative approaches to the law of abortion and reproduction in different countries or regions. I have no notes, transcript or recording. The panel was jointly sponsored by two student organizations at Georgetown Law, the Georgetown Progressive Alliance for Life and Georgetown Law Students for Reproductive Justice. The address of both sponsoring organizations is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington DC 20001.

June 5, 2009: Presenter, Faculty Workshop at Transitional Justice Institute, University of Ulster, Belfast, Northern Ireland, "Why Transnational Legal Theory?" I spoke on the curricular relevance of transnational legal theory for students, many of whom are likely to face transnational questions in legal practice. I have no notes, transcript or recording. The address of the Transitional Justice Institute is University of Ulster, Jordanstown Campus, Shore Road, Newtownabbey, BT37 0QB, Northern Ireland.

July 1, 2008: Speaker, brownbag discussion at Georgetown University Law Center. Along with my co-author, Naomi Mezey, I spoke about of a draft of the article that was later published as *Against the New Maternalism*, provided in response to 12(a). I have no notes, transcript or recording. The address of the Women's Legal Alliance is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001.

June 14, 2008: Moderator, "A Bill of Rights for the 21st Century," American Constitution Society Convention panel, Washington, DC. I have no notes, transcript or recording, but press coverage summarizing the panel is supplied. The address of the American Constitution Society for Law and Policy is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

April 2008: Presenter, Faculty Workshop at University of San Diego Law School, "The New Maternalism," San Diego, CA. This was a faculty workshop (jointly with co-author Naomi Mezey) of a draft of the article that was later published as *Against the New Maternalism*, provided in response to 12(a). I have no notes, transcript or recording. The address of the University of San Diego Law School is 5998 Alcalá Park, San Diego, CA 92110.

April 2008: Presenter, Faculty Workshop at Loyola of Los Angeles Law School, "The New Maternalism," Los Angeles, CA. This was a faculty workshop (jointly with co-author Naomi Mezey) of a draft of the article that was later published as *Against the New Maternalism*, provided in response to 12(a). I have no notes, transcript or recording. The address of Loyola Law School is 919 Albany Street, Los Angeles, CA 90015.

July 25-28, 2007: Panelist, "Mother Love in the Public Sphere," Annual conference of the Law & Society Conference, Berlin, Germany. This was a panel

presentation (jointly with co-author Naomi Mezey) of a draft of the article that was later published as *Against the New Maternalism*, provided in response to 12(a). I have no notes, transcript or recording. The address of the Law and Society Association is 380 South 1400 East #313, Salt Lake City, Utah 84112.

April 29, 2007: Presenter, Faculty Workshop at University of Minnesota School of Law, "Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy," Minneapolis, MN. This was a faculty workshop of a draft of an article that was later published, and is supplied in response to 12(a). I have no notes, transcript or recording. The address of the University of Minnesota School of Law is 229 19th Avenue South, Minneapolis, Minnesota 55455.

April 21, 2007: Panelist, Yale Women Faculty Forum and American Constitution Society co-sponsored Conference on Progressive Family Values, panel on "Advocating our Family Values," at Yale Law School, New Haven, CT. I spoke on *Nevada v. Hibbs*. I have no notes, transcript or recording. The address of the Yale Women Faculty Forum is Yale University, P.O. Box 208347, New Haven, CT 06520; the address of the American Constitution Society for Law and Policy is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

April 13, 2007: Presenter, Faculty Workshop at University of Southern California, "What's Sex Got to Do with It? Single Sex Education and Sex Equality," Los Angeles, CA. This was a faculty workshop on a draft of an article that I have not finalized or submitted for publication. Notes supplied.

March 13, 2007: Moderator, "Separation of Powers and National Security," Second Annual Dash Conference at Georgetown Law, Washington, DC. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

March 8, 2007: Moderator, Georgetown Law Corporate Counsel Institute, Supreme Court Review and Preview, Washington DC. Handout and notes supplied.

February 13, 2007: Moderator, "Security, Human Rights, and War Powers in the Post-9/11 Era: What Should We Expect from Congress?" Samuel Dash Conference on Human Rights, sponsored by the Human Rights Institute at Georgetown Law, Washington, DC. I have no notes, transcript or recording. The address of the Human Rights Institute is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington DC 20001.

December 7, 2006: Presenter, Workshop at Institute for Advanced Legal Studies, "Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy," London, UK. This was a fellows workshop of a draft of the article that was later published, and is supplied in response to 12(a).

I have no notes, transcript or recording. The address of the IALS is Charles Clore House, 17 Russell Square, London WC1B 5DR, United Kingdom.

June 29, 2006: Panelist, American Constitution Society Supreme Court Roundup of October Term 2005, Washington, DC. I spoke on the importance of decisions from that Supreme Court Term. I have no notes, transcript or recording. The address of the American Constitution Society for Law and Policy is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

June 17, 2006: Moderator, "Next Generation Discrimination: Can the Law Address Unintended and Subtle Bias?" American Constitution Society National Convention, Washington, DC. Transcript supplied.

April 18, 2006: Speaker, "Briefing on Contraceptive Equity: Cummins v. Illinois," Washington, DC. I discussed a then-pending Seventh Circuit case on Title VII, contraception and state employees' health plans. I have no notes, transcript or recording. This briefing was sponsored by the Georgetown Law Student Chapter of the American Constitution Society for Law and Policy. The address of that ACS chapter is Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington DC 20001.

March 31, 2006: Keynote Speaker, University of Montreal Center for the Law of Business and International Trade conference, Justice en March: Du Recours Collectif à l'Arbitrage Collectif, Montreal, Canada. Text of speech published as *A United States Perspective on Classwide Arbitration*, in La Justice en March: du Recours Collectif a L'Arbitrage Collectif (2007), provided in response to Question 12(a).

March 3-4, 2006: Panelist, Columbia Law School Symposium, Reproductive Rights and Equality, New York, NY. This was the initial panel presentation of ideas that I developed into an article that was later published as *Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy,* provided in response to 12(a). I have no notes, transcript or recording. The address of the Columbia Law School is 435 West 116th Street, New York, NY 10025.

February 28, 2006: Roundtable Discussant, Yale Women Faculty Forum "Working for Care: Families and the Workplace," New Haven, CT. I participated in discussion of workplace law and practices to enable wage workers to care for themselves and others. I have no notes, transcript or recording. The address of the Yale Women Faculty Forum is Yale University, P.O. Box 208347, New Haven, CT 06520.

December 1, 2005: Panel moderator, Georgetown University Law Center, on *Planned Parenthood of New Hampshire v. Ayotte*, Washington, DC. I discussed the issue of as-applied vs. facial challenges to the statute at issue in the *Ayotte*

case. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue NW, Washington DC 20001.

November 11, 2005: Panelist, Supreme Court Briefing Breakfast, National Women's Law Center, Washington, DC. I discussed issues presented by and importance of cases in the upcoming Supreme Court Term. I have no notes, transcript or recording. The address of the National Women's Law Center is 11 Dupont Circle, NW, Washington, DC 20036.

October 16, 2005: Panelist, Supreme Court overview, Georgetown Law Alumni Weekend, Washington, DC. I discussed issues presented by and importance of cases in the upcoming Supreme Court Term. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington DC 20001.

October 7, 2005: Panelist, "War, Terrorism and Torture: Limits on Presidential Power in the 21st Century," Maurer School of Law at Indiana University symposium, Bloomington, IN. This was the initial panel presentation of ideas that I developed into an article that was later published as *Unitariness and Myopia: The Executive Branch, Legal Process, and Torture*, provided in response to 12(a). I have no notes, transcript or recording. The address of the Maurer School of Law at Indiana University is 211 South Indiana Avenue, Bloomington, Indiana 47405.

September 19, 2005: Panelist, Supreme Court Institute press briefing Washington, DC. I discussed issues presented by and importance of cases in the upcoming Supreme Court Term. I have no notes, transcript or recording. The address of the Supreme Court Institute is Georgetown University Law Center, 600 New Jersey Avenue NW, Washington, DC 20001.

July 30, 2005: Panelist, American Constitution Society Annual Convention, "New Directions in Equality," Washington, DC. I spoke about *Nevada v. Hibbs*. I have no notes, transcript or recording. The address of the American Constitution Society for Law and Policy is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

July 7, 2005: Panelist, Legacy of Justice Sandra Day O'Connor, Georgetown Law, Washington, DC. Video recording available at http://www.c-spanvideo.org/program/187506-1.

June 20, 2005: Moderator, American Constitution Society Supreme Court Review panel at National Press Club, Washington DC. Transcript supplied.

May 25, 2005: Panelist, Human Rights Recentered conference, Charmey, Switzerland. This was the initial panel presentation of ideas that I developed into a book chapter that was later published as *The Human Right to Sex Equality at the*

Work-Family Fault Line, provided in response to 12(a). I have no notes, transcript or recording. The conference was sponsored by the Fribourg University Law School (Professor Franz Werro), Avenue de Beauregard 11, Office # 5.608, 1700 Fribourg, Switzerland.

April 28, 2005: Speaker, introducing Justice Stevens as guest of honor at Georgetown Law Supreme Court Institute reception for SCI participants and supporters, Washington, DC. Notes supplied.

January 6, 2005: Keynote Speaker, National Association of Women Lawyers program on Oral Argument in the Supreme Court, Washington, DC. The speech was published as *Women as Supreme Court Advocates*, provided in response to 12(a).

December 16, 2004: Presenter, faculty workshop at Georgetown Law, Washington, DC. This was a faculty workshop on a draft of the article, *What's Sex Got to Do With It? Sex Equality and the Single-Sex Schools Movement*, that I have not finalized or submitted for publication. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

November 29, 2004: Presenter, faculty workshop at University of Virginia School of Law, Charlottesville, VA. This was a faculty workshop on a draft of the article, *What's Sex Got to Do With It? Sex Equality and the Single-Sex Schools Movement*, that I have not finalized or submitted for publication. I have no notes, transcript or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

November 18, 2004: Discussant (with Yale Law School Professor Robert Post), American Constitution Society conversation on Progressive Visions for Constitutional Law at the University of Pennsylvania School of Law, Philadelphia, PA. I have no notes, transcript or recording, but press coverage is supplied. The address of the American Constitution Society for Law and Policy is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

October 15, 2004: Panelist, American Bar Association, 8th Annual National Institute on Class Actions, New York, NY. I spoke about class aetions and arbitration. I have no notes, transcript or recording. The address of the American Bar Association is 740 15th Street, NW, Washington, DC 20005.

September 17, 2004: Participant, Roundtable at Duke University School Of Law, Conference on Interrogation, Detention and the Powers of the Executive, Durham, NC. My remarks focused on the role of lawyers in the war on terror. I have no notes, transcript or recording. The address of Duke University School of Law is 210 Science Drive, Durham, NC 27708.

June 19, 2004: Panelist, "Sameness and Difference: What is Sex Discrimination?" American Constitution Society National Convention, Washington, DC. Transcript and press coverage supplied.

June 2004 (approximate date): Presenter, brownbag workshop for legal staff, Office of Legal Counsel, United States Department of Justice, Washington, DC. This was a workshop presentation of ideas that I developed into an article that was later published as *The Unfulfilled Promise of the Constitution in Executive Hands*, provided in response to 12(a). I have no notes, transcript or recording. The address of the OLC is 950 Pennsylvania Avenue, NW, Washington DC, 20530.

April 16, 2004: Presenter, faculty workshop at the Maurer School of Law at Indiana University, Bloomington, IN. This was a workshop presentation of ideas that I developed into an article that was later published as *The Unfulfilled Promise of the Constitution in Executive Hands*, provided in response to 12(a). I have no notes, transcript or recording. The address of the Maurer School of Law at Indiana University is 211 South Indiana Avenue, Bloomington, Indiana 47405.

March 13, 2004: Commentator, plenary session on *The Sanitized Workplace* by Vicki Schultz, at the annual conference of the Association for the Study of Law, Culture and the Humanities (ASLCH), University of Connecticut Law School, Hartford, CT. I have no notes, transcript or recording. This conference was sponsored by the ASLCH, c/o Professor Linda Meyer, Quinnipiac University School of Law, 275 Mount Carmel Avenue, Hamden, CT 06518.

February 13, 2004: Presenter, faculty workshop at the University of Texas School of Law, Austin, TX. This was a workshop presentation of ideas that I developed into an article that was later published as *The Unfulfilled Promise of the Constitution in Executive Hands*, provided in response to 12(a). I have no notes, transcript or recording. The address of the University of Texas School of Law is 727 East Dean Keeton Street, Austin, Texas 78705.

October 16, 2003: Speaker, Retreat of the Judges of the United States District Court for the Eastern District of Pennsylvania, Saint Michaels, MD. Notes supplied.

October 1, 2003: Panelist, Harvard Club of Washington DC review and preview of Supreme Court Terms, Washington, DC. I spoke about important cases in the preceding Supreme Court Term. I have no notes, transcript or recording. The address of the Harvard Club of Washington DC is 3220 N Street, NW #295, Washington, DC 20007.

October 1, 2003: Panelist, Supreme Court Roundup, University of Maryland School of Law, Baltimore, MD. I spoke about the Supreme Court's decision in *Nevada v. Hibbs*. I have no notes, transcript or recording. The address of the

University of Maryland School of Law is 500 West Baltimore Street, Baltimore, MD 21201.

September 25, 2003: Panelist, Georgetown Law Supreme Court Term Opener press briefing, Washington, DC. I discussed important cases in the upcoming Supreme Court Term. I have no notes, transcript or recording. The address of Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington DC 20001.

July 30, 2003: Panelist, American Bar Association teleconference on the impact of *Green Tree v. Bazzle*, national teleconference in which I participated from my office in Washington, DC. I have no notes, transcript or recording. The address of the American Bar Association is 740 15th Street, NW, Washington, DC 20005.

July 13, 2003: Keynote speaker, Jack Kent Cooke Foundation Graduate Scholars introductory weekend, Landsdowne, VA. Notes supplied.

July 2003: Speaker, brownbag lunch speaker at O'Melveny & Myers, Washington, DC. I spoke about the experience of litigating *Nevada v. Hibbs* and the implications of the Court's decision. I have no notes, transcript or recording. The address of O'Melveny & Myers is 1625 I Street, NW, Washington, DC 20006.

April 25, 2003: Speaker, Commonwealth School luncheon honoring Charles E. Merrill, founder and former headmaster, at The Harvard Club, Boston, MA. I have no notes, transcript or recording. The address of Commonwealth School is 151 Commonwealth Avenue, Boston, Massachusetts 02116.

April 25, 2003: Speaker, all-school assembly at Commonwealth School, Boston, MA. I spoke to the student body at the high school from which I graduated about the experience of litigating *Nevada v. Hibbs* and the implications of the Court's decision. I have no notes, transcript or recording. The address of Commonwealth School is 151 Commonwealth Avenue, Boston, Massachusetts 02116.

March 7, 2003: Panelist, Annual Conference of the Association for the Study of Law, Culture and the Humanities (ASLCH), New York University School of Law, New York, NY. I spoke on work-family issues and the Family and Medical Leave Act. I have no notes, transcript or recording. This conference was sponsored by the ASLCH, c/o Professor Linda Meyer, Quinnipiac University School of Law, 275 Mount Carmel Avenue, Hamden, CT 06518.

January 24, 2003: Panelist, Conference on The New Glass Ceiling, American University, Washington College of Law, Washington, DC. I spoke on work-family issues and the Family and Medical Leave Act. I have no notes, transcript or recording. I believe that the conference sponsor was the Center for WorkLife

Law, which is currently located at University of California Hastings College of the Law, 200 McAllister Street, San Francisco, California 94102.

October 2002: Speaker, Vermont Law School event on Supreme Court oral advocacy and *Nevada v. Hibbs*, Royalton, VT. Notes supplied.

May 18, 2002: Delivered citation at Georgetown University Law Center graduation on occasion of conferral of honorary degree on Mayor Anthony A. Williams, Washington, DC. Copy supplied.

February 26, 2002: Presenter, Faculty Workshop at Georgetown University Law Center, Washington, DC. This was an early workshop presentation of ideas that I developed into an article that was later published as *The Unfulfilled Promise of the Constitution in Executive Hands,* provided in response to 12(a). I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

November 16-17, 2001: Panelist, Georgetown Immigration Law Journal Symposium, Washington, DC. This was a presentation of ideas that I developed into an article that was later published as *Plenary Power Underground in* Nguyen v. INS: *A Reply to Professor Spiro*, provided in response to 12(a). I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, NW, Washington, DC 20001.

I have also spoken at Georgetown University Law Center in two other capacities that I do not specifically enumerate here because I lack the necessary records. First, at the request of various Deans, I have addressed students about how to succeed in law school (note-taking, study habits and exam taking skills), and I have spoken at orientation to incoming law students and their families about what to expect in the first year of law school. Second, I have participated as an oral advocate or a Justice in reenactments of cases pending in the Supreme Court as part of programs for prospective or admitted law students or orientation for incoming students. During the past decade, I have typically assisted with one to four of these programs each year.

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.

Georgetown Law Brochure 2012-2113. Copy supplied.

Susan Page, *The Constitution Today: Federalism*, The Diane Rehm Show, National Public Radio (Nov. 15, 2010). Transcript supplied.

Class Actions Targeted in AT&T Mobility v. Concepcion: An Interview with Prof. Pillard, ASC Blog (Nov. 10, 2010). Available at: http://www.acslaw.org/news/video/a-briefing-on-att-mobility-v-concepcion-0.

Ben James, *High Court Nixes Class Arbitration in Stolt-Nielsen Case*, Law360 (Apr. 27, 2010). Copy supplied.

John Lawless, *Saxa Politica, Fines Are Fine, Records Aren't*, The Georgetown Voice (Jan. 15, 2009). Copy supplied.

Anne Cassidy, *Georgetown Goes Global*, Georgetown Law (Fall/Winter 2008). Copy supplied.

Gregg Re, *International Law Center Opens In London*, The Hoya (Oct. 10, 2008). Copy supplied.

Robert B. Bluey, *Supreme Court's Family Leave Ruling 'Bucks Trend' of States' Rights Cases*, CNSNewroom.com (July 7, 2008). Copy supplied.

Lynn Kirshbaum, *Georgetown Law Goes International*, The Georgetown Voice (Feb. 26, 2008). Copy supplied.

Rupal Doshi, *Supreme Court of the United States, October Term 2006 Overview*, Georgetown University Law Center Supreme Court Institute (June 28, 2007). Copy supplied.

Jerry Zremski, *Roberts' Style Conciliatory In Steering Deeply Divided High Court*, The Buffalo News (July 10, 2006). Copy supplied.

Richmond County Daily Journal Editorial Board, *Roberts Didn't End World*, Richmond County Daily Journal (July 6, 2006). Copy supplied.

Kennedy Is Court's New Swing Vote, The Arizona Republic (July 2, 2006). Copy supplied.

Abortion and the Supreme Court, CSPAN (Jan. 3, 2006). Video recording available at: http://www.c-spanvideo.org/program/190565-1.

Greg Langlois, *The Moot Court Program At Georgetown Law's Supreme Court Institute*, Georgetown Law (Fall/Winter 2005). Copy supplied.

Greg Langlois, *The Court As Classroom*, Georgetown Law (Fall/Winter 2005). Copy supplied.

Michael Doyle, *Roberts Will Face A Diet Of Legal Hot Potatoes*, The Sacramento Bee (Oct. 2, 2005) (reprinted in multiple outlets). Copy supplied.

Gregory J. Langlois, *Dress Rehearsal: The Moot Court Program At Georgetown Law Center's Supreme Court Institute*, Journal Of Appellate Practice And Process (Sept. 22, 2005). Copy supplied.

Tom Curry, *Stevens is Key to High Court's Future*, NBCNews.com (Sept. 21, 2005). Copy supplied.

Gretchen Cook, *U.S.-Women: Gender-Bias Victories Pay More Than Money*, Women's E-News (Dec. 1, 2004). Copy supplied.

Lawrence Hurley, *U of MD Seminar Hosts Supreme Court Victors*, Daily Record (Baltimore) (Oct. 2, 2003). Copy supplied.

Gregory Froom, *U.S. Supreme Court Returns Case To Arbitrator For Class Approval*, South Carolina Lawyers Weekly (June 30, 2003). Copy supplied.

Paul D. Boynton, *U.S. Supreme Court Rules State Can Be Sued Under FMLA*, Lawyers USA (June 9, 2003). Copy supplied.

Frank J. Murray, *Justice Reverses Himself On Rights; Breyer Rules With Majority On Family Leave*, Washington Times (June 2, 2003). Copy supplied.

David L. Hudson, *Court Surprises With Family Leave Act Ruling*, ABA J.E. Report (May 30, 2003). Copy supplied.

Jan Crawford Greenburg, *Court Bolsters Family Leave: Justices Reject; Stereotypes; Say States Not Exempt From U.S. Law*, Chicago Tribune (May 28, 2003). Copy supplied.

Tony Batt, *High Court Opens Door To Family Leave Lawsuit*, Las Vegas Review-Journal (May 28, 2003). Copy supplied.

Pete Williams, *Supreme Court Rules Men Can Sue States Under Family And Medical Leave Act*, NBC Nightly News (May 27, 2003). Transcript supplied.

Nina Totenberg, *US Supreme Court To Hear Arguments In A Case Testing States' Immunity From Lawsuits When They Violate The Family And Medical Leave Act*, National Public Radio (Jan. 15, 2003). Transcript supplied and audio available at http://www.npr.org/ramfiles/me/20030115.me.15.ram.

Tony Batt, *U.S. Supreme Court: State Rights Challenged In Leave Case*, Las Vegas Review-Journal (Jan. 12, 2003) (reprinted in multiple outlets). Copy supplied.

Associated Press, *Former State Worker Pitted Against Nevada In Supreme Court Family Leave Case*, Las Vegas Sun (Jan. 12, 2003). Copy supplied.

Diane E. Lewis, *Case Weighs Worker's Suit Against Nev; Time Off To Care For Ill Relative Is Focus*, Boston Globe (June 30, 2002). Copy supplied.

Jim Stewart, *Attorney General John Ashcroft Keeping Low Profile Lately*, CBS Evening News (June 22, 2002). Transcript supplied.

David Chernicky and Troy Graham, *Hampton Likely To Fight Reedy Case In Court, Lawyers Say*, Daily Press (Apr. 19, 2002). Copy supplied.

Robert Cossack, *Battle Of Separation Of Church And State Rages On; Why Are American Men And Women Treated Differently When It Comes To Children Born Overseas?*, CNN (June 12, 2001). Transcript supplied.

Barbara Bradley, *Supreme Court Decision On U.S. Citizenship*, All Things Considered, National Public Radio (June 11, 2001). Transcript supplied.

David G. Savage, *High Court Rejects Strip-Search Case; Ruling Illustrates Bench's Tendency To Favor Protecting Public Officials Over Individuals*, Houston Chronicle (Nov. 11, 1997). Copy supplied.

Jan Crawford Greenburg, *This Couple Argues Before Highest Court*, Chicago Tribune (Oct. 15, 1997). Copy supplied.

Roger Parloff, *Fatal Protraction*, American Lawyer (Apr. 1993). Copy supplied.

Shoney's Approves 105 Million, Los Angeles Sentinel (Mar. 11, 1993). Copy supplied.

Blacks, Du Pont Fail To Settle Bias Suit, Lexington Herald-Leader (Dec. 19, 1992). Copy supplied.

Glenn Rutherford, *Ex-Workers Cheer Ruling Against Bias At Du Pont*, Lexington Herald-Leader (Nov. 19, 1992). Copy supplied.

Joe Ward, *Du Pont De Nemours Workers Win Damages in Discrimination Suit*, USA Today (Nov. 17, 1992). Copy supplied.

Julia Lawlor, *Shoney's Settles Race-Bias Lawsuit*, USA Today (Nov. 6, 1992). Copy supplied.

Joseph Menn, *High Court Won't Hear First Union Bias Suit*, Charlotte Observer (June 4, 1991). Copy supplied.

Sam Roberts, *Metro Matters; In A Bias Case, A Family's Quest For Vindication*, N.Y. Times (May 24, 1990). Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and 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 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 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 1987 to 1988, I was a law clerk to Judge Louis H. Pollak, United States District Court for the Eastern District of Pennsylvania.

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

I have practiced alone only when, during my employ as a law professor, I have acted as lead counsel for cases in the Supreme Court. In each such instance, while my own practice was solo, I collaborated with lawyers in law firms or in nonprofit organizations.

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 – 1989
American Civil Liberties Union
125 Broad Street
New York, New York, 10004
Marvin M. Karpatkin Fellow

1989 – 1994
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, New York 10013
(transferred to DC office, 1992 – 1994)
Assistant Counsel

1994 – 1997
Office of the Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Assistant to the Solicitor General

1998 – 2000
Office of Legal Counsel
United States Department of Justice
1300 Pennsylvania Avenue, NW
Washington, DC 20530
Deputy Assistant Attorney General
(on leave from Georgetown Law)

2008 – 2009
Center for Transnational Legal Studies
Swan House
37-39 High Holborn
London WC1V 6AA
United Kingdom
Academic Co-Director & Professor
(in the employ and on behalf of Georgetown Law)

2012 – 2013
Woodrow Wilson International Center For Scholars
One Woodrow Wilson Plaza
1300 Pennsylvania Avenue, NW
Washington, DC 20004
Fellow
(on leave from Georgetown Law during spring semester 2013)

1997 – present
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
Professor (2005 – present)
Associate Professor (1997 – 2005)

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 an arbitrator or mediator.

b. Describe:

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

During my one year as a Marvin M. Karpatkin Fellow, I worked in the ACLU's national legal office in New York, performing legal research, and working on litigation projects and various briefs.

As Associate Counsel at the NAACP Legal Defense and Educational Fund, Inc., I worked under the supervision of senior counsel on trial, appellate and Supreme Court cases in federal courts. I successfully petitioned for certiorari and then briefed the merits in two Supreme Court cases. I argued four appeals in four different federal courts of appeals and briefed more than ten federal appeals. I also did intensive pretrial discovery and briefing in approximately five cases in federal district courts. I was co-counsel at trial in two cases, one before a jury in Miami, Florida, and one before a judge in Cincinnati, Ohio. I also worked on issues relating to the structure and administration of settlements and court awards.

As Assistant to the Solicitor General, I drafted Supreme Court briefs on the merits under the supervision of the Deputy SG and the SG; argued cases in the Supreme Court and assisted colleagues in preparing to argue their cases in the Court; drafted petitions and briefs in opposition to petitions for certiorari; and made recommendations to the SG regarding whether the SG should grant permission for government appeals to intermediate courts of appeals or to the Supreme Court. I presented six oral arguments in the Supreme Court and briefed approximately fifteen additional cases.

As Deputy Assistant Attorney General in the Office of Legal Counsel, I provided authoritative legal advice to the President, the Attorney General, and executive branch agencies. I also helped to supervise the Office's approximately twenty Attorney Advisors as well as the non-legal staff, researched and reviewed proposed advice, and consulted frequently and at length with the other Deputies and the Assistant Attorney General who headed the Office to ensure the best resolution of all the legal matters under our consideration.

For more than a decade, the bulk of my work has been as a professor. My principal activities are teaching students, carrying on legal research and writing, and fulfilling service commitments to my students, alumni, the law school and the wider community. I also have acted as lead counsel in three cases in the United States Supreme Court and as co-counsel on one other case and one unsuccessful petition for certiorari. As a member of the Faculty Advisory Committee and now as Faculty Co-Director, I have also assisted other lawyers to prepare for oral argument in the Supreme Court by acting as a moot court justice on dozens of occasions.

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

When I worked in the nonprofit sector, my clients were principally individuals or, on occasion, small private firms or organizations. Typically they had suffered retaliation, discrimination or violation of other basic constitutional or statutory rights and could not afford counsel.

At the Office of the Solicitor General and the Office of Legal Counsel, my clients were the United States Government and federal officials or entities.

In my practice as a law professor, I have represented in the Supreme Court a taxpayer, a corporation, consumers, an individual employee, and two elementary school students.

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.

With the exception of my work as Assistant Attorney General, Office of Legal Counsel from 1998 to 2000, which was advisory, all of my law practice has been in federal litigation. As a law professor, I have been lead counsel in the Supreme Court in three cases, and I have been co-counsel in two others. As Assistant to the Office of the Solicitor General, I argued six cases in the Supreme Court and drafted briefs on the merits in approximately fifteen cases. As Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc., I argued four cases in United States Courts of Appeals, wrote the briefs in more than ten appeals, and did intensive discovery and pretrial litigation in five cases in United States District Courts, two of which I tried with co-counsel.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 95%
   2. criminal proceedings: 5%

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

I participated as associate counsel in two cases that were tried to verdict.

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.

Argued cases:

Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 130 S.Ct. 1758 (2010) (transcript, 2009 WL 4662509; brief for respondent, 2009 WL 3404244)

Green Tree Financial Corp. v. Bazzle, 539 U.S. 444 (2003) (transcript, 2003 WL 1989562; brief for respondents, 2003 WL 1701523; brief of respondents in opposition (following remand), 2004 WL 745106)

Nevada Dep't of Human Resources v. Hibbs, 538 U.S. 721 (2003) (transcript, 2003 WL 145272; brief for respondent, 2002 WL 31655020; brief in opposition, 2001 WL 34116242)

Inter-Modal Rail Employees Ass'n v. Atchison, Topeka and Santa Fe Ry. Co., 520 U.S. 510 (1997) (transcript, 1997 WL 129186; brief for the United States as amicus curiae supporting petitioners, 1997 WL 24906)

Lewis v. United States, 518 U.S. 322 (1996) (transcript, 1996 WL 206926)

Ornelas-Ledesma v. United States, 517 U.S. 690 (1996) (transcript, 1996 WL 146310; brief for the United States, 1996 WL 32774)

Behrens v. Pelletier, 516 U.S. 299 (1996) (transcript, 1995 WL 674477; brief for the United States as amicus curiae supporting petitioner, 1995 WL 782861)

Johnson v. Jones, 515 U.S. 304 (1995) (transcript, 1995 WL 243454; brief for the United States as amicus curiae supporting petitioners, copy supplied)

American Airlines, Inc. v. Wolens, 513 U.S. 219 (1995) (transcript, 1994 WL 759074; brief of the United States as amicus curiae in support of reversal, 1994 WL 16012085)

Briefed cases:

Knight v. C.I.R., 552 U.S. 181 (2008) (petitioner's brief, 2007 WL 2428375; reply brief, 2007 WL 3276499)

Crawford-El v. Britton, 523 U.S. 574 (1998) (brief for the United States as amicus curiae, 1997 WL 33485505)

Jenkins by Hall v. Herring, 522 U.S. 966 (1997) (certiorari petition, 1997 WL 33549229; reply brief, 1997 WL 33549172)

Richardson v. McKnight, 521 U.S. 399 (1997) (brief for the United States as amicus curiae supporting respondent, 1997 WL 63323)

United States v. Hughes Aircraft, 520 U.S. 1183 (1997) (certiorari petition, 1997 WL 33557586; reply brief, 1997 WL 33557815)

Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co., 520 U.S. 17 (1997) (brief for the United States as amicus curiae, 1996 WL 172221)

United States v. Virginia, 518 U.S. 515 (1996) (certiorari petition, 1995 WL 17013870; brief for petitioner, 1995 WL 703403; brief in opposition to conditional cross-petition, 1995 WL 17013897; brief for cross-respondent, 1995 WL 745010; reply brief, 1996 WL 32776)

Reno v. Bossier Parish School Bd., 520 U.S. 471 (1996) (jurisdictional statement, 1996 WL 439256; brief for the federal appellant, 1996 U.S. S. Ct. Briefs LEXIS 447; reply brief, 1996 WL 607731)

Board of Comm'rs, Wabaunsee Cty. v. Umbehr, 518 U.S. 668 (1996) (brief for the United States as amicus curiae supporting respondent, 1995 WL 782875) (briefed sub nom *Heiser v. Umbehr*)

United States v. D.F., 517 U.S. 1231 (1996) (certiorari petition, copy supplied; reply brief, 1996 WL 33467349)

North Carolina Power v. North Carolina Utilities Comm'n, No. 94-1986, *cert. denied*, 516 U.S. 1092 (1996) (brief of the United States as amicus curiae in support of certiorari, copy supplied)

Kimberlin v. Quinlan, 515 U.S. 321 (1995) (vacated and remanded in light of *Johnson v. Jones*) (brief for the United States as amicus curiae (petition stage), copy supplied; brief for the United States as amicus curiae supporting reversal (merits), 1995 U.S. S. Ct. Briefs LEXIS 145)

Adarand Constructors v. Peña, 515 U.S. 200 (1995) (brief in opposition, 1994 WL 16012041; brief for respondents, 1994 WL 694992)

City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995) (brief for the United States, 1995 WL 31812)

West Penn Power Co. v. Pennsylvania Public Utility Comm'n, No. 93-1341, *cert. denied*, 513 U.S. 925 (1994) (brief of the United States as amicus curiae in support of certiorari, copy supplied)

Rivers v. Roadway Express, 511 U.S. 298 (1994) (petition for certiorari, copy supplied; petitioner's brief, 1993 WL 329989; reply brief, 1993 WL 664650)

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993) (NAACP LDF brief as amicus curiae in support of respondent, 1991 U.S. S. Ct. Briefs LEXIS 953)

United States v. Verdugo-Urquidez, 494 U.S. 259 (1990) (brief of ACLU as amicus curiae in support of respondent, 1989 WL 1127209)

As an Assistant to the Solicitor General, I also wrote dozens of briefs in opposition petitions for certiorari against the government. The United States' briefs in opposition are public documents filed in court, but the practice of the Solicitor General's office is not to list the name of the drafting Assistant to the Solicitor General on those briefs, and I did not maintain records of which such briefs I wrote.

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. *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 130 S.Ct. 1758 (2010)

    I was lead Supreme Court counsel for the respondent, AnimalFeeds International Corp., and I drafted the brief in opposition and the merits brief and argued the case in the Supreme Court. My client sought to recover, on a class-wide basis, civil damages flowing from a criminal antitrust conspiracy. The issue in the Supreme Court was whether the Federal Arbitration Act preempted class-wide arbitration under an agreement that expressed no intent to authorize class proceedings. The Court articulated a default presumption under the Federal

Arbitration Act that parties who agree to arbitrate do not thereby consent to arbitrate on a class-wide basis.

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2. *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003)

I was lead Supreme Court counsel for two classes of homeowners, and I drafted the merits brief and argued the case in the Supreme Court. The case arose from thousands of home improvement loans that plaintiffs claimed were made in systematic violation of South Carolina's consumer protection law. The issue in the Supreme Court was whether the Federal Arbitration Act preempted class-wide arbitration that the arbitrator had conducted and the state high court approved under an arbitration clause that empowered the arbitrator to decide "all disputes" between the parties, but said nothing specific about class proceedings. The Court held that the Federal Arbitration Act allocates to the arbitrator, not the trial court, the decision whether such an arbitration clause authorizes class proceedings.

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3. *Nevada Dep't of Human Resources v. Hibbs*, 538 U.S. 721 (2003)

I was lead Supreme Court counsel for the respondent, Hibbs, whose state employer violated his Family and Medical Leave Act (FMLA) rights when Hibbs sought leave to care for his seriously ill wife. I was the principal drafter of the brief in opposition, as well as respondent's brief on the merits, and I argued the

case in the Supreme Court. The issue in the Supreme Court was whether Congress's enactment of the family-care provision of the FMLA was a valid exercise of congressional authority under Section 5 of the Fourteenth Amendment to remedy a widespread pattern of state sex discrimination. The Court held that it was.

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4. *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997)

I was the principal drafter of the brief for the United States as amicus curiae in this case addressing the doctrine of equivalents for patent infringement. Under the equitable, extra-statutory doctrine of equivalents, a product or process that does not literally infringe a patent because it has elements that differ from those specified in the patent claim limitations may nonetheless be held to infringe if the differences are insubstantial. A fractured Federal Circuit opinion had left the nature and application of the doctrine unclear. The United States argued for, and the Court sustained, a slightly narrowed and clarified doctrine.

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5. *United States v. Virginia*, 518 U.S. 515 (1997)

I was the principal drafter of the briefs for the United States in this equal protection challenge to Virginia Military Institute's exclusion of women and the Commonwealth of Virginia's development of a separate and substantially different program for women. The United States initiated this case in response to a complaint by a young woman denied admission to VMI based on her sex. The Supreme Court held that VMI's exclusion of women violated the Equal Protection Clause, as did its effort to remedy that violation by establishing a women-only program that was in many material respects unequal to VMI.

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6. *Board of Comm'rs, Wabaunsee Cty. v. Umbehr*, 518 U.S. 668 (1996)

I was the principal drafter of the brief for the United States as amicus curiae in this case addressing whether the First Amendment protects government contractors against retaliatory termination of government contracts based on

speech on matters of public concern. Respondent was a trash hauler whose contract with the county was automatically renewable and terminable at will, and he contended that the county cancelled his contract in retaliation for his public criticism at meetings and in the newspaper of the county's misuse of public equipment on private construction projects, excessive public landfill rate hikes, and planned closure of the landfill. The United States urged that viewpoint-based public contract termination, like other viewpoint-based grant or withdrawal of public benefits, is presumptively unconstitutional. The Supreme Court held that the First Amendment protects public contractors against speech-based retaliation and that an adjusted *Pickering* balancing test adequately accounts for the government's countervailing interests as contractor.

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7. *Lewis v. United States*, 518 U.S. 322 (1996)

I argued this case in the Supreme Court on behalf of the United States. The issue was whether a defendant who is prosecuted for multiple petty offenses in a single proceeding has a Sixth Amendment right to a jury trial. Criminal defendants

accused of serious crimes have a constitutional right to trial by jury, but this right is inapplicable to "petty" offenses, and any offense for which the legislature provided a maximum authorized sentence less than six months had been treated as presumptively petty. The Court held that a potential aggregate sentence exceeding six months does not convert the underlying petty offenses into serious crimes triggering the jury right.

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8. *Ornelas-Ledesma v. United States*, 517 U.S. 690 (1996)

I was the principal drafter of the brief on the merits for the United States and argued this case in the Supreme Court. The issue was whether determinations of reasonable suspicion to stop and probable cause for a warrantless search are subject to *de novo* review, or only review for clear error. The United States had prevailed below on the more deferential standard, but before the Supreme Court the government argued for the *de novo* standard and the Court appointed counsel to defend the judgment of the court of appeals. The Court held that determinations of reasonable suspicion and probable cause for a warrantless search should be reviewed *de novo*.

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9. *Behrens v. Pelletier*, 516 U.S. 299 (1996)

I was the principal drafter of the brief for the United States as amicus curiae, and I argued the case in support of petitioner Behrens in the Supreme Court. The question in this case was whether a public official who had already taken an interlocutory appeal of the denial of qualified immunity at the motion to dismiss stage is entitled to a second interlocutory appeal of denial of a summary judgment motion reasserting qualified immunity. The Court held that an official is not limited to one interlocutory appeal on qualified immunity grounds.

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10. *Adarand Constructors v. Peña*, 515 U.S. 200 (1995)

I was the principal drafter of the briefs for the United States in this equal protection challenge to the Small Business Administration's Disadvantaged Business Enterprise program, which permitted official consideration of race as a factor in determining business disadvantage. The United States defended the Disadvantaged Business Enterprise program under *Fullilove v. Klutznick*, 448 U.S. 448 (1980). The Court held that any official consideration of race, even in affirmative action programs, must be strictly scrutinized under the Equal Protection Clause.

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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.)

The main focus of my practice has been litigation or preparation for litigation on behalf of my own clients. I have also, however, done substantial counseling and advising, such as when I worked in the Office of Legal Counsel in the United States Department of Justice. Other significant non-litigation legal activities include the following:

In my service through the Supreme Court Institute (SCI) at Georgetown University Law Center, first as a member of the Faculty Advisory Committee and now as Faculty Co-Director, I have been a frequent volunteer justice for moot court panels. The SCI conducts moot courts on a first-come, first-served basis to assist counsel in preparing to argue in the United States Supreme Court. I have assisted dozens of lawyers in preparing their arguments, without regard to the issue or their position. I have also served as an advisor to and advocate for the SCI executive staff regarding the administration and expansion of the SCI and its many other educational programs and activities.

As a member of the Board of Directors and the Executive Committee of the American Arbitration Association (AAA), I have attended and participated in annual meetings of the Board and quarterly meetings of the Executive Committee. I bring to the AAA experience and knowledge of legal processes drawn from my law practice and teaching, as well as detailed knowledge of the Federal Arbitration Act (FAA) and judicial interpretations of it that I developed through briefing and arguing two Supreme Court cases under the FAA. I have sought as a Board and Executive Committee member to use my knowledge and experience to assist the AAA in fulfilling its mission of providing prompt, effective and economical methods of dispute resolution to parties who choose to arbitrate or mediate their disputes under the auspices of the AAA. In 2003, at the invitation of the AAA General Counsel before I joined the Board, I consulted with the Association in drafting the AAA Supplementary Rules for Class Arbitrations.

I have not engaged in any 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.

I have been a member of the Georgetown University Law Center faculty since 1997, with occasional leaves of absence or sabbaticals to engage in other employment, teaching, and research opportunities. In my years as a professor I have taught the following courses:

Advanced Constitutional Law Seminar (co-taught with Professor J. Michael Seidman): 2004

This was an advanced, workshop-style course, with invited outside faculty presenting different topics each week, followed by students presenting their own research papers on constitutional law subjects. A syllabus for the course is supplied.

Civil Procedure: 1998, 2001, 2002, 2004, 2011

This course covered pleading, motions, trial, appeal, personal jurisdiction, subject matter jurisdiction, *Erie* and choice of law, preclusion, alternative dispute resolution, and remedies. A syllabus for the course is supplied.

Constitutional Law I: The Federal System: 2000, 2001, 2002, 2005

This course covered judicial review, federalism, and separation of powers. A syllabus for the course is supplied.

Constitutional Law I & II (Bar Review): 2012

This course, consisting of four lectures, covered judicial review, federalism, separation of powers, due process, equal protection, fundamental rights, and the First Amendment. I did not develop a syllabus for this course, but based my teaching on a proprietary curriculum developed especially for LL.M. students.

Constitutional Law II: Individual Rights & Liberties (co-taught with Professor David Cole at Georgetown Summer Program in Florence, Italy): 2000

This course covered due process, equal protection, and the First Amendment. I did not retain a syllabus for this course, but taught from the casebook, Constitutional Law, by Stone, Seidman and Sunstein.

Corporate Accountability for Workers in the Global Supply Chain: 2012, 2013

This seminar examines issues relating to establishing, monitoring, complying with and enforcing private codes that set standards for workers in global value chains supplying goods to the U.S. market. A syllabus for the course is supplied.

Employment Seminar: Theory, Law and Policy: 2006

This course covered a different topic each week, including globalizing labor markets; work-family tensions; minimum wage, Earned Income Tax Credit or living wage policies; the Fair Labor Standards Act; nondiscrimination based on sexual orientation; workplace diversity; cognitive bias and law & economics approaches to unconscious discrimination at work. A syllabus for the course is supplied.

International Law of Labor & Employment: 2009, 2010

This survey course covered the International Labor Organization, work-related human rights, litigation of international work-related claims, trade-labor linkage, work law in the European Union, private regulation of work through codes of conduct, migrant workers, and women workers. A syllabus for the course is supplied.

Law of Work in the Global Economy Seminar (co-taught with Professor Kerry Rittich, University of Toronto at the Center for Transnational Legal Studies, London, United Kingdom): 2008

This seminar covered the structure of the new global economy, regulatory flexibility, post-industrial employment, contingent work, working time and work/family policy, social insurance, transnational labor organizing, transnational regulation, new governance, and labor migration. A syllabus for the course is supplied.

Legal Justice Seminar: 1997, 2000, 2001, 2002, 2004, 2005

This small-group, first-year course is a survey of 20th century legal theory, with a curriculum designed by a group of faculty. Topics typically include classical legal thought, American legal realism, legal process, law and economics, critical legal studies, critical race theory, feminist jurisprudence, and modern rights theory. I did not develop a syllabus for this course, but taught based on reading materials collected by the 5-6 faculty members who taught sections of the course in the same year.

Legal Process and Society: 2005, 2007-2008, 2010-2011

This is a full-year civil procedure course for Section 3, an optional first-year curriculum that takes a more theoretical, interdisciplinary and integrated approach to the traditional first-year curriculum. I taught the regular civil procedure subjects – pleading, motions, trial, appeal, personal jurisdiction, subject matter jurisdiction, *Erie* and choice of law, preclusion, alternative dispute resolution, and remedies – and assigned additional secondary readings on issues such as the importance of fair process, the growing importance of arbitration, and class actions. A syllabus for the course is supplied.

Regulating the Workplace in the Global Economy (co-taught with Assistant Professor Alvaro Santos): 2008

This seminar examined the transformation of the global labor market, workforce development, challenges and opportunities of global labor markets, and conventional and alternative institutions of worker representation. A syllabus for the course is supplied.

Social Welfare and Economic Liberty in Constitutional and Human Rights Law Seminar: 2007

This seminar explored different constitutional and human rights approaches to protection of economic liberties and providing for the social welfare. The

readings included political theory and social science as well as legal texts and analysis. A reading list and seminar requirements handout are supplied.

Transnational Law Colloquium (co-taught with Professor David Cole): 2008, 2009
This was a workshop-style course with invited speakers and structured student participation. Speaker lists are supplied.

Transnational Legal Theory Seminar (co-taught with Professor David Luban): 2009
This seminar surveyed contemporary issues in transnational legal theory, including laissez-faire, globalism, realism, human rights, pluralism and relativism, the fragmentation of the international legal system, the laws of war, the question whether global justice is a coherent concept, global justice and poverty, women and international legal theory, trans-national legal translation, and the future of the nation state. A syllabus for the course is supplied.

Work Law in Flux: Labor and Employment for the 21st Century (co-taught with Katie Corrigan): 2011
This "practicum" course combined student externship placements in labor or employment law offices with weekly seminar meetings to discuss case studies, as well as cross-cutting issues of work law, including the economics of workplace regulation, labor law, employment law, employment discrimination law, the shifting employer-employee relationship, human rights protections for workers, and job creation. A syllabus for the course is supplied.

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

    I have no anticipated receipts from deferred income arrangements.

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

    If 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 confirmed, I would recuse from any case on which I had previously worked and any case in which I had an interest raising an appearance of bias or which presented a ground on which my impartiality might reasonably be questioned. My recent law practice has been as a professor, and I am not aware of any individuals or entities with whom I have a personal, financial or professional relationship that is likely to present a conflict of interest. If a potential conflict arose, I would apply the standards of 28 U.S.C. § 455 and the Code of Judicial Conduct for United States Judges, as well as any other pertinent principles of judicial ethics, to determine whether to recuse.

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

       In order to avoid any potential conflict of interest, I would consult rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct for United States Judges, and based on such sources, I would compile a comprehensive list of matters, clients or other persons so that I could readily identify potential conflicts of interest. In close cases, I would consult other judges and any person 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.

    I was lead counsel, pro bono, in the United States Supreme Court in *Nevada Department of Human Services v. Hibbs*. I spent several hundred hours briefing the case at the petition and merits stages and arguing the case.

I worked with a Georgetown colleague on a pro bono basis in preparing the merits brief in *Knight v. C.I.R.*, 552 U.S. 181 (2008). I also worked on a pro bono basis with the NAACP Legal Defense & Educational Fund, Inc. to prepare the petition for certiorari in *Jenkins by Hall v. Herring*, 522 U.S. 966 (1997). I have assisted many other lawyers who represent disadvantaged clients, advising them on litigation planning and briefing.

I spend many hours each year volunteering my time on moot court panels for lawyers preparing to argue before the Supreme Court. I do not limit those pro bono contributions to any particular type of client or issue, but many of the lawyers I have mooted over the years were representing disadvantaged clients. I also have assisted many other lawyers who represent disadvantaged clients, advising them on litigation planning and briefing.

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 January 2013, I was contacted by an official from the White House Counsel's Office, inquiring whether I was interested in being considered for a vacancy on the United States Court of Appeals for the District of Columbia Circuit and discussing my legal career. In March, I received a follow-up call informing me that I would be placed under further consideration. Since March 15, 2013, I have been in contact with officials from the Office of Legal Policy in the Department of Justice. On May 8, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 17, 2013, I met with the White House Counsel in Washington, DC. On June 4, 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
Pillard, Cornelia T.	District of Columbia Circuit	06/08/2013
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 06/04/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/16/2013
7. Chambers or Office Address		
Georgetown University Law Center 600 New Jersey Ave, NW Washington DC 20001		

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.	Board of Directors and Executive Committee member	American Arbitration Association
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 13	Name of Person Reporting Pillard, Cornelia T.	Date of Report 06/08/2013

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	Georgetown University -- salary	$172,971.72
2. 2012	Georgetown University -- salary	$178,314.78
3. 2012	LLM Bar Review -- teaching	$8,000.00
4. 2012	Woodrow Wilson International Center for Scholars--Fellowship	$37,500.00
5. 2013	Georgetown University -- salary	$11,458.30
6. 2013	Woodrow Wilson International Center for Scholars--Fellowship	$47,500.00

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. 2012	Georgetown University--salary
2. 2012	self-employed writer
3. 2012	Wells Fargo -- legal consulting
4. Jan. 2012	University of Chicago, Honorarium $286.72
5. Feb 2012	George Washington University, Honorarium $2000
6. Mar 2012	Yale University, Honorarium $250
7. April 2012	University of Minnesota, Honorarium $2000
8. April 2012	Saint Edwards College, Honorarium $5000
9. Sept 2012	Case Western Reserve University, Honorarium $3000
10. 2012	Open Society Foundation--fellowship
11. 2013	Georgetown University--salary
12. 2013	self-employed writer
13. 2013	Open Society Foundation--fellowship

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Name of Person Reporting	Date of Report
Pillard, Cornelia T.	06/08/2013

14. Feb 2013	William & Mary, Honorarium $1000
15. Mar 2013	American Bar Association, Honorarium $1,000
16. Mar 2013	The College of the Holy Cross, Honorarium $2,100
17. April 2013	St. Jude League, Honorarium $250

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 4 of 13	Name of Person Reporting Pillard, Cornelia T.	Date of Report 06/08/2013

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 5 of 13

Name of Person Reporting	Date of Report
Pillard, Cornelia T.	06/08/2013

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. 3M Co. Common Stock	A	Int./Div.	K	T	Exempt				
2. AT&T Inc. Common Stock	B	Int./Div.	K	T					
3. Alcoa Inc. Common Stock	A	Int./Div.	J	T					
4. American Century Ultra Mutual Fund	A	Int./Div.	K	T					
5. American Financial Group Preferred Stock	A	Int./Div.	J	T					
6. Anheuser Busch Bond	A	Int./Div.							
7. Baxter International Inc. Common Stock	A	Int./Div.	J	T					
8. Bellsouth Corp. Bond	A	Int./Div.	J	T					
9. Blackrock Equity Dividend Mutual Fund	A	Int./Div.	K	T					
10. Blackrock Inflation Protected Bond Mutual Fund	A	Int./Div.	J	T					
11. Boeing Co. Common Stock	B	Int./Div.	K	T					
12. Canadian Oil Sands Ltd Common Stock	B	Int./Div.	K	T					
13. Caterpillar Inc. Common Stock	A	Int./Div.	K	T					
14. Cisco Systems Inc. Common Stock	A	Int./Div.	J	T					
15. Coca Cola Co. Common Stock	A	Int./Div.	J	T					
16. Cohen & Steers Institutional Global Realty Mutual Fund	C	Int./Div.	L	T					
17. Cohen & Steers Institutional Realty Mutual Fund	D	Int./Div.	L	T					

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

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Name of Person Reporting	Date of Report
Pillard, Cornelia T.	06/08/2013

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. Colgate Palmolive Co. Common Stock	B	Int./Div.	K	T					
19. Comcast Corp Common Stock	A	Int./Div.	J	T					
20. ConocoPhillips Common Stock	A	Int./Div.	J	T					
21. Deere & Co. Common Stock	A	Int./Div.	K	T					
22. Diageo PLC ADR Stock	A	Int./Div.	K	T					
23. Doubleline Total Return Bond Mutual Fund	A	Int./Div.	K	T					
24. Du Pont De Nemours & Co. Stock	B	Int./Div.	K	T					
25. Emerson Electric Bond	A	Int./Div.	J	T					
26. Fidelity Beacon Municpal Money Market Fund	A	Int./Div.	M	T					
27. Fidelity Money Market Cash Reserves	A	Int./Div.	L	T					
28. Fidelity New Markets Income Mutual Fund	A	Int./Div.	J	T					
29. Fluor Corp. Common Stock	A	Int./Div.	K	T					
30. Freeport Memoran Copper & Gold Common Stock	A	Int./Div.	J	T					
31. General Electric Common Stock	A	Int./Div.	J	T					
32. Heinz Co. Common Stock	A	Int./Div.	K	T					
33. Hershey Foods Corp. Common Stock	A	Int./Div.	J	T					
34. Home Depot Inc. Common Stock	A	Int./Div.	K	T					

1. Income Gain Codes: (See Columns D1 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		

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of 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. IBM Common Stock	A	Int./Div.	K	T					
36. India Index Fund - IFN	C	Int./Div.	K	T					
37. Ingersoll Rand Common Stock	A	Int./Div.	K	T					
38. Ishares MSCI Japan Index Fund	A	Int./Div.							
39. Ishares Brazil Index Fund	A	Int./Div.	K	T					
40. Ishares Dow Jones Select Dividend Index Fund	A	Int./Div.	K	T					
41. Ishares Natural Resource Index Fund	A	Int./Div.	J	T					
42. Ishares MSCI EAFE Index Fund	A	Int./Div.	J	T					
43. Ishares Russell Mid Cap Index Fund	A	Int./Div.	K	T					
44. Ishares S&P Small Cap Index Fund	A	Int./Div.	J	T					
45. Janus Mutual Fund	A	Int./Div.	L	T					
46. Kellogg Co. Common Stock	A	Int./Div.							
47. Manpower Inc. Common Stock	A	Int./Div.	K	T					
48. Mckesson Corp. Common Stock	A	Int./Div.	L	T					
49. Mcmoran Bond	A	Int./Div.							
50. Medtronic Inc. Common Stock	A	Int./Div.	J	T					
51. Metzler Payden European Emerging Markets Mutual Fund	A	Int./Div.	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		

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VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
52. Monsanto Co. Common Stock	A	Int./Div.	K	T					
53. Motorola Inc. Common Stock	A	Int./Div.	J	T					
54. Australia Bank Bond	B	Int./Div.	K	T					
55. Pepsico Inc. Common Stock	A	Int./Div.	K	T					
56. Petrobras International Finance Bond	A	Int./Div.	J	T					
57. Petro Canada Make Whole Bond	B	Int./Div.	K	T					
58. Pfizer Inc. Common Stock	A	Int./Div.	J	T					
59. Phillips 66 Common Stock	A	Int./Div.	J	T					
60. Pimco Corporate Opportunity Mutual Fund	A	Int./Div.	J	T					
61. Pimco All Asset Insitutional Mutual Fund	C	Int./Div.	L	T					
62. Powershares Water Resource Portfolio	A	Int./Div.	K	T					
63. Powershares Wilderhill Clean Energy Portfolio	A	Int./Div.	J	T					
64. Proctor & Gamble Co. Common Stock	A	Int./Div.	J	T					
65. Progressive Corp. Ohio Common Stock	A	Int./Div.	J	T					
66. Roche ADR Stock	A	Int./Div.	K	T					
67. T Rowe Price New Asia Mutual Fund	B	Int./Div.	K	T					
68. T Rowe Price Spectrum Income Mutual Fund	C	Int./Div.	L	T					

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

FINANCIAL DISCLOSURE REPORT Page 9 of 13	Name of Person Reporting Pillard, Cornelia T.	Date of Report 06/08/2013

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)
69. Royce Total Return Mutual Fund	B	Int./Div.	K	T					
70. Healthcare Select Sector SPDR Index Fund	A	Int./Div.	J	T					
71. Siemens AG ADR Stock	A	Int./Div.							
72. Southwest Airlines Co. Common Stock	A	Int./Div.	J	T					
73. SPDR International Gov. Inflation Protected Bond Index Fund	C	Int./Div.	L	T					
74. Starbucks Corp. Bond	C	Int./Div.	K	T					
75. Suncor Energy Inc. Common Stock	A	Int./Div.	J	T					
76. Transocean LTD ZUG Namen AKT Stock	A	Int./Div.	J	T					
77. US Treasury Bond TIPS	B	Int./Div.							
78. UBS Dynamic Alpha Mutual Fund	A	Int./Div.							
79. United Parcel Sevices Inc. Common Stock	A	Int./Div.	J	T					
80. Volkswagon ADR Stock	B	Int./Div.	K	T					
81. Waste Management Inc. Common Stock	A	Int./Div.	K	T					
82. Westpack Banking Bond	B	Int./Div.	K	T					
83. Xerox Corp. Bond	B	Int./Div.	K	T					
84. Altegris Managed Futures Strategy Fund		None	K	T					
85. Amazon Common Stock		None	K	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

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of 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)
86. Archer Daniels Midland Common Stock		None	J	T					
87. Cemex SAB ADR Stock		None	J	T					
88. CSX Corp. Common Stock		None	J	T					
89. Ishares MSCI Emerging Markets Minimum Vol Index Fund		None	K	T					
90. Itron Inc. Common Stock		None	K	T					
91. Jacobs Engineering Group Inc. Common Stock		None	K	T					
92. Nuvasive Inc. Common Stock		None	K	T					
93. Petmed Express Inc. Common Stock		None	J	T					
94. Pitney Bowes Bond		None	J	T					
95. Trowe Price Science & Technology Mutual Fund		None	J	T					
96. Urban Outfitters Common Stock		None	K	T					
97. Walt Disney Common Stock		None	J	T					
98. Wells Fargo Common Stock		None	J	T					
99. Daimler Chrysler AG Stock		None							
100. Vanguard Windsor II Fund	D	Dividend	N	T					
101. Vanguard Windsor Fund	E	Dividend	P1	T					
102. Fidelity Magellan Fund	D	Int./Div.	N	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

3. Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
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)
103. Fidelity Low Priced Stock	E	Int./Div.	O	T					
104. IRA-BDA #1	A	Distribution	K	T					
105. --Fidelity Canada Fund									
106. --Fidelity Diversified International Fund									
107. --Fidelity Select technology Fund									
108. IRA-BDA #2	A	Distribution	K	T					
109. --Fidelity Canada Fund									
110. --Fidelity Diversified International Fund									
111. --Fidelity Select Technology Fund									
112. Suntrust cash accounts	E	Interest	J	T					
113.									

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
Pillard, Cornelia T.	06/08/2013

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

Name of Person Reporting	Date of Report
Pillard, Cornelia T.	06/08/2013

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/ **Cornelia T. Pillard**

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		175	945	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	424	515	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		336	501
Real estate owned – see schedule	1	120	105	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		73	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Saving Plan		96	573				
				Total liabilities		336	501
				Net Worth	5	553	637
Total Assets	5	890	138	Total liabilities and net worth	5	890	138
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 stock	$ 33,321
Alcatel Alsthom (ADR)	44
Alcoa Inc. stock	1,275
Altegris Managed Future Strategy Fund	15,708
Amazon stock	46,221
American Century Ultra Fund	36,334
American Financial Group stock	4,058
Archer Daniels Midland stock	10,248
AT&T Inc. stock	15,924
Baxter International stock	5,389
Bellsouth Corp. bond	5,296
BlackRock Equity Dividend Fund	15,208
BlackRock Inflation Protected Bond Fund	14,479
Boeing Co. stock	43,462
Canadian Oil Sands Ltd stock	15,776
Caterpillar Inc. stock	26,034
Cemex SAB de CV (ADR)	13,402
Cisco Systems stock	13,018
Coca-Cola Co. stock	4,310
Cohen & Steers Institutional Global Realty Shares	68,617
Cohen & Steers Institutional Realty Shares	71,351
Colgate Palmolive Co. stock	46,785
Comcast Corp. stock	3,602
ConocoPhillips stock	6,243
CSX Corp. stock	10,280
Deere & Co stock	26,817
Diageo plc (ADR)	24,990
Doubleline Total Return Bond Fund	29,429
E. I. DuPont de Nemours & Co. stock	27,745
Emerson Electric Co. bond	10,689
Fidelity Canada Fund	9,623
Fidelity Diversified International Fund	25,298
Fidelity Low-Priced Stock Fund	532,836
Fidelity Magellan Fund	337,719
Fidelity New Markets Income Fund	14,606
Fidelity Select Technology Fund	5,830
Fluor Corp. stock	27,900
Freeport-McMoRan Copper & Gold stock	8,811
General Electric Co. stock	12,449
H.J. Heinz stock	19,917
Health Care Select Sector SPDR	12,205

Hershey Foods Corp. stock	3,598
Home Depot Inc. stock	30,700
IBM stock	15,352
Ingersoll-Rand plc	17,055
iShares Dow Jones Select Dividend Index Fund	28,863
iShares MSCI Brazil Index (ETF)	16,326
iShares MSCI EAFE Index Fund	9,394
iShares MSCI Emerging Markets Minimum Volatility Index Fund	15,730
iShares Russell Midcap Index Fund	30,786
iShares S&P North American Natural Resources Sector Index Fund	6,009
iShares S&P SmallCap 600 Value Index Fund	5,645
Itron Inc. stock	17,975
Jacobs Engineering Group Inc. stock	27,699
Janus Fund	66,908
LSI Corp. stock	28
Manpower Inc. stock	41,602
McKesson Corporation stock	89,445
Medtronic Inc. stock	4,964
Metzler/Payden European Emerging Markets Fund	8,555
Monsanto Co. stock	21,534
Motorola Inc. stock	3,796
National Australian Bank bond	26,623
Nuvasive Inc. stock	18,345
Pepsico Inc. stock	18,842
Petmed Express Inc. stock	4,603
Petrobras International Finance bond	5,491
Petro-Canada Make Whole bond	25,133
Pfizer Inc. stock	4,388
Phillips 66 stock	3,192
PIMCO All Asset All Authority Fund	65,542
PIMCO Corporate & Income Opportunity Fund	11,732
Pitney Bowes bond	13,226
PowerShares Water Resource Portfolio	41,563
PowerShares WilderHill Clean Energy Portfolio	1,578
Procter & Gamble Co. stock	6,817
Progressive Corp. stock	4,709
Roche Holding Ltd. (ADR)	32,053
Royce Total Return Fund	31,315
Southwest Airlines stock	707
SPDR DB Int'l Gov't Inflation-Protected Bond ETF	69,272
Starbucks Corp. bond	35,832
Suncor Energy Inc. stock	5,042
T. Rowe Price New Asia Fund	47,503
T. Rowe Price Spectrum Income Fund	84,333
T. Rowe Price Science & Technology Fund	13,016
The India Fund, Inc. stock	25,072

Transocean Ltd. Zug Namen AKT stock	6,842
United Parcel Service stock	6,589
Urban Outfitters stock	39,276
Vanguard Windsor Fund	1,136,442
Vanguard Windsor II Fund	385,346
Volkswagen AG (ADR)	48,192
Walt Disney stock	9,970
Waste Management Inc. stock	31,493
Wells Fargo stock	9,816
Westpack Banking bond	21,773
Xerox Corp. bond	17,634
Total Listed Securities	$ 4,424,515

Real Estate Owned	
Personal residence	$ 950,255
Vacation home	169,850
Total Real Estate Owned	$ 1,120,105

AFFIDAVIT

I, Cornelia T. L. Pillard, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 13, 2013
(DATE)

(NAME)

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 13 DAY OF June, 2013.
BY Cornelia T.L. Pillard
Roberta Kelley Paul
NOTARY PUBLIC

Roberta Kelley Paul
(NOTARY)

ROBERTA KELLEY PAUL
NOTARY PUBLIC
Expiration Date
May 14, 2017
DISTRICT OF COLUMBIA

Senator BLUMENTHAL. Thank you very much. I am going to begin with some questions and then turn to other Members of the Committee.

Ms. Pillard, I understand that you were on the ABA Committee that evaluated Samuel Alito when he was nominated to the Supreme Court. In fact, you chaired the ABA Reading Committee that produced the report evaluating then-Judge Alito when it gave Judge Alito its highest rating.

I wonder if you could describe the qualities that make a good appellate court judge, qualities that you evaluated in giving Judge Alito that recommendation.

Ms. PILLARD. Thank you, Senator Blumenthal. I was asked in 2005 and 2006 to chair one of the ABA Nominations Committee's Reading Committees, and at that time, one of the nominations that came forward was the nomination of then-Judge Alito to sit as a Justice on the Supreme Court. And we reviewed every single writing that could be found that had been authored by Justice Alito, and that included many judicial opinions. It also included speeches and other writings that were written in other capacities. And we thoroughly read all of those writings, and what we were looking for there was a faithful ability to read the law and apply it rigorously to the facts of the case when we were looking at the judicial opinions.

We looked at the other writings with a little bit of a different approach because they were written in a different role. But we are looking for someone who we think, whatever his views, personal views, when he approaches the law, he approaches it fairly, rigorously, with an open mind, and has, therefore, the qualities of impartiality and of fairness that we are looking for in a federal judge. And we made our report and the ABA found it, I think, readily apparent that now-Justice Alito had the qualities to equip him to be a Justice on the U.S. Supreme Court.

Senator BLUMENTHAL. And you have been an advocate, a very zealous and passionate and successful advocate sometimes, of controversial causes and cases. Looking to those qualities of impartiality and fairness, do you think you would be able to be impartial and fair? I know you will say yes. How will you be able to, in effect, move from the advocacy demeanor and role to the appellate judge role, which is obviously one of judging, not of advocacy?

Ms. PILLARD. Thank you, Senator Blumenthal. I have had the experience, as I think most nominees have, of being an advocate, and what we undertake in agreeing to be nominated to be a judge is to set aside the kind of partisanship and the loyalty to client that we may have, that we were duty bound to have as an arguing advocate, and put aside any bias and take on as our trust and as the goal of what we are doing the neutral and evenhanded application of the precedents of the U.S. Supreme Court, the precedents of the DC Circuit, and apply those to the case at hand. And the judge has an especially heightened responsibility, in my view, to read the read the record in a case meticulously to make sure that her decisions do not in any way exceed the bounds of the issues presented before her.

Article III judges are judges of limited power, and one of the highest responsibilities of a judge is to be so familiar with the

record that they are deciding only the issue presented before them in the most evenhanded way possible under the precedents and the text of the law and statutes.

Senator BLUMENTHAL. Thank you.

Senator Grassley.

Senator GRASSLEY. Thank you very much.

I know that you believe that there is a right of privacy in the U.S. Constitution. From what and where in that document does it derive? And what is your understanding in general terms of the contour of that right?

Ms. PILLARD. Thank you, Senator Grassley. My view, any personal view that I might have, would be irrelevant to my serving as a judge. The views that I would take as my guide in answering any such question as the question you pose are the precedents of the U.S. Supreme Court. And the U.S. Supreme Court in a long line of cases has found a right of privacy protecting reproductive choice in the liberty aspect of due process. And as those precedents have evolved, those are the precedents that I would apply, and those are the precedents that I would be bound to, precedents of the U.S. Supreme Court and any precedents of the District of Columbia Circuit.

Senator GRASSLEY. A little bit along the same line, I will quote Justice Douglas in Griswold: Although the Bill of Rights did not explicitly mention the right to privacy, it could be found, as you know, as he said, in the "penumbras" and "emanations" of the Constitution. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found reading between the lines, as he—"reading between the lines"?

Ms. PILLARD. I do not think that is a methodology that I would apply in my decisions as a judge. Thankfully, the Court has done much to elaborate since then, and we are not looking at enumerations or penumbras. I do not see any role for that kind of reasoning under the United States Constitution. I would apply the precedents of the U.S. Supreme Court. I would look to the text and the structure of the Constitution in interpreting the Constitution.

Senator GRASSLEY. Thank you.

You have argued that, "Equal protection is at the heart of the abortion matter." Could you explain where in the Constitution or Supreme Court precedent you find support for that argument that abortion rights are a matter of equal rights? So let me continue with an additional question along the same lines. You have asserted that reproductive rights should be doubly constitutionally protected by overlapping liberty and equality guarantees. So then what constitutional authority supports this proposition or the argument that abortion rights are a matter of equal protection?

Ms. PILLARD. Thank you, Senator Grassley. I do not believe that the Supreme Court has held that the abortion right is protected under equal protection. It is based in the liberty aspect of the Due Process Clause.

The article to which you refer was an article not seeking to retheorize in any way the abortion right, but was looking at other—the article was titled, "Our Other Reproductive Choices," and it was putting aside the debates about abortion and looking at other

areas of law where well-established equal protection principles of the equality between women and men might, in fact, be used to make abortion less frequent. And the reference to equality and abortion is a more general reference to the policy or the outcomes of equality that the Supreme Court refers to in the joint opinion in *Casey* where the Court in that *Casey* opinion says women's ability to participate equally in the economic and social life of the Nation has been facilitated by their ability to exercise reproductive choice. So it is not intended as any kind of doctrinal re-theorization of the abortion right.

Senator GRASSLEY. Okay. A little bit along the same line but in a more specific area, you have criticized laws that grant conscience rights to pharmacists and health care providers "to refuse to facilitate abortions or even to fill prescriptions for contraceptives if they are personally opposed to such practices."

I think that this is quite dismissive of religious beliefs that these health care providers might have, so I would give you an opportunity now to explain your understanding of freedom of religion as enumerated in the First Amendment in the context of that question and your statement.

Ms. PILLARD. That is not my view, in fact. I believe that I have not written on the question of conscience rights, and, in fact, the question is a question that is very much before the lower courts. It is a question that might come before me. And I would hesitate to speak in detail how a judge should approach those issues except to generally note that there are rights on both sides of those questions. There are rights of individuals to have access to reproductive care, but, of course, there is also well-established recognition in our Constitution and laws of the free exercise rights of individuals and potentially also of organizations.

So I think any judge approaching those issues would have to take into account religious freedom as well as the reproductive rights of an individual seeking to exercise those.

Senator GRASSLEY. Okay. While the case *Hosanna-Tabor Evangelical Lutheran Church* v. *EEOC* was pending before the Supreme Court, you made a statement at a press briefing that the Lutheran Church's position was a "substantial threat to the American rule of law." Given that the Supreme Court ruled unanimously for the church, I would like to have you explain how the ministerial exception to employment decisions is a substantial threat to the rule of law? And do you believe that the ministerial exception is unconstitutional?

Ms. PILLARD. Thank you, Senator Grassley. That was a case in which the Lutheran Church Missouri Synod was arguing that they were exempt from civil rights laws because it was in violation of their religious tenets to have somebody who claimed age disability discrimination raise the claim. And the tension in that case is between the free exercise rights on the one hand and the rights to have general application of the government system of rule of law on the other. And I have to admit, Senator Grassley, that—and this would not be the only time—I really called it wrong on that case. I did not predict that the Court would rule as it did. And needless to say, I would be bound by the Court's decision in that case and in every other case of the U.S. Supreme Court. And I do have con-

fidence that I would have no trouble applying that precedent to any case that would come before me.

Senator GRASSLEY. Thank you.

Senator BLUMENTHAL. Thank you, Senator Grassley.

I am going to call on Senator Whitehouse now to ask questions and to take the gavel briefly. I have a Veterans' Affairs mark-up, a Committee meeting that I am going to have to attend briefly. So thank you very much, Senator Whitehouse, for taking the gavel.

Senator WHITEHOUSE [presiding]. It is my pleasure to stand in for Senator Blumenthal briefly at the hearing and to reflect on the fact that the complementary things that Senator Blumenthal has had to say about this nominee come from a pretty remarkable position of accomplishment as one of the senior Attorneys General of the country. And I think he has spent more time before the U.S. Supreme Court than anybody else in the Senate, so he knows whereof he speaks.

Welcome, Professor Pillard.

Ms. PILLARD. Thank you.

Senator WHITEHOUSE. One of the issues that courts are faced with fairly frequently involves the role of the jury. And we all as lawyers understand that the jury has a very important role in the administration of justice. It has a vital fact-finding role. And my question to you is actually addressed to the role of the jury beyond its pure judicial fact-finding role.

If you begin with Blackstone, who is a fairly renowned authority on legal matters, and if you go through the writings and the words and the actions of our Founders when this great Republic was created, and if you continue on to the, I think, viewed as relatively authoritative, writings of viewers of our country like de Tocqueville, over and over again they make the same point, which is that the jury is more than just a judicial entity, is more than just a fact-finding adjunct to the court. It has a governmental role, and it is described as a means for defense against tyranny. It is in the provision of de Tocqueville's "Democracy in America." The discussion is in the chapter that says, "On what restricts the tyranny of the majority." It has been described as one of the means of the sovereignty of the people and, in effect, as a significant part of the architecture of our distinctive American system of government.

Could you comment a little bit on your view on the role of the American jury both as a pure judicial institution and in the broader context of its role within the American system of government given its history?

Ms. PILLARD. Thank you, Senator Whitehouse. The jury is indeed one of the cornerstones of justice in our constitutional democracy, and it is—I know that, among others, Justice Scalia on the U.S. Supreme Court has really insisted, looking at the original document and the history of our Constitution, on the central importance of the jury right.

Senator WHITEHOUSE. "I am a big fan of the jury," he said in a hearing before this Committee. Juries across the country were gratified, I am sure.

[Laughter.]

Ms. PILLARD. Indeed. It is quite a service to shoulder. I have been there myself.

And I think one of the really important functions of the jury is a function that anyone seeking to take the bench also be guided by, and that is that the jury really helps the public to accept the legitimacy of the decisions that are handed down. When common people from all walks of life are convened together, it is harder for the skeptical public or for the public that feels like they may be outsiders to feel that justice is designed by elites or by insiders and imposed upon them from on high.

So the jury has a very important function in increasing the acceptability of the system of justice for the people. And that is a lesson that I believe that judges also must take very seriously.

One of the subjects that is very dear to me—I teach Civil Procedure, we teach about the jury. A lot of my writing has been about fair process. And many of my students come into law school, and Civil Procedure is not high on the list of things they are inspired to study. They are not thinking, "Whoo, I have come to law school for Civil Procedure." But I try to impress upon them the importance of fair procedure and the central and solving role that procedure can play.

There are winners and there are losers in every case before the court, and it is my view that when procedure is scrupulously fair, that when the bench is made up of people who have checked their biases, if any, at the door, that even the losers in the system remain connected to it. They feel that they have had a fair shake, and they feel that the system of justice is theirs.

I think the jury helps to create that belief among the public, and I think that when judges provide fair process, listen carefully to the parties before them and approach them with an open mind, that the bench also can communicate that they are guardians of this precious public trust and that they are fair to all comers.

Senator WHITEHOUSE. Thank you. I think we often forget that in this popular government, one of the ways in which people have the most direct voice is sitting in the jury box and making the official decisions that will be made in conflicts that are brought before them.

It has also been described as having a very significant educational role, a school for citizens and their rights and their responsibilities of governance. And it has been described as an important check on the wealthy and on the powerful, which I think is embodied in the principle that to tamper with the jury is actually a crime; whereas, wealthy and powerful interests spend an enormous amount of effort trying to tamper with executive and legislative branch officials to make sure that they get their way. And there comes a point when they can get too much their way. And against that tide of power and wealth stand the hard square corners of the jury box.

I hope that as you go forward, and presuming that you will be nominated and confirmed, that you will always bear in mind that there is more to the jury than just its fact-finding function. It is part of how we, the people, govern ourselves.

And next, I think, we have Senator Lee.

Senator LEE. Thank you, Mr. Chairman. I look forward to asking a few questions of Ms. Pillard, but first I wanted to just briefly speak to this administration's push to fill additional seats on the DC Circuit at a time when those vacancies do not need to be filled.

No one who is familiar with the DC Circuit's current caseload can honestly say that the court is overworked or that it is in need of an additional judge, let alone two or three additional judges, as the administration has been suggesting.

While other federal circuit courts struggle to keep up with their ever-rising caseloads, in each of the last several years, the DC Circuit has canceled regularly scheduled argument dates because of a dearth of pending cases. And so especially at a time when other circuit court vacancies need to be filled and the administration has failed to put forward judicial nominees for seats that are considered judicial emergencies, it raises significant questions for this administration to focus so heavily on a court that does not need additional judges.

The administration appears to be pushing to confirm additional unneeded judges to the DC Circuit because of that court's important role in reviewing Executive actions. The court's decisions, including its recent invalidation of the President's unconstitutional recess appointments, made at a time when the Senate by its own rules was not in recess, often have very significant political implications. With the administration's controversial Executive agenda, the President appears to have targeted the DC Circuit in hopes that he can pack the court and stack the DC to his advantage.

But that said, I would like to ask you a few questions, Ms. Pillard. Why don't we start off with a simple question. Tell me who your judicial role model is, if you had to identify a jurist, let us say somebody who served on the Supreme Court in the past. You can pick anyone other than John Marshall. Everybody says John Marshall. That does not tell us much. Why don't we stick with a Justice who has served in the last 50 years or so?

Ms. PILLARD. If I could go a little further back than that, I would like to, because the one that I would like to mention would be Justice Robert Jackson.

Senator LEE. Okay. Tell us why you like Justice Jackson.

Ms. PILLARD. Justice Robert Jackson was an astounding jurist. Here was a man who I do not believe went to college and maybe had one year of law school training and was one of the sort of leading lights of the Supreme Court. He was Solicitor General and Attorney General before he was nominated to the bench. And he also had the experience of being the chief prosecutor of the Nazi war criminals at Nuremberg and, I think, understood from his varied experience how the rule of law can be a bulwark against tyranny. And his opinions show his tremendous patriotism, his tremendous love of the Constitution and laws of our country. And he handed down some of the constitutional opinions that still guide us, that we still teach in constitutional law today. A surprising number of the opinions that are well known to law students are opinions of Justice Jackson. So I have a great admiration for him.

Senator LEE. Great. You are thinking about his concurring opinion in *Youngstown*?

Ms. PILLARD. His *Youngstown* opinion is—you know I worked in the Office of Legal Counsel and assessing the powers and limits of the government, and his *Youngstown* opinion talking about the complementary powers of Congress and the Executive is, of course, a much-cited opinion.

Senator LEE. I have always been fascinated by that opinion. He had a clerk that year named William Rehnquist, who later made that concurring opinion the majority analysis in *Dames & Moore* v. *Regan* many years later.

In an article that Senator Grassley talked to you about a few minutes ago, you posited an equal protection right to abortion and contraception, and in that article you wrote, among the other things that Senator Grassley talked to you about, that "Our law . . . needs to be restyled so that mothers are not routinely 'mommy tracked.'"

In what ways do you think that our laws need to be restyled and specifically in order to make sure that mothers are not routinely "mommy tracked"? And what role does the judiciary play in doing that?

Ms. PILLARD. That article was not seeking to restyle the law in any way, but actually—not the constitutional law. It was an article directed at policymakers and advocates, so asking for the law to be restyled was not at all a direction to judges but a direction to people who would be advocating for policies, whether they be corporate policies——

Senator LEE. Legislators.

Ms. PILLARD. Or legislative policies that might help families who are contemplating having children be more optimistic about their ability both to raise their children in the ways that they believe are best and to work enough hours to make a living, so——

Senator LEE. Okay. So you were talking about legislative policy there. You were not talking about judging.

You authored an amicus brief—I think it was about 20 years ago—in a case before the Supreme Court called *Bray* v. *Alexandria Women's Health Clinic*. I believe your client was the NAACP. You were representing the NAACP as amicus curiae. And you argued in that brief that pro-life protesters were guilty of conspiracy in violation of 42 U.S.C. Section 1985.

Now, that, of course, was a law that was originally passed to criminalize the activities of the Ku Klux Klan and their efforts at depriving African American citizens of their civil rights.

In the brief, you called the pro-life protesters that were at issue in that case "militant," and you wrote that, like the conspirators at whom Section 1983 was originally aimed—meaning the Klan, of course—the defendants in this case, these pro-life protesters, "seek forcibly to revoke constitutional rights that they have been unable to repeal through legal and political processes."

Do you believe—based on what I am reading here, it caused me to wonder whether you believe that pro-life protesters that were at issue in that case are fairly analogous to Ku Klux Klan members who lynched African Americans simply because of their race, who bombed churches and in the process killed innocent children, who brutally murdered people in attempting to exercise their right to vote? Is this a fair comparison?

Ms. PILLARD. Not at all. Not at all, Senator Lee. The statute that was on the books was, as you mentioned, Section 1985(3), which was written during the Reconstruction Era as a way to help ensure that the newly freed slaves would enjoy their equal rights.

Senator LEE. I understand that, but I am not talking about the law. I am talking about your comparison. This is your comparison, your invocation of the Ku Klux Klan/pro-life protester comparison.

Ms. PILLARD. And in using that law, we were arguing that the provisions of the law might be deployed in current-day circumstances, and the contribution of our brief was talking about when and if protesters interfere with law enforcement. We wrote a brief focusing on a hindering of law enforcement argument. That was the focus of our brief. And the Court decided not to reach that issue. They said the party had not raised it. And in the following year, the Congress enacted the *Freedom of Access to Clinic Entrances Act*. And I think that it really recognizes the point you make, Senator Lee, which is that that old statute, which was the only thing on the books on which we could base the theory at the time, was not a good fit for the problem at hand. And so Congress, in the wake of that case, enacted the *Freedom of Access to Clinic Entrances Act* in order to give more modern and more fitting tools that did not have, as you mentioned, the disparaging connotations of using that old statute for the current-day problem of allowing law enforcement officers to do their job.

Senator LEE. Okay. My time has expired, and so we will have to move on. But I want to make clear I am not questioning anyone's choice to invoke that statute. I am questioning your choice in that brief to make that comparison, which I think was unfair.

Thank you.

Senator WHITEHOUSE. Let me, before I call on Senator Klobuchar, exercise the prerogative of the Chair to respond to Senator Lee's assertion that no one can honestly say that filling these seats is not necessary or advisable. I do not recall the exact word he used. I actually can say that and feel that I am being honest in saying so given that the lowest number of appeals per active judge is actually the Eighth Circuit, the lowest number of appeals per authorized judge is the Tenth Circuit. And it is my belief that the nature of the appeals that the DC Circuit tends to hear, particularly the agency appeals, is more complex than the average case that, for instance, the First Circuit used to hear when I was arguing before them regularly as Attorney General and United States Attorney.

Senator LEE. May I respond briefly to that, Mr. Chairman?

Senator WHITEHOUSE. You have already gone over your time.

Senator LEE. If you would give me 12 seconds.

Senator WHITEHOUSE. Got it.

Senator LEE. Under the same analysis used by the Democrats in the Senate who blocked Peter Keisler's confirmation, the DC Circuit's caseload is still as low as it was back then. The number of cases per panel is still as low or lower than it was then.

Thank you.

Senator WHITEHOUSE. Senator Klobuchar.

Senator KLOBUCHAR. All right, thank you. I am focused on you, Ms. Pillard, and I welcome you to this hearing today.

As we have been discussing today, the Circuit Court for the District of Columbia in many ways is the second-highest court in the country. As Chief Justice John Roberts once said, "Whatever combination of letters you can put together, it is likely that jurisdiction to review that agency's decision is vested in the DC Circuit."

Because of the DC Circuit's crucial role in the development of this country's jurisprudence, it is essential that the court operate with its full complement of judges to avoid congestion on the docket, delay of justice, and uncertainty for agencies and the entities under its jurisdiction.

You are one of the most accomplished Supreme Court advocates in the country. You have argued nine cases and briefed 25 cases before the high court. You have spent over a decade teaching and mentoring aspiring young lawyers and serving as faculty director to Georgetown Law School Supreme Court Institute. And I have no doubt you would make an excellent addition to the DC Circuit.

Could you talk about the circuit, and can you talk about the unique role of this court and the circuit court and what in your background makes you specifically qualified to serve on that court?

Ms. PILLARD. Thank you, Senator Klobuchar. The DC Circuit is indeed an important court, and one of the characteristics of the docket of the Supreme Court is that it has a high caseload on issues about the scope and limits of governmental power. And these are the kinds of issues that I worked on within the executive branch at the Office of Legal Counsel where the daily fare is advising agencies' and entities' officials within the government about the scope and limits of their power. And certainly in the Supreme Court Institute at Georgetown, I have also had exposure to a wide range of the kinds of issues that come before the DC Circuit.

The Supreme Court Institute is a very special enterprise that brings together lawyers from across the spectrum, lawyers with Supreme Court experience, and helps on a voluntary basis to prepare lawyers to argue before the Supreme Court without regard to issue or position.

And this past term that just ended, we helped to prepare one or more of the lawyers in every single case that the U.S. Supreme Court heard. I personally have been involved in helping to prepare lawyers across the spectrum. I have prepared former Republican Solicitors General for their arguments. I have helped to prepare State Attorneys General to defend their criminal convictions. I have helped to prepare lawyers for major multinational corporations to defend arbitration awards, to defend the court and the nonpartisan service.

Our commitment at the Supreme Court Institute is when lawyers make their best arguments, the Court can make its best decisions. And I think my engagement with a wide range of issues in the Supreme Court Institute, my personal involvement in helping to prepare lawyers, is always part of my background to help me prepare for the difficult and varied caseload of the DC Circuit.

Senator KLOBUCHAR. And also the different and varied ideology of some of the judges that serve on the court. I would think that that is going to be very important to be able to work with people with different views.

Could I ask one question about one of your cases? During your time in the Solicitor General's office, you successfully argued a number of important cases on behalf of the United States. One case was *Ornelas* v. *United States* in which the Court, in an opinion by Chief Justice Rehnquist, agreed with the government's position that reasonable suspicion and probable cause required independent review in appellate courts in order to clarify precedent and afford law enforcement clear guidance as to when searches are appropriate.

As someone who was in law enforcement for a number of years, what benefit do you think clear rules and guidance have for law enforcement officials?

Ms. PILLARD. The difficulty for front-line law enforcement officials is that they have to make quick decisions in a varied range of circumstances, often at personal peril and peril to the safety and the property of others. And one of the problems with a standard that does not involve appellate de novo review is that the body of decisions that create the examples, the more precise fact-based guidance does not develop as clearly.

And so in consultation with the Criminal Division, the Government's position in that case was that it was going to be best and most helpful to law enforcement if there were definitive appellate guidelines on the legality of their actions in a wide range of settings, and that that would very much help them going forward.

Senator KLOBUCHAR [presiding]. All right. Thank you very much.

Senator Cruz.

Senator CRUZ. Thank you, Madam Chairwoman. Professor Pillard, thank you for being here. Thank you for your testimony.

I want to begin by underscoring the point that Senator Lee made a minute ago that I have real concerns about the nominees this administration is putting forward to the DC Circuit. The DC Circuit nominations to that court in partner have been politicized for a long time. The Democrats in the Senate repeatedly stopped qualified, excellent nominees to the court, including Peter Keisler, including, I think most indefensibly, Miguel Estrada, where a Democratic staffer put in a memo that the reason to stop Miguel Estrada, one of the top Supreme Court advocates in the country, was "because he is Latino." And for that to be put in writing, to explicitly say we must not have a conservative Hispanic on the court I think was indefensible. And I have deep concerns about what the administration is doing now with a package of three nominees to the DC Circuit, after the Senate just confirmed a very qualified nominee to the DC Circuit, I believe is an attempt by this administration to pack that court because the DC Circuit has been one of the few restraints on government power exercised by the Obama administration.

Now, those are all concerns that are extrinsic to you, but they are concerns about the nominations put forward by this administration.

But I will confess, Professor Pillard, that I have concerns about your nomination. You have not served on the bench, and so we had a limited universe of materials by which to assess your judicial philosophy and the approach you would take to serving on the bench. The primary source we have is your academic writings, and those

writings to me suggest that your views may well be considerably out of the mainstream. So I would like to ask you about some of those writings.

I would like to first ask about an article you wrote in the *Emory Law Journal* in 2007 where you argued—and this is a quote—"The equal protection critique of abstinence-only curricula"—in schools—"is strengthened and rendered more amenable to judicial resolution by the fact that sex education classes are designed not only to expose students to ideas but also to shape behavior."

In that article, if I understand what you are saying correctly, you were arguing that if a State decides to teach abstinence only, that that decision by State and local officials, in your judgment, may well be unconstitutional and it is an appropriate role for a federal court to strike down a State or local government's decision to teach abstinence only. Is that indeed what you were arguing?

Ms. PILLARD. No, Senator Cruz. In that article—let me say first I am a mother. I have two teenage children, one boy and one girl. And if my children are being taught in sex education, I want both my children to be taught to say no, not just my daughter. I want my son to be taught that, too.

The article was very explicit in saying I do not see any constitutional objection, justiciable or otherwise, to abstinence-only education that does not rely on and promulgate sex role stereotypes. So the concern I had in the article was with inequalities that might be contrary to a long line of established Supreme Court cases on the equality between men and women. That was the only constitutional concern that I identified in the article.

In my view, the front line and in virtually every case the only people who are involved in developing curriculum are the local schools and the parents in the communities. That is absolutely under our constitutional system where the writing of curriculum resides. And when I talked in my article about what would make something more amenable to judicial review, it was because just prior to that I had said I do not think there is any settled law making any of this reachable by courts. And as we academics do, I said, you know, the argument that one would make to make it amenable by courts is the one you quoted.

So it was in the context of saying this is—you know, there may be no doctrine even raising these, but this is a concern. This is an academic article. Academics are paid to, you know, test the boundaries and look at implications of things. As a judge, I would apply established law of the U.S. Supreme Court and of the DC Circuit and ensure——

Senator CRUZ. Professor Pillard, the arguments you have presented here today may well be sound policy arguments, why abstinence only should not be the curriculum, and I would fully expect a school board or a State legislature to consider those arguments, and that would seem to me an appropriate forum to make those arguments.

What you stated in this *Law Review* article was not that as a policy matter school boards should not choose to do so; rather, it was that their decision to teach abstinence only may well be unconstitutional, and you explicitly said and that it is justiciable, that federal courts, the argument for them having the authority to set

aside those decisions under the Constitution, you found strengthened and considerable. And I would note that I find that an extraordinary position, and if that is unconstitutional, it is hard to imagine what decisions are beyond the ambit of federal courts.

Let me get to a second area because my time is rapidly expiring, and a second area of concern I have is the statements you have made concerning—in the *Hosanna-Tabor* case, and in particular, there the question was: What is a church's ability to control its own hiring? And in that case, you gave a September 2011 press briefing where you stated that the case against the church there strikes you as a "strong case for the employee. The big news will be if the Court decides it for the church." And you stated the position that the church has a First Amendment right to choose who it hires was a "substantial threat to the American rule of law."

Now, that position, as you know, was rejected unanimously by the U.S. Supreme Court, and indeed, justice Elena Kagan, no conservative, described the position you articulated there when it was articulated by the Obama Justice Department as "amazing" to suggest that the First Amendment does not protect a church's ability to choose, make its own hiring.

Do you continue to hold those views?

Ms. PILLARD. Thank you, Senator Cruz. The Court has ruled—and I am the first to admit that I called that case wrong. That was a case that commentators acknowledged was a difficult case going into the Court because, on the one hand, you had employees' ability to access the general rule of law system outside the church, and on the other hand, you had the church's claim to have the ability to have its own internal system. And it was—there were very strong competing interests on both sides, and the hard question was where to draw the line.

I was wrong in my prediction about the way that case would come out, and I have no question about my ability to apply that precedent. In fact, I am grateful for the clarity that it provides in a difficult area. And I could apply that like any other precedent of the U.S. Supreme Court, were I to be confirmed to the DC Circuit.

Senator CRUZ. Thank you. My time has expired.

Senator KLOBUCHAR. Thank you very much.

Senator Blumenthal has returned.

Senator BLUMENTHAL [presiding]. Thank you, Senator Klobuchar, for taking the Chair and also to my colleague, Senator Whitehouse, and thank you, Senator Cruz.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Professor Pillard, you argued *Nevada* v. *Hibbs* in which the Supreme Court upheld the *Family and Medical Leave Act*'s application to States and their employees. I have a few questions about your role in that case.

First, why did you get involved in that case?

Ms. PILLARD. Thank you, Senator Franken. I was asked to be considered as one of the candidates to be a volunteer lawyer to take that case as lead counsel in the U.S. Supreme Court, and I was very happy to be considered. And the client, after consultation with me and the other potential lawyers, chose me to represent him, and he was a Nevada employee working for the State of Nevada, and

his wife, Diane, was critically injured in a terrible automobile accident. She had a neck injury that threatened her life, and he wanted to take time off from work to care for her. And he was fired from his job as a result of trying to exercise his rights under the *Family and Medical Leave Act*. And the State of Nevada took the position that he could not recover damages against the State because of its immunity, and the question turned on whether the *Family and Medical Leave Act* could validly apply to the State.

And the Supreme Court, in a decision authored by then-Chief Justice Rehnquist, seemed to not have trouble finding that it could, it did apply to the State, and that was a case in which the U.S. Government was participating to defend the constitutionality of the federal law at issue in the case. So I had the opportunity to argue alongside the Assistant Attorney General in the Bush administration to the Supreme Court defending the constitutionality of that law.

Senator FRANKEN. So you were working alongside the Bush administration in this. What was that like?

[Laughter.]

Ms. PILLARD. It was terrific. I work—as I mentioned, in the Supreme Court Institute I work with people from all across the spectrum, and the Assistant Attorney General in that case also happened to be a colleague and personal friend and a colleague from Georgetown Law who was on leave from the law center working as a lead lawyer in the Bush administration.

Senator FRANKEN. I did not expect to get a laugh on that.

[Laughter.]

Senator FRANKEN. I was actually just asking.

So what lessons did you draw from that case?

Ms. PILLARD. Maybe the same lesson that I drew from *Hosanna-Tabor*, which is do not ever predict how you think something is going to come out, because when I took the case, everyone said it was a real uphill battle, and I think it was very gratifying that the Court ruled.

I ended up basing some of my academic work on the Chief Justice's opinion because he talks about the importance of the law not assuming that caregiving responsibilities are the province of women and that men have no desire or need for family leave, for example, to be offered to them on equal terms. So I was very, you know, pleased and interested in the ramifications of that opinion.

And I also found it, as I find it in the Supreme Court Institute, extremely gratifying to find common cause with people who are often depicted in the news and in the public eye as having irreconcilable views. It just has not been my experience. I have had many times in my career, whether on the executive committee of the American Arbitration Association, where I work with general counsels from corporations and people from international law firm practices, and really from a wide range of perspectives, and I find it really gratifying to work on common projects that advance the public good, and I find it satisfying, and I found that satisfying also, working on the *Hibbs* case.

Senator FRANKEN. Well, we share that view, that it is satisfying to work with folks that some people outside think have irreconcil-

able views, but here in the Senate, we see time and time again where we do come together, and that is a great lesson to draw.

You spoke about it influencing your academic work, and I think as we have seen in some of the questioning today, there is a difference between being a judge and being a professor. See, now, I expected the laugh on that one.

[Laughter.]

Senator FRANKEN. And so I was just—what do you think that difference is? How is the work of a judge different from the work of a professor? And do you think you would have a hard time making that transition from being an academic to being a judge?

Ms. PILLARD. Thank you, Senator Franken. I have had many different aspects of my career, and the professor aspect is in some ways most different, because as a professor you are really called on to be provocative, to push the boundaries, to come up with novel theories. And, you know, I have also been a practice lawyer. I have also worked in government as a counselor. I have also worked as a teacher. And there are differences between and among all these roles. And the role of a judge is a very constrained one, and I appreciate that, in part because I have held very many different roles already, and each of them has its distinct features.

But I would emphasize that the role of a judge is to put aside interests, values, policy objectives, experimental and novel theories, and to apply the law—the Constitution, the statutes, the regulations—to the case at hand and to do that as rigorously and meticulously as is possible.

Senator FRANKEN. Well, obviously, in arguing cases before the Supreme Court and other courts, you get a perspective on the judge's role because that is who you are arguing to.

Do you have an overarching legal theory? Is there a Pillard doctrine that we should know about and that may or may not apply to being a judge?

Ms. PILLARD. Senator Franken, there is no Pillard doctrine. I would, in approaching the bench, emphasize three things: the attention to the record, the attention to the arguments of counsel, and the scrupulous application of existing and binding law to the facts of the case.

I cannot overemphasize how important it is for an Article III judge to be intimately familiar with the factual record in a case. And I see this—you know, cases will come up, they will come through the institute, or they will come up when I was clerking, or they will come into the Solicitor General's office, and people think the case is raising such-and-such an issue. And when you get into the record and you delve down, sometimes you see there is no jurisdiction, or the issue that is raised actually is a different issue that is raised in the case. And as a judge who has limited power under Article III, there is nothing more important than knowing which issues are presented by the case and which issues are not.

I think it is also important for a judge to be guided by—have an open mind in reading—the briefs for both sides and an open and engaged attitude toward counsel at oral argument.

And, finally, the role of the judge is to be a straight shooter, to apply the law that is in the precedents, the constitutional law, the statutory law, to the case at hand. And those would be, for me, my

guides in being a faithful shepherd of the great historical legacy that we have as a country, which is our system, our system of courts.

Senator FRANKEN. Thank you.

Thank you very much, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Franken.

Senator Flake.

Senator FLAKE. Thank you, Mr. Chairman. Thank you, and I apologize for not being here earlier. I had another hearing. But let me just ask a general, very general question first, and then one specific.

Do you believe that judges should look to the original meaning of the words and phrases in the Constitution when applying them to current cases?

Ms. PILLARD. Thank you, Senator. I certainly do, and I would be guided in methodological questions like originalism by the guidance of the U.S. Supreme Court. So, in effect, the precedents on method, I think, are equally binding on judges as the substance of the opinions themselves, and we have many Supreme Court opinions which direct us to look to the original intent. So absolutely, yes.

Senator FLAKE. So you would look to determine original meaning, original intent, you would look to the Constitution, and where that is unclear, you look to current Supreme Court cases or precedent or those that have followed?

Ms. PILLARD. My understanding of my role as a judge would be that I would be bound by the precedents and the precedents that direct us to look at the original meaning.

Senator FLAKE. Even if those—I caught a little of the questioning before, but where it seemed that your feelings seem to be at odds with what the Court had determined or you could not predict? Was that allowing your own feelings or just—we all predict elections and get them wrong all the time. But with a court case, it would—and hearing your answer to a previous question, it would seem that you felt that it ought to go the other way. But your application of the law has to be what precedent is, right?

Ms. PILLARD. Absolutely. I would have to check my feelings at the door and look at the Constitution, at the text, at the meaning, and at the precedents, absolutely.

Senator FLAKE. In a footnote to your article titled, "The Human Right to Sex Equality at the Work-Family Fault Line," you quote and seemingly agree with an author who said the "rights traditioned in the U.S. Constitution just seem to have run out," but there is "promise in international human rights as a potential source for social rights in the United States." Is that a sentiment you agree with? And if not, why would you have footnoted it in an article that you wrote, seemingly favorably?

Ms. PILLARD. I do not adopt that. I cited several things in that article as illustrative of different points. The rights——

Senator FLAKE. But that seemed to be in support of your conclusion in your article.

Ms. PILLARD. The article was arguing about the United States rights tradition, and it was speaking to a European audience in Switzerland, and I was trying to explain to them and compare for

them the *Nevada* v. *Hibbs* decision and how it might relate to their traditions.

The fundamental rights tradition in the United States is a domestically based constitutional tradition. In Europe, some of the systems are different. The United Kingdom Fundamental Rights Charter is adverting to international rights, and so the article was making comparison between our fundamental rights tradition—and another aspect of the *Hibbs* case that made it hard to describe and explain over there was that we have a federal system, not a national system, and so really the animating issue in the *Hibbs* case was the question of the limits on federal power and the *Boerne* v. *Flores* line of cases. And those are really alien concepts to the European audience. So, you know, in the article, I was endeavoring to make analogies between their rights traditions and our rights traditions.

Senator FLAKE. So to be clear, you do not believe that there is a promise in international human rights as a potential source of social rights of the U.S. You would not look to other constitutions.

Ms. PILLARD. Not unless Congress would so legislate, no. I mean, if Congress thought that there were, you know, examples they wanted to draw from in the international human rights tradition, then I would say have at it. But, you know, my role as a judge would be to apply the American rights tradition as it is announced in positive law, be that in the Constitution or in statutes. That is right.

Senator FLAKE. Well, thank you.

Senator BLUMENTHAL. Thank you, Senator Flake.

Senator Grassley, did you want to ask any additional questions?

Senator GRASSLEY. I will submit some further questions for answer in writing. Thank you.

Ms. PILLARD. Thank you.

Senator BLUMENTHAL. I believe that concludes the questioning of our Committee this morning. Thank you very, very much for being with us today and answering these questions so candidly and forthrightly. I think you have made clear that the difference between a professorial role and a judicial role is one that you well understand and that citations or footnotes in articles do not necessarily mean adherence or support for the positions stated in those articles, and that, in fact, the articles that you have written are not necessarily going to influence your role as a judge, in fact, that you would adhere to precedents and statutes and the established principles of law as you know so well. So I think that point has been made clear, as well as your ability to separate yourself from past positions of advocacy, very important to this Committee and eventually to the courts.

So thank you very much, Ms. Pillard, Professor Pillard, for being here today. Thank you to your family as well for joining you and for supporting you in this very arduous process. And with that, I believe you are excused. Thank you.

Ms. PILLARD. Thank you. It has been an honor to be here to answer your questions. Thank you so much.

Senator BLUMENTHAL. And as soon as we have a chance to put the name identifications in place, we will call forth the next nominee.

[Pause.]

Senator BLUMENTHAL. We are going to come to order and begin the next portion of our hearing. Let me ask the nominees to please stand and raise your right hand. Do you affirm that the testimony you are about to give the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Justice MORRIS. I do.

Judge WATTERS. I do.

Mr. MEYER. I do.

Ms. MCCAFFERTY. I do.

Senator BLUMENTHAL. Thank you. Please be seated. And I will invite each of you to make a brief opening statement. Feel free to identify the members of your family that are here. Justice Morris.

STATEMENT OF HON. BRIAN MORRIS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA

Justice MORRIS. Thank you, Mr. Chairman, Senator Grassley, for holding this hearing here today. It is my honor to be here.

I first want to thank my colleagues on the Montana Supreme Court for their forbearance and patience as I go through this process and get distracted from the work of my day job. And I also want to recognize and thank my family who is here with me today: my beautiful wife, Cherche; and my middle son, Max, is here representing his four siblings. My daughter, Mekdi, was somehow—she traveled from Montana, was somehow persuaded a morning with the Domenici twins is more fun than watching me here testify. And my son, Willem, is home in Montana, along with his younger brother, Aiden. But they are here with me in spirit.

[The biographical information of Justice Morris follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Brian Matthew Morris

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

   United States District Judge for the District of Montana

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.

   Montana Supreme Court
   Justice Building, Room 414
   215 North Sanders Street
   P.O. Box 2003001
   Helena, Montana 59620

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

   1963; Butte, Montana

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, Stanford Law School; J.D. (with distinction), 1992
   1986 – 1987, Stanford University; M.A., 1987
   1982 – 1987, Stanford University; B.A., 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.

   2005 – present
   Montana Supreme Court
   Justice Building, Room 414

215 North Sanders Street
P.O. Box 2003001
Helena, Montana 59620
Justice

2006
Treasure State Television Network
(network no longer exists)
Butte, Montana
College Football Color Commentator

2003 – 2005
Omega Broadcasting
(broadcaster no longer exists)
Helena, Montana
College Football Color Commentator

2001 – 2005
Montana Department of Justice
215 North Sanders Street
P.O. Box 201401
Helena, Montana 59620
Solicitor

Spring 2002
Carroll College
1601 North Benton Avenue
Helena, Montana 59625
Adjunct Professor

2000 – 2001
United Nations Compensation Commission
Palais des Nations
Geneva, Switzerland CH121
Senior Legal Officer

1995 – 2000
Goetz, Madden & Dunn
35 North Grand Avenue
Bozeman, Montana 59715
Partner (1997 – 2000)
Associate (1995 – 1997)

1994 – 1995
Iran-United States Claims Tribunal
Parkweg 13

2585 JH
The Hague, Netherlands
Legal Assistant

1993 – 1994
Honorable William H. Rehnquist
United States Supreme Court
One First Street, NE
Washington, DC 20543
Law Clerk

1992 – 1993
Honorable John T. Noonan, Jr.
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94119
Law Clerk

1990 – 1992
Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, California 94305
Research Assistant for Professor Gerald Gunther

Summer 1991
Preston, Gates & Ellis
(currently K&L Gates LLP)
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
Summer Associate

Summer 1991
Morrison & Foerster
425 Market Street
San Francisco, California 94105
Summer Associate

Summer 1990
United States Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Summer Intern

1988 – 1989
EIP Associates

353 Sacramento Street
San Francisco, California 94111
Economic Analyst

1987 – 1988
California Tomorrow
(organization no longer exists)
P.O. Box 99664
Emeryville, California 94662
Public Service Fellow

Other Affiliations (uncompensated):

2006 – present
The William H. Rehnquist Center on the Constitutional Structures of Government
University of Arizona James E. Rogers College of Law
P.O. Box 210176
Tucson, Arizona 85721-0176
Board Member

2008 – 2012
Helena Youth Soccer Association
P.O. Box 6972
Helena, Montana 59604-6972
President (2009 – 2012)
Vice-President (July 2008 – January 2009)

1998 – 1999
American Civil Liberties Union of Montana
P.O. Box 1317
Helena Montana 59624
Board Member

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

   I have never served in the U.S. Military. I registered for selective service upon turning 18.

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

Professional:

Elected to the American Law Institute (2009)

The Advanced Science and Technology Adjudication Resource Center, Science and Technology Fellow (2009)

The Frank I. Haswell Award for Outstanding Article Presented to the Montana Lawyer (2002)

Other:

Montana High School Association Athletes Hall of Fame (2011)

Butte Sports Hall of Fame (2003)

National Collegiate Athletic Association Post-Graduate Scholarship Award (1987)

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

Montana Judicial Branch Commission on Technology (2012 – present)
Chairperson

Montana Supreme Court Working Group to Develop Performance Measures (2008)

Montana Supreme Court Working Group to Develop Standards for Public Access to Electronic Court Records (2009)

Montana Supreme Court Working Group to Revise Standards to Release Records on Attorney Discipline (2009)

Montana Trial Lawyers Association (1998 – 1999)

State Bar of Montana Access to Justice Commission (2005 – 2012)

State Bar of Montana Judicial Relations Commission (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.

Montana, 1993

There has been no lapse in membership.

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

Supreme Court of the United States, 2001
United States Court of Appeals for the Ninth Circuit, 2001
United States District Court for the District of Montana, 1996
Montana Supreme Court, 1993

There have been no lapses in membership.

11. **Memberships**:

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

American Civil Liberties Union of Montana (1998 – 1999)
Board Member

Cap City Traveling Basketball (2011 – present)
Coach

Helena Small Fry Football (2010 – present)
Coach

Helena Youth Soccer Association (2007 – present)
President (2009 – 2012)
Board Member (2008 – 2012)
Arsenal Coach (2007 – present)

The William H. Rehnquist Center on the Constitutional Structures of Government (2006 – present)
Board Member

Stanford Alumni Association (1995 – 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 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.

Symposium: Looking Backward, Looking Forward: The Legacy of Chief Justice Rehnquist and Justice O'Connor: In Memory of William H. Rehnquist: For the Chief, 58 STAN. L. REV. 1683 (2006). Copy supplied.

Free Speech in Judicial Elections, Vol. 27, No. 11 MONT. LAW. 5 (2002). Copy supplied.

The UN Compensation Commission: Practical Justice, Not Retribution, co-authored with David D. Caron, 13 EUR. J. INT'L L. 183 (2002). Copy supplied.

Something upon Which We Can All Agree: Requiring a Unanimous Jury Verdict in Criminal Cases, 62 MONT. L. REV. 1 (2001). Copy supplied.

Unanswered Prayers: The Upper Missouri River Basin States Take on the U.S. Army Corps of Engineers, 68 N.D. L. REV. 897 (1992). Copy supplied.

When Rivers Run Dry Under a Big Sky: Balancing Agricultural and Recreational Claims to Scarce Water Resources in Montana and the American West, 11 STAN. ENVTL. L.J. 259 (1992). Copy supplied.

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

I have not prepared any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I 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 supplied or that others presented on your behalf to public bodies or public officials.

I have not issued or supplied any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

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

June 10, 2013: Speaker, Address to 2013 American Legion of Montana Boys State, Helena, Montana. Remarks supplied.

April 12, 2013: Panelist, Lessons from the Bench, New Lawyers Section, State Bar of Montana, Missoula, Montana. I have no notes, transcript, or recording. The address of the State Bar of Montana is P.O. Box 577, Helena, Montana 59624.

January 2012 – November 2012: I participated in several forums with other candidates running for the Montana Supreme Court between the time that I filed my candidacy for re-election in January 2012 and the election in November 2012. The State Bar of Montana, local bar associations, business groups, labor groups, and conservation groups generally sponsored these forums. I have no notes, transcripts or recordings of these events, and I was not able to locate press coverage for any of these events.

September 13, 2012: Presenter, "The Role of Expert Witness Credibility in Assessing the Outcome of Cases on Appeal," National Conference of State Tax Judges, San Francisco, California. Outline supplied.

August 2, 2012: Panelist, Judicial Panel Discussion on Class Action Litigation in Montana, Montana Trial Lawyers Association Annual Convention, Big Sky, Montana. The panel addressed the potential application of federal class action rules to Montana, a review of recent Montana Supreme Court decisions on class

certification, and the changing nature of class action claims in Montana. I have no notes, transcript, or recording. The address of the Montana Trial Lawyers Association is 32 South Ewing, Suite 312, Helena, Montana 59601.

April 25, 2012: Speaker, Mariah's Challenge Scholarship Banquet, Butte, Montana. I discussed the problems of alcohol in our culture and the dangers of underage drinking at a banquet for an organization that works to reduce underage drinking and eliminate drinking and driving. I have no notes, transcripts, or recording, but press coverage is supplied. The address of Mariah's Challenge is P.O. Box 66, Butte, Montana 59703.

February 13, 2012: Keynote Speaker, 2012 Annual Banquet of the Butte Exchange Club, Butte, Montana. Copy supplied.

May 16, 2011: Presenter, "Ethics: Representing Multiple Parties in Water Cases," Law Seminars International, Helena, Montana. Outline supplied.

April 29, 2011: Moderator, Access to Justice Panel at the 12th Annual Conference of the Montana Mediation Association, Helena, Montana. The panel discussed methods to expand mediation services to lower income litigants, the challenges involved in conducting mediation with non-represented litigants, and the appropriate role of the mediator when working with non-represented litigants. I have no notes, transcript, or recording. The address of the Montana Mediation Association is P.O. Box 1984, Great Falls, Montana 59403..

March 25, 2011: Presenter, "The Role of Appellate Courts," Montana Judicial Institute, Missoula, Montana. Outline supplied.

February 25, 2011: Presenter, "How to Raise Constitutional Issues," State Bar of Montana Continuing Legal Education (CLE) Institute, Bozeman, Montana. Outline supplied.

February 19, 2010: Panelist, "Best Practices before the Montana Supreme Court," State Bar of Montana Continuing Legal Education (CLE) Institute, Missoula, Montana. Outline supplied.

September 19, 2008: Panelist, "Montana Case Law Update: Montana Supreme Court Orders and Decisions July 1, 2007—August 12, 2008," State Bar of Montana Continuing Legal Education (CLE) Institute, Butte, Montana. Outline supplied.

September 18, 2008: Presenter, Community Pro Bono Award at State Bar of Montana Annual Banquet in Butte, Montana. I presented the award to the coordinator of the pro bono program for Butte-Silver Bow County, which has the highest rate of lawyer participation in the state of Montana. I have no notes,

transcript, or recording, but press coverage is supplied. The address of the State Bar of Montana is P.O. Box 577, Helena, Montana 59624.

September 9, 2008: Panelist, New Media and the Courts, The William H. Rehnquist Center on the Constitutional Structures of Government, University of Arizona James E. Rogers College of Law, Tucson, Arizona. I have no notes, transcript, or recording. The address of the William H. Rehnquist Center is P.O. Box 210176, Tucson, Arizona 85721.

August 21, 2008: Speaker, Introductory Remarks, Convocation Ceremony for First Year Law Students, University of Montana School of Law. I offered advice to incoming law students on how to survive law school based on my own experiences. I have no notes, transcript, or recording, but press coverage is supplied. The address of the University of Montana School of Law is School of Law, The University of Montana, 32 Campus Drive, Missoula, Montana 59812.

March 17, 2008: Master of Ceremonies, Friendly Sons and Daughters of St. Patrick Annual Banquet. I have no notes, transcript, or recording. The address of the organization is c/o Brendan McDonough, 1911 Argyle Street, Butte, Montana 59701.

March 7, 2008: Speaker, Welcoming Remarks, CLE seminar, "Changing the Paradigm: Recognizing Human Needs in Legal Needs & Developing Awareness & Skills for Cross-Cultural Lawyering," The University Center, University of Montana, Missoula, Montana. This seminar was sponsored by the State Bar of Montana, University of Montana Student Bar Association, Montana Justice Foundation, Supreme Court Equal Justice Task Force, Disability Rights Montana, ACLU Montana (University of Montana Chapter), and the Montana Public Interest Law Coalition. I welcomed conference participants and highlighted challenges in Montana based upon statistical evidence regarding the number of non-represented litigants in the Montana court system. I have no notes, transcript, or recording, but press coverage is supplied. The address for the State Bar of Montana is P.O. Box 577, Helena, Montana 59624.

February 1, 2008: Presenter, "Background and Overview of the 10th Amendment: Federal-State Powers and Jurisprudence," Helena Education Foundation, Helena, Montana. Outline supplied.

June 20, 2007: Speaker, Welcoming Remarks, Montana Justice Foundation, Helena, Montana. Copy supplied.

September 29, 2006: Presenter, "Alternative Dispute Resolution in Montana and Some Thoughts Concerning Regulatory Takings," State Bar of Montana Continuing Legal Education (CLE) Institute, Bozeman, Montana. Outline supplied.

August 15, 2006: Presenter, "Perspectives on Judicial Ethics," American College of Trial Lawyers, Whitefish, Montana. Notes supplied.

April 29, 2006: Keynote Speaker, 2006 Annual Banquet of National Football Foundation Hall of Fame, Montana Chapter, Helena, Montana. Copy supplied.

February 9, 2006: Keynote Speaker, 2006 Annual Banquet of the Butte Exchange Club, Butte, Montana. Copy supplied.

January 14, 2006: Panelist, "Montana Supreme Court Decisions July 1, 2004—December 28, 2005," State Bar of Montana Continuing Legal Education (CLE) Institute, Missoula, Montana. Outline supplied.

December 5, 2005: Speaker, "Thoughts on the Montana Supreme Court," Association of Executive Directors, Helena, Montana. Copy supplied.

November 2005: Luncheon Speaker, Gallatin County Bar Association, Bozeman, Montana. Notes supplied.

September 9, 2005: Presenter, "Resolution of Discovery Disputes at the Montana Supreme Court," State Bar of Montana Continuing Legal Education (CLE) Institute, Helena, Montana. Outline supplied.

August 4, 2005: Presenter, "Judicial Ethics and the Appearance of Propriety," Montana Trial Lawyers Association Annual Convention, Polson, Montana. Copy supplied.

June 23, 2005: Panelist, The Court's Expectations of Counsel for the State, National Association of Attorneys General Solicitor's Conference, Big Sky, Montana. The panel addressed ethical issues for state lawyers, strategy for state lawyers in appellate cases, and the dangers of misrepresenting the record. I have no notes, transcript, or recording. The address of the National Association of Attorneys General is 2030 M Street, NW, Eighth Floor, Washington, DC 20036.

May 19, 2005: Keynote Speaker, 2005 Annual Dinner & 98th Meeting of the Butte Family YMCA, Butte, Montana. Copy supplied.

March 18, 2005: Presenter, "Preserving the Record for Appeal," State Bar of Montana Continuing Legal Education (CLE) Institute, Butte, Montana. Copy supplied.

July 2003 – November 2004: I participated in numerous forums with other candidates running for the Montana Supreme Court between the time that I announced my candidacy in July 2003 and the election in November 2004. The State Bar of Montana, local bar associations, business groups, labor groups, and conservation groups generally sponsored these forums. I also made brief

presentations as a candidate at breakfasts, lunches, and dinners sponsored by the Montana Republican Party and the Montana Democratic Party. I have no notes, transcripts or recordings of these events, and I was not able to locate press coverage for any of these events.

May 6, 2004: Presenter, "The Fort Peck Draw Down by the Army Corps of Engineers: What has Montana Done and What Can Montana Do," Great Falls Conservation Council, Great Falls, Montana. I discussed efforts undertaken by Montana to address concerns that arose from the management of Fort Peck Reservoir by the U.S. Army Corps of Engineers and potential legal options available to Montana. I have no notes, transcript, or recording. The address of the Great Falls Conservation Council is 287 McIver Road, Great Falls, Montana 59404.

December 2003: Faculty Member, Appellate Advocacy Seminar, National District Attorney's Association, Columbia, South Carolina. I have no notes, transcript, or recording. I served as a judge in mock oral arguments, critiqued the performances of seminar participants, and provided practical demonstrations to participants during week-long program. The address of the National District Attorney's Association is 99 Canal Center Plaza, Suite 330, Alexandria, Virginia 22314.

November 1, 2002: Presenter, "United States Supreme Court: Recent Trends and Predictions for the Future," State Bar of Montana Continuing Legal Education (CLE) Institute, Helena, Montana. Outline 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.

Eddie Gregg, *Grant Gives Students Access to iPads*, HELENA INDEP. REC., Mar. 6, 2013. Copy supplied.

Dan Testa, *Local Attorneys, Judges Say Federal Nominee Up to the Job*, FLATHEAD BEACON, May 16, 2011. Copy supplied.

Bruce Sayler, *Morris a State Hall of Famer*, THE MONT. STANDARD, Jan. 21, 2011. Copy supplied.

Gerard O'Brien, *Brian Morris, Class of '82: From Star Athlete to Supreme Court Justice*, THE MONT. STANDARD, June 6, 2009. Copy supplied.

Mandy Erickson, *Brian Morris '92 Scores Seat on Montana High Court*, STAN. LAW., Winter 2005. Copy supplied.

Mary Ann Zehr, *Court Overturns Montana Funding System*, EDUC. WK., Nov. 17, 2004. Copy supplied.

Chelsea DeWeese, *McLean vs. Morris*, SILVER ST. POST, Oct. 27, 2004. Copy supplied.

Jim Gransbery, *Court Candidates Won't Discuss Specific Cases*, BILLINGS GAZETTE, Oct. 25, 2004. Copy supplied.

Sarah R. Craig, *Morris, McLean Say Backgrounds Do the Talking*, ASSOCIATED PRESS, Oct. 22, 2004. Copy supplied.

Jennifer McKee, *Morris Touts Broad Legal Experience in Court Race*, THE MISSOULIAN, Oct. 7, 2004. Copy supplied.

Bob Anez, *Patrol Officers Endorse McLean, Younkin in Court Races*, ASSOCIATED PRESS, Sept. 16, 2004. Copy supplied.

Mike Dennison, *Campaign Cash Reveals Contrast*, GREAT FALLS TRIB., Aug. 8, 2004. Copy supplied.

Mike Dennison, *Stealthy Supreme Court Race Pits Nice Guy Against Nice Guy*, GREAT FALLS TRIB., Aug. 8, 2004. Copy supplied.

'Speaking Out:' Still a Thorny Issue for Montana's Judicial Candidates, MONT. LAW., Apr. 2004. Copy supplied.

Mike Dennison, *State School-Funding Trial Looms*, GREAT FALLS TRIB., Jan. 18, 2004. Copy supplied.

Mike Dennison, *State Judge Forcefully Upholds McDonald Gold-Mining Ban*, GREAT FALLS TRIB., Dec. 11, 2002. Copy supplied.

Jennifer McKee, *Mining Company Can't Sue*, THE MISSOULIAN, Dec. 11, 2002. Copy supplied.

Kathleen McLaughlin, *Cyanide Challenge Stripped*, THE MISSOULIAN, Nov. 2, 2001. Copy supplied.

Associated Press, *High Court Refuses to Hear First Amendment Appeals*, FREEDOMFORUM.ORG, Oct. 2, 2001. Copy supplied.

Michael Babcock, *Judge Rules Rancher Cannot Block Access on Powell County Road*, GREAT FALLS TRIB., Oct. 27, 1999. Copy supplied.

Associated Press, *Judge to Say Who Gets Kuralt Items – Widow or Friend*, THE CHARLOTTE OBSERVER, July 22, 1998. Copy supplied.

Associated Press, *Judge Will Decide; Both Sides Forgo Trial over Kuralt's Items*, STAR-NEWS (WILMINGTON, NC), July 22, 1998. Copy supplied.

Danny Martin, *Palmer Grad Fights NCAA in Montana – College Corner*, ANCHORAGE DAILY NEWS, Jan. 9, 1998. Copy supplied.

Tom Lutey, *NCAA Says MSU at Fault in Basketball Suit*, BOZEMAN DAILY CHRON., Dec. 18, 1997. Copy supplied.

Joan Haines, *Sportsmen Appealing Turner Land Deal*, BOZEMAN DAILY CHRON., Nov. 18, 1996. Copy supplied.

Chris Baker, *Stanford's Paye Pays Price With His Shoulder*, L.A. TIMES, Oct. 20, 1985. Copy supplied.

I was interviewed numerous times by newspapers, magazines, radio stations, and television stations while I played football for Stanford University between 1982 and 1986. These interviews generally involved questions related to my performance or the performance of the Stanford football team. I do not have copies of these interviews, and I was not readily able to obtain copies through the electronic search engines to which I had access.

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

I have served as a justice on the Montana Supreme Court since January 2, 2005. I was elected to the court in November 2004 in a non-partisan contested election. I was re-elected to the court in November 2012 for a second eight-year term. The Montana Supreme Court possesses general jurisdiction over civil, criminal, and administrative appeals from district court, limited jurisdiction courts, and administrative agencies.

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

As an appellate court judge, I have not presided over any trials.

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___%
civil proceedings:	___%
criminal proceedings:	___%

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

See attached list of opinions.

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

1. *Boyne USA, Inc. v. Spanish Peaks*, No. 12-0094, 2013 MT 1, 368 Mont. 143; 292 P.3d 432 (Mont. 2013)

The Court affirmed the jury's award of $600,000 to Boyne as a result of deceit and abuse of the legal process committed by Spanish Peaks. The deceit resulted from Spanish Peaks' repeated refusal over a ten-year period to complete a land sale contract for the purchase of 15 acres of property on top of Lone Peak in Madison County, Montana. Spanish Peaks abused the legal process through its filing of related litigation in different jurisdictions in which it took contradictory legal positions on similar issues. The Court also affirmed the District Court's award of specific performance of the land sale contract.

Counsel for Spanish Peaks:	Stephen R. Brown Charles E. McNeil Elena J. Zlatnik Garlington, Lohn & Robinson, PLLP 350 Ryman Street Missoula, Montana 59807 (406) 523-2500
Counsel for Boyne:	David M. Wagner Crowley Fleck PLLP 45 Discovery Drive, Suite 200 Bozeman, Montana 59719 (406) 556-1430

2. *Burlington Resources Oil & Gas Co. v. Lang & Sons, Inc.*, No. 10-0406, 2011 MT 199, 361 Mont. 407, 259 P.3d 766 (Mont. 2011)

The surface owner appealed the District Court's determination that the leaseee/operator of natural gas wells had no obligation to compensate the surface owner separately for injecting wastewater into pore space beneath an abandoned oil well. The operator of natural gas wells injected drilling wastewater into pore space beneath an abandoned well. The surface owner sought separate payment

from operator for use of surface owner's pore space. The Court recognized that the pore space belonged to the surface owner in the same manner that any non-mineral materials beneath the physical boundaries of the surface owner's property belong to the surface owner's surface estate. In this case, however, the surface owner failed to offer evidence of damage to the surface estate compensable under Montana law.

Counsel for Lang & Sons: Albert R. Batterman
Batterman Law Offices, P.C.
P.O. Box 985
Baker, Montana 59313
(406) 778-3006

Richard W. Heineman
100 South Wibaux
Wibaux, Montana 59353
(406) 796-2427

Counsel for Burlington: Jeffery J. Oven and Matthew S. Brahana
Crowley Fleck, PLLP
490 North 31st Street, Suite 500
Billings, Montana 59103
(406) 252-3441

3. *Puget Sound v. MDOR*, No. 10-0394, 2011 MT 141, 361 Mont. 39, 255 P.3d 171 (Mont. 2011)

The Montana Department of Revenue (MDOR) appealed the District Court's determination that the State Tax Appeal Board could not assess Puget Sound's market value in an amount that exceeded the MDOR's original assessment. The Court determined that the State Tax Appeal Board possessed the constitutional and statutory duty to hear Puget Sound's appeal and make an independent determination of Puget Sound's market value even if the State Tax Appeal Board's assessment exceeded the Department's original assessment. The Court further rejected Puget Sound's argument that it lacked notice or an opportunity to respond to the State Tax Appeal Board's determination that Puget Sound's market value exceeded MDOR's original assessment.

Counsel for MDOR: C.A. Daw, Derek Bell, and Courtney Jenkins
Montana Department of Revenue
125 North Roberts Street, Room 476
Helena, Montana 59604
(406) 444-1763

Counsel for Puget Sound: Michael Green
Crowley Fleck, PLLP

100 North Park Avenue, Suite 300
Helena, Montana 59624
(406) 449-4185

4. *Hohenlohe v. DNRC*, No. 09-0429, 2010 MT 203, 357 Mont. 438, 240 P.3d 628 (Mont. 2010)

Landowner sought to lease accompanying water rights to a conservation group to augment instream flow. The interpretation of Montana's instream flow statute by the Department of Natural Resources and Conservation (DNRC) imposed an unattainable burden on the landowner of having to establish no adverse effect to existing right holders from the proposed lease. The Court interpreted the instream flow statute in a manner that recognized that the ultimate purpose of the instream flow statute was to restore water to streams for the benefit of the fishery resource. This interpretation potentially would allow a water rights holder to lease up to the full historically diverted amount. The Court rejected DNRC's concerns regarding a potential windfall to instream flow leasors if allowed to lease the entire amount historically diverted as being mitigated by the fact that the leasor's water rights remain subject to ultimate adjudication by the Water Court.

Counsel for DNRC: Anne W. Yates and Kevin R. Peterson
Department of Natural Resources and Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-0503

Counsel for Hohenlohe: Abigail J. St. Lawrence and John E. Bloomquist
Doney, Crowley, Bloomquist, Payne, Uda, P.C.,
44 West Sixth Avenue, Suite 200
Helena, Montana 59624
(406) 443-2211

5. *Textana v. Klabzuba*, No. 08-0243, 2009 MT 401, 353 Mont. 442, 222 P.3d 580 (Mont. 2009)

The Court determined that professional services contract between oil developer and landman imposed a fiduciary duty on the landman to disclose all opportunities for oil and gas development in the area. This trust relationship imposed on the landman an affirmative duty to disclose his interests in oil and gas properties that could have been of interest to the oil developer. These factors, along with evidence of fraudulent concealment by the landman, supported the District Court's conclusion that the jury should resolve any disputes regarding the tolling of the statute of limitations on claims related to oil and gas opportunities that the landman allegedly had failed to disclose to the oil developer.

Counsel for Textana:

James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

John D. Stephenson
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, 7th Floor
Great Falls, Montana 59403
(406) 727-5000

Counsel for Klabzuba:

Matthew Hutchison
Kaufman, Vidal, Hileman & Ramlow, P.C.
22 Second Avenue West, Suite 4000
Kalispell, Montana 59903
(406) 755-5700

6. *Malcom v. Evenflo Co.*, No. 08-0085, 2009 MT 285, 352 Mont. 325, 217 P.3d 514 (Mont. 2009)

Evenflo appealed from a jury verdict in favor of Malcolm. The Court affirmed the District Court's evidentiary ruling that excluded Evenflo's evidence that its child safety seat complied with federal regulations for the purposes of establishing compensatory damages in a product liability case. The district court properly determined that evidence of compliance with federal regulations likely would confuse the jury as it would result in the commingling of negligence principles and product liability principles. The Court also affirmed the District Court's evidentiary ruling to admit evidence of product recalls of Evenflo's child safety seats in light of the substantial similarity between the recalled models and the model at issue.

Counsel for Evenflo Co.:

James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

Randy J. Cox
Boone Karlburg
201 West Main Street, Suite 300
Missoula, Montana 59807
(406) 543-6646

Allan H. Baris
Moore, O'Connell & Refling

601 Haggerty Lane, Suite Ten
Bozeman, Montana 59771
(406) 587-5511

Counsel for Malcolm: L. Randall Bishop
Jarussi & Bishop
3970 Avenue D, Suite A
Billings, Montana 59102
(406) 839-9091

7. *State v. Giddings*, No. 07-0333, 2009 MT 61, 349 Mont. 347, 208 P.3d 363 (Mont. 2009)

The Court affirmed Giddings's conviction for deliberate homicide, felony tampering with or fabricating physical evidence, and felony criminal possession of dangerous drugs. The Court held that the District Court properly had denied Giddings's motion to dismiss based on the State's alleged intentional destruction of exculpatory evidence because Giddings had supplied no evidence to establish that the detective's handwritten notes from an interview contained information favorable to the defense or that the detective's conduct constituted bad faith, as he destroyed his notes only after transcribing all relevant information into a formal report. The District Court also did not abuse its discretion by denying Giddings's motion for a mistrial based on the State's alleged violation of an order in limine that excluded any testimony or other evidence concerning whether the victim disliked or was afraid of Giddings. A detective's testimony regarding an alternative suspect having been afraid of defendant did not violate the order or Mont. R. Evid. 404(b), as it did not implicate the victim's dislike of Giddings and was not evidence of other crimes, wrongs, or acts.

Counsel for Giddings: Jim Wheelis and Joslyn M. Hunt
Office of Appellate Defender
139 North Last Chance Gulch
Helena, Montana 59620
(406) 444-9505

Counsel for State: Tammy Plubell
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

8. *State v. Barnaby*, No. 05-013, 2006 MT 203, 333 Mont. 220, 142 P.3d 809 (Mont. 2006)

The Court affirmed Barnaby's conviction of operating a clandestine methamphetamine laboratory. The justice court issued a search warrant based on

citizen complaints and other information known about a person staying at Barnaby's residence. The Court applied the totality of the circumstances test to evaluate whether probable cause supported the issuance of a warrant. These circumstances included the fact that the person staying at Barnaby's house had been involved in methamphetamine use and suspicious activity at the residence. The Court rejected as a matter of law the proposition that independent police work represented the only method of corroboration under the totality of the circumstances test. The Court further determined that the District Court properly had denied Barnaby's *Batson* challenge in light of the race neutral explanations supplied by the prosecutor: one potential juror was related to Barnaby, and the other one considered Barnaby's trial counsel a good friend.

Counsel for Barnaby: William F. Hooks
Office of the Public Defender
44 West Park
Butte, Montana 59701
(406) 496-6080

Counsel for State: Joslyn M. Hunt
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

9. *Montanans for the Responsible Use of Trust Lands v. Darkenwald*, No. 04-027, 2005 MT 190, 328 Mont. 105, 119 P.3d 27 (Mont. 2005)

The Court rejected a challenge that the State Land Board had violated the Montana Constitution and breached its duty of trust. The challengers contended that the State Land Board's approval of plan to sell a future stream of mineral royalties from school trust land in exchange for an immediate cash infusion constituted improper commingling of trust assets into the general fund. The Court determined that the commingling of interest income did not necessarily mean that any duty had been violated. The State Land Board accounted for the exact amount of interest and bonuses deposited into the general fund. The Court further determined that the plan did not abrogate the State Land Board's requirement to obtain full market value for school trust lands. The State Land Board properly had balanced the interests of the present and future beneficiaries when it had conducted the sale of the future mineral royalties.

Counsel for Montanans: Roy H. Andes
Andes Law Office
P.O. Box 991
Helena, Montana 59624
(406) 431-0869

Counsel for Darkenwald: Tommy H. Butler
Montana Department of Natural Resources and Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-3776

10. *Travelers Cas. & Sur. Co. v. Ribi Immunochem Research*, No. 04-0228, 2005 MT 50, 326 Mont. 174, 108 P.3d 469 (Mont. 2005)

A biotechnology company routinely deposited hazardous waste in a landfill. The company assumed that the waste would deteriorate before it leached into the groundwater. In fact, the waste leached into the groundwater soon after it had been deposited. The insured's comprehensive general liability (CGL) policy did not provide coverage for the insured's disposal of hazardous waste that had contaminated groundwater. The CGL's pollution exclusion barred coverage. The Court determined that the damage caused by the insured's intentional disposal of hazardous waste constituted an "occurrence" as defined under the CGL policy. Acts that had taken place over a significant period of time, but caused unexpected damage, could fall within the definition of "occurrence" and thereby trigger coverage. The CGL nevertheless barred coverage under the "sudden and accidental" exception in the pollution exclusion. The insured intentionally had disposed of the waste over a long period of time. The fact that the insured had not intended for the waste to migrate into groundwater did not render contamination "sudden and accidental" as contemplated by the exception in the pollution exclusion.

Counsel for Ribi: J. Daniel Hoven
Browning, Kaleczyc, Berry and Hoven, P.C.
800 North Last Chance Gulch, Suite 101
Helena, Montana 59624
(406) 683-6820

Counsel for Travelers: Ronald A. Bender
Worden Thane, P.C.
111 North Higgins Avenue, Suite 600
Missoula, Montana 59806
(406) 721-3400

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. *Boyne USA, Inc. v. Spanish Peaks*, No. 12-0094, 2013 MT 1, 368 Mont. 143; 292 P.3d 432 (Mont. 2013)

Counsel for Spanish Peaks:	Stephen R. Brown Charles E. McNeil Elena J. Zlatnik Garlington, Lohn & Robinson, PLLP, 350 Ryman Street Missoula, Montana 59807 (406) 523-2500
Counsel for Boyne:	David M. Wagner Crowley Fleck PLLP 45 Discovery Drive, Suite 200 Bozeman, Montana 59719 (406) 556-1430

2. *Burlington Resources Oil & Gas Co. v. Lang & Sons, Inc.*, No. 10-0406, 2011 MT 199, 361 Mont. 407, 259 P.3d 766 (Mont. 2011)

Counsel for Lang & Sons:	Albert R. Batterman Batterman Law Offices, P.C. P.O. Box 985 Baker, Montana 59313 (406) 778-3006
	Richard W. Heineman 100 South Wibaux Wibaux, Montana 59353 (406) 796-2427
Counsel for Burlington:	Jeffery J. Oven and Matthew S. Brahana Crowley Fleck, PLLP 490 North 31st Street, Suite 500 Billings, Montana 59103 (406) 252-3441

3. *Puget Sound v. MDOR*, No. 10-0394, 2011 MT 141, 361 Mont. 39, 255 P.3d 171 (Mont. 2011)

Counsel for MDOR:	C.A. Daw, Derek Bell, and Courtney Jenkins Montana Department of Revenue 125 North Roberts Street, Room 476 Helena, Montana 59604 (406) 444-1763

Counsel for Puget Sound: Michael Green
Crowley Fleck, PLLP
100 North Park Avenue, Suite 300
Helena, Montana 59624
(406) 449-4185

4. *Hohenlohe v. DNRC*, No. 09-0429, 2010 MT 203, 357 Mont. 438, 240 P.3d 628 (Mont. 2010)

Counsel for DNRC: Anne W. Yates and Kevin R. Peterson
Department of Natural Resources and Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-0503

Counsel for Hohenlohe: Abigail J. St. Lawrence and John E. Bloomquist
Doney, Crowley, Bloomquist, Payne, Uda, P.C.,
44 West Sixth Avenue, Suite 200
Helena, Montana 59624
(406) 443-2211

5. *Textana v. Klabzuba*, No. 08-0243, 2009 MT 401, 353 Mont. 442, 222 P.3d 580 (Mont. 2009)

Counsel for Textana: James H. Goetz
Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

John D. Stephenson
Jardine, Stephenson, Blewett & Weaver, P.C.
300 Central Avenue, 7th Floor
Great Falls, Montana 59403
(406) 727-5000

Counsel for Klabzuba: Matthew Hutchison
Kaufman, Vidal, Hileman & Ramlow, P.C.
22 Second Avenue West, Suite 4000
Kalispell, Montana 59903
(406) 755-5700

6. *Malcom v. Evenflo Co.*, No. 08-0085, 2009 MT 285, 352 Mont. 325, 217 P.3d 514 (Mont. 2009)

Counsel for Evenflo Co.: James H. Goetz

Goetz, Gallik & Baldwin, P.C.
35 North Grand Avenue
Bozeman, Montana 59715
(406) 587-0618

Randy J. Cox
Boone Karlburg
201 West Main Street, Suite 300
Missoula, Montana 59807
(406) 543-6646

Allan H. Baris
Moore, O'Connell & Refling
601 Haggerty Lane, Suite Ten
Bozeman, Montana 59771
(406) 587-5511

Counsel for Malcolm: L. Randall Bishop
Jarussi & Bishop
3970 Avenue D, Suite A
Billings, Montana 59102
(406) 839-9091

7. *State v. Giddings*, No. 07-0333, 2009 MT 61, 349 Mont. 347, 208 P.3d 363 (Mont. 2009)

Counsel for Giddings: Jim Wheelis and Joslyn M. Hunt
Office of Appellate Defender
139 North Last Chance Gulch
Helena, Montana 59620
(406) 444-9505

Counsel for State: Tammy Plubell
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

8. *State v. Barnaby*, No. 05-013, 2006 MT 203, 333 Mont. 220, 142 P.3d 809 (Mont. 2006)

Counsel for Barnaby: William F. Hooks
Office of the Public Defender
44 West Park
Butte, Montana 59701
(406) 496-6080

Counsel for State: Joslyn M. Hunt
Assistant Attorney General
215 North Sanders
Helena, Montana 59620
(406) 444-2026

9. *Montanans for the Responsible Use of Trust Lands v. Darkenwald*, No. 04-027, 2005 MT 190, 328 Mont. 105, 119 P.3d 27 (Mont. 2005)

Counsel for Montanans: Roy H. Andes
P.O. Box 991
Helena, Montana 59624
(406) 431-0869

Counsel for Darkenwald: Tommy H. Butler
Montana Department of Natural Resources and Conservation
1625 11th Avenue
Helena, Montana 59620
(406) 444-3776

10. *Travelers Cas. & Sur. Co. v. Ribi Immunochem Research*, No. 04-0228, 2005 MT 50 , 326 Mont. 174, 108 P.3d 469 (Mont. 2005)

Counsel for Ribi: J. Daniel Hoven
Browning, Kaleczyc, Berry and Hoven, P.C.
800 North Last Chance Gulch, Suite 101
Helena, Montana 59624
(406) 683-6820

Counsel for Travelers: Ronald A. Bender
Worden Thane, P.C.
111 North Higgins Avenue, Suite 600
Missoula, Montana 59806
(406) 721-3400

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

<u>*Certiorari* Granted</u>:

Western Tradition P'ship v. Attorney General, 2011 MT 328, 2011 MT 328; 363 Mont. 220; 271 P.3d 1 (Mont. 2011), *cert. granted, rev'd, Am. Tradition P'ship v. Bullock*, 132 S. Ct. 2490, 2491 (2012) (joined majority opinion)

Certiorari Pending:

Kelker v. Geneva-Roth, 2013 MT 62, 369 Mont. 254, __P.3d ___, extension of time granted until July 10, 2013 in which to file cert petition

Big Sky Colony, Inc. v. Mont. Dep't of Labor & Indus., 2012 MT 320, 368 Mont. 66, 291 P.3d 123 (Mont. 2012), petition for certiorari filed, 12-1191 (April 1, 2013)

Certiorari Denied:

Butler v. Montana, 2012 MT 278N; 368 Mont. 413 (Mont. 2012), *cert. denied,* 2013 U.S. LEXIS 4116 (May 28, 2013) (joined majority opinion)

Helena Sand & Gravel, Inc. v. Lewis & Clark Planning & Zoning Comm'n, 2012 MT 272; 367 Mont. 130; 290 P.3d 691 (Mont. 2012), *cert. denied*, 2013 U.S. LEXIS 4244 (June 3, 2013) (joined majority opinion)

Ballard v. Levens, 2012 MT 178N (Mont. 2012), *cert. denied*, 133 S. Ct. 946 (2013) (joined majority opinion)

Spear v. State, Montana Highway Patrol, 366 Mont. 543 (Mont. 2012), *cert. denied*, *Spear v. Montana*, 133 S. Ct. 584 (2012)

Stock v. Montana, 2011 MT 131; 361 Mont. 1; 256 P.3d 899 (Mont. 2011), *cert. denied*, 132 S. Ct. 850 (2011) (joined majority opinion)

Stevens v. Novartis Pharms. Corp., 2010 MT 282; 358 Mont. 474; 247 P.3d 244 (Mont. 2010), *cert. denied*, 131 S. Ct. 2938 (2011) (joined majority opinion)

Tacke v. Energy West, Inc., 2010 MT 39, 355 Mont. 243; 227 P.3d 601 (Mont. 2010), *cert. denied*, 131 S. Ct. 131 (2010) (joined majority opinion)

In re David, 2009 MT 422; 354 Mont. 44; 221 P.3d 1209 (Mont. 2009), *cert. denied*, *David v. David*, 130 S. Ct. 2384 (2010) (joined majority opinion)

State ex rel. Bullock v. Philip Morris, Inc., 2009 MT 261 (Mont. 2009), *cert. denied*, *R.J. Reynolds Tobacco Co. v. Montana ex rel. Bullock*, 130 S. Ct. 3354 (2010) (joined majority opinion)

Eklund v. Wheatland County, 2009 MT 231 (Mont. 2009), *cert. denied*, 559 U.S. 936 (2010)

State v. Giddings, 349 Mont. 347, 208 P.3d 363 (Mont. 2009), *cert. denied*, *Giddings v. Montana*, 130 S. Ct. 227 (2009)

Clement v. Mont. Dep't of Labor & Indus., 348 Mont. 370 (Mont. 2008), *cert. denied*, 129 S. Ct. 1998 (2009)

Fenno v. Mt. W. Bank, 345 Mont. 161, 192 P.3d 224 (Mont. 2008), *cert. denied, Mt. W. Bank, N.A. v. Fenno*, 555 U.S. 1219, 130 S. Ct. 458 (2009)

In re Engel, 344 Mont. 219, 194 P.3d 613 (Mont. 2008), *cert. denied, Engel v. Mont. Supreme Court Comm'n on Practice*, 555 U.S. 1031, 129 S. Ct. 619 (2008)

In the Matter of Joseph F. Nascimento, No. 02-778, *cert. denied, Nascimento v. Montana Supreme Court*, 550 U.S. 919 (2007) (joined majority opinion)

Jones v. Mont. Univ. Sys., 337 Mont. 1, 155 P.3d 1247 (Mont. 2007), *cert. denied*, 552 U.S. 951, 128 S. Ct. 401 (2007)

Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil, 2006 MT 284 (Mont. 2006), *cert. denied, O'Neil v. Mont. Supreme Court Comm'n on Unauthorized Practice of Law*, 549 U.S. 1282 (2007) (joined majority opinion)

Piper Jaffray & Co. v. Kaufman, 2005 MT 191N; 2005 Mont. LEXIS 350 (Mont. 2005), *cert. denied*, 546 U.S. 1173 (2006) (joined majority opinion)

Piper Jaffray Co. v. Shea, 2005 MT 63N; 2005 Mont. LEXIS 70 (Mont. 2005), *cert. denied*, 546 U.S. 976 (2005); 546 U.S. 1173 (joined majority opinion)

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.

To the best of my knowledge, none of my opinions have been reversed or affirmed with significant criticism of my substantive or procedural rulings.

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

I have authored approximately 475 opinions. Approximately 170 of those opinions, or 36 percent, are unpublished. These unpublished opinions appear in electronic databases, such as Lexis and Westlaw, with an "N" designation after the citation. For example, my opinion in *State v. Stone*, appears under the citation 2013 MT 18N.

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.

Big Sky Colony, Inc. v. Mont. Dep't of Labor & Indus., 368 Mont. 66, 291 P.3d 123 (Mont. 2012)

State v. Price, 350 Mont. 272, 207 P.3d 298 (Mont. 2009)

Disability Rights Mont. v. State, 350 Mont. 101, 207 P.3d 1092 (Mont. 2009)

Davis v. State, 344 Mont. 300, 187 P.3d 654 (Mont. 2008)

State v. PPL Mont., LLC, 340 Mont. 124, 172 P.3d 1241 (Mont. 2007)

Cassady v. Yellowstone County Mont. Sheriff Dep't, 333 Mont. 371, 143 P.3d 148 (Mont. 2006)

State v. Barnaby, 333 Mont. 220, 142 P.3d 809 (Mont. 2006)

Germann v. Stephens, 332 Mont. 303, 137 P.3d 545 (Mont. 2006)

Farrier v. Teacher's Ret. Bd., 328 Mont. 375, 120 P.3d 390 (Mont. 2005)

Montanans for the Responsible Use of the School Trust v. Darkenwald, No. 04-027, 328 Mont. 105, 119 P.3d 27 (Mont. 2005)

State v. Parrish, 327 Mont. 88, 111 P.3d 671 (Mont. 2005)

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

I have never sat by designation on any federal court.

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

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

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

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

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

The Montana Supreme Court follows the rules dictated by Section 3-1-803, Montana Code Annotated, regarding recusal, as well as the guidelines set forth in the Montana Canons of Judicial Ethics, and the ABA Model Rules of Judicial Conduct. These authorities set forth specific instances that require automatic recusal, as well as circumstances in which a justice's impartiality reasonably may be called into question, and thereby necessitate recusal.

Upon my election to the Montana Supreme Court in November 2004, Chris Tweeten, the Chief Civil Counsel in the office of the Montana Department of Justice, crafted a policy to govern the transition from my former position as solicitor with the Montana Department of Justice to my new position on the Montana Supreme Court. The policy recognized the distinction between a lawyer in a government agency and a lawyer in private practice. This distinction has led me to recuse myself from those cases that involve the office of the Montana Attorney General, as a matter of course, only from those cases in which I served as counsel, on which I supplied background research, consulted with counsel in the case, or otherwise had direct involvement with the case. I have followed this practice during my tenure with the Montana Supreme Court.

I have recused myself in the following cases:

Public Lands Access, Inc. v. Board of County Commissioners, DA 12-0312.
Counsel for one of the parties sent me a letter in which she requested that I recuse myself due to the fact that I had been involved in a related challenge to the application of Montana's Stream Access Law to the same party during my work as solicitor with the Montana Department of Justice. I recused myself in response to the letter. The current litigation involves application of an amended version of Montana's Stream Access Law to the same party in the case in which I had been involved in 2004. I determined that the unusual similarity of the two cases made it appropriate to recuse myself consistent with my practice of avoiding sitting in cases in which I had involvement during work as solicitor with the Montana Department of Justice.

Reichert v. State, DA 12-0187, 2012 MT 111.
I recused myself sua sponte in an appeal that involved a challenge to a legislative referendum that would have modified by statute the scheme to elect justices to the Montana Supreme Court from a statewide election to election by districts. I was a candidate for re-election in 2012 at the time that the appeal came before the Court and potentially would have been affected directly by the outcome.

State v. Goodenough, DA 09-0201, 2010 MT 247.
I recused myself sua sponte due to the fact that my father-in-law had served as the trial court judge in the case.

State Farm Fire & Cas. Co. v. Bush Hog, LLC, OP 08-0430, 2009 MT 349.
I recused myself sua sponte due to the fact my wife's law firm had filed an amicus brief in the case.

Ammondson v. Northwestern Corp., DA 07-0243, 2009 MT 331.
I recused myself sua sponte due to the fact that my wife's law firm represented Northwestern Corp.

In re Mental Health of C.R.C., DA 08-0325, 2009 MT 125.
I recused myself sua sponte due to the fact that my father-in-law had served as the trial court judge in the case.

State v. Rose, 05-129, 2009 MT 4.
I recused myself sua sponte due to the fact that I had been involved with related litigation in which Rose had been a party during my work as solicitor with the Montana Department of Justice.

Kafka v. Mont. Dep't of Fish, Wildlife & Parks, 05-146, 2008 MT 460.
I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

Buhmann v. State, 05-473, 2008 MT 465.
I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

Omimex Can., Ltd. v. State, DA 07-0356, 2008 MT 403.
I recused myself sua sponte due to the fact that my wife's law firm represented Omimex Can., Ltd.

Libby Placer Mining Co. v. Noranda Minerals Corp., DA 07-0166, 2008 MT 367.
I recused myself sua sponte due to the fact that my father-in-law had served as the trial court judge in the case.

Thompson v. State, DA 06-0365, 2007 MT 185.
Counsel for Thompson sent me a letter asking that I recuse myself due to the fact that I had served briefly as counsel of record in the case during my work as solicitor with the Montana Department of Justice. I would have recused myself, even without the request from counsel for Thompson, consistent with my longstanding practice not to sit on appeals in cases in which I had been involved during my work as solicitor with the Montana Department of Justice.

Elliott v. State Dep't of Revenue, No. 05-336, 2006 MT 267.
I recused myself sua sponte due to the fact that my wife's law firm represented Elliott.

Haynes v. Shodair Children's Hosp., No. 05-065, 2006 MT 128.
I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

Hofer v. Mont. Dep't of Pub. HHS (In re Hofer), No. 04-395, 2005 MT 302.
I recused myself sua sponte due to the fact that I had been involved in the case during my work as solicitor with the Montana Department of Justice.

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

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

I have not held any public office other than judicial 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 office in or rendered any services to any political party or election committee. I have never 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 July 1993 through July 1994, I served as a law clerk to the Honorable William H. Rehnquist, Chief Justice of the United States Supreme Court.

From August 1992 through July 1993, I served as a law clerk to the Honorable John T. Noonan, Jr., Circuit Judge of the United States Court of Appeals for the Ninth 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 – 1995
Iran-United States Claims Tribunal
Parkweg 13
The Hague, Netherlands
Legal Assistant

1995 – 2000
Goetz, Madden & Dunn
35 North Grand Avenue
Bozeman, Montana 59715
Associate (1995 – 1997)
Partner (1997 – 2000)

2000 – 2001
United Nations Compensation Commission
Palais des Nations
Geneva, Switzerland
Senior Legal Officer

2001 – 2005
Montana Department of Justice
215 North Sanders Street
P.O. Box 201401
Helena, Montana 59620
Solicitor

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

I have never served as a mediator or arbitrator.

b. Describe:

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

From September 1994 through September 1995, I served as a legal assistant to a group of American arbitrators at the Iran-U.S. Claims Tribunal. I researched and drafted legal memorandum relating to takings issues, valuation issues, including the availability of lost profits, and issues relating to dual nationality for claims filed by American citizens and corporations that sought compensation for takings of private property after the Iranian Revolution.

From 1995 through the beginning of 2000, I engaged in general litigation practice in state and federal courts with the law firm of Goetz, Madden & Dunn in Bozeman, Montana. I initially worked as an associate in conjunction with several senior partners. Besides doing work for the senior partners, I also accepted appointments in criminal cases during that period. I became a partner in 1997 and began to represent my own clients. My practice included both trial and appellate work and issues ranging from commercial litigation to criminal law.

For the year of 2000, I served as a senior legal officer at the United Nations Compensation Commission in Geneva, Switzerland. In that capacity, I prepared and presented claims to panels of arbitrators filed by corporations injured by Iraq's invasion and occupation of Kuwait. I researched legal issues and drafted proposed awards for the arbitrators.

From the beginning of 2001 through the end of 2004, I served as solicitor with the Montana Department of Justice. I often defended the State in trial and appellate courts against federal and state constitutional challenges to a statute or citizen-approved initiative or to the adequacy of State programs and institutions. I evaluated whether the State should intervene in cases in which a party challenged the constitutionality of a statute, but in which the State was not a party in the initial proceeding. I also drafted several briefs in criminal appeals to the Montana Supreme Court.

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

During my legal career before becoming a judge, I did not focus on any one specialty. Rather, I participated in a broad range of trial and appellate litigation in a variety of areas of the law. While at Goetz, Madden & Dunn, I represented property owners in boundary and easement disputes and land use disputes, small business owners in commercial disputes, a county government in a dispute with court reporters over salary and hours

of work, and individual criminal defendants in court-appointed cases. My work at the Iran-U.S. Claims Tribunal and UNCC focused on valuation methods and takings claims. As the solicitor for the Montana Department of Justice, I represented the State of Montana in civil litigation at the trial and appellate levels in state and federal courts.

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.

Most of my practice was in litigation, both in private practice with Goetz, Madden & Dunn and with the Montana Department of Justice. While in private practice, I appeared in court at least once each month. I appeared in court approximately two times per month while working for the Montana Department of Justice.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 80%
   3. other courts: 5%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 90%
   2. criminal proceedings: 10%

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

I tried to verdict, judgment, or final decision approximately 12 cases during my career. I served as sole counsel in four of these cases, lead counsel in six cases, and supporting counsel in two others.

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 80%

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

Mont. Right to Life Ass'n v. Eddleman, cert. denied, 543 U.S. 812, 125 S. Ct. 47, 160 L. Ed. 2d 16 (2004) (opposition to a petition for a writ of certiorari on behalf of the State of Montana, 2004 WL 1283792).

Madison v. Graham, cert. denied, 538 U.S. 1058, 123 S. Ct. 2221, 155 L. Ed. 2d 1107 (2003) (opposition to a petition for a writ of certiorari on behalf of the State of Montana). Copy supplied.

Golightly v. Montoya, cert. denied, 537 U.S. 1112, 123 S. Ct. 902, 154 L. Ed. 2d 786 (2003) (amicus brief in support of a petition for a writ of certiorari on behalf of the State of Montana and 21 other states, 2002 WL 32133715).

California v. Schulman, cert. denied, 534 U.S. 992, 122 S. Ct. 458, 151 L. Ed. 2d 377 (2001) (amicus brief in support of a petition for a writ of certiorari on behalf of the State of Montana and other states and territories, 2001 WL 34116110).

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. *Montana v. Goldin* (*In re Pegasus Gold Corp.*), 394 F.3d 1189 (9th Cir. 2005).

I served as counsel on appeal for the State of Montana. I drafted the brief and argued the case before a three-judge panel of the Ninth Circuit. The Ninth Circuit reversed the decisions of the Bankruptcy Court and the District Court that had denied Montana's motion to dismiss. The Ninth Circuit agreed that the 11th Amendment supplied Montana with immunity from suit in federal court against claims by debtor in a bankruptcy proceeding. The debtor instead had to pursue the claims in state court.

Co-counsel:	John Sullivan Hughes, Sullivan, Kellner, and Alke 40 North Lawrence Helena, Montana 59601 (406) 442-3690
Counsel for Goldin:	Michael P. Richman Mayer Brown LLP 1675 Broadway

New York, New York 10019
(212) 506-2500

2. *Seven Up Pete Venture v. Montana*, 114 P.3d 1009 (Mont. 2005).

I served as counsel for the State of Montana before the district court and on appeal before the Montana Supreme Court. A mining company that held a lease on state trust land filed a challenge in state court to Montana's voter approved initiative that banned the cyanide heap leach method of extracting gold at open pit mines.

Judge Jeffrey Sherlock presided in the district court. The parties engaged in extensive discovery, conducted numerous depositions over a two-year period, and filed and argued pre-trial motions. The district court granted summary judgment to the State on the basis that the ban did not raise to the level of a taking of the mining company's property interest in the lease. The Montana Supreme Court affirmed after oral argument.

Counsel for Intervenor:	Karl Englund Englund Law Offices 401 North Washington Missoula, Montana 59807 (406) 721-2729
Counsel for Seven Up Pete:	Ron Waterman and Alan Joscelyn Gough, Shanahan, Johnson, and Waterman 33 South Last Chance Gulch Helena, Montana 59624 (406) 442-8560

3. *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 109 P.3d 257 (Mont. 2005).

I served as lead counsel for the State of Montana before the district court and on appeal before the Montana Supreme Court. A group of school districts challenged the adequacy of Montana's school funding system in light of the provision in the Montana Constitution that requires the State to provide "a basic system of free quality public elementary and secondary schools." The school districts also alleged that the school funding system violated the provision of the Montana Constitution that guarantees to each person "[e]quality of educational opportunity."

Judge Jeffrey Sherlock presided in the district court. The parties engaged in extensive discovery, conducted numerous depositions over a three-year period, and filed and argued pre-trial motions. The district court conducted a four-week trial. The court rejected the school district's equal protection claim regarding equality of educational opportunity. The court determined, however, that Montana's school funding system failed to meet the constitutional requirement of a basic system of free quality public elementary and secondary schools. The Montana Supreme Court affirmed after oral argument.

Co-counsel:	Ali Bovingdon Assistant Attorney General 215 North Sanders Helena, Montana 59620 (406) 444-2026
Counsel for Columbia Falls:	Jim Molloy Office of the Governor State Capitol, Room 204 Helena, Montana 59620 (406) 949-0430
	Brian Gallik Goetz, Gallik and Baldwin 35 North Grand Avenue Bozeman, Montana 59715 (406) 587-0618

4. *White v. Martz*, No. CDV-2002-133, First Judicial District Court, Lewis & Clark County.

I served as lead counsel for the State of Montana in defending against a class action brought by a group of indigent defendants that challenged the adequacy of Montana's public defender system. Judge Thomas Honzel presided in the district court. The parties engaged in extensive discovery, conducted hundreds of depositions over a three-year period, and filed and argued pre-trial motions.

The parties eventually entered into a stipulation in which they agreed to hold the case in abeyance pending action by the Montana legislature to establish a state-wide public defender system. The 2005 Montana legislature established the state-wide system and the district court dismissed the case upon motion of the parties.

Co-counsel for Defendant:	Pam Bucy Assistant Attorney General 215 North Sanders Helena, Montana 59620 (406) 444-2026
Counsel for Intervenor:	Norman H. Grosfield Grosfield Law Firm P.O. Box 5015 Helena, Montana 59604 (406) 443-7295

Counsel for White, et al.	Ron Waterman Gough, Shanahan, Johnson, and Waterman 33 South Last Chance Gulch Helena, Montana 59624 (406) 442-8560
	E. Vincent Warren ACLU Legal Department 125 Broad Street New York, New York 10004 (212) 549-2651

5. *Berta v. Clark Recreation Lot Owners Assoc.*, No. DV-97-96, Twenty-second Judicial District, Carbon County.

I served as counsel for the Bertas who challenged the existence of a public road or easement across their property. Another group of landowners proposed to use the existing primitive road across the Bertas' property to reach their own property. All parties agreed that a public road that arose from a petition for public road filed in the late 1880s extended at least to the boundary of the Bertas' property. The parties engaged in discovery, conducted depositions, and filed and argued pre-trial motions.

Judge Diane Barz presided in the district court. The district court conducted a three-day trial. The district court agreed with Bertas that the public, including the neighboring landowners, did not have a right to use the existing primitive road across the Bertas' property. The court determined, however, that a public easement existed along the boundary of the Bertas' property based on the road petition filed in the late 1880s.

Counsel for the Lot Owners:	Ken Tolliver 10 North 27th Street, Suite 310 Billings, Montana 59103-1913 (406) 256-9600
Counsel for Carbon County:	Tony Kendall P.O. Box 129 Red Lodge, Montana 59068 (406) 446-9130

6. *Madison v. Graham*, 316 F.3d 867 (9th Cir. 2002), *cert. denied*, 538 U.S. 1058, 123 S. Ct. 2221, 155 L. Ed. 2d 1107 (2003).

I served as counsel on appeal for the State of Montana. The Montana Legislature had enacted the Stream Access Law in 1985. The law codified the common law doctrine of the public trust related to navigable rivers and streams in Montana. The law protected public use of rivers and streams in Montana for recreational purposes below the historical

high water mark. The Montana Supreme Court earlier had rejected a takings challenge to the Stream Access Law in *Galt v. State*, 225 Mont. 142, 731 P.2d 912 (Mont. 1987).

A group of property owners filed an action in federal court that attacked the Stream Access Law on the basis that it violated their substantive due process rights under the Fourteenth Amendment and that it was void for vagueness. I drafted the brief and argued the case before a three-judge panel of the Ninth Circuit. The Ninth Circuit agreed that the District Court properly had dismissed the property owners' substantive due process claims due to the availability of more specific takings remedies. I drafted a brief in opposition for a petition for a writ of certiorari.

Counsel for Intervenor:	James H. Goetz Goetz, Gallik & Baldwin, P.C. 35 North Grand Avenue Bozeman, Montana 59715 (406) 587-0618
Counsel for Madison:	Dale R. Cockrell Christiansen, Moore, Cockrell 145 Commons Loop, Suite 200 Kalispell, Montana 59904 (406) 751-6000
	William Perry Pendley and S. Amanda Koehler Mountain States Legal Foundation 2596 South Lewis Way Lakewood, Colorado 80227 (303) 292-2021

7. *Cole v. State ex rel. Brown*, 42 P.3d 760 (Mont. 2002).

I served as counsel for the State of Montana in an original proceeding filed before the Montana Supreme Court. I drafted the brief and argued the case before the Montana Supreme Court. A group of legislators and voters alleged that Montana's 1994 voter approved term limits initiative for executive and legislative offices violated a provision of the Montana Constitution that limits voter initiatives to a single subject. The court adopted the State's argument that the doctrine of laches barred the challenge on the basis that the legislators and voters had waited too long to challenge the method by which the voters had adopted the term limits.

Counsel for Cole:	Stan Kaleczyc and Kim Beatty Browning, Kaleczyc, Berry and Hoven 800 North Last Chance Gulch, Suite 101 Helena, Montana 59624 (406) 443-6820

8. *Davison v. State ex rel. Brown*, Cause No. BDV-2002-458, First Judicial District Court, Lewis & Clark County.

I served as counsel for the State of Montana in a pre-election challenge to a proposed voter initiative that would have authorized the State to initiate condemnation proceedings against various hydroelectric dams in Montana. The dam owners alleged that the proposed initiative involved more than a single subject in violation of Art. V, § 11(3) of the Montana Constitution, constituted impermissible special legislation, and exceeded the scope of the State's eminent domain power.

Judge Jeffrey Sherlock presided in the district court. I filed pre-motions and supporting briefs. The court conducted an all day hearing. The district court rejected all of the challenges to the proposed initiative. The proposed initiative appeared on the November 2002 general election ballot. The voters rejected the proposed initiative.

Counsel for Davison:

Joseph P. Mazurek and Alice Henshaw
Crowley Fleck, PLLP
100 North Park Avenue, Suite 300
Helena, Montana 59624
(406) 449-4185

Robert M. Murdo
Jackson, Murdo, Grant & McFarland
203 North Ewing Street
Helena, Montana 59601
(406) 442-1300

9. *Greater Yellowstone Coalition, Inc. v. Bd. of County Comm'rs*, 25 P.3d 168 (Mont. 2001).

I served as counsel for the Greater Yellowstone Coalition in the district court. The Coalition alleged that a decision by the Gallatin County Board of Commissioners to approve a request to rezone land from residential with a density of one unit per ten acres to a planned unit development that would have facilitated the development of hundreds of houses and a golf course on border of Yellowstone National Park constituted impermissible spot zoning.

Judge Thomas Olson presided in the district court. The parties engaged in discovery, conducted depositions, and filed and argued pre-trial motions. The district court conducted a five-day trial. The district court determined that the Coalition had presented sufficient evidence to satisfy all of the elements of spot zoning. The Montana Supreme Court affirmed.

Co-counsel:

Richard J. Dolan
Goetz, Madden & Dunn
35 North Grand Avenue

Bozeman, Montana 59715
(406) 587-0618

Counsel for Gallatin County: Susan Swimley
1807 West Dickerson, # B
Bozeman, Montana 59715
(406) 586-5544

Counsel for Intervenor: Mike Lily
Berg Law Firm
1 West Main Street
Bozeman, Montana 59715
(406) 587-3181

10. *In re Estate of Prescott*, 8 P.3d 88 (Mont. 2000).

I served as counsel for the Montana State University (MSU) Foundation and the Museum of the Rockies in the district court and before the Montana Supreme Court. A formerly unknown heir challenged the probating of his mother's will that excluded him from any inheritance. The disinherited heir turned out to be the testatrix's biological son. The heir alleged that his mother lacked testamentary capacity at the time that she had executed the will as evidenced by the fact that she claimed in the will to have no children. The will made bequests to the MSU Foundation and the Museum of the Rockies.

Judge Mike Salvagni presided in the district court. The parties engaged in discovery, conducted depositions, and filed and argued pre-trial motions. The district court granted summary judgment to the MSU Foundation and the Museum of the Rockies after a hearing. The Montana Supreme Court affirmed.

Counsel for the Heir: Thomas White
3100 Sentinel Drive
Bozeman, Montana 59771
(406) 243-4311

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

I have been involved with various commissions of the Montana Supreme Court. Most recently, I assumed the position of chair of the Montana Judicial Branch Commission on Technology. The commission evaluates the needs of the judicial branch in Montana, including the district courts and the courts of limited jurisdiction, considers available

options and possible sources of funding, and makes recommendations to the Office of the Court Administrator and the Montana Supreme Court regarding priorities.

I also currently serve on the State Bar of Montana Judicial Relations Commission. The commission seeks to foster communication and improve relations between members of the practicing bar and the judiciary. The commission also sponsors and presents an annual program of continuing legal education.

From 2005 through 2012, I served on the Montana Supreme Court's Access to Justice Commission. The commission sought to remove barriers to courts for pro se litigants and to encourage pro bono participation by lawyers in Montana.

In 2009, I served as a member of a Montana Supreme Court working group to develop standards for public access to electronic court records at the Montana Supreme Court and at state district courts throughout Montana. The standards sought to maximize public access while protecting sensitive personal information, such as social security numbers, that could be used for improper purposes.

I served as a member of a Montana Supreme Court working group in 2009 to revise standards used by the Commission on Practice to release records on attorney discipline. The new standards require that the public have access to all records of a proceeding in which the attorney received some form of public discipline. The revised standards allow the Commission on Practice to continue to resolve minor infractions through private admonitions in which the records remain confidential.

I served as a member of a Montana Supreme Court working group in 2008 to develop performance measures in conjunction with the National Center for State Courts. The Montana Supreme Court now issues quarterly performance measures that depict the Court's timeliness. The working group also developed an annual survey distributed to members of the State Bar of Montana, state district court judges, and faculty members at the University of Montana Law School. The Court posts on its website both the quarterly performance measures and the annual survey results as part of the Court's efforts to promote public access and transparency.

I also have presented at numerous programs of continuing legal education mostly related to practice before the Montana Supreme Court, including appellate advocacy, preserving issues and developing the record for appeal, and constitutional issues.

I have not performed any lobbying activities or registered as a lobbyist during my career.

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

I co-taught an undergraduate seminar entitled "Introduction to Constitutional Law" at Carroll College in Helena, Montana during the fall of 2003. The course supplied an overview of our system of government that included discussion of separation of powers and the role of the courts in our society. My co-teacher and I modeled the course based upon the textbook entitled "American Constitutional Law, Introductory Essays and Selected Cases," (Thirteenth Ed.) by Alpheus Thomas Mason and Donald Grier Stephenson, Jr. I could not locate a copy of the course 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.

    None.

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

    If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       My wife and my brother both work as lawyers in Montana. I would not sit on any cases in which they or their law firms represented any party. Neither one of them

has a significant practice in federal court, so I would not anticipate many conflicts.

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

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

My position as a justice on the Montana Supreme Court prohibits me from performing directly pro bono litigation services. From 2005 through 2012, however I served on the Montana Supreme Court's Access to Justice Commission. The commission sought to remove barriers to courts for pro se litigants and to encourage pro bono participation by lawyers in Montana. In this capacity, I also made remarks to, or participated as a panel member in, continuing legal education seminars that focused on methods to expand pro bono programs and remove barriers to court access.

I participated in a pro bono program sponsored by the First Judicial District Court in Helena, Montana while I worked for the Montana Department of Justice. I represented several clients in child custody proceedings.

While in private practice, I participated in a pro bono program sponsored by the Eighteenth Judicial District in Bozeman, Montana. I represented three separate clients there, including a spouse in marriage dissolution proceeding and two separate parties in parental termination proceedings. I also took on a number of court-appointed criminal cases, which paid significantly less than my usual fees.

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 January 7, 2013, I applied to the committee established by Senator Max Baucus to consider applicants for these judicial vacancies. In late January, I spoke with Senator Baucus by phone, and I interviewed with him in Three Forks, Montana, on February 18, 2013. On March 11, 2013, Senator Baucus announced that he would recommend me to the White House. Since March 13, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 18, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 23, 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
Brian, Morris M.	United States District Court, District of Montana	05/23/2013
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 Service	☑ Nomination Date 05/23/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/15/2013
7. Chambers or Office Address		
Montana Supreme Court Justice Building, Room 414 215 North Sanders Helena, Montana 59620		

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.	Director	The William H. Rehnquist Center on the Constitutional Structures of Government University of Arizona James E. Rogers Co
2.	Executor	Estate #1
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Brian, Morris M.	Date of Report 05/23/2013

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	Montana Supreme Court -- salary	$49,000.00
2. 2012	Montana Supreme Court -- salary	$119,000.00
3. 2011	Montana Supreme -- salary	$113,000.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2013	Hughes, Kellner, Sullivan & Alke -- salary
2. 2012	Hughes, Kellner, Sullivan & Alke -- 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 7	Name of Person Reporting Brian, Morris M.	Date of Report 05/23/2013

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.	AES	Education loan	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Brian, Morris M.	05/23/2013

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. New York Life Variable Annuity									
2. -MainStay ICAP Select Equity Fund	A	Int./Div.	J	T	Exempt				
3. -MainStay VP Common Stock Portfolio	A	Int./Div.	J	T					
4. -MainStay VP Convertible Portfolio	A	Int./Div.	J	T					
5. -MainStay VP Janus Balanced Portfolio	A	Int./Div.	J	T					
6. -MainStay VP Large Cap Growth Portfolio	A	Int./Div.	J	T					
7. -MainStay VP S&P 500 Index Portfolio	A	Int./Div.	J	T					
8. -MainStay VP T. Rowe Price Equity Income Portfolio	A	Int./Div.	J	T					
9. RBC Prime Money Market Fund	A	Interest	K	T					
10. Yahoo Common Stock		None	J	T					
11. HKSA 401(k) Profit Sharing Plan									
12. -American Funds AMCAP Fund	B	Int./Div.	K	T					
13. -American Funds New Perspective Fund	A	Int./Div.	K	T					
14. -Franklin Templeton Mutual Global Discovery Fund	B	Int./Div.	K	T					
15. -JP Morgan Mid-Cap Value Fund	B	Int./Div.	J	T					
16. -Neuberger Berman Socially Responsive Fund	B	Int./Div.	K	T					
17. -Oppenheimer Main Street Small & Mid-Cap Fund	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Brian, Morris M.	05/23/2013

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. Carbon Energy Holdings Common Stock		None	J	W					
19. Capital Housing Partners Share	B	Distribution	J	W					
20. Parrot Ditch Company Stock		None	J	W					
21. Mountain West Bank (Cash account)	A	Interest	J	T					
22. Estate #1									
23. -Agricultural property Madison County, Montana		None	M	W					
24. -American Federal Savings (Cash account)	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $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
Brian, Morris M.	05/23/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Brian, Morris M.	Date of Report 05/23/2013

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/ **Morris M. Brian**

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		5	000	Notes payable to banks-secured (auto)		10	613
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities – see schedule		159	756	Notes payable to relatives			
Unlisted securities – see schedule		3	500	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	217
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		382	568
Real estate owned – see schedule		550	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	000	Education loans		13	125
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		414	523
				Net Worth		348	733
Total Assets		763	256	Total liabilities and net worth		763	256
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 AMCAP Fund	$ 18,575
American Funds New Perspective Fund	17,851
Franklin Templeton Mutual Global Discovery Fund	17,445
JPMorgan Mid-Cap Value Fund	9,978
MainStay ICAP Select Equity Fund	8,686
MainStay VP Common Stock Portfolio	4,794
MainStay VP Convertible Portfolio	5,777
MainStay VP Janus Balanced Portfolio	9,597
MainStay VP Large Cap Growth Portfolio	3,643
MainStay VP S&P 500 Index Portfolio	5,436
MainStay VP T. Rowe Price Equity Income Portfolio	7,040
Neuberger Berman Socially Responsive Fund	18,315
Oppenheimer Main Street Small- & Mid-Cap Fund	9,372
RBC Prime Money Market Fund	21,340
Yahoo stock	1,907
Total Listed Securities	$ 159,756

Unlisted Securities	
Carbon Energy Holdings, Inc.	$ 0
Capital Housing Partners	2,500
Parrot Ditch Company	1,000
Total Unlisted Securities	$ 3,500

Real Estate Owned	
Personal residence	$ 500,000
Vacation property (25% interest)	50,000
Total Real Estate Owned	$ 550,000

AFFIDAVIT

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

5/24/13
(DATE)

(NAME)

GWYN A. GREGOR
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, Montana
My Commission Expires
November 15, 2014

(NOTARY)

Senator BLUMENTHAL. Judge Watters.

STATEMENT OF HON. SUSAN P. WATTERS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MONTANA

Judge WATTERS. Thank you, Chairman Blumenthal and Senator Grassley. I am also very honored to be here. I want to express my gratitude to President Obama for nominating me for this position and also my gratitude to Senator Baucus and Senator Tester, and thank Senator Baucus for his very kind words this morning.

I am blessed to be here with my family also: my husband, Ernie Watters, and my daughters, Jessica Dunn and Maggie Kelleher. And it is true, they both have young children and jobs and so forth, and I did not expect them to be able to be here, and they flew in last night and surprised me, and I am very happy that they are here and able to share this with me. And I am very pleased that you were able to set up this hearing so quickly.

Thank you very much.

[The biographical information of Judge Watters follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Susan Pamela Watters
   Susan Pamela Dunn (formerly)
   Susan Pamela Elsberry (formerly)
   Susan Pamela Klein (formerly)

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

   United States District Judge for the District of Montana

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.

   State of Montana Thirteenth Judicial District Court
   301 South Park, Suite 328
   Helena, Montana 59620

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

   1958; Billings, Montana

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, University of Montana School of Law; J.D., 1988

   1976 – 1980, Eastern Montana College (currently Montana State University-Billings); B.A. (honors), 1980

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

1998 – present
State of Montana Thirteenth Judicial District Court
301 South Park, Suite 328
Helena, Montana 59620
District Judge

1996 – 1998
Hendrickson, Everson, Noennig & Woodward, P.C.
208 North Broadway, Suite 324
Billings, Montana 59103
Senior Associate

1995 – 1996
Watters Law Firm
301 North 27th Street
Billings, Montana 59101
Sole Practitioner

1989 – 1995
Yellowstone County Attorney's Office
Yellowstone County Courthouse
217 North 27th Street
Billings, Montana 59101
Deputy County Attorney

1988 – 1989
State of Montana Thirteenth Judicial District Court
217 North 27th Street
Billings, Montana 59101
Law Clerk to the Honorable Maurice Colberg (November – December 1989)
Law Clerk to the Honorable Diane G. Barz (1988 – 1989)

1986 – 1988
Garlington, Lohn & Robinson, PLLP
350 Ryman Street
Missoula, Montana 59802
Legal Intern

1984 – 1985
Byington, Deveny & Meyer, P.C.
Missoula, Montana 59802
Administrative Assistant

1976 – 1984
HC Oil Company, Inc.
1302 Avenue D

Billings, Montana 59102
Administrative Assistant

Other Affiliations (uncompensated):

2006 – 2007
Montana Judges' Association
1010 Main Street
Miles City, Montana 59301
President

1996 – 2002
Tumbleweed Runaway and Homeless Youth Program
505 North 24th Street
Billings, Montana 59101
President (2001 – 2002)
Board of Directors (1996 – 2002)

1996 – 2002
Child & Family Intervention Center
3212 First Avenue South
Billings, Montana 59101
Board of Directors

1994 – 1996
Yellowstone County Bar Association
(No physical address)
Board of Directors

1990 – 1994
Youth Information Management Team
(No physical address)
Board of Directors

1990 – 1991
Serious Habitual Offender Program
(No physical address)
Board of Directors

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

I have not served in the military. I 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.

   The Advanced Science and Technology Adjudication Resource Center National Judges Science Program Fellow (2009)

   Montana State University-Billings (formerly Eastern Montana College), Distinguished Alumna (2009)

   Court Appointed Special Advocates, Judge of the Year (2005)

   Roots of Promise Spirit of Promise Award (presented to the Yellowstone County Family Drug Treatment Court, over which I preside) (2006)

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

   Criminal Justice Act Panel Attorney (1995 – 1998)

   Drug, Alcohol, Tobacco and Other Drug Control Policy Task Force (2002)

   Montana District Courts Judicial Workload Assessment Study Committee (2006-2010)

   Montana Judges' Association (1998 – present)
   President (2006 – 2007)

   Montana State Bar Association (1988 – present)

   National Association of Criminal Defense Lawyers (1996 – 1998)

   Yellowstone County Bar Association (1988 – 1998)
   Board of Directors (1994 – 1996)

10. **Bar and Court Admission**:

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

       Montana, 1988

       There has been no lapse in membership.

    b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1996
United States District Court for the District of Montana, 1988
Supreme Court of Montana, 1988

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.

Child & Family Intervention Center (1996 – 2002)
Board of Directors

Serious Habitual Offender Program (1990 – 1991)
Board of Directors

Tumbleweed Runaway and Homeless Youth Program (1996 – 2002)
Board of Directors (1996 – 2002)
President (2001 – 2002)

Youth Information Management Team (1990 – 1994)
Board of Directors

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 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.

Letter to the Editor, *Voice of the Reader*, Billings Gazette, September 16, 2005. 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.

Although I did not draft the Montana District Court Judicial Workload Assessment Study Final Report (2007), I contributed generally to the extent I was on the Workload Study Committee and provided input during committee discussions regarding the caseloads in Montana and in the Thirteenth Judicial District and also participated with the other state judges in providing caseload statistics. Copy supplied.

Otherwise, I have not prepared or contributed to 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.

In approximately July 2008, in conjunction with my role on the Workload Study Committee, I discussed with the Yellowstone County Commissioners that the study indicated the Thirteenth Judicial District was short at least two judges. I do not have any notes, transcripts, or recordings of this discussion and minutes are not kept of informal discussions.

On or about March 19, 2007, I and several of my colleagues spoke to the Yellowstone County Commissioners regarding the benefits of making the Yellowstone County Justice Court a court of record. My statements to the Commissioners are generally reflected in the Billings Gazette article, Tom Howard, *Judges Request Court-of-Record Designation*, Billings Gazette, March 19, 2007. Copy supplied.

In approximately June 2006, I and several of my colleagues spoke to the Yellowstone County Commissioners in support of the Clerk of Court's request for authorization from the Commissioners of overtime for her staff due to the increasing workload in her office. I do not have any notes, transcripts, or recordings of this discussion. It occurred during a budget hearing and no minutes are kept.

On November 29, 2006, Judge Joe Hegel wrote to Montana Representative Gutsche regarding the issue of mental health and drug treatment courts and quoted my response to him regarding drug treatment courts providing services for people with co-occurring mental health disorders. Copy supplied.

On May 12, 2004, I spoke to the Montana District Court Council about the need to reimburse attorneys hired by the Office of Public Defender to represent indigent participants in state drug courts. Minutes supplied.

On May 5, 2000, the five judges of the Thirteenth Judicial District sent a letter to the Chief Public Defender at the Yellowstone County Public Defenders Office stating our concerns with the number of increased motions to substitute public defender attorneys for private sector attorneys acting as conflict counsel, the difficulties we were having getting information from the chief deputy public defender about whether up-coming trials were going or not, and how often neither of those individuals were in court or available in their offices. 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.

January 28, 2013: Speaker, "The Court System," the Golden Kiwanis Club, Billings, Montana. Remarks supplied.

November 10, 2012: Speaker, "The Benefits of Adoption," National Adoption Day, Billings, Montana. Remarks supplied.

March 2012: Panelist, "What Civil Court Judges Want you to Know," National Business Institute. I was a panelist with several other judges answering primarily procedural questions and addressing what lawyers do that is helpful and not so helpful to the courts in civil litigation. I do not have any notes, transcripts, or

recordings of the event. The address of the National Business Institute is 1218 McCann Drive, Altoona, Wisconsin 54720.

November 12, 2011: Speaker, "The Benefits of Adoption," National Adoption Day, Billings, Montana. Remarks supplied.

November 2010: Speaker, "The Benefits of Adoption," National Adoption Day, Billings, Montana. I do not have a copy of my remarks from November 2010, but my remarks would have been similar to those I made in November 2011 and 2012.

July 2009: I administered the oath of office to the new Yellowstone County Sheriff at his swearing-in ceremony at the Yellowstone County Courthouse. I do not have any notes, transcripts, or recordings of the event, but press coverage is supplied. The address of the Yellowstone County Courthouse is 217 North 27th Street, Billings, Montana.

April 3, 2009: Panelist, "Evidentiary Issues in Medical Litigation," Montana Trial Lawyers Association Spring Seminar, Medical School for Lawyers, Billings, Montana. I was a panelist with my judicial colleagues and answered questions from the attending attorneys regarding various evidentiary issues related to medical malpractice and personal injury litigation. I do not have any notes, transcripts, or recordings of the event. The address of the Montana Trial Lawyers Association is 32 South Ewing, Suite 312, Helena, Montana.

March 28, 2009: Speaker, Acceptance Speech for the Distinguished Alumna Award, Montana State University-Billings, Billings, Montana. Remarks supplied.

June 4 – 5, 2007: Speaker, "Meth Epidemic: Prevention and Intervention," At Risk Conference, Montana State University Billings College of Professional Studies and Lifelong Learning and the Montana State University Billings College of Education, Billings, Montana. I believe I spoke from the perspective of the presiding judge of the Yellowstone County Family Drug Treatment Court about what I knew about the meth epidemic in our community and its effects on the children and families in the community. I do not have any notes, transcripts, or recordings of the event, but press coverage is supplied. The address of the Montana State University Billings College of Education is 1500 University Drive, Billings, Montana.

June 17, 2005: Speaker, "Justice for Montana's Children," Montana Equal Justice Conference, Billings, Montana. I presented on the Yellowstone County Family Drug Treatment Court. I do not have any notes, transcripts, or recordings of the event, but I have supplied the agenda for the conference. The address of the Montana Supreme Court, Equal Justice Task Force is 301 South Park, Suite 328, Helena, Montana 59620.

February 25, 2005: Panelist, Annual Bench-Bar CLE, Judicial Relations Committee, State Bar of Montana, Bozeman, Montana. I was part of a panel of speakers who answered questions from the audience. I do not have any notes, transcripts, or recordings of the event. The address of the State Bar of Montana is Seven West Sixth Avenue, Suite 2B, P.O. Box 577, Helena, Montana 59624.

I have participated as a judge on numerous bench/bar panels for the Yellowstone Area Bar Association and the Montana State Bar Association. My remarks generally answered procedural questions. I have no record of the specific dates of those events, and I do not have any notes, transcripts, or recordings. The Yellowstone Area Bar association has no physical address. The address for the State Bar of Montana is 7 West Sixth Avenue, Suite 2B, P.O. Box 577, Helena, Montana 59624.

Since the Yellowstone County Family Drug Court began in June 2001, I have given numerous speeches to service organizations, such as the Downtown Rotary Club and the Downtown Exchange Club, and other organizations about the family drug court. These speeches and interviews were merely informational to familiarize the audience with the family drug court program. I have no record of the specific dates or locations of those events, and I do not have any notes, transcripts, or recordings from these presentations. Neither the Downtown Rotary Club nor the Downtown Exchange Club has a physical address that I can find.

As a deputy county attorney, I spoke to Billings Police Department officers regarding search and seizure laws. I have no record of the specific dates of those events, and I do not have any notes, transcripts, or recordings. Billings Police Department, P.O. Box 1554, Billings, Montana 59101

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.

Clair Johnson, *Watters, Morris Get Nods for Federal Judgeships*, Billings Gazette, May 24, 2013. Copy supplied.

Billings Gazette Editorial Board, *Watters, Morris: 2 Great Choices For Federal Bench*, Billings Gazette, March 17, 2013. Copy supplied.

KULR-TV, March 12, 2013 regarding my nomination by Senator Baucus. Video supplied.

Clair Johnson, *Watters A Finalist For Federal Bench*, Billings Gazette, March 12, 2013. Copy supplied.

Clair Johnson, *2 for Federal Judgeships Announced*, Billings Gazette, March 11, 2013. Copy supplied.

Mike Dennison & Clair Johnson, *6 on Short List for Possible Nomination for 2 Federal Judgeships in Montana*, Billings Gazette, February 4, 2013. Copy supplied.

Clair Johnson, *3 Yellowstone County Judges to Seek Re-election*, Billings Gazette, January 19, 2012. Copy supplied.

Billings Gazette Editorial Board, *Drug Court Pays Off For Families, Community*, Billings Gazette, December 20, 2011. Copy supplied.

Gazette Opinion, *Investment in Drug Court Pays Off for Community*, Billings Gazette, May 16, 2010. Copy supplied.

Gazette Opinion, *Drug Treatment Court Works for Local Families*, Billings Gazette, May 20, 2009. Copy supplied.

MSU Billings Honors Outstanding Alumni, MSUB News Services, March 26, 2009. Copy supplied.

Susan Olp, *Reunited Couple Sees Better Days Coming*, Billings Gazette, November 26, 2008. Copy supplied.

Ed Kemmick, *Judges Stand for Election, But Rarely Against Any One*, Billings Gazette, February 9, 2008. Copy supplied.

Greg Tuttle, *Legal Wrangling Bogs Down Fight Involving Sheriff's Office*, Billings Gazette, January 8, 2008. Copy supplied.

Virginia A. Bryan, *Judge Susan Watters, A Dose Of Therapeutic Justice*, Yellowstone Valley Woman, September/October 2006. Copy supplied.

Ed Kemmick, *Numbers, Stories Tell Of Drug Court's Success*, Billings Gazette, August 24, 2005. Copy supplied.

Ed Kemmick, *Drug Treatment Court: A Glimmer of Hope in the Fight Against Meth*, Billings Gazette, August 24, 2005. Copy supplied.

Pat Bellinghausen, *Novel Court Helps Addicts, Their Families*, Montana Standard, September 20, 2004. Copy supplied.

Gazette Opinion, *Drug Courts Treat Cause of Justice System Overload*, Billings Gazette, September 18, 2004. Copy supplied.

Greg Tuttle, *Family Drug Court Reports 1st Success Story*, Billings Gazette, October 17, 2002. Copy supplied.

John Fitzgerald, *Prominent Local Women Say Doors Have Opened in Decade*, Billings Gazette, April 25, 2002. Copy supplied.

Susan Olp, *Public Defender-Court Tensions Ease*, Billings Gazette, January 24, 2001. Copy supplied.

Pat Bellinghausen, *Giving Parents, Kids A Second Chance In Family Drug Court*, Billings Gazette, November 4, 2000. Copy supplied.

Nick Ehli, *Watters Becomes District's 2nd Woman Judge*, Billings Gazette, January 30, 1998. Copy supplied.

Jim Gransbery, *Billings Woman Is New Judge*, Billings Gazette, December 25, 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.

Since 1998, I have served as a District Judge for the Thirteenth Judicial District of Montana, Yellowstone County, in Billings, Montana. In December 1997, I was appointed by Governor Marc Racicot and immediately ran for election to finish the term of my predecessor. I was subsequently elected to three six-year terms in 2000, 2006 and 2012. This is a general jurisdiction court. I preside over the following types of cases: criminal, civil, probate, juvenile, abused and neglected children, domestic relations, sanities, guardianship/conservatorship, and adoptions.

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

I have presided over approximately 300 cases that have gone to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	33%
bench trials:	67%
civil proceedings:	65%
criminal proceedings:	35%

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

See attached list.

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

1. *Coates, et al., v. Laurel Chamber of Commerce, et al.,* DV 1997-0552, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied), *aff'd,* 2001 MT 98, 305 Mont. 225, 26 P.3d 730 (Mont. 2001).

Firemen were collecting money for fireworks near an interstate exit ramp. The driver of a vehicle coming onto the exit ramp collided with the other cars stopped ahead as the other drivers were giving donations to the firemen. After the plaintiffs presented their case in chief to the jury, I granted the defendants' motion for a directed verdict because the plaintiffs had not established a causal link between the traffic congestion and any negligence on the part of the defendants. The Montana Supreme Court often cites this case when discussing motions for directed verdict.

Counsel for Plaintiffs: Charles Angel (deceased)

Counsel for Defendant: Kenneth D. Tolliver
Tolliver Law Firm P.C.
10 North 27th Street, Suite 300
Billings, Montana 59101
(406) 256-9600

2. *Seal v. Woodrow's Pharmacy, et al.*, DV 1995-0476, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied), *aff'd,* 1999 MT 247, 296 Mont. 197, 988 P.2d 1230 (Mont. 1999)

Plaintiff sued defendants for negligence related to the doctor's dispensing of pain medication. I granted summary judgment to defendants because plaintiff failed to designate a qualified expert to testify to the appropriate standard of care within the deadline set forth in the scheduling order. This case is often cited by the Montana Supreme Court when discussing the necessity for disclosing a qualified expert within the time allowed in a scheduling order.

Counsel for Plaintiff: Thomas S. Winsor (deceased)
John D. Alexander
#2 Railroad Square, Suite B
Great Falls, Montana 59403
(406) 771-0007

Counsel for Defendants: Richard F. Cebull
Brown Law Firm P.C.
315 North 24th Street
Billings, Montana 59101
(406) 248-2611

Bruce A. Fredrickson
1830 Third Avenue E, Suite 301
Kalispell, Montana 59903
(406) 257-6001

Herbert I. Pierce, III
John H. Maynard
Crowley Law Firm
490 North 31st Street, Suite 400
Billings, Montana 59101
(406) 252-3441

3. *State v. Fallsdown*, DC 2001-0110, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied), *aff'd*, 2003 MT 300, 318 Mont. 219, 79 P.3d 797 (Mont. 2003)

Fallsdown had been released from prison in Wyoming and came to Billings. He and his co-defendant invited two girls to a hotel room in Billings to party. Fallsdown shot and killed one of the girls after she made a joke about his long hair. He attempted to shoot and kill the other girl, but the gun jammed. Fallsdown and his co-defendant kidnapped the remaining girl, put her in their pickup, and left town. During the trip, they forced the girl to drink cold medicine and took turns raping her. They decided to make a stop in Butte, Montana and when they were stopped on the exit ramp, the girl jumped out of the pickup and ran to another car stopped on the ramp. Several state probation officers happened to be in that vehicle and eventually apprehended Fallsdown and his co-defendant. Fallsdown was charged with one count of deliberate homicide, one count of attempted deliberate homicide, one count of aggravated kidnapping, and three counts of sexual intercourse without consent. Fallsdown was convicted by a jury, and I sentenced him to consecutive life sentences.

Counsel for Plaintiff: Ira Eakin
Yellowstone County Attorney's Office
217 North 27th Street
Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: L. Sandford Selvey II
316 North Third Street

Billings, Montana 59101
(406) 252-7503

4. *Cassady v. Yellowstone County Montana Sheriff Department, et al.*, DV 2004-0160, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied), *aff'd*, 2006 MT 217, 333 Mont. 371, 143 P.3d 148 (Mont. 2006)

Sheriff's deputies responded to a 911 call and found the plaintiff in the unoccupied bar with a gun. Plaintiff pointed the gun at one of the deputies and refused their commands to put the gun down. The deputies shot at plaintiff. I granted summary judgment for the individual deputies, having determined they were entitled to qualified immunity from suit under 42 U.S.C. s. 1983. The Montana Supreme Court affirmed on all issues raised by plaintiff on appeal.

Counsel for Plaintiff:	Scott W. Green Patten, Peterman, Bekkedahl & Green PLLC 2817 2nd Avenue North Billings, Montana 59101 (406) 252-8500
Counsel for Defendants:	Kevin Gillen Yellowstone County Attorneys Office 217 North 27th Street Billings, Montana 59101 (406) 256-2830

5. *Orednick v. State, et al.*, DV 2004-0188, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied).

Plaintiffs adopted their daughter from the State of Montana. Following the adoption, plaintiffs claimed they became aware of material facts that were not disclosed to them concerning their daughter and her birth parents. Plaintiffs sued defendants on a breach of fiduciary duty theory. Plaintiffs also sued on their own behalf on a theory of negligent failure to disclose, but withdrew this claim mid-trial. After a five day trial, the jury made certain factual findings, including that the State of Montana had breached its fiduciary duty to plaintiffs' daughter; that the State of Montana's breach of its fiduciary duty caused plaintiffs' daughter harm; that plaintiffs' daughter had sustained general damages of $800,000; but that the State of Montana did not negligently misrepresent the facts and circumstances surrounding plaintiffs' daughter to plaintiffs and, as a result, the jury awarded not damages to plaintiffs. Following the plaintiffs' notice of entry of judgment, the defendants filed a Motion for Judgment as a Matter of Law or in the alternative, Motion for New Trial, pursuant to Rules 50(b) and 59 of the Montana Rules of Civil Procedure and Section 25-11-102, M.C.A. I granted the defendants' motion for judgment as a matter of law, finding that plaintiffs had

failed to present substantial evidence linking their daughter's damages to negligence by the defendants.

Counsel for Plaintiffs: James M. Ragain
Ragain Law Firm
3936 Avenue B
Billings, Montana 59102
(406) 651-8888

John R. Christensen
Christensen, Fulton & Filz PLLC
2825 Third Avenue North
Billings, Montana 59101
(406) 248-3100

Counsel for Defendants: Calvin J. Stacey
Stacey & Funyak
100 North 27th Street
Billings, Montana 59101
(406) 259-4545

6. *State v. Patrick*, DC 2005-0438, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2009 MT 220N, 2009 Mont. LEXIS 270 (Mont. 2009).

This cased involved felony charges of assault with a weapon, partner or family member assault, intimidation, and tampering with a witness or informant. The defendant was an attorney from South Carolina. He had a total of six attorneys appointed to represent him before he finally fired the last one and proceeded to trial pro se. The defendant raised many issues prior to trial such as, allegations of ineffective assistance of counsel, lack of speedy trial, and a motion to suppress evidence. Defendant was convicted on all counts. He appealed to the Montana Supreme Court, which affirmed.

Counsel for Plaintiff: Rodney Souza
Yellowstone County Attorneys Office
217 North 27th Street
Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: Penelope Strong
2517 Montana Avenue
Billings, Montana 59101
(406) 839-9220

Jay F. Lansing

Moses & Lansing PC
175 North 27th Street
Billings, Montana 59101
(406) 248-7702

Herman A. Watson
101 East Main Street, Suite C
Bozeman, Montana 59715
(406) 586-4707

Matthew J. Wald
Wald Law Office
210 Second Street West
Hardin, Montana
(406) 665-4140

Raymond Kuntz III
23 North Broadway, Suite 201-A
Red Lodge, Montana 59068
(406) 446-3725

Brad L. Arndorfer
Arndorfer Law Firm
1921 First Avenue North
Billings, Montana 59101
(406) 252-3911

7. *Vlahakis, et al., v. Burkhartsmeier, et al.,* DV 2007-0623, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2009 MT 335N, 2009 Mont. LEXIS 844 (Mont. 2009).

Plaintiffs purchased a coffee kiosk franchise from defendants. They sued defendants for breach of contract. I presided over a bench trial. The financial evidence was quite complicated because defendant Burkhartsmeier moved money around between her and her husband's personal accounts and the corporation. I ultimately found for plaintiffs, piercing the corporate veil to hold a shareholder personally liable for a judgment against the corporation and later denying a Rule 59(g), M.R.Civ.P. motion to alter or amend the judgment. The Montana Supreme Court affirmed.

Counsel for Plaintiffs:

James A. Patten
Patten, Peterman, Bekkedahl & Green PLLC
2817 Second Avenue North
Billings, Montana 59101
(406) 252-8500

Counsel for Defendants: Randall G. Nelson
Nelson & Dahle PC
2615 Saint Johns Avenue, Suite A
Billings, Montana 59102
(406) 867-7000

James P. Healow
Sweeney & Healow
1250 15th Street West, Suite 202
Billings, Montana 59102
(406) 256-8060

Malcolm H. Goodrich
Goodrich Law Firm PC
2619 Saint Johns Avenue
Billings, Montana 59102
(406) 256-3663

8. *Thiel's Welding, Inc. v. Vermeer of Washington, Inc., et al.*, DV 2000-949, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied), *aff'd*, 2013 MT 100, 2005 Mont. LEXIS 378, 328 Mont. 521, 120 P.3d 810 (Mont. 2005).

Plaintiff filed suit against defendants alleging negligent misrepresentation, constructive fraud, breach of contract and breach of warranties in connection with the purchase and use of a D80 horizontal boring machine manufactured by Vermeer Manufacturing and sold to plaintiff by Vermeer Sales. The matter was tried to a jury and the jury found that there was not a sale of the D80 boring machine from Vermeer Sales to plaintiff, neither defendant had constructively defrauded plaintiff, neither defendant was negligent, and neither defendant negligently misrepresented the D80 to plaintiff. The jury also found that plaintiff was not liable to Vermeer Sales based on its counter-claim for unjust enrichment. Plaintiff moved for a new trial. I denied that motion. The Montana Supreme Court affirmed all my pretrial and trial rulings.

Counsel for Plaintiff: Kenneth D. Peterson (retired)

Counsel for Defendants: Donald R. Herndon
Herndon Law Firm, P.C.
P.O. Box 80050
Billings, Montana 59108-0050

Geoffrey R. Keller
Matovich, Keller & Murphy
2812 First Avenue North, Suite 225
Billings, Montana 59101

(406) 252-5500

Calvin J. Stacey
Stacey & Funyak
100 North 27th Street
Billings, Montana 59101
(406) 259-4545

9. *State v. Brooks Jay*, DC 2009-0016, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part, and remanded*, 2013 MT 79, 2013 WL 1212813 (Mont. 2013).

Defendant was charged with two counts of vehicular homicide while under the influence and two counts of negligent endangerment. Defendant had been drinking and he was driving west on Interstate 90 (I-90). He crossed the median that divided the eastbound and westbound traffic. His pickup continued through the median before turning onto I-90 and driving into the oncoming eastbound traffic. Defendant traveled the wrong way on I-90 for approximately one-fifth of a mile. Two cars successfully avoided colliding with defendant's pickup by driving off the road. Defendant's pickup struck a third car carrying two individuals, at a high rate of speed. The individuals in the other car suffered traumatic injuries that resulted in their deaths at the scene of the crash. Defendant was convicted by a jury on all counts. The Montana Supreme Court affirmed the judgment on all issues except the award of restitution to the State of Montana and the open-ended restitution to the victims' family members.

Counsel for Plaintiff: David Carter
Yellowstone County Attorney's Office
217 North 27th Street
Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: Matthew Claus
Office of Public Defender
207 North Broadway
Billings, Montana 59101
(406) 256-6861

10. *CHS, Inc. v. Montana State Department of Revenue*, DV 2010-133, Thirteenth Judicial District Court, Yellowstone County, Montana (copy supplied), *aff'd*, 2013 MT 100, 369 Mont. 505, 299 P.3d 813 (Mont. 2013).

This case relates to state property taxes assessed on plaintiff's coking refinery in Laurel, Montana and its petroleum marketing terminals in Gallatin and Missoula Counties. Plaintiff was dissatisfied with the Department of Revenue's 2009 assessment of its property. Plaintiff's remedy was to appeal to the county tax

appeal board, the State Tax Appeal Board, and, eventually, petition for judicial review of the administrative decisions. An aggrieved taxpayer may also bring a declaratory judgment action directly in a district court to establish that an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the Department of Revenue is illegal or improper. Plaintiff paid its 2009 taxes under protest and then pursued, simultaneously, administrative review by the county tax appeal boards in the various counties and the declaratory judgment option for challenging its property tax assessment in my court. The same situation occurred in 2010 and the cases were consolidated into my court. The Department of Revenue moved for summary judgment arguing that plaintiff had failed to present facts stating a claim and that the types of challenges being made by plaintiff must first be presented to the administrative tax appeal boards provided for under Montana statutes. In addition, the Department of Revenue requested summary judgment on plaintiff's claims that the Department of Revenue had failed to equalize plaintiff's properties with similar properties or to timely assess the property under the pertinent statutory deadline. I ultimately granted summary judgment to the Department of Revenue as to all of plaintiff's claims. I determined that the Department of Revenue had established the nonexistence of material facts as to the illegality of the tax imposed on plaintiff, and that plaintiff then had failed to meet its burden of presenting evidence that the method or procedure of assessment was illegal or improper. I deferred to the appropriate tax appeal boards the merits of the equalization argument, and I ruled that plaintiff had established no prejudice as a result of the late assessment notice in 2009. The Montana Supreme Court affirmed.

Counsel for Plaintiff:	Jared M. LeFevre Jon Dyre James P. Sites Crowley Fleck PLLP 490 North 31st Street, Suite 500 Billings, Montana 59101 (406) 252-3441
Counsel for Defendants:	Derek R. Bell Brendan R. Beatty Montana Department of Revenue 125 North Roberts Street Helena, Montana 59604 (406) 444-6900

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. *CHS, Inc. v. Montana State Department of Revenue*, DV 2010-133, Thirteenth Judicial District Court, Yellowstone County, Montana, *aff'd*, 2013 MT 100, 369 Mont. 505, 299 P.3d 813 (Mont. 2013) . A copy of my opinion and the Montana State Supreme Court Opinion are supplied in response to question 13(c).

Counsel for Plaintiff:	Jared M. LeFevre Jon Dyre James P. Sites Crowley Fleck PLLP 490 North 31st Street, Suite 500 Billings, Montana 59101 (406) 252-3441
Counsel for Defendants:	Derek R. Bell Brendan R. Beatty Montana Department of Revenue 125 North Roberts Street Helena, Montana 59604 (406) 444-6900

2. *Orednick v. State, et al.*, DV 2004-0188, Thirteenth Judicial District Court, Yellowstone County, Montana. A copy of my opinion is supplied in response to question 13(c).

Counsel for Plaintiffs:	James M. Ragain Ragain Law Firm 3936 Avenue B Billings, Montana 59102 (406) 651-8888 John R. Christensen Christensen, Fulton & Filz PLLC 2825 Third Avenue North Billings, Montana 59101 (406) 248-3100
Counsel for Defendants:	Calvin J. Stacey Stacey & Funyak 100 North 27th Street Billings, Montana 59101 (406) 259-4545

3. *In re The Marriage of Midence*, DR 2001-1204, 2005 Mont. Dist. LEXIS 1026, Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd*, 2006 MT 294, 334 Mont. 388, 147 P.3d. 227 (Mont. 2006).

Counsel for Petitioner: Christopher J. Nelson (deceased)

Counsel for Respondent: W. Corbin Howard
3860 Avenue B, Suite C
Billings, Montana 59901
(406) 248-9244

4. *State v. Patrick*, DC 2005-0438, Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd*, 2009 MT 220N, 214 P.3d 790 (Mont. 2009). Copies of my opinions are supplied in response to question 13(c).

Counsel for Plaintiff: Rodney Souza
Yellowstone County Attorney's Office
217 North 27th Street
Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: Penelope Strong
2517 Montana Avenue
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Raymond Kuntz III
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Brad L. Arndorfer

Arndorfer Law Firm
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5. *Opie, et al., v. Billings School District No. 2, et al.,* DV 2006-149, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied).

Counsel for Plaintiff: *Pro Se*

Counsel for Defendant: Harlan B. Krogh
2708 First Avenue North, Suite 300
Billings, Montana 59101
(406) 255-4000

Martha Sheehy
2822 Third Avenue North
Billings, Montana 59101
(406) 252-2004

Mary E. Duncan
Felt, Martin, Frazier & Weldon
208 North 28th Street, Suite 313
Billings, Montana 59101
(406) 248-7646

6. *State v. Ellison*, DC 2007-907, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2009 MT 408N, 222 P.3d 645 (Mont. 2009).

Counsel for Plaintiff: Yellowstone County Attorneys Office
217 North 27th Street
Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: Elizabeth J. Honaker
208 North 29th Street, Suite 206
Billings, Montana 59101
(406) 254-7172

7. *Williams v. Lowther Insurance Agency, Inc.*, DV 2005-615,Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2008 MT 46, 341 Mont. 394, 177 P.2d 1018 (Mont. 2008).

Counsel for Plaintiff: Phillip R. Oliver
208 North 29th Street, Suite 228
Billings, Montana 59101
(406) 248-7577

Counsel for Defendant: John Amsden
1946 Stadium Drive, Suite 1
Bozeman, Montana 59715
(406) 586-8700

8. *In re Billings High School District No. 2, Yellowstone County v. Billings Gazette, et al.*, DV 2004-1030, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2006 MT 329, 335 Mont. 94, 149 P.3d 565 (Mont. 2006).

Counsel for Plaintiff: Laurence R. Martin
Mary Duncan
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Counsel for Defendant: Martha Sheehy
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Richard A. Larson
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Helena, Montana 59624
(406) 449-3691

9. *State v. Coates*, DC 2000-0354, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2003 MT 196N, 77 P.3d 553, 2003 (Mont. 2003).

Counsel for Plaintiff: John Petak
Yellowstone County Attorney's Office
217 North 27th Street
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(406) 256-2870

Counsel for Defendant: Michael Klinkhammer
Klinkhammer Law Offices
1111 South Main

Kalispell, Montana 59901
(406) 545-5759

10. *State v. Ochadleus*, DC 2003-0094, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd*, 2005 MT 88, 326 Mont. 441, 110 P.3d 448 (Mont. 2005).

Counsel for Plaintiff:	Yellowstone County Attorney's Office 217 North 27th Street Billings, Montana 59101 (406) 256-2870
Counsel for Defendant:	Nancy G. Schwartz 303 North Broadway, Suite 600 Billings, Montana 59101 (406) 256-1982

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

State v. Fallsdown, DC 2001-0110 (copy supplied in response to question 13(c), *cert. denied*, 541 U.S. 1067, 124 S.Ct. 2397 (2004))

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.

Granbois v. Big Horn County Electric Cooperative, Inc., DV 1997-095, Thirteenth Judicial District Court of Montana, Big Horn County (copy supplied), *rev'd*, 1999 MT 222, 296 Mont. 45, 986 P.2d 1097 (Mont. 1999). The Cooperative does not allow multiple memberships at any single meter location where a current membership exists, so a prior membership must be terminated at the location before a new member may receive electric service at the location. I granted summary judgment to the Cooperative, concluding that the bylaw provision which restricts transfer of a membership to a new member until delinquent accounts are made current was reasonable as a matter of law. The Court concluded that the bylaw provisions at issue were unreasonable and reversed.

State v. O'Neill, DC 1997-554, Thirteenth Judicial District of Montana, Yellowstone County (copy supplied), *rev'd*, 1999 MT 224, 296 Mont. 71, 985 P.2d 154 (Mont. 1999). I allowed the State to file the charging documents (information), in District Court rather than Youth Court, without a hearing. The Court ruled that a hearing was required and reversed.

State v. Johnson, DC 1998-698, Thirteenth Judicial District of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2000 MT 122N, 2000 Mont. LEXIS 115 (Mont. 2000). I denied defendant's motion to suppress. The Court reversed and remanded, concluding that it was not inevitable that the contraband would have been found in the inventory search.

Decker Coal Company v. Department of Revenue of the State of Montana, et al., DV 1997-012, Thirteenth Judicial District of Montana, Big Horn County (copy supplied), *rev'd*, 2000 MT 125, 299 Mont. 477, 2 P.3d 245 (Mont. 2000). On a Petition for Judicial Review, I affirmed the State Tax Appeal Board's order assessing additional coal taxes against Decker based on the Department of Revenue's imputed price per ton of coal. The Court reversed, concluding that Decker's sale of coal to ComEd pursuant to a 1974 contract with pre-determined escalators is not representative of the market and economic conditions at the time of the sale and, thus, does not meet the controlling definition of market value.

State v. Hart, DC 1998-129, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part and rev'd in part*, 2000 MT 332, 303 Mont. 71, 15 P.3d 917 (Mont. 2000). The defendant appealed from his conviction and sentence for felony assault. The Court affirmed the conviction but struck the weapons enhancement.

In re the Marriage of Redenius, DR 1997-1013, 2000 Mont. Dist. LEXIS 2019, Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd in part, rev'd in part and remanded*, 2002 MT 57N, 309 Mont. 533, 43 P.3d 986 (Mont. 2000). The Court affirmed my rulings on three out of the five issues regarding division of the parties' marital estate. The Court remanded so I could make supplemental findings of fact and conclusions of law regarding the purchase of the parties' condominium and some premarital property.

Reff-Conlin's Inc., et al., v. Fireman's Fund Insurance Company, et al., DV 1997-0734, 2000 Mont. Dist. LEXIS 1741, Thirteenth Judicial District Court of Montana, Yellowstone County, *rev'd and remanded*, 2002 MT 60, 309 Mont. 533, 43 P.3d 986 (Mont. 2002). The Court concluded that I had erred when I denied Western's challenge to a juror based on the attorney-client privilege between the juror's employer and Conlin's trial counsel.

State v. Freshment, DC 1998-1049, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part and remanded*, 2002 MT 61, 309 Mont. 142, 45 P.3d 863 (Mont. 2002). The Court affirmed my decision denying defendant's motion to sever the charges and hold separate trials. The Court reversed my denial of defendant's challenge for cause of two prospective jurors, concluding that they had stated a bias related to a critical issue in the case, and remanded the case for retrial.

State v. Logan, DC 1998-923, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2002 MT 206, 311 Mont. 239, 53 P.3d 1285 (Mont. 2002). I denied defendant's motion to suppress. The Court reversed, concluding that exigent circumstances did not justify the officers' warrantless search of the purse and the car.

State v. Fields, DC 1998-925, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2002 MT 84, 309 Mont. 300, 46 P.3d 612 (Mont. 2002). I denied defendant's motion for a recess mid-trial to allow a second psychiatrist to appear to testify after the State objected to the delay and renewed its objection that the second psychiatrist's testimony would be cumulative. The Court reversed, concluding that the second psychiatrist should have been allowed to testify.

Watson v. State, DC 1995-372, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2002 MT 329, 313 Mont. 209, 61 P.3d 759 (Mont. 2002). I concluded Watson's petition for post-conviction relief had no merit and denied it without a hearing. The Court concluded a hearing was necessary and remanded accordingly.

Bradley v. Crow Tribe of Indians, DV 2000-0980, 2002 Mont. Dist. LEXIS 2745, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2003 MT 82, 315 Mont. 75, 67 P.3d 306 (Mont. 2003). *(Bradley I)* Stephen, a member of the Crow Tribe, brought an action for breach of contract against the Tribe. I dismissed the complaint for lack of jurisdiction, concluding that because neither party could produce a signed copy of the contract, the evidence was not sufficient to overcome the presumption against the Tribe's waiver of immunity from suit in state court. The Court reversed the dismissal, concluding the evidence established a contract between Stephen and the Tribe which included the unequivocal waiver of sovereign immunity.

State v. Smith, DC 2002-0958, 2003 Mont. Dist. LEXIS 2551, Thirteenth Judicial District Court of Montana, Yellowstone County, *rev'd*, 2004 MT 16N, 87 P.3d 1042 (Mont. 2004). The Court reversed one condition of probation restricting Smith.

In re the Marriage of Swanson, DR 2001-1203, 2003 Mont. Dist. LEXIS 2565, Thirteenth Judicial District Court of Montana, Yellowstone, *aff'd in part and rev'd in part*, 2004 MT 124, 321 Mont. 250, 90 P.3d 418 (Mont. 2004). The Court upheld my determination of the value and equitable distribution of the marital estate, my award of temporary maintenance to R.A., and my denial of attorney fees to R.A. The Court reversed solely on the issue of the methodology used to calculate how the ex-husband's pension and annuity plans should be distributed.

State v. Heath, DC 2000-0564, 2001 Mont. Dist. LEXIS 2638, Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd in part, rev'd in part and remanded*, 2004 MT 126, 321 Mont. 280, 90 P.3d 426 (Mont. 2004). The Court affirmed the imposition of the restitution obligation and the amount of restitution I ordered Heath to pay, but it reversed and remanded for an amendment to the judgment addressing the time and method of Heath's restitution payments.

Statev. Lucero, DC 2001-0309, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part and remanded*, 2004 MT 248, 323 Mont. 421, 97 P.3d 1106 (Mont. 2004). Lucero was convicted after a jury trial. He filed a pro se motion claiming his attorney had provided ineffective assistance. Following a hearing, I denied Lucero's ineffective assistance of counsel claims. He appealed his conviction and various probation conditions imposed. The Court upheld the conviction and sixteen of the probation conditions I imposed, but reversed four of the probation conditions. *Hi-Tech Motors, Inc., et al., v. Bombardier Motor Corporation of America*, DV 2002-795, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part and remanded*, 2005 MT 187, 328 Mont. 66, 117 P.3d 159 (Mont. 2005). The Court affirmed my ruling regarding subject matter jurisdiction, but reversed my grant of summary judgment to defendant, concluding that Hi-Tech was a franchise because it was substantially reliant on Bombardier.

State v. Samples, DC 2002-0590, 2003 Mont. Dist. LEXIS 2543, Thirteenth Judicial District Court of Montana, Yellowstone County, *rev'd and remanded*, 2005 MT 210, 328 Mont. 242, 119 P.3d 1191 (Mont. 2005). After Samples' lawyer refused to file a motion challenging the constitutionality of the ex post facto application of the law requiring sex offenders to register, I allowed Samples to file the motion pro se. I denied Samples' motion, substantively discussing and rejecting Samples' ex post facto argument. However, the motion he filed contained a number of additional arguments on other issues and, based upon the intended limited scope of the motion, I declined to consider these. The Court remanded the case for me to address these other arguments.

Bradley v. Crow Tribe of Indians, DV 2000-980, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2005 MT 309, 329 Mont. 448, 124 P.3d 1143 (Mont. 2005). *(Bradley II)* The Court reversed and remanded the case *(Bradley I)*, for further proceedings. I granted Bradley's motion for summary judgment on the grounds there were no material issues of fact. The Court reversed after determining that there were genuine issues of material fact as to whether the Tribe properly terminated Bradley, based on the ambiguous contract language, and as to the proper amount of damages.

State v. Harlson, DC 2003-709, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part and remanded*, 2006 MT 195N, 333 Mont. 551, 143 P.3d 703 (Mont. 2006). My written

judgment inadvertently included a conviction on a charge that I had dismissed. The Court remanded the case to me for the limited purpose of correcting the written judgment.

State v. Greeson, DC 2004-1028, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part and rev'd in part*, 2007 MT 23, 336 Mont. 1, 152 P.3d 695 (Mont. 2007). I sentenced Greeson to a probationary sentence and imposed numerous conditions. She appealed the constitutionality of the condition mandating that her home be open and available for her probation officer to visit and the condition restricting drug and alcohol use and imposing drug and alcohol testing. The Court affirmed me regarding the home visit condition, but reversed the probation condition restricting the use of alcohol.

Hajenga v. Schwein, DV 2002-662, 2004 Mont. Dist. LEXIS 3262, Thirteenth Judicial District Court of Montana, Yellowstone County, *rev'd*, 2007 MT 80, 336 Mont. 507, 155 P.3d 1241 (Mont. 2007). I granted summary judgment to defendant. The Court reversed, concluding there was a genuine issue of material fact regarding the insurance company's obligation to pay plaintiff's future medical expenses.

State v. Andersen-Conway, DC 2005-0495, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2007 MT 281, 339 Mont. 439, 171 P.3d 678 (Mont. 2007). The Court reversed, concluding that the defendant's probation could not be revoked based on a violation of conditions not contained in the stipulation that transferred this case from Youth Court to District Court.

Vettel-Becker v. Deaconess Medical Center of Billings, Inc. , DV 2002-1145, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2008 MT 51, 341 Mont. 435, 177 P.3d 1034 (Mont. 2008). I granted summary judgment to defendant on plaintiff's wrongful termination claims. The Court determined there were genuine issues of material fact precluding summary judgment on the claims and reversed.

State v. Rahn, DC 2004-157 and DC 2005-1148, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2008 MT 201, 334 Mont. 110, 187 P.3d 622 (Mont. 2008). I overruled defendant's objection that the State breached the plea agreement by offering the testimony of the second expert who had not evaluated defendant. The Montana Supreme Court reversed, concluding the State tried to convince me that the plea-bargained sentencing recommendation should not be accepted.

State v. Stiles, DC 2006-0252, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2008 MT 390, 347 Mont. 95, 197 P.3d 966 (Mont. 2008). Defendant was convicted after jury trial. I

sentenced him to a term in prison followed by probation. The Court reversed one of the probation conditions I imposed.

Statev. Samples, DC 2002-590, 2006 Mont. Dist. LEXIS 633, Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd in part, rev'd in part and remanded*, 2008 MT 416, 347 Mont. 292, 198 P.3d 803 (Mont. 2008). The Court affirmed Samples' conviction, which he challenged by raising constitutional issues regarding the Sexual and Violent Offender Registration Act (2001). The Court reversed and remanded the case back to me to hold a hearing to determine the appropriate sex offender level designation.

Montana Rail Link v. CUSA Parts, LLC, DV 2006-1286, Thirteenth Judicial District Court, Yellowstone County (copy supplied), *aff'd in part and rev'd in part*, 2009 MT 432, 354 Mont. 101, 222 P.3d 1021 (Mont. 2009). The Court reversed solely as to my ruling that Powder River musty indemnify Montana Rail Link for attorney fees, concluding their indemnity agreement and statute did not provide a basis for this award.

State v. Heafner, DV 2008-0563, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2010 MT 87, 356 Mont. 128, 231 P.3d 1087 (Mont. 2010). I sentenced defendant, including specific conditions of parole. The Court reversed the conditions of parole and the open-ended restitution for the victim's future medical expenses.

Griffin, et al., v. Moseley, DV 2006-457, Thirteenth Judicial District Court of Montana, Yellowstone County, (copy supplied), *rev'd and remanded*, 2010 MT 132, 356 Mont. 393, 234 P.3d 869 (Mont. 2010). I granted summary judgment to Mosely because Griffin did not have a qualified expert to testify as to the standard of care of a neurosurgeon. The Court reversed, concluding that Griffin's neuro-ophthalmologist was qualified.

Puget Sound Energy, Inc. v. State, Department of Revenue, DV 2009-1081, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd*, 2011 MT 141, 361 Mont. 39, 255 P.3d 171 (Mont. 2011). I ruled that the State Tax Appeal Board could not assess plaintiff's market value in excess of the Department of Revenue's original assessment. The Court reversed, concluding that the State Tax Appeals Board possessed the authority to assess a taxpayer's market value at 100% of market value, even if the assessment exceeds the Department of Revenue's original assessment.

Credit Service Co. v. Crasco, DV 2010-1373, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2011 MT 211, 361 Mont. 487, 264 P.3d 1061 (Mont. 2011). I ruled that a collection agency could charge bad check penalties for checks assigned to it from payday lenders. The Court reversed, concluding that a payday lender cannot assign greater rights to a collection agency than the payday lender itself can enforce.

Williamson, et al., v. Montana Public Service Commission, et al., DV 2010-1450, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part and remanded*, 2012 MT 32, 364 Mont. 128, 272 P.3d 71 (Mont. 2012). I affirmed the Public Service Commission's determination that plaintiffs were procedurally barred from amending their complaint. The Court reversed, concluding that the Public Service Commission's rationales for rejecting the amended complaint were incorrect.
The Northern Cheyenne Tribe Collectively v. The Roman Catholic Church, et al., DV 2005-286, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *aff'd in part, rev'd in part and remanded*, 2013 MT 24, 368 Mont. 330, 296 P.3d 450 (Mont. 2013). I granted summary judgment to defendants. The Court affirmed as to seven of the plaintiff's claims and reversed on plaintiff's unjust enrichment claim and constructive trust claim. The Court concluded that wrong-doing on the part of the defendant was not required for a claim of unjust enrichment in the context of an alleged constructive trust. The Court reversed and remanded my decision granting summary judgment to St. Labre regarding its fundraising activities prior to 2002 based upon the statute of limitations.

State v. Steglich, DC 2008-360, Thirteenth Judicial District Court of Montana, Yellowstone County (copy supplied), *rev'd and remanded*, 2009 MT 163, 350 Mont. 465, 208 P.3d 408 (Mont. 2009). Defendant was charged with negligent homicide and failure to stop or remain at the scene of an accident involving death or personal injury. I ruled that the statutes under which defendant was charged were unconstitutional on their face and as applied to the defendant. The Court reversed and remanded, concluding that the reasonableness determination required did not render the statutes vague on their face and that the statutes were not vague as applied to defendant because they provided actual notice to citizens of what conduct is prohibited and minimal guidelines to law enforcement.

State v. Jay, DC 2009-016, Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd in part, rev'd in part, and remanded*, 2013 MT 79, 369 Mont. 332, 298 P.3d 396 (Mont. 2013). The Court affirmed my decisions denying defendant's challenge to one juror for cause; excluding defendant's expert witness on complex partial seizures; and, denying defendant's request to instruct the jury on the charge of Driving Under the Influence of Alcohol as a lesser-included offense of Vehicular Homicide While Under the Influence. The Court reversed the award of restitution to the State of Montana and the open-ended restitution to the victims' family members. A copy of my opinion is supplied in response to 13(c).

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

As a judge for the Thirteenth Judicial District Court of Montana, none of my opinions are selected for publication in state reporters. Some are available on Lexis/Nexis. All reported and unreported opinions that I have issued are filed and stored in the Yellowstone County Clerk of Court's Office.

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

State v. Steglich, DC 2008-360, Thirteenth Judicial District of Montana, Yellowstone County, *rev'd and remanded*, 2009 MT 163, 350 Mont. 465, 208 P.3d 408 (Mont. 2009). A copy of my opinion is supplied in response to 13(f).

State v. Samples, DC 2002-590, 2003 Mont. Dist. LEXIS 2543 Thirteenth Judicial District Court of Montana, Yellowstone County, *aff'd in part, rev'd in part and remanded*, 2008 MT 416, 347 Mont. 292, 198 P.3d 803 (Mont. 2008).

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

As a judge for the Thirteenth Judicial District of Montana, I recuse myself as required by the 2008 Montana Code of Judicial Conduct, Rule 2.12, in cases where my impartiality might reasonably be questioned. Once a judge recuses from a case, the Court does not maintain any records of the recusals. However, I

was able to find the following hard copies of recusals in an office file that went back to 2008. A party has filed a motion to substitute me for cause only once during the last fifteen years. I have listed that case last in the list below. Because the orders of recusal do not state the specific reason for my recusing myself sua sponte, there are a few cases in the list below where I cannot remember the reason I recused myself. Three of the criminal cases were investigated by my husband, who has been employed by the Billings Police Department for over thirty-two years.

Mannion, et al., v. West, et al., DV 2005-1449, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because I know three of the four defendants professionally or socially.

Bland v. Billings Clinic, DV 2007-076, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte. I do not remember the specific reason why.

Cleveland v. Interstate Brands Corporation, Inc., et al., DV 2007-1298, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte. I do not remember the specific reason why.

Bechtold v. City of Billings Police Department, et al., DV 2008-0664, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because my husband and plaintiff are both employed by the City of Billings Police Department and I have known the Chief of Police for over twenty years.

Pennington, et al. v. The Travelers Indemnity Company, et al., DV 2009-0712, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because one of the plaintiffs' attorneys, Randall L. Bishop, is representing my husband in a pending lawsuit.

Ronning, et al. v. Yellowstone County, et al., DV 2010-0549, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because plaintiffs were challenging the plea agreement in the related criminal case, over which I presided.

Ellison v. State of Montana, DV 2011-0306, Thirteenth Judicial District Court of Montana, Yellowstone County. This case is a post-conviction relief case. I recused myself sua sponte to avoid the appearance of impropriety or bias against the defendant because I had presided over the original criminal case.

Ross, et al., v. Wilson, et al., DV 2012-0867, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because I know one of the plaintiffs.

State of Montana v. Sanders, DC 2008-0414, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because I prosecuted the defendant when I was a Deputy Yellowstone County Attorney.

State of Montana v. Trusty, DC 2008-0465, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because my husband was the Billings Police Detective who investigated the case and was, therefore, a witness in the case.

State v. Lambert, DC 2009-0123, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because my husband was the Billings Police Detective who investigated the case and was, therefore, a witness in the case.

State of Montana v. Robson, DC 2012-0496, Thirteenth Judicial District Court of Montana, Yellowstone County. I recused myself sua sponte because my husband was the Billings Police Detective who investigated the case and was, therefore, a witness in the case.

Harper v. Harper, DR 2009-084, Thirteenth Judicial District Court of Montana, Yellowstone County. This is a dissolution of marriage case. I recused myself sua sponte because I am friends with the plaintiff.

Treu v. Morgan, DR 2010-0910, Thirteenth Judicial District Court of Montana, Yellowstone County. This is a dissolution of marriage case. I recused myself sua sponte; however, I cannot remember why.

Dahl v. Dahl, DR 2011-0810, Thirteenth Judicial District Court of Montana, Yellowstone County. This is a dissolution of marriage case. I recused myself sua sponte because I am friends with the plaintiff.

Bechtold v. Bechtold, DR 2011-1327, Thirteenth Judicial District Court of Montana, Yellowstone County. This is a dissolution of marriage case. I recused myself sua sponte because the Respondent is my husband's co-employee at the Billings Police Department.

Nance v. Eaton, DF 2012-002, Thirteenth Judicial District Court of Montana, Yellowstone County. This is a paternity and parenting plan case. I recused myself sua sponte because I know the petitioner.

State of Montana v. Patrick, DC 2005-0438, Thirteenth Judicial District Court of Montana, Yellowstone County. Just before the trial, the defendant moved to have me substituted for cause. He alleged I was biased against him. A judge was called in from another district to preside over the hearing on the defendant's motion to substitute me for cause. The judge denied the motion and I continued on the case.

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

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

I have not held public office other than judicial offices. In 1994, I unsuccessfully ran for Yellowstone County Attorney, Yellowstone County, Montana.

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 any 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 August 1988 to November 1989, I served as a law clerk to Judge Diane G. Barz, District Judge, Thirteenth Judicial District of Montana.

From November 1989 to December 1989, I served as a law clerk to Judge Maurice Colberg, District Judge, Thirteenth Judicial District of Montana.

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

1995 – 1996
Watters Law Firm
301 North 27th Street
Billings, Montana 59101
Sole 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.

1989 – 1995
Yellowstone County Attorney's Office
Yellowstone County Courthouse
217 North 27th Street
Billings, Montana 59101
Deputy County Attorney

1995 – 1996
Watters Law Firm
301 North 27th Street
Billings, Montana 59101
Sole Practitioner

1996 – 1998
Hendrickson, Everson, Noennig & Woodward, P.C.
208 North Broadway, Suite 324
Billings, Montana 59103
Senior Associate

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 1989 to 1995, I was a deputy county attorney for the Yellowstone County Attorney's Office. While there, I had responsibilities for a broad variety of criminal and civil cases. From 1989 to 1990, I was assigned to the Yellowstone County Justice Court prosecuting misdemeanor criminal cases. From 1990 to 1991, I was assigned to prosecute abuse and neglect cases at the district court level, which required me to work closely with and advise the Department of Health and Human Services, Child Protection Services Division. I was also assigned to prosecute juveniles who were charged with misdemeanors and felonies in Youth Court during this time period. From 1990 to 1994, I was assigned as the drug prosecutor to prosecute felony drug cases. I prosecuted all types of felony drug cases from possession to sale to manufacture of dangerous drugs, particularly methamphetamine and marijuana. Beginning in 1991, I also prosecuted felony criminal cases in district court. I prosecuted all types of

felony criminal cases, including sex offenses and homicides. From 1994 to 1995, I transferred to the civil division of the office, where I represented Yellowstone County in suits filed against the County.

From 1995 to 1996 I was a sole practitioner. I represented criminal defendants on misdemeanor and felony charges filed in Big Horn County, Montana and in federal court in the United States District Court for the District of Montana. I also represented clients in dissolution of marriage cases and personal injury cases.

From 1996 to 1998, I was a senior associate at the Hendrickson law firm. I represented criminal defendants in federal court in the United States District Court for the District of Montana and in the Thirteenth Judicial District Court of Montana, Yellowstone County. I represented clients in dissolution of marriage cases and personal injury cases.

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

As a deputy county attorney for the Yellowstone County Attorney's Office, my client was Yellowstone County.

My typical clients when I was in private practice were criminal defendants, individuals seeking dissolution of their marriages or parenting plans, or personal injury clients. I have never specialized in any area of the 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.

Approximately 100% of my practice was in litigation. I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record: 80%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried several hundred cases to verdict, judgment or final decision in the ten years prior to taking the state court bench. I would have been sole counsel on most of them, but I would have been second chair on some of the jury trials.

i. What percentage of these trials were:
   1. jury: 25%
   2. non-jury: 75%

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

I 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. *State v. Soraich*, DC 1996-0065, Thirteenth Judicial District Court of Montana, Yellowstone County, 2003 ML 2032, 2003 Mont. Dist. LEXIS 2560. Defendant was charged with deliberate homicide for the point-blank shooting death of the victim. Mr. Woodward and I represented the defendant. The defendant was convicted by the jury after seven days of trial. I participated in all aspects of the trial preparation and the jury trial, and I handled the sentencing hearing. Honorable Maurice R. Colberg, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Plaintiff: Joe Cobel
David Legare
Yellowstone County Attorney's Office
217 North 27th Street

Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: Vernon E. Woodward
49 North 15th Street, Suite 1
Billings, Montana 59101
(406) 294-5585

2. *State v. Losson*, DC 1991-0140, Thirteenth Judicial District Court of Montana, Yellowstone County. Defendant was charged with deliberate homicide for the shooting death of her husband. She raised the defense of spousal abuse. I prosecuted the case with Mr. Paxinos. The defendant was convicted by the jury. I participated in all aspects of trial preparation and trial. Honorable G. Todd Baugh, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Plaintiff: Dennis Paxinos (retired)

Counsel for Defendant: Michael Eislein
401 North 31st Street #950
Billings, Montana 59103
(406) 252-3461

Arthur J. Thompson (retired)

3. *Haughton v. Haughton*, DV 1996-590, Thirteenth Judicial District Court of Montana, Yellowstone County. This was a dissolution case involving a large marital estate with numerous oil and gas interests. It required the testimony of a number of expert witnesses regarding the valuation of the marital estate. In addition, the respondent attempted to raise marital misconduct on behalf of the plaintiff despite the fact that Montana is a no-fault divorce state. There were also custody issues involved. Mr. Woodward originally took the case into our firm, but turned it over to me. I represented the petitioner and handled all trial preparation, pre-trial hearings, and ultimately the bench trial. I prevailed on behalf of my client. Honorable Russell C. Fagg, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Petitioner: Vernon E. Woodward
49 North 15th Street, Suite 1
Billings, Montana 59101
(406) 294-5585

Counsel for Respondent: Donald L. Harris
404 North 31st Street, Suite 410
Billings, Montana 59101
(406) 294-2000

4. *United States v. Boxer*, CR-95-101-BLG-JDS, United States District Court for the District of Montana, Billings. Defendant was charged with assaulting two men with a shotgun. I was attorney of record and represented the defendant throughout the case, including in the jury trial in federal court and at sentencing. He was convicted by the jury. Honorable Jack Shanstrom, United State District Court of Montana, Billings Division.

Counsel for United States: Klaus Richter (retired)

5. *State v. Williams*, DC 1990-0432, Thirteenth Judicial District Court of Montana, Yellowstone County. Defendant was charged with deliberate homicide. Daniel Schwarz and I prosecuted the defendant. The defendant was convicted at jury trial. I participated in all aspects of the trial preparation and the jury trial. Honorable Russell C. Fagg, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Plaintiff: Daniel Schwarz
Yellowstone County Attorney's Office
217 North 27th Street
Billings, Montana 59101
(406) 256-2870

Counsel for Defendant: Gary Wilcox
207 North Broadway, Suite 414
Billings, Montana 59101
(406) 245-1559

Arthur J. Thompson (retired)

6. *State v. Smith*, DC 1993-0275, Thirteenth Judicial District Court of Montana, Yellowstone County. Defendant was charged with criminal possession of dangerous drugs, felony. I prosecuted the defendant on behalf of the State. The defendant was convicted at jury trial. I participated in all aspects of the trial preparation and the jury trial. Honorable Robert W. Holmstrom, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Defendant: Curtis Bevolden
210 North 27th Street
Billings, Montana 59101
(406) 657-8205

7. *State v. Daniels*, DC 1990-0444, Thirteenth Judicial District Court of Montana, Yellowstone County. The defendant was charged with growing a large number of marijuana plants in his up-scale home. I prosecuted the defendant on behalf of the State. The defendant eventually pled guilty. Honorable William J. Speare, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Defendant: Jay Lansing
175 North 27th Street, Suite 1202
Billings, Montana 59101
(406) 248-7702

8. *State v. Heath*, DC 1991-453 and DC 1991-454, Thirteenth Judicial District Court of Montana, Yellowstone County. The defendant was charged with criminal sale of dangerous drugs. I prosecuted the defendant on behalf of the State. The defendant pled guilty to the charge. Honorable William J. Speare, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Defendant: John L. Adams, Jr. (deceased)

9. *State v. Leake*, DC 1991-087, Thirteenth Judicial District Court of Montana, Yellowstone County. The defendant was charged with growing a large number of marijuana plants. I prosecuted the defendant on behalf of the State. The defendant pled guilty to the charge. Honorable G. Todd Baugh, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Defendant: Joseph Zavaletta
P.O. Box 128
Sweet, Idaho 83670
(208) 283-6683

10. *State v. Thompson*, DC 1991-351, Thirteenth Judicial District Court of Montana, Yellowstone County. The defendant was charged with criminal possession of dangerous drugs, felony. I prosecuted the defendant on behalf of the State. The defendant pled guilty to the charge. Honorable William J. Speare, Thirteenth Judicial District Court of Montana, Yellowstone County.

Counsel for Defendant: Arthur J. Thompson (retired)

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 started the Yellowstone County Family Drug Treatment Court in June 2001. It was the first family drug court in Montana, and it subsequently served as a model court for family drug courts around the nation. Participants in the family drug court are involved in pending abuse and neglect cases in the District and have had their children removed by the Department of Public Health and Human Services, Child Protective Services, because of abuse and/or neglect primarily related to the participant's abuse of drugs and/or

alcohol. The court was initially funded by federal grant money, but it is now part of a Montana legislative appropriation. The legislators recognized the tremendous value of the court for families involved with the Department. The legislators also recognized the cost-savings the court provided through, among other things, reduced time for children in foster care and the reduced number of parental rights termination cases.

I have never performed lobbying activities on behalf of clients or organizations.

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

    In May 2010, I volunteered to participate in the University of Montana School Of Law Advanced Trial Advocacy Program. This course was designed to teach trial procedure and practice to third year law students and new practitioners. The format was one of lectures by instructors brought in by the law school and various teams who worked with small groups of participants. I was a member of one of these teams. A copy of the syllabus is supplied.

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

    I have a deferred compensation account with the State of Montana, my current employer, with a balance of approximately $23,000. This account has already vested.

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.

       I am not aware of any potential conflicts of interest. If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

       If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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

    For the last fifteen years, I have been a judge. I am prevented from practicing law and, therefore, cannot provide pro bono services. However, in addition to my service with the Yellowstone County Family Drug Treatment Court, I have volunteered to serve my community over the years.

    For example, I have volunteered for the National Adoption Day for the last three years. This is a day that celebrates the families who adopt children, the adoptees, and the parents who recognize that it is in their children's best interests to relinquish their parental rights and place the children for adoption.

    I volunteered to participate in the "Read with Me" program, which encouraged parents to read to their children twenty minutes a day in approximately 2004.

    I have also volunteered to be one of the judges at various functions. For example, I was a volunteer judge for the state debate competitions at Billings West High School in

approximately 2001 and 2002. I also volunteered to be one of the judges at the local science fairs in approximately 2000 and 2001.

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 approximately December 18, 2012, I submitted a cover letter, resume, and references to Senator Max Baucus's office in Washington, DC. On January 22, 2013, I was notified by Senator Baucus's staff that the selection committee appointed by the Senator to consider applicants for the judicial vacancies in Montana had recommended me for further consideration. On February 3, 2013, I interviewed with Senator Baucus in Helena, Montana. On March 11, 2013, Senator Baucus called me to inform me that he would be recommending me to the White House for the U.S. District Judge position in Billings, Montana. Since March 12, 2013, I have been in contact with officials from the Office of Legal Policy at the U.S. Department of Justice. On April 15, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 23, 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
Watters, Susan P.	United States District Judge for the District of Montana	05/23/2013
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
United States District Judge - Active	☑ Nomination Date 05/23/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/17/2013
7. Chambers or Office Address		
Yellowstone County Courthouse 217 North 27th Street Billings, Montana 59101		

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.	Montana State District Judge	State of Montana
2.		
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	1998	Montana Judges Retirement Pension Plan - no control
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Watters, Susan P.	Date of Report 05/23/2013

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	State of Montana - salary	$101,967.00
2. 2012	State of Montana - salary	$105,606.00
3. 2013	State of Montana - salary	$47,481.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2012	City of Billings - salary
2. 2013	City of Billings - salary
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Watters, Susan P.	Date of Report 05/23/2013

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
Watters, Susan P.	05/23/2013

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. Montana Fixed Fund	A	Interest	K	T	Exempt				
2. Rimrock Credit Union - Account	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
Watters, Susan P.	05/23/2013

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Watters, Susan P.	Date of Report 05/23/2013

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/ Susan P. Watters

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		9	500	Notes payable to banks-secured (auto)		23	200
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		23	221	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		6	100
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		268	792
Real estate owned – personal residence		370	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		200	000				
Cash value-life insurance							
Other assets itemize:							
Montana Judges' Retirement System		114	148				
Montana MPORS retirement plan		174	737				
				Total liabilities		298	092
				Net Worth		593	514
Total Assets		891	606	Total liabilities and net worth		891	606
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

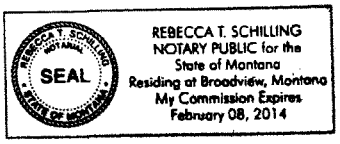
Listed Securities	
Montana Fixed Fund	$ 23,221
Total Listed Securities	$ 23,221

AFFIDAVIT

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

May 24, 2013
(DATE)

Susan P. Watters
(NAME)



Rebecca T. Schilling
(NOTARY)

Senator BLUMENTHAL. Thank you.
Mr. Meyer.

STATEMENT OF JEFFREY ALKER MEYER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT

Mr. MEYER. Thank you, Senator. It is a particular honor to appear before you as Chairman in light of your remarkable career as perhaps Connecticut's foremost attorney in the practice and in the intellectual sphere in Connecticut before your Senate career and continuing.

I am also very thankful to the Ranking Member, Senator Grassley, and to the entire Committee as well as to President Obama and for the faith that he has put into me in nominating me for this position.

I have had so much support from family members. I have six brothers and sisters who have settled all across the United States. Some of my family have been able to come here, as well as two of my students and other supporters that I have had at both Quinnipiac and Yale Law Schools.

As Senator Murphy indicated and you indicated, Mr. Chairman, my father, State Senator Ed Meyer, was able to come here. My mother could not be here, but my father has been just a great inspiration for me, especially as a lawyer, practicing lawyer, former Assistant U.S. Attorney, a legislator in both the States of New York and Connecticut in the area of public service.

I am also joined by my daughter, Cara Meyer, a gifted chorale singer and now about to start her freshman year at Yale College; and my son, Zane Meyer, who is a gifted tap dancer, and he is about to start his freshman year of high school.

And, finally, I would be remiss if I did not mention the love of my life, Linda Ross Meyer, who has joined me here today as well. Linda hails originally from Kansas, and she and I actually first met just across the street over at the U.S. Supreme Court when she was clerking for Justice Sandra Day O'Connor and I was clerking for Justice Blackmun. Today, July 24, marks our 20th wedding anniversary, so it is especially an honor to be here.

Senator BLUMENTHAL. We are sorry to interfere with that important date.

[Laughter.]

Mr. MEYER. Thank you.

Senator BLUMENTHAL. But it will be memorable. And thank you for your kind words.

[The biographical information of Mr. Meyer follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jeffrey Alker Meyer

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

   United States District Judge for the District of Connecticut

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.

   Quinnipiac University School of Law
   275 Mt. Carmel Avenue – #LL339
   Hamden, Connecticut 06518

   Yale Law School
   127 Wall Street – #J23
   New Haven, Connecticut 06520

   Residence: Branford, Connecticut

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

   1963; North Tarrytown, 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.

   1986 – 1989, Yale Law School; J.D., 1989.

   1981 – 1985, Yale College; B.A. (*summa cum laude*), 1985.

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

2010 – Present
Yale Law School Supreme Court Advocacy Clinic
127 Wall Street
New Haven, Connecticut 06520
Visiting Professor of Law

2006 – Present
Quinnipiac University School of Law
275 Mt. Carmel Avenue
Hamden, Connecticut 06518
Associate Professor of Law (2006 – 2010)
Professor of Law (2010 – Present)

Summer 2007
The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
Editor and Counsel to Independent Panel Review of the World Bank Department of Institutional Accountability (paid as independent contractor)

2004 – 2005
Independent Inquiry Committee into the United Nations Oil-for-Food Program in Iraq
825 Third Avenue, 15th Floor
New York, New York 10022
Senior Counsel

1998 – 2004
Yale Law School
127 Wall Street
New Haven, Connecticut 06520
Clinical Visiting Lecturer in Law (Prosecution Externship)

1995 – 2004
U.S. Attorney's Office for the District of Connecticut
157 Church Street
New Haven, Connecticut 06510
Appeals Chief (2000 – 2004)
Assistant U.S. Attorney (1995 – 2004)

1993 – 1995
Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC
(formerly Kellogg, Huber, Hansen & Todd LLP)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Associate

1993
Shearman & Sterling LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Associate

1992 – 1993
Vermont Legal Aid, Inc.
Mental Health Law Project
Waterbury State Hospital
103 South Main Street
Waterbury, Vermont 05676
Staff Attorney (temporary contract)

1991 – 1992
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543
Law Clerk to Associate Justice Harry A. Blackmun

1990 – 1991
Shearman & Sterling LLP
Four Embarcadero Center, Suite 3800
San Francisco, California 94111
Associate

1990
United States Court of Appeals for the Eighth Circuit
111 South 18th Plaza
Omaha, Nebraska 68102
Law Clerk (temporary) to Judge Donald R. Ross

1989 – 1990
United States Court of Appeals for the Second Circuit
Main Street
Brattleboro, Vermont 05301
Law Clerk to Chief Judge James L. Oakes

Summer 1988
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Summer Associate

Summer 1988
U.S. Department of State
Office of the Legal Adviser
2201 C Street, N.W.
Washington, D.C. 20520
Summer Law Clerk

Summer 1987
Shartsis, Friese LLP
(formerly Shartsis, Friese & Ginsburg LLP)
One Maritime Plaza, 18th Floor
San Francisco, California 94111
Summer Associate

Summer 1987
Morris, Nichols, Arsht & Tunnell
1201 North Market Street, Suite 1800
Wilmington, Delaware 19801
Summer Associate

Summer 1985
Roy Rogers Restaurant
3 Penn Center
Philadelphia, Pennsylvania 19102
Cook, cashier

Other Affiliations (Uncompensated):

2010 – Present
Timberledge Corporation
Plummer School Road
Sweden, Maine 04040
Director and Secretary (summer rental cabins on pond in Maine)

2008 – 2010
Chilmark Associates ("Barn House")
451 South Road
Chilmark, Massachusetts 02535
Board of Trustees (summer cabins in Martha's Vineyard)

1994 – Present
Harry A. Blackmun Scholarship Foundation
c/o William A. McDaniel
118 West Mulberry Street
Baltimore, Maryland 21201
Director

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

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

   Connecticut Bar Foundation, James W. Cooper Fellow (2010 – Present)

   Quinnipiac University Excellence in Teaching Award (2010)

   Yale/Stanford Junior Faculty Forum for article: "Dual Illegality and Geoambiguous Law" (2010)

   Executive Office of U.S. Attorney's Director's Award for Superior Performance as an Assistant U.S. Attorney (1999 and 2002)

   Articles Editor, Yale Law and Policy Review (1988 – 1989)

   Elm-Ivy Award from City of New Haven for services to the community as a student director of the Yale Law School's homelessness clinic (1989)

   Thomas I. Emerson Prize from Yale Law School for distinguished paper on a subject related to legislation: "Establishing a Right to Shelter: Lessons from Connecticut" (1989)

   Fulbright Scholarship, rural development economics (Ecuador, 1985 –1986)

   John Addison Porter Prize from the Yale University History Department for outstanding undergraduate essay in American history: "Politics and Planning: Public Housing in Mount Vernon, New York" (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.

   Advisory Committee for Selection of the Connecticut Federal Public Defender (2011)

   Connecticut Bar Association (Federal Practice and Criminal Law Sections)

   Connecticut Judicial Ethics Committee (2008 – Present)

Independent Accountability Panel, City of New Haven, Connecticut (co-chair for panel advising mayor of City of New Haven on reform of police department) (2007 – 2008)

Supreme Court Historical Society

10. **Bar and Court Admission**:

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

Connecticut, 1989
New York, 1990

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, 2010
United States Court of Appeals for the Second Circuit, 1995 (inactive from July 2004 to May 2007 and from May 2012 to May 2013)
United States District Court for the District of Connecticut, 1995
United States District Court for the Northern District of California, 1991

Other than the inactive periods noted above, 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.

Chilmark Associates (summer cabin property in Martha's Vineyard)
Board of Trustees (2008 – 2010)

Guilford Racquet & Swim Club (2012 – Present)

Harry A. Blackmun Scholarship Foundation
Director (1994 – Present)

New Haven Lawn Club (2003 – 2007)

Ridge Top Club (2000 – 2003)

Timberledge Corporation (summer rental cabins on pond in Maine)
Director and Secretary (2010 – 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 question 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

Extraterritorial Common Law: Does the Common Law Apply Abroad? 102 GEO. L.J. __ (forthcoming 2013). Copy supplied.

Will Privacy Go to the Dogs? N.Y. TIMES, Oct. 16, 2012. Copy supplied.

Terrorism and Territoriality – Ten Years After 9/11, CONN. L. TRIB., Sept. 12, 2011. Copy supplied.

A Question of Contempt and Consequences, CONN. L. TRIB., Oct. 11, 2010. Copy supplied.

Commerce Clause Stretched in Sex Crimes Prosecution, CONN. L. TRIB., May 10, 2010. Copy supplied.

Equity, a Mayor, and an Empty Chair, CONN. L. TRIB., Mar. 29, 2010. Copy supplied.

Federal Safety Penalty 'Feeble', HARTFORD COURANT, Mar. 14, 2010. Copy supplied.

Dual Illegality and Geoambiguous Law: A New Rule for Extraterritorial Application of U.S. Law, 95 MINN. L. REV. 110 (2010). Copy supplied.

Racial Profiling In State – Lift Rug, Sweep Under, CONN. L. TRIB., Aug. 24, 2009. Copy supplied.

It's Time to Come Clean, NAT'L L.J., Apr. 13, 2009. Copy supplied.

Second Thoughts on Secondary Sanctions, 30 U. PENN. J. INT'L. L. 905 (2009). Copy supplied.

Letter to the Editor (re pirates), WALL ST. J., Nov. 24, 2008. Copy supplied.

Authentically Innocent: Juries and Federal Regulatory Crimes, 59 HASTINGS L.J. 137 (2007). Copy supplied.

Abolish Parole, N.Y. TIMES, Oct. 28, 2007 (with Linda Ross Meyer). Copy supplied.

Letter to the Editor (re Alien Tort Statute suits), WALL ST. J., Mar. 13, 2007. Copy supplied.

All Prosecution Is Local, N.Y. TIMES, Mar. 4, 2007 (with Linda Ross Meyer). Copy supplied.

Should All Confessions Be On Tape? HARTFORD COURANT, Dec. 22, 2006. Copy supplied.

Cleanupticut, N.Y. TIMES, Oct. 1, 2006. Copy supplied.

Stakes Are High as U.S. Supreme Court Takes on Abortion Case, NEW HAVEN REGISTER, Mar. 5, 2006. Copy supplied.

GOOD INTENTIONS CORRUPTED: THE OIL-FOR-FOOD SCANDAL AND THE THREAT TO THE U.N. (Public Affairs Books 2006) (with Mark G. Califano and Paul A. Volcker). Copy supplied.

Letter to the Editor (re AIDS cases), N.Y. TIMES, Nov. 3, 1995. Copy supplied.

Letter to the Editor (re Thurgood Marshall papers), WASH. POST, June 2, 1993 (with Linda Ross Meyer). Copy supplied.

Letter to the Editor (re double jeopardy), N.Y. TIMES, Apr. 19, 1993. Copy supplied.

The Homeless: Society Can Be a Cruel Landlord, HARTFORD COURANT, Apr. 1, 1990 (with Ronald Apter). Copy supplied.

Establishing a Right to Shelter: Lessons from Connecticut, 11 U. BRIDGEPORT L. REV. 1 (1990). Copy supplied.

Congressional Control of Foreign Assistance, 13 YALE J. INT'L L. 69 (1988). Copy supplied.

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

State of Connecticut Judicial Branch, Committee on Judicial Ethics, *Advisory Opinions* (2008 – 2013), available at http://www.jud.ct.gov/committees/ethics/.

Comments of Independent Accountability Panel to Police Executive Research Forum (PERF) Recommendations (Oct. 19, 2007). Copy supplied.

Report of the Independent Panel Review of the World Bank Group Department of Institutional Integrity (Sept. 13, 2007). Copy supplied.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Report on the Manipulation of the Oil-For-Food Programme by the Iraqi Regime (Oct. 27, 2005), available at http://www.iic-offp.org/story27oct05.htm.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Report on the Management of the Oil-for-Food Programme (Sept. 7, 2005), available at http://www.iic-offp.org/Mgmt_Report.htm.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Third Interim Report (Aug. 8, 2005), available at http://www.iic-offp.org/documents/Third%20Interim%20Report.pdf.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Second Interim Report (Mar. 29, 2005), available at http://www.iic-offp.org/documents/InterimReportMar2005.pdf.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Interim Report (Feb. 3, 2005), available at http://www.iic-offp.org/documents/InterimReportFeb2005.pdf.

Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Briefing Paper (Oct. 21, 2004), available at http://www.iic-offp.org/documents/Briefing%20Paper21October04.pdf.

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.

Joint letter of Connecticut professors to Connecticut General Assembly Judiciary Committee in support of reform of Connecticut's juvenile sentencing laws (Mar. 11, 2013). Copy supplied.

Memorandum in Support of Legislative Proposal of Dr. William A. Petit, Jr., to Clarify the Right of Surviving Family Members to Present Victim Impact Statements in Capital Murder Cases (Dec. 24, 2010) (memorandum prepared in connection with joint legislative testimony before the Connecticut General Assembly Judiciary Committee of Dr. William A. Petit, Jr., and me on March 7, 2011). Dr. Petit's testimony, my accompanying legal memorandum, and hearing transcript supplied.

Joint letter of former Assistant U.S. Attorneys to Senate Judiciary Committee in support of nomination of Judge Robert N. Chatigny to the United States Court of Appeals for the Second Circuit (Apr. 27, 2010). Copy supplied.

Co-signatory to Brief of Law Professors as *Amici Curiae* in Support of Petition for Writ of Certiorari in *British American Tobacco (Investments) Limited v. United States*, No. 09-980 (Mar. 24, 2010). Copy supplied.

Joint letter of Connecticut professors to Gov. Jodi Rell and Members of the Connecticut General Assembly in support of repeal of Connecticut death penalty (approx. April 7, 2008). I am not certain that this letter was ever transmitted. 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 listed below all speeches or talks that I can recall giving and based on review of my files and Internet searches, but I cannot be certain that I have found every speech or talk that I have ever given. Although I believe I appeared as a law school class guest from time to time while I served as an Assistant U.S. Attorney (from 1995 to 2004), I have no specific recollection of any dates or topics of such appearances.

September 27, 2012: Panelist, "Supreme Court Preview," Quinnipiac University School of Law, Federalist Society, Hamden, CT. I described the context and legal questions posed in several pending Supreme Court cases. I have no notes, transcript, or recording. The address of the organization is: Quinnipiac University School of Law Federalist Society, 275 Mt. Carmel Avenue, Hamden, CT 06518.

September 17, 2012: Guest class lecturer, "International Jurisdiction," Quinnipiac University School of Law, Hamden, CT. Powerpoint supplied.

April 11, 2012: Guest class lecturer, "Extraterritorial Habeas Corpus," Quinnipiac University School of Law, Hamden, CT. Powerpoint supplied.

February 27, 2012: Guest speaker, "Federal/State Criminal Justice Disparities: Examples/Lessons from Connecticut," Yale Law School, Federalist Society, New Haven, CT. Powerpoint supplied.

February 25, 2012: Panelist for workshop on criminal environmental enforcement at conference: "New Directions in Environmental Law: [Re]Claiming Accountability," Yale School of Forestry, New Haven, CT. Powerpoint supplied.

January 11, 2012: Co-presenter, "Key Developments in Criminal White Collar Matters in the Second Circuit and the Supreme Court," Connecticut Bar Association Federal Practice Section, New Haven, CT. Powerpoint and notes supplied.

October 4, 2011: Panelist, "Representing Justice," Quinnipiac University School of Law, Hamden, CT. Powerpoint and notes supplied.

October 3, 2011: Panelist, "Supreme Court Preview," Quinnipiac University School of Law, Federalist Society, Hamden, CT. I described the context and legal questions posed in several pending Supreme Court cases. I have no notes, transcript, or recording. The address of the organization is: Quinnipiac University School of Law Federalist Society, 275 Mt. Carmel Avenue, Hamden, CT 06518.

September 9, 2011: Guest lecture, "Terrorism and Territoriality," United States Attorney's Office, New Haven, CT. Powerpoint supplied.

September 8, 2011: Panelist, "International Law and Homeland Security," Quinnipiac University, Hamden, CT. Video available at http://www.youtube.com/watch?v=1WE0jyNBL4Y.

February 18, 2011: Conference panelist, "Coming to America: The Legal Challenges of Immigration," Quinnipiac University School of Law, Hamden, CT. Video available at http://www.youtube.com/watch?v=7tGZYZik1sU.

February 15, 2011: Guest lecture, "Dual Illegality and Geoambiguous Law," Quinnipiac University School of Law, Hamden, CT. Powerpoint supplied.

January 28, 2011: Introductory remarks, "Juries and Justice," Quinnipiac University School of Law, Hamden, CT. Video available at https://sites.google.com/site/juriesandjustice/.

November 12, 2010: Panelist, "Dual Illegality and Geoambiguous Law," Southwestern Law School, Los Angeles, CA. I spoke concerning my forthcoming article: *Dual Illegality and Geoambiguous Law: A New Rule for Extraterritorial Application of U.S. Law*, 95 MINN. L. REV. 110 (2010). I have no notes, transcript, or recording. The address of the organization is: Southwestern Law School, 3050 Wilshire Boulevard, Los Angeles, CA 90010.

October 19, 2010: Panelist at a forum at Yale Law School arising from controversy concerning the arrest of students who sought to video record the police in the course of their duties, New Haven, CT. I have no notes, transcript, or recording, but press coverage is supplied. The address of the organization is: Yale Law School, 127 Wall Street, New Haven, CT 06520.

May 21, 2010: Panelist, "The Banana DBCP/Nemagon Cases," Quinnipiac University International Human Rights Law Society forum in Chinandega, Nicaragua. Powerpoint supplied.

February 19, 2010: Closing remarks, conference: "Building Up or Breaking Down: The Direction of Nuclear Non-Proliferation," Quinnipiac University School of Law, International Human Rights Law Society and the Albert Schweitzer Institution at Quinnipiac University, Hamden, CT. Video available at http://www.youtube.com/watch?feature=player_embedded&v=Lq_rCdInLm8#!.

December 12, 2008: Co-participant in panel at the United States Attorney's Office in New Haven, Connecticut about fraud and corruption in the UN Oil-for-Food Program. I have no notes, transcript, or recording. The address of the organization is: United States Attorney's Office, 157 Church Street, New Haven, CT 06510.

March 5, 2008: Panelist, "Racial Profiling," Quinnipiac University School of Law, American Constitution Society, Hamden, CT. I believe I spoke concerning the lack of enforcement of Connecticut's law requiring police to report data concerning police stops. I have no notes, transcript, or recording. The address of the organization is: Quinnipiac University School of Law, 275 Mt. Carmel Avenue, Hamden, CT 06518.

February 29, 2008: Panelist, "Trade Sanctions in a 21st Century Economy," University of Pennsylvania School of Law, Philadelphia, PA. I spoke on the subject of the sanctions related to the Oil-for-Food Program in Iraq and about the jurisdictional legality of so-called "secondary sanctions." I have no notes, transcript, or recording. The address of the organization is: University of Pennsylvania School of Law, 3501 Sansom Street, Philadelphia, PA 19104.

November 15, 2007: Moderator for a forum on human trafficking at Quinnipiac University School of Law, Hamden, CT. I have no notes, transcript, or recording. The address of the organization is: Quinnipiac University School of Law, 275 Mt. Carmel Avenue, Hamden, CT 06518.

November 2, 2007: Guest faculty presentation, "Authentically Innocent: Juries and Federal Regulatory Crimes," Vermont Law School, Royalton, VT. Notes supplied.

October 24, 2007: Panelist, "Guilty Until Proven Innocent," Quinnipiac University School of Law, Hamden, CT. I spoke on the subject of wrongful convictions of innocent persons, including the Connecticut case of James Calvin Tillman, who served more than 16 years in prison for a rape that he did not commit. I have no notes, transcript, or recording, but press coverage is supplied. The address of the organization is: Quinnipiac University School of Law, 275 Mt. Carmel Avenue, Hamden, CT 06518.

September 26, 2007: Panelist for a forum on federal judicial appointments sponsored by the Federal Society at Quinnipiac University School of Law, Hamden, CT. I have no notes, transcript, or recording. The address of the organization is: Quinnipiac University School of Law, 275 Mt. Carmel Avenue, Hamden, CT 06518.

May 22-23, 2007: Introductory remarks as co-chair of the Independent Accountability Panel appointed by the Mayor of the City of New Haven at two citizen forums at schools in New Haven, Connecticut. Notes supplied.

February 22, 2007: Moderator for a forum on the subject of "Terrorism and the U.S. Courts," Quinnipiac University School of Law, American Constitution Society, Hamden, CT. I have no notes, transcript, or recording. The address of the

organization is: Quinnipiac University School of Law, 275 Mt. Carmel Avenue, Hamden, CT 06518.

January 26, 2007: Panelist, "Odious Debts & State Corruption," Duke University School of Law, Durham, NC. I spoke on the subject of corruption of the Oil-for-Food Program in Iraq. I have no notes, transcript, or recording. The address of the organization is: Duke University School of Law, 210 Science Drive, Durham, NC 27708.

November 29, 2006: Co-presenter at forum about the investigation of the Oil-for-Food Program, Columbia University, New York, NY. I spoke on the subject of corruption of the Oil-for-Food Program in Iraq. I have no notes, transcript, or recording. The address of the organization is: Columbia University, 116th Street and Broadway, New York, NY 10027.

October 27, 2006: Co-presenter at forum about the investigation of the Oil-for-Food Program, Duke University. Video available at http://www.c-spanvideo.org/program/195410-1, and press coverage supplied.

October 20, 2006: Co-presenter at forum about the investigation of the Oil-for-Food Program, Harvard Law School, Cambridge MA. I spoke on the subject of corruption of the Oil-for-Food Program in Iraq. I have no notes, transcript, or recording. The address of the organization is: Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 28, 2006: Panelist, "Reform at the United Nations? Lessons from the Oil-for-Food Program in Iraq," Woodrow Wilson School, Princeton University, Princeton, NJ. A video of this event is available at http://www.youtube.com/watch?v=QCJrdwCKAaI.

September 6, 2006: Panelist for book-launch event about my book about the Oil-for-Food Program, New York University School of Law, New York, NY. I have no notes, transcript, or recording. The address of the organization is: NYU Law School, 40 Washington Square, South, New York, NY 10012.

May 2006 (or May 2007, exact date not known): I made remarks at an awards ceremony to graduating students of the Quinnipiac University School of Law. I believe my remarks drew upon anecdotes from my practice career and encouraged students not to be afraid of taking risks and failing. I have no notes, transcript or recording. The address of the organization is: Quinnipiac University School of Law, 275 Mt. Carmel Avenue, Hamden, CT 06518.

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

As part of my responsibilities as a law professor and at the request of my university administration, I have very frequently responded to inquiries from news reporters on a wide range of legal issues in Connecticut from 2006 to the present. As an Assistant United States Attorney from 1995 to 2004, I occasionally responded to reporters' inquiries about cases that I prosecuted. To respond to this request, I reviewed my personal files and conducted multiple Internet searches. I have also requested copies from local television stations of news stories that have interviewed me, but they have not responded to my requests. I cannot be certain that I have found every news story that has ever quoted me. All articles and other media sources that I have been able to find that quote me are listed below.

Ed Stannard, *Obama nominates Quinnipiac law professor to serve as judge on U.S. District Court for Connecticut*, NEW HAVEN REGISTER, June 7, 2013 (reprinted in multiple outlets). Copy supplied.

Dave Collins, *Obama nominates law school professor Jeffrey Meyer to serve as federal judge in Conn.*, THE REPUBLIC, June 7, 2013 (reprinted in multiple outlets). Copy supplied.

David DesRoches, *Evidence withheld in Jennings trial; Morgan Stanley banker fired while prosecutor sat on evidence*, DARIEN NEWS TIMES, Jan. 17, 2013. Copy supplied.

Erika Morphy, *Netflix Could Get Smacked With Higher Postal Rate*, E-COMMERCE TIMES, Jan. 14, 2013. Copy supplied.

Michael P. Mayko, *Feds to Charge Newton with Violation*, CONN. POST, Jan. 11, 2013. Copy supplied.

Michael P. Mayko, *Arrest May End Newton's Career*, CONN. POST, Jan. 5, 2013. Copy supplied.

Jesse Buchanan, *Officer Cosette said no to plea bargain agreement*, MERIDEN RECORD-JOURNAL, Dec. 10, 2012. Copy supplied.

Michael P. Mayko, *U.S. attorney general in Conn. with plan to reduce gun violence*, CONN. POST, Nov. 27, 2012. Copy supplied.

Harry R. Weber, *BP spill plea deal turns focus to its partners*, HOUSTON CHRONICLE, Nov. 18, 2012. Copy supplied.

Jesse Buchanan, *Legal expert: Grand jury indictments usually lead to guilty pleas*, MERIDEN RECORD-JOURNAL, Nov. 17, 2012. Copy supplied.

Professor Jeff Meyer, a former federal prosecutor of environmental crimes, available to discuss BP fines, QUINNIPIAC WIRE, Nov. 15, 2012. Copy supplied.

Former Federal Prosecutor Discusses The Skakel Hearing, FOXNEWS POT, Oct. 25, 2012. Video available at http://www.ctnow.com/videogallery/73033072/News/Former-Federal-Prosecutor-Discusses-The-Skakel-Hearing.

Professor Jeff Meyer available to offer insight on Skakel parole hearing, QUINNIPIAC WIRE, Oct. 24, 2012. Copy supplied.

John Nickerson & Michael P. Mayko, *Experts handicap odds of Skakel's release*, CONN. POST, Oct. 24, 2012. Copy supplied.

David DesRoches, *Bigotry, Assault Charges Dropped Against Jennings*, DARIEN TIMES, Oct. 18, 2012. Copy supplied.

Christian Nolan, *Authorities Say Alleged Terrorists Used Connecticut Internet Server*, CONN. L. TRIB., Oct. 15, 2012. Copy supplied.

Sabina Kuriakose, *Two Terror Suspects Plead Not Guilty to Raising Money for Terrorists*, NBC CONNECTICUT.COM, Oct. 6, 2012. Copy supplied.

Alaine Griffin, *Death Penalty Bias Case Put On Hold*, HARTFORD COURANT, Oct. 4, 2012. Copy supplied.

Marcia Chambers, *Accused Dog Killer Goes Judge Shopping*, BRANFORD EAGLE, Aug. 17, 2012. Copy supplied.

Thomas B. Scheffey, *High Stakes for All: Reputations on the Line in Election Eve Probes*, CONN. L. TRIB., Aug. 13, 2012. Copy supplied.

Rich Scinto, *Restitution fund created for girls sexually abused by Milford Peace Corps volunteer*, NEW HAVEN REGISTER , Aug. 10, 2012. Copy supplied.

Sabina Kuriakose, *Questions Remain After Town Hall Raid*, NBC CONNECTICUT.COM, Aug. 9, 2012. Copy supplied, and video available at http://www.nbcconnecticut.com/investigations/Bridgewater-Selectman-Under-Investigation-165441626.html.

Eric Berkman, *Experts Assess Unpredictable and Independent Roberts Court*, PREVIEW (ABA journal), Aug. 4, 2012. Copy supplied.

Jordan Fenster, *Chris Donovan should withdraw from 5th District race, Roberti says*, REGISTER CITIZEN, July 12, 2012. Copy supplied.

Mary E. O'Leary & Jordan Fenster, *Indictment of Chris Donovan aide alleges conspiracy to kill law for money*, REGISTER CITIZEN, July 11, 2012. Copy supplied.

Did They or Didn't They? THE NATIONAL JOURNAL'S HOUSE RACE HOTLINE, June 29, 2012. Copy supplied.

Jordan Fenster, *Feds raid Waterbury Chamber office in John Rowland probe; Chamber lawyer says report inaccurate*, REGISTER CITIZEN, June 28, 2012. Copy supplied.

Looking at Lisa, THE NATIONAL JOURNAL'S HOUSE RACE HOTLINE, June 22, 2012. Copy supplied.

Lisa Wilson-Foley could be target in John Rowland investigation, says former prosecutor, REGISTER CITIZEN, June 21, 2012. Copy supplied.

Twice as Nice, THE NATIONAL JOURNAL'S HOUSE RACE HOTLINE, June 20, 2012. Copy supplied.

Jon Lender, Daniela Altimari & Wes Duplantier, *Wilson-Foley Calls Feds Probe of Rowland a 'Distraction'*, HARTFORD COURANT, June 20, 2012. Copy supplied.

Jordan Fenster, *Federal Communications Commission won't investigate complaint against former Gov. John Rowland*, REGISTER CITIZEN, June 20, 2012. Copy supplied.

Jay Stapleton, *Another Law School Dean Decides To Step Down; Quinnipiac's Saxton Praised for Enhancing School's Reputation, Unifying Faculty*, CONN. L. TRIB., June 4, 2012. Copy supplied.

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Alaine Griffin & Josh Kovner, *Tulisano Taped Raffa Conversation; Westbrook Official's Fate Might Hang on Interpretation of Words*, HARTFORD COURANT, Feb. 18, 2006. Copy supplied.

Joseph Straw, *High court nominee faces hard questions as hearings begin*, NEW HAVEN REGISTER, Jan. 10, 2006. Copy supplied.

MariAn Gail Brown, *Going Courtside: Professors say the most recent opinions show newest U.S. Supreme Court justices settling and ducking the limelight, for now*, QUINNIPIAC LAW (magazine), Summer 2006. Copy supplied.

Rhea Hirshman, *Experience a Plus: Prominent prosecutor brings rich legal background to the classroom*, QUINNIPIAC LAW (magazine), Winter 2006.

Michael P. Mayko, *Saddam probe gets state aid*, CONN. POST, July 11, 2004. Copy supplied.

Lynne Tuohy, *Former Judge Fined, Spared Jail*, HARTFORD COURANT, Apr. 17, 2004. Copy supplied.

Associated Press, *Former Frankel helper convicted in scheme*, NEW HAVEN REGISTER, Jan. 31, 2003. Copy supplied.

Lynne Tuohy, *Frankel Employee Convicted Of Fraud*, HARTFORD COURANT, Jan. 31, 2003. Copy supplied.

Vesna Jaksic, *Frankel aide Mona Kim guilty on all counts*, GREENWICH TIME, Jan. 31, 2003. Copy supplied.

Associated Press, *Frankel Aide Guilty for Role in Theft From Insurance Companies*, N.Y. TIMES, Jan. 30, 2003. Copy supplied.

Lynne Tuohy, *Insider or Dupe? Jury To Decide Mona Kim's Role*, HARTFORD COURANT, Jan. 30, 2003. Copy supplied.

Vesna Jaksic, *Aide to Frankel gets day in court*, GREENWICH TIME, Jan. 14, 2003. Copy supplied.

Kellie A. Wagner, *Freon Smugglers Plead Guilty*, CONN. L. TRIB., Apr. 8, 2002. Copy supplied.

Christa Lee Rock, *Developer expected to get jail time*, NEW HAVEN REGISTER, Nov. 21, 2001. Copy supplied.

Michael P. Mayko, *5 facing $26m tax fraud*, CONN. POST, July 31, 2001. Copy supplied.

Christa Lee Rock, *Bank robber gets 23 years*, NEW HAVEN REGISTER, June 13, 2001. Copy supplied.

Randall Beach, *Weintraub sentenced in asbestos case*, NEW HAVEN REGISTER, May 12, 2000. Copy supplied.

Jack Dew, *Contractor gets 13 months in jail*, NEW HAVEN REGISTER, Oct. 29, 1999. Copy supplied.

Christopher Hoffman, *Asbestos jury says 'guilty,'* NEW HAVEN REGISTER, Oct. 9, 1999. Copy supplied.

Judge releases Greenwich man wanted in Hong Kong, ASSOCIATED PRESS, Sept. 4, 1999. Copy supplied.

Jack Dew, *Man gets 6 years in prison in police effort to rid city of guns*, NEW HAVEN REGISTER, Aug. 21, 1999. Copy supplied.

2 convicted in EPA case, AMERICAN METAL MARKET, June 15, 1999. Copy supplied.

Michael Gannon, *Men await verdict on dumping charges*, NEW HAVEN REGISTER, May 19, 1999. Copy supplied.

Rachel Gottlieb, *Trash Trail Led Police To Alleged Counterfeiter*, HARTFORD COURANT, Feb. 11, 1999. Copy supplied.

Alex Wood, *Ellington man convicted of firearms charge*, JOURNAL INQUIRER, Nov. 14, 1997. Copy supplied.

Mark Pazniokas, *Man gets prison for endangering workers who removed asbestos*, HARTFORD COURANT, Sept. 12, 1997. Copy supplied.

Niall Fraser, *Delay in extradition treaty may give fugitive legal loophole*, SOUTH CHINA MORNING POST, May 30, 1997. Copy supplied.

Kevin McCoy, *Accident Detours a Life*, NEW YORK NEWSDAY, Mar. 31, 1991. Copy supplied.

Mary McGrath, *From Tragedy to 'Miracle,' Accident Victim Isn't Alone on Long Road to Recovery*, OMAHA WORLD HERALD, Nov. 22, 1990. Copy supplied.

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

I have not served as a judge.

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.

In approximately 1994, I was a candidate for my neighborhood association (the Stony Creek Association) but was not elected.

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 supported and attended campaign events for my father, Connecticut State Senator Edward Meyer, but I have no office, title or position with his organization or any political party or election committee. I have supported as a volunteer each of my father's campaigns for elected office including for the State Assembly in New York in 1970 and 1972, for Congress in New York in 1976 and 1984, and for State Senate in Connecticut in 2004 (to the extent permitted by federal law while I was a federal government employee), 2006, 2008, 2010, and 2012. On June 29, 2006, my wife and I hosted a fundraising event at our home for Ned Lamont, then a candidate for the United States Senate. I have not otherwise held a position or played a role in a political campaign for any other political candidate.

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 1989 to 1990, I served as a law clerk to the Honorable James L. Oakes, Chief Judge of the United States Court of Appeals for the Second Circuit.

In the fall of 1990, I served as a temporary law clerk to the Honorable Donald R. Ross of the United States Court of Appeals for the Eighth

Circuit (in Omaha, Nebraska where I was temporarily living because of a family-related medical emergency).

From 1991 to 1992, I served as a law clerk to Associate Justice Harry A. Blackmun of the Supreme Court of the United States.

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.

1992 – 1993
Vermont Legal Aid, Inc.
Mental Health Law Project
Waterbury State Hospital
103 South Main Street
Waterbury, Vermont 05676
Staff Attorney (temporary contract)

1993
Shearman & Sterling LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Associate

1993 – 1995
Kellogg, Huber, Hansen, Todd, Evans & Figel PLLC
(formerly Kellogg, Huber, Hansen & Todd LLP)
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Associate

1995 – 2004
U.S. Attorney's Office
157 Church Street
New Haven, Connecticut 06510
Appeals Chief (2000 – 2004)
Assistant U.S. Attorney (1995 – 2004)

1998 – 2004
Yale Law School
127 Wall Street

New Haven, Connecticut 06520
Clinical Visiting Lecturer in Law (Prosecution Externship)

2004 – 2005
Independent Inquiry Committee into the
United Nations Oil-for-Food Program in Iraq
825 Third Avenue, 15th Floor
New York, New York 10022
Senior Counsel

Summer 2007
The World Bank
1818 H Street, N.W.
Washington, D.C. 20433
Editor and Counsel to Independent Panel Review of the World Bank Department of Institutional Accountability (paid as independent contractor)

2010 – Present
Yale Law School Supreme Court Advocacy Clinic
127 Wall Street
New Haven, Connecticut 06520
Visiting Professor of Law

2006 – Present
Quinnipiac University School of Law
275 Mt. Carmel Avenue
Hamden, Connecticut 06518
Associate Professor of Law (2006 – 2010)
Professor of Law (2010 – Present)

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Most of my practice career has been in litigation and mostly in the federal courts of Connecticut as described below:

From 1992 to 1993, I served as a temporary staff attorney (in place of an attorney who was on leave) with Vermont Legal Aid at the Vermont State Hospital in Waterbury, Vermont to represent clients in civil commitment proceedings. I conducted frequent contested evidentiary hearings before the Family Court of Vermont.

After my contract with Vermont Legal Aid expired, I moved to Washington, D.C. and spent approximately two years, from 1993 to 1995, as a civil litigator with two major national law firms. Among other matters, I served as a principal associate managing litigation by a group of the "Baby Bell" telephone companies against the federal government to challenge certain federal law restrictions. I was also in charge of defending a multi-million dollar contract dispute between a national long-distance telephone company and a provider of institution-based telephone services. Although I did not try any cases during this period, I was involved in extensive motions, discovery, and deposition practice in federal courts.

From March 1995 to July 2004, I served as an Assistant United States Attorney in Connecticut. I was sole, lead, or second-chair counsel for twelve criminal jury trials that ranged in length from just a few days to nearly three months. All of these trials resulted in guilty pleas or guilty verdicts (except for an acquittal of a single defendant in a multi-defendant case). I also appeared very frequently in federal court for presentments, arraignments, bail hearings, pre-trial motion hearings, guilty plea hearings, sentencing hearings, and probation/supervised-release revocation hearings. In addition, I argued numerous appeals in the Second Circuit throughout my service as an Assistant United States Attorney. From 2000 to 2004, I served as Appeals Chief for the U.S. Attorney's Office and supervised criminal appeals as well as civil appeals in the areas of immigration, employment discrimination, the Federal Tort Claims Act, and other areas of federal civil law.

From July 2004 to November 2005, I was Senior Counsel to the United Nations Independent Inquiry Committee (led by Paul A. Volcker) into the United Nations Oil-for-Food Program in Iraq. My role involved three principal responsibilities. First, I led a team of lawyers and investigators to examine the UN Security Council's lack of oversight of the oil-for-food program. Second, I led a separate team of lawyers, investigators, and accountants that tracked more than $1.5 billion of illegal kickbacks that were paid by more than 2,000 companies to secure business deals under the oil-for-food program. Third, I was the principal drafter and staff editor of the investigation committee's several official reports.

In the summer of 2007, I served as Editor and Counselor to the Independent Panel Review (led by Paul A. Volcker) of the World Bank Department of Institutional Accountability. The independent panel was

examining the World Bank's safeguards against corruption and misuse of its project funds, and my staff role involved the analysis of World Bank records, interview of World Bank employees, and editing of the panel's final report and recommendations.

For the last three years I have served as co-counsel for pro bono clients with matters before the United States Supreme Court in connection with my appointment as a Visiting Professor of Law at Yale Law School where I co-teach the Yale Supreme Court Advocacy Clinic. I have worked with my attorney colleagues and student teams to draft briefing for more than two dozen matters before the Supreme Court.

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

At Vermont Legal Aid, I represented clients who were subject to civil commitment proceedings on grounds of mental illness. At Shearman & Sterling and Kellogg, Huber, Hansen & Todd, I represented small and large telephone service companies in federal civil litigation. At the United States Attorney's Office, I represented the United States government. At the United Nations and the World Bank, I represented independent investigating entities. At the Yale Supreme Court Advocacy Clinic, I represent indigent criminal defendants and other civil clients who are generally unable to pay for our services.

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

About 90% of my practice has been in litigation with Vermont Legal Aid, private law firms, the United States Attorney's Office, and the Yale Supreme Court Advocacy Clinic. I appeared in court very frequently with Vermont Legal Aid and the United States Attorney's Office.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 10%
   3. other courts: 0%
   4. administrative agencies: 0%

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 estimate that I tried about a dozen civil commitment cases while at Vermont Legal Aid from 1992 to 1993. These were non-jury, contested evidentiary hearings before judges of the Vermont Family Court. As an Assistant United States Attorney in Connecticut from 1995 to 2004, I tried twelve criminal jury cases as sole counsel (three cases), chief counsel (three cases), or associate counsel (six cases) in the United States District Court for the District of Connecticut (a few of these trials ended prior to the jury verdict as a result of defendants' decisions to plead guilty).

i. What percentage of these trials were:
   1. jury: 90%
   2. non-jury: 10%

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

As a Visiting Professor of Law at Yale Law School and co-instructor of the Yale Law School Supreme Court Advocacy Clinic, I have served as co-counsel with attorneys Andrew J. Pincus and Charles A. Rothfeld of the law firm Mayer Brown in Washington, D.C., for more than 20 cases before the U.S. Supreme Court from 2010 to the present (including petitions for certiorari, oppositions to petitions for certiorari, merits briefs, and amicus merits briefs). I have not argued any cases before the Supreme Court but have participated extensively in the briefing of cases before the Court, working with Yale law students who have conducted research and initial drafting. A listing of all cases in which I have served as co-counsel in the Supreme Court is set forth below (with copies of briefs supplied):

Jefferson County School District v. Elizabeth E., No. 12-1175, (cert. denied) (opposition to petition for certiorari, 2013 WL 2316712).

Jeffries v. United States, No. 12-1185 (pending) (petition for certiorari, 2013 WL 1309081).

United States v. Windsor, No. 12-307 (amicus brief filed on behalf of constitutional scholars on jurisdiction question, 2013 WL 860457).

Wilson v. Flaherty, No. 12-986 (pending) (petition for certiorari, 2013 WL 503249; reply brief, 2013 WL 2428989).

Butts v. Hall, No. 12-813, (cert. denied) (opposition to petition for certiorari, 2013 WL 873298).

Adoptive Couple v. Baby Girl, No. 12-399 (opposition to petition for certiorari, 2012 WL 5994979; brief for respondent, 2013 WL 1191183).

Bernacki v. State of Connecticut, No. 12-759 (cert. denied) (petition for certiorari, 2012 WL 6693933; reply brief, 2013 WL 1247793).

Alexander v. Lewis, No. 12-470 (cert. denied) (opposition to petition for certiorari, 2012 WL 6587626).

Kiehle v. County of Cortland, No. 12-607 (cert. denied) (petition for certiorari, 2012 WL 5837597; reply brief, 2013 WL 785605).

Bandi v. Becnel, No. 12-424 (cert. denied) (petition for certiorari, 2012 WL 4803204; reply brief, 2012 WL 6100047).

Smith v. Colson, No. 12-390, 2013 WL 2371465 (petition for certiorari, 2012 WL 4481428; reply brief, 2012 WL 5361531; supplemental brief, 2013 WL 2352601).

City of New Haven v. Briscoe, No. 11-1024 (cert. denied) (opposition to petition for certiorari, 2012 WL 1374521).

Arizona v. United States, 132 S. Ct. 2492 (2012) (amicus brief on behalf of state and local law enforcement officers, 2012 WL 1044375).

Yang v. Holder, No. 11-1119 (cert. denied) (petition for certiorari, 2012 WL 826577; reply brief, 2012 WL 1957758).

Holder v. Martinez Gutierrez (Sawyers), 132 S. Ct. 2011 (2012) (brief for respondent, 2011 WL 6282150).

State of Connecticut v. Lenarz, No. 11-451 (cert. denied) (opposition to petition for certiorari, 2011 WL 6257240).

County of Erie v. Cash, No. 11-613 (cert. denied) (opposition to petition for certiorari, 2012 WL 549269).

Merrifield v. Board of County Commissioners for the County of Santa Fe, No. 11-881 (cert. denied) (petition for certiorari, 2012 WL 151755; reply brief, 2012 WL 1132404).

United States v. Jones, 132 S. Ct. 945 (2012) (amicus brief on behalf of technology experts, 2011 WL 4590838).

Nielson v. Ketchum, No. 11-680 (cert. denied) (petition for certiorari, 2011 WL 6019917; reply brief, 2012 WL 957507).

Astrue v. Capato, 132 S. Ct. 2021 (2012) (opposition to petition for certiorari, 2011 WL 5014750; brief for respondent, 2012 WL 273128).

Ragbir v. Holder, No. 10-1295 (cert. denied) (petition for certiorari, 2011 WL 1540432; reply brief, 2011 WL 1540432).

Rehberg v. Paulk, 132 S. Ct. 1497 (2012) (petition for certiorari, 2010 WL 7096385; reply brief, 2011 WL 549182; brief for petitioner, 2011 WL 2310185; reply brief for petitioner, 2011 WL 4842583).

Faulkner v. United States, No. 11-235 (cert. denied) (petition for certiorari, 2011 WL 3750686; reply brief, 2011 WL 5373683).

DePierre v. United States, 131 S. Ct. 2225 (2011) (brief for petitioner, 2010 WL 5087871; reply brief for petitioner, 2011 WL 601141).

Buonora v. Coggins, No. 10-237 (cert. denied) (opposition to petition for certiorari, 2010 WL 4959710).

In addition to my work with the Yale Supreme Court Clinic and in light of my background in international and foreign-relations law, I have co-authored three amicus briefs with Professor Oona Hathaway before the Supreme Court since December 2011 for the Yale Law School Center for Global Legal Challenges:

Kiobel v. Royal Dutch Petroleum, Inc., 2013 WL 1628935 (Apr. 17, 2013) (amicus brief, 2011 WL 6425362; supplemental amicus brief, 2012 WL 2165340).

Bond v. United States, No. 12-158 (certiorari granted and pending) (amicus brief, 2012 WL 4790405).

In 2007, I assisted in the preparation and filing of a petition for certiorari on behalf of a pro bono client of the Quinnipiac University Legal Clinic:

Trupin v. United States, No. 06-12034 (cert. granted, judgment vacated and remanded in light of intervening case) (petition for certiorari, copy supplied).

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

    a. the date of representation;

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

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

1. *United States v. Monaco*, 3:95cr41(AWT) (D. Conn.). This was a complex narcotics money laundering case stemming from a Connecticut family's laundering of large amounts of cash generated by a major Florida narco-trafficker. I was co-counsel for an approximately 11-week jury trial from November 1997 to February 1998 that concluded with guilty verdicts on all counts against all five defendants. The convictions and sentences were all upheld on appeal, which I co-briefed and co-argued before the United States Court of Appeals for the Second Circuit. See *United States v. Monaco*, 194 F.3d 381 (2d Cir. 1999). For my work on this case, I was a co-recipient of the Department of Justice's EOUSA Director's Award in 1999.

Presiding Judge: Alvin W. Thompson

Co-counsel:

Mark G. Califano (then Assistant U.S. Attorney)
SVP & Managing Counsel, Litigation
American Express
3 World Financial Center
200 Vesey Street
New York, NY 10285
(212) 640-2877

Principal opposing trial counsel:

Jeremiah F. Donovan
Attorney at Law
123 Elm Street, P.O. Box 554
Old Saybrook, CT 06475
(860) 388-3750
Counsel for J. Monaco

Hugh F. Keefe
Lynch, Traub, Keefe & Errante
52 Trumbull Street, P.O. Box 1612
New Haven, CT 06506
(203) 787-0275
Counsel for D. Monaco

William T. Koch, Jr.
151 Brush Hill Road
Lyme, CT 06371
(860) 434-3060
Counsel for M. Monaco

M. Hatcher Norris
Butler, Norris & Gold
254 Prospect Avenue
Hartford, CT 06106
(860) 236-6951
Counsel for L. DeMaio

Jon L. Schoenhorn
Jon L. Schoenhorn & Associates LLC
108 Oak Street
Hartford, CT 06106
(860) 278-3500
Counsel for M. DeMaio

2. *United States v. Himes et al.*, 3:01cr174(CFD) (D. Conn.). This was a 10-defendant case, for which I served as the government's lead counsel, stemming from a transnational fraud scheme to illegally import and sell millions of pounds of ozone-depleting chlorofluorocarbon (CFC) gases. The defendants smuggled CFC gases into the United States, evaded more than $20 million in excise taxes, and laundered millions of dollars of CFC sales proceeds through offshore bank accounts and ultimately back into the United States to buy homes and luxury cars in Connecticut. Ten defendants entered pleas of guilty without trial, and for my work on this case I was a co-recipient with DOJ co-counsel of the Department of Justice's EOUSA Director's Award in 2002.

Presiding Judge: Christopher F. Droney

Co-counsel:

David Lastra
United States Environmental Protection Agency
Criminal Investigation Division
Environmental Crimes Section
Two Potomac Yard (North Bldg.)
2733 South Crystal Drive, Room 4357
Arlington, VA 22202
(703) 347-8417

Opposing counsel for the principal defendants:

Ethan A. Levin-Epstein
Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C.
405 Orange Street
New Haven, CT 06511
(203) 777-4425
Counsel for Himes

Jacob D. Zeldes
Zeldes, Needle & Cooper
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, CT 06601
(203) 333-9441
Counsel for Mucha

Terence S. Ward
Federal Public Defender's Office
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106
(860) 493-6260
Counsel for Pelletier

Francis L. O'Reilly
O'Reilly & Shaw
167 Old Post Road
Southport, CT 06490
(203) 319-0707
Counsel for Castle

Harold James Pickerstein
McElroy, Deutsch, Mulvaney & Carpenter
30 Jelliff Lane
Southport, CT 06890
(203) 319-4003
Counsel for Barlen

3. *United States v. Weintraub*, 3:98cr171(JBA) (D. Conn.). This was a case against a real estate developer, construction companies and construction contractors arising from the illegal removal and dumping of carcinogenic asbestos materials in various wooded areas of New Haven. Among the victims in this case were undocumented immigrant laborers who were exposed to clouds of asbestos dust. Three of the defendants pled guilty before trial, and three of the four remaining defendants were convicted following an approximately three-week jury trial in September and October 1999, for which I served as the government's lead trial counsel. The convictions and

sentences were affirmed on appeal, which I co-briefed and argued before the United States Court of Appeals for the Second Circuit. *United States v. Weintraub*, 273 F.3d 139 (2d Cir. 2001); 27 Fed. Appx. 54 (2d Cir. 2001).

Presiding Judge: Janet B. Arterton

Co-counsel:

Sharon Jaffe (then Assistant U.S. Attorney)
William Raveis Real Estate
47 Riverside Avenue
Westport, CT 06880
(203) 218-1743

Andrew Lauterback
Senior Regional Criminal Enforcement Counsel
United States Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100
Boston, MA 02109
(617) 918-1724

Opposing trial counsel:

James T. Cowdery
Cowdery, Ecker & Murphy
280 Trumbull Street, 22nd Floor
Hartford, CT 06103
(860) 278-5555
Counsel for Morelite Dev. & Const. Co.

Ira B. Grudberg
Ira B. Grudberg, LLC
350 Orange Street, P.O. Box 606
New Haven, CT 06503
(203) 772-3100
Counsel for Weintraub

Kenneth Rosenthal
Brenner, Saltzman & Wallman LLP
271 Whitney Avenue
New Haven, CT 06511
(203) 772-2600
Counsel for Liberty Realty Assoc., LLC

Paul F. Thomas
Assistant Federal Public Defender

265 Church Street, Suite 702
New Haven, CT 06510
(203) 498-4200
Counsel for Harris

4. *United States v. Kim*, 3:99cr235(EBB) (D. Conn.). This was an approximately two-week jury trial in January 2003 based on Kim's participation in a $200+ million international fraud, RICO, and money laundering scheme led by fugitive financier Martin Frankel stemming from his defrauding of numerous insurance companies. See *United States v. Kim*, 303 F. Supp. 2d 150 (D. Conn. 2004). I served as co-counsel at trial, and the defendant was convicted on all counts.

Presiding Judge: Ellen Bree Burns

Co-counsel:

Mark G. Califano (then Assistant U.S. Attorney)
Senior Vice-President & Managing Counsel, Litigation
American Express
3 World Financial Center
200 Vesey Street
New York, NY 10285
(212) 640-2877

Opposing counsel:

Peter A. Kelly
6892 East Vista Bonita Road
P.O. Box 63
Hereford, AZ 85615
(520) 366-0112
Counsel for Kim

5. *United States v. Vasquez*, 3:02cr261(AWT) (D. Conn.). This was one of a series of cases that I investigated and prosecuted against rampant sexual abuse of female inmates by prison guards at the Federal Correctional Institution in Danbury, Connecticut. The defendant in this case pled guilty after several days of jury trial in June 2003, and his conviction and sentence were affirmed on appeal before the United States Court of Appeals for the Second Circuit. *United States v. Vasquez*, 389 F.3d 65 (2d Cir. 2004). Other Danbury sex-abuse and corruption cases that I prosecuted and that concluded with guilty pleas included: *United States v. Cephas*, 3:96cr153(JBA); *United States v. Tortorella*, 3:02cr68(AWT); *United States v. Webb*, 3:04cr27(AVC); and *United States v. Phillips*, 3:95cr157(EBB).

Presiding Judge: Alvin W. Thompson

Co-counsel:

Anastasia Enos King
Assistant U.S. Attorney
U.S. Attorney's Office
157 Church Street, 23rd floor
New Haven, CT 06510
(203) 821-3700

Principal opposing trial counsel:

Richard A. Reeve
Sheehan & Reeve
139 Orange Street, Suite 301
New Haven, CT 06510
(203) 787-9026
Counsel for Vasquez

6. *United States v. Cover-It, Inc., et al.*, 3:98cr58 (DJS) (D. Conn.). This was a case involving illegal dumping of industrial hazardous waste at venues near Interstate 95 in the area of New Haven, Connecticut. Three defendants were charged principally with criminal violations of the federal Resource Conservation and Recovery Act. One of the defendants pleaded guilty, and two of them went to a jury trial for which I served as the government's lead trial counsel and that resulted in verdicts of guilty against both defendants on all counts. One of the defendants appealed, and his conviction and sentence were affirmed in an appeal, which I briefed and argued before the United States Court of Appeals for the Second Circuit. *United States v. Cover-It, Inc.*, 234 F.3d 1263 (2d Cir. 2000).

Presiding Judge: Dominic J. Squatrito

Co-counsel:

John T. McNeil (formerly Special Assistant U.S. Attorney)
Deputy Chief, Criminal Division
U.S. Attorney's Office
John Joseph Moakley
United States Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Opposing counsel:

Craig A. Raabe
Robinson & Cole

280 Trumbull Street
Hartford, CT 06103
(860) 275-8304
Counsel for Cover-It, Inc.

Jon L. Schoenhorn
Jon L. Schoenhorn & Associates LLC
108 Oak Street
Hartford, CT 06106
(860) 278-3500
Counsel for Knapp

Gary D. Weinberger
Federal Public Defender's Office
10 Columbus Boulevard, 6th Floor
Hartford, CT 06106
(860) 493-6260
Counsel for Hawley

7. *United States v. MRCA Information et al.*, 3:00cr192(PCD) (D. Conn.). This was a prosecution of two corporate officers and their company in connection with their embezzlement of approximately $1.5 million from an employee pension plan. All three defendants pleaded guilty, and the district court's upward adjustment of the leading defendant's sentence was affirmed in an appeal that I briefed and argued before the United States Court of Appeals for the Second Circuit. *United States v. Learner*, 20 Fed. Appx. 18 (2d Cir. 2001).

Presiding Judge: Peter C. Dorsey

Opposing counsel:

Michael G. Considine
Seward & Kissell
One Battery Park Plaza
New York, NY 10004
(212) 574-1334
Counsel for MRCA Information Services, Inc. and Learner

Harold James Pickerstein
McElroy, Deutsch, Mulvaney & Carpenter
30 Jelliff Lane
Southport, CT 06890
(203) 319-4003
Counsel for Hay

8. *United States v. Watras*, 3:00cr198(RNC) (D. Conn.). This was a prosecution of a man for interstate stalking and threatening his 3-year-old child with a nailgun to his head. I tried the case for one week in June 2001, and the jury returned a verdict of guilty on all counts and declined to accept the defendant's insanity defense.

Presiding Judge: Robert N. Chatigny

Opposing counsel:

Paul F. Thomas
Assistant Federal Public Defender
265 Church Street, Suite 702
New Haven, CT 06510
(203) 498-4200
Counsel for Watras

9. *Cheung v. United States*, 213 F.3d 82 (2000). This was an international extradition case involving complex international law issues concerning the capacity of the United States to enter into an enforceable extradition relationship with the sub-sovereign Hong Kong Special Administrative Region of the People's Republic of China. Cheung fled to Connecticut following his defrauding of business creditors in Hong Kong, and Hong Kong sought his extradition to face prosecution. As counsel for the government I instituted extradition proceedings, but the district court denied extradition on the ground that the extradition agreement between the United States and sub-sovereign Hong Kong did not qualify as a treaty within the meaning of the federal extradition statute. I appealed on behalf of the government, and the Second Circuit reversed, concluding on the basis of extensive briefing and argument about the juridical status of Hong Kong that the extradition agreement was an enforceable treaty within the meaning of federal extradition law.

Presiding Judges: Magistrate Joan G. Margolis and Peter C. Dorsey

Opposing trial counsel:

Richard A. Reeve
Sheehan & Reeve
139 Orange Street, Suite 301
New Haven, CT 06510
(203) 787-9026
Counsel for Cheung

10. *In re R.L.*, 657 A.2d 180 (Vt. 1995). As a legal aid lawyer in Vermont, one of my first clients was a man (R.L.) who was subject to involuntary civil commitment proceedings following a severe bipolar episode but who wished to receive in-patient mental health treatment on a voluntary basis. The State nonetheless pursued an order of involuntary commitment against R.L., and I briefed and argued in the Vermont Supreme Court that

my client had the right to receive mental health treatment on a voluntary basis rather than to have it forced upon him. Although the Vermont Supreme Court concluded that R.L. was not an appropriate candidate for voluntary treatment, it ruled more broadly that "once the patient puts in issue his request for voluntary treatment, whether as a residential or as a nonresidential patient, the State must show by clear and convincing evidence that voluntary treatment is not feasible before the family court may enter an order for involuntary treatment." *Id.* at 184.

Co-counsel:

Alexander Scherr (formerly my supervisor at Vermont Legal Aid)
Associate Professor and Director of Civil Clinics
University of Georgia School of Law
338C Hirsch Hall
Athens, GA 30602
(706) 542-6510

Opposing Counsel:

Janet Bull
State of Vermont, Department of Mental Health
26 Terrace Street
Montpelier, VT 05609
(802) 828-3824

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.)

Investigation of the United Nations Oil-for-Food Program in Iraq (July 2004 – Nov. 2005). This was a massive global investigation of fraud, corruption and mismanagement arising from one of the world's largest humanitarian aid programs – the Oil-for-Food Program. Led by former Federal Reserve Chairman Paul A. Volcker, the investigation employed more than 100 lawyers, investigators, accountants and consultants who conducted more than 1,100 witness interviews across five continents and reviewed more than 13 million pages of UN documents. My role as Senior Counsel to the investigation involved three principal responsibilities:

(1) Investigation of UN Security Council Oversight of the Program: I led a team of lawyers and investigators to examine how the UN Security Council and its member countries interacted with the Oil-for-Food program. This position involved sensitive negotiations with the U.S. State Department and numerous

foreign ministries concerning the terms of our access and review of diplomatic records in foreign capitals, and it included interviews with scores of UN officials (including the Secretary-General) and diplomats from Security Council member countries across the globe.

(2) Investigation of Corrupt Contractors: I led a separate team of lawyers, investigators, and accountants who tracked more than $1.5 billion of illegal kickbacks that were paid to the Iraqi regime by more than 2,000 companies worldwide to secure business deals under the Oil-for-Food Program.

(3) Report Drafting/Editing: I was the principal drafter and staff editor of the investigation committee's final reports totaling more than 2,000 pages (and that formed the basis for a book that I later co-authored: GOOD INTENTIONS CORRUPTED: THE OIL-FOR-FOOD SCANDAL AND THE THREAT TO THE U.N. (Public Affairs Books 2006) (co-author with Paul A. Volcker and Mark G. Califano)).

Review of World Bank Anti-Corruption Safeguards (May – Sept. 2007). This was an independent review led by Paul Volcker and a committee of economic development and anti-corruption experts (including former GE General Counsel Ben W. Heineman, Jr.) into the adequacy of the World Bank's safeguards against corruption and misuse of its project funds. This review arose in the midst of controversy about how the World Bank should balance its interest in expeditious project funding against its interest in investigating allegations of corruption and instituting systemic safeguards. My role involved analysis of World Bank records, interview of World Bank employees, and editing of the panel's final report and recommendations.

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.

Criminal Procedure (Investigative), Quinnipiac University School of Law, 2006 – 2013 (except 2011). Basic principles concerning the authority of the government to investigate in a manner compatible with the Fourth, Fifth, Sixth Amendments, and with federal statutory law. Syllabus supplied: 2007, 2008, 2009, 2010 and 2013 (other years unavailable).

Criminal Procedure (Comparative), Quinnipiac University School of Law summer program at Trinity College in Dublin, Ireland, Summer 2009 (co-teach). Basic comparative law approach to criminal procedure systems of the United States, Europe and elsewhere. Syllabus supplied.

Environmental Law, Quinnipiac University School of Law, 2006 – 2012 (except 2010). Basic principles and strategies of environmental regulation, a survey of major federal environmental statutes (such as the Clean Air Act, the Clean Water Act, RCRA,

CERCLA, and NEPA), and consideration of how federal and state environmental regulatory regimes intersect. Syllabus supplied: 2012 (other years unavailable).

International Law, Quinnipiac University School of Law, 2007 – 2013. Basic principles of treaties and customary international law, with an emphasis on transnational jurisdiction and how international law commitments translate (or not) to legal obligations under U.S. domestic law. Syllabus supplied: 2007, 2008, 2009, 2010 and 2013 (other years unavailable).

Lawyers' Professional Responsibility, Quinnipiac University School of Law, 2006 – 2012. Basic principles of legal practice ethics and the ABA Model Rules of Professional Conduct with a focus on the duty of competence, confidentiality, conflicts of interest, and candor to the court. Syllabus supplied: 2006, 2007, 2008, 2009, 2010 and 2012 (other years unavailable).

Prosecution Externship, Yale Law School, 1998 – 2004. Class instruction for Yale Law School prosecution interns, with focus on procedural and ethical issues confronting prosecutors through the course of investigation, charging, guilty plea, trial, and sentencing phases of a criminal prosecution. I do not recall using a syllabus for this course.

Supreme Court Advocacy Clinic, Yale Law School, 2010 – 2013 (co-teach). Pro bono representation of clients with matters before the United States Supreme Court, as well as classroom component involving discussion of Supreme Court practice and guest judges/practitioners. Syllabus supplied: 2010, 2011, 2012.

Supreme Court Symposium, Quinnipiac University School of Law, 2009 – 2013 (co-teach). One-credit course involving review and student "moot court" argument of seven top cases in the Supreme Court each term. Syllabus supplied: 2013 (other years unavailable).

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.

    Other than any wages due or retirement benefits I have accrued in connection with my prior employment, I do not anticipate any receipts from deferred income arrangements, stock, options, uncompleted contracts or any other benefits to be received from my current employment or any business.

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 would consider any possibilities that might arise to teach a course at Yale or Quinnipiac law schools (not involving any clinical work or the practice of law). I would not engage in the practice of law or in any commitments that would detract from my duties as a federal court judge.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I would recuse in any litigation that involved my father, a State Senator, or the State Senate as a party (while he remains a State Senator), or that involved a challenge to the validity of a law that I became aware he sponsored. I would plan to recuse as required under Canon 3(C)(1)(a) and (d) of the Code of Conduct for United States Judges. For a period of time, I also anticipate recusing in all cases that involve my current university employers, Yale and Quinnipiac, if they were to appear as parties to a case or if their professors and/or clinic attorneys were to appear as counsel for any case before me. 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.

       If confirmed, I would scrupulously abide by the ethical restrictions set forth by statute in 28 U.S.C. § 455 and Canon 3 of the Code of Conduct for United States Judges. If I were uncertain about my obligations, I would seek guidance from other judges and/or request an opinion from the Committee on Codes of Conduct of the Administrative Office of the United States Courts.

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

I have represented a substantial number of pro bono clients since 2010 with the Yale Supreme Court Advocacy Clinic. In addition, I have participated in two other significant pro bono client matters.

First, from March 2010 to December 2011, I represented Dr. William A. Petit, Jr., at his request to furnish legal advice on a range of criminal law issues and victim's-rights-related issues stemming from the murders of his wife and two daughters in Cheshire, Connecticut in July 2007, and for the subsequent capital murder trials of the two defendants involved. I met with Connecticut legislators concerning a mid-trial proposal to repeal Connecticut's death penalty, and I co-testified with Dr. Petit before the Connecticut General Assembly concerning Dr. Petit's rights as a survivor of capital crime victims to present victim impact testimony at trial.

Second, from February 2007 to January 2009 and in conjunction with the Quinnipiac University School of Law Low Income Tax Clinic, I provided pro bono representation to a federal criminal defendant in multi-stage sentencing and appeal proceedings. *United States v. Trupin*, No. 97cr97(LMM) (S.D.N.Y).

I have also participated in a range of pro bono public service activities not involving direct client representation. First, since August 2008, I have served as a member of Connecticut's Judicial Ethics Committee to furnish advisory opinions for guidance of Connecticut judges concerning ethical issues arising from their judicial service. Second, in 2011, I was a member of a federal advisory committee that was chaired by Judge José A. Cabranes to screen, interview, and recommend candidates for selection to be the Federal Public Defender in Connecticut. Third, since 2009 I have served as faculty advisor to the Quinnipiac International Human Rights Law Society and its annual law-and-service trips to Nicaragua and Guatemala. I have joined our students several times for a one-week trip to Nicaragua or Guatemala where we have co-sponsored legal education forums on domestic violence laws, alternative dispute resolution, and human rights laws, and where we also participate in school painting/construction projects. Fourth, from 2007 to 2008, I served in the City of New Haven, Connecticut as co-chair of a citizen panel known as the Independent Accountability Panel to conduct public community forum hearings and to advise the city in connection with reform proposals following revelations of deep corruption in the city police department. Finally, I have also previously served from 1995 to 1996 as an academic tutor and friendship mentor for a Laotian elementary school student in New Haven, and from 1995 to 1997 I served on the U.S. Attorney's Police and Urban Youth Task Force to organize meetings and social events designed to enhance the relationship among prosecutors, police and youth of New Haven, Connecticut.

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 January 11, 2013, I submitted my completed questionnaire to an advisory screening committee assembled by Senators Richard Blumenthal and Chris Murphy. I interviewed with the screening committee on January 27, 2013, and then interviewed with Senators Blumenthal and Murphy on February 22, 2013 in Hartford, Connecticut. Since March 7, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 15, 2013, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 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. 1/2013

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
Meyer, Jeffrey A.	U.S. District Court, Connecticut	06/07/2013
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
District Judge	☑ Nomination Date 06/07/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 06/03/2013
7. Chambers or Office Address		
Yale Law School 127 Wall Street, Box 108 New Haven, CT 06520		

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.	Professor of Law	Quinnipiac University School of Law
2.	Visiting Professor of Law	Yale Law School
3.	Secretary and Director	Timberledge Corporation
4.	Trustee	Trust #1
5.	Director	Harry A. Blackmun Scholarship Foundation

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 10	Name of Person Reporting Meyer, Jeffrey A.	Date of Report 06/07/2013

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	Quinnipiac University School of Law	$57,625.00
2. 2013	Yale Law School	$14,583.33
3. 2012	Quinnipiac University School of Law	$128,622.00
4. 2012	Yale Law School	$27,499.98
5. 2011	Quinnipiac University School of Law	$130,366.14
6. 2011	Yale Law School	$20,000.04

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	Quinnipiac University School of Law - salary
2. 2012	Quinnipiac University School of Law - salary
3. 2012	University of Alabama Law School - honorarium - $2,000
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 10	Name of Person Reporting Meyer, Jeffrey A.	Date of Report 06/07/2013

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.	Hopkins School, New Haven, CT	Private secondary school for child	None
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 10

Name of Person Reporting	Date of Report
Meyer, Jeffrey A.	06/07/2013

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. Peoples United Bank cash accounts	A	None	K	T	Exempt				
2. US savings bonds (Series EE)	A	None	J	T					
3. Brokerage account									
4. - T.Rowe Price Blue Chip Growth Fund	A	Dividend	K	T					
5. -Schwab Money Market	A	Interest	J	T					
6. IRA account #1	A	Dividend	J	T					
7. - Schwab Markettrack All Equity									
8. IRA account #2	C	Dividend	M	T					
9. - Schwab Markettrack All Equity									
10. - Pimco Total Return Fund Cl D									
11. TIAA/CREF retirement account #1	B	Interest	M	T					
12. -TIAA Traditional									
13. - CREF Bond Market									
14. - CREF Equity Index									
15. - CREF Global Equities									
16. - TIAA Real Estate									
17. TIAA/CREF retirement account #2	D	Interest	O	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
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Name of Person Reporting	Date of Report
Meyer, Jeffrey A.	06/07/2013

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)
18. - TIAA Traditional									
19. - CREF Social Choice									
20. Trust #1	E	Dividend	O	T					
21. -Abbott Laboratories (ABT) common stock									
22. -Abbvie Inc. (ABBV) common stock									
23. -Alliance Resources (ARLP) common stock									
24. -Archer Daniels Midland (ADM) common stock									
25. -AT&T Inc. (ATT) common stock									
26. -Companihia de Bebidas (ABV) common stock									
27. -CVS Caremark Corp (CVS) common stock									
28. -Du Pont (DD) common stock									
29. -General Electric (GE) common stock									
30. -Hess Corp. (HES) common stock									
31. -Intel Corp (INTC) common stock									
32. -Int'l Business Mach. (IBM) common stock									
33. -Int'l Paper Co. (IP) common stock									
34. -JP Morgan Chase (JPM) common stock									

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

FINANCIAL DISCLOSURE REPORT Page 6 of 10	Name of Person Reporting Meyer, Jeffrey A.	Date of Report 06/07/2013

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)
35. -Marathon Oil Corp (MRO) common stock									
36. -NYSE Euronext (NYX) common stock									
37. -Pfizer Inc. (PFE) common stock									
38. -SPDR Euro Stoxx 50 ETF (FEZ)									
39. -Timken Company (TKR) common stock									
40. -Whiting Petro Corp (WLL) common stock									
41. Trust #2	D	Dividend	M	T					
42. -Atmos Energy Corp. (ATO)									
43. -Exxon Mobil Corp. (XOM) common stock									
44. -Growth Fund of America Cl. A (AGTHX)									
45. -T. Rowe Price Group Inc. (TROW) common stock									
46. -Procter & Gamble (PG) common stock									
47. -Invesco Global 45 Dividend Strategy Portfolio unit trusts									
48. Trust #3	E	Dividend	O	T					
49. -American Century Div. Bond Fund Institutional Cl. (ACBPX)									
50. -CBA Aggressive Growth Fund Cl. Fl. (SAGYX)									
51. -Columbia Smallcap Value Fund I CL Z (CSCZX)									

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
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Name of Person Reporting	Date of Report
Meyer, Jeffrey A.	06/07/2013

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)
52. -Dodge & Cox Income Fund (DODIX)									
53. -Dodge & Cox Stock Fund (DODGX)									
54. -Fundamental Investors Fund Cl F1 (AFIFX)									
55. -Harbor Capital Appreciation Fund Instit. Class (HACAX)									
56. -Hartford Cap. Appreciation Fund (ITHIX)									
57. -Invesco Comstock Fund Class Y (ACSDX)									
58. -JP Morgan Core Bond Fund Select Cl. (WOBDX)									
59. -JP Morgan Federal Money Market Fund Instit. Cl. (JFMXX)									
60. -JP Morgan High Yield Fund Select Cl. (OHYFX)									
61. -JP Morgan Mid Cap Value Fund Select Cl (JMVSX)									
62. -Loomis Sayles Global Bond Fund Instit. Cl. (LSGBX)									
63. -Loomis Sayles Investment Grade Bond Fund Cl. Y (LSIIX)									
64. -Metropolitan West Fund Total Return Bond Fund Cl. I (MWTIX)									
65. -MFS International New Discovery Fund Cl I (MWNIX)									
66. -MFS Value Fund Cl. I (MEIIX)									
67. -Mutual Global Discovery Fund Cl Z (MDISX)									
68. -Pimco Funds Total Return Fund IV Inst. Cl. (PTUIX)									

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Meyer, Jeffrey A.	05/07/2013

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)
69. -Prudential Jennison Mid-Cap Growth Fund Cl Z (PEGZX)									
70. -Rainier Small Mid Cap Equity Fund Inst. Class (RAISX)									
71. -Scout International Fund (UMBWX)									
72. -T Rowe Price Blue Chip Growth Fund (TRBCX)									
73. -T Rowe Price International Bond Fund (RPIBX)									
74. -T Rowe Price International Stock Fund (PRITX)									

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
Meyer, Jeffrey A.	06/07/2013

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

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Meyer, Jeffrey A.	Date of Report 06/07/2013

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/ Jeffrey A. Meyer

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		29	981	Notes payable to banks-secured (auto)		15	930
U.S. Government securities – Series EE		3	200	Notes payable to banks-unsecured			
Listed securities – see schedule		909	339	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		9	082
Real estate owned – personal residence		396	400	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		21	500				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		252	934				
				Total liabilities		25	018
				Net Worth	1	588	336
Total Assets	1	613	354	Total liabilities and net worth	1	613	354
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.	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
CREF Bond Market	$ 15,775
CREF Equity Index	72,866
CREF Global Equities	61,863
CREF Social Choice	325,806
Nortel Networks stock	0
PIMCO Total Return Fund	17,331
Schwab MarketTrack All Equity Portfolio	96,457
T. Rowe Price Blue Chip Growth Fund	26,751
TIAA Real Estate	9,290
TIAA Traditional	283,200
Total Listed Securities	$ 909,339

AFFIDAVIT

I, JEFFREY ALKER MEYER, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/10/2013
(DATE)

(NAME)

(NOTARY)

[redacted]on Expires
[redacted]r 30, 2017

Senator BLUMENTHAL. Ms. McCafferty.

STATEMENT OF LANDYA B. MCCAFFERTY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF NEW HAMPSHIRE

Judge MCCAFFERTY. Thank you, Senator Blumenthal and Ranking Member Grassley, for having this hearing. It is an honor to be here.

First, I would like to thank President Obama for the honor of this nomination. I would like to thank Senator Shaheen for her kind words today and for her trust in me in submitting my name to the President. I would also like to thank Senator Ayotte, who has been supportive of me as well.

Today, I am lucky to have family members with me. My husband of 27 years, Patrick McCafferty, is here, along with ny two wonderful daughters: Maureen McCafferty, named for my mother-in-law. Maureen is 16 years old going into her junior year of high school. And Claire McCafferty is 11, both of whom have been very well behaved in the back and are sitting behind me. Claire is going into the sixth grade.

Both of my parents are here today, and I am very lucky to have them both here. And my brother, Galen; my first cousin, Rob Householder, has come in from Canada; and my brother-in-law, Terrence, has come down from New York City. I feel very honored to have them here with me today.

Thank you.

[The biographical information of Judge McCafferty follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Landya B. McCafferty
   Formerly Landya Marie Boyer

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

   United States District Judge for the District of New Hampshire

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 District of New Hampshire
   Warren B. Rudman United States Courthouse
   55 Pleasant Street, Room 417
   Concord, New Hampshire 03301

   Residence: Portsmouth, New Hampshire

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

   1962; Washington, D.C.

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

   1988 – 1991, Northeastern University School of Law; J.D., 1991
   1980 – 1984, Harvard University, A.B. (*cum laude*); 1984

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

2010 – present
United States District Court for the District of New Hampshire
Warren B. Rudman United States Courthouse
55 Pleasant Street
Concord, New Hampshire 03301
United States Magistrate Judge

2003 – 2010
New Hampshire Attorney Discipline Office
Four Chenell Drive, Suite 102
Concord, New Hampshire 03301
Disciplinary Counsel

1995 – 2003, November 1989 – February 1990
New Hampshire Public Defender Program
15 Fourth Street, Suite 3
Dover, New Hampshire 03820
Staff Attorney (1995 – 2003)
Legal Intern (November 1989 – February 1990)

1994 – 1995
United States District Court for the District of Massachusetts
One Courthouse Way
Boston, Massachusetts 02210
Law Clerk for Honorable A. David Mazzone (deceased)

1993 – 1994, 1990 – 1991
McLane, Graf, Raulerson & Middleton, PA
900 Elm Street
Manchester, New Hampshire 03105
Litigation Associate (1993 – 1994)
Legal Intern (1990 – 1991)

1992 – 1993
United States Court of Appeals for the First Circuit
One Courthouse Way
Boston, Massachusetts 02210
Law Clerk for Honorable Norman H. Stahl

1991 – 1992
United States District Court for the District of New Hampshire
55 Pleasant Street
Concord, New Hampshire 03301
Law Clerk for Honorable Norman H. Stahl

Summer 1990
Wilmer Cutler Pickering Hale and Dorr, LLP
60 State Street.
Boston, Massachusetts 02109
Summer Associate

Summer 1989
United States District Court for the District of New Hampshire
55 Pleasant Street
Concord, New Hampshire 03301
Legal Intern for Honorable Shane Devine (deceased)

1984 – 1988
St. Paul's School
325 Pleasant Street
Concord, New Hampshire 03301
Assistant Director of Admissions/Teacher

Summer 1984
Grant Village Lodge at Yellowstone National Park
Old Faithful ByPass Road
Yellowstone Lake Park, Wyoming 82190
Waitress/Hostess

Other affiliations (uncompensated):

Approximately 2000 – 2002
St. John's Episcopal Church
101 Chapel Street
Portsmouth, New Hampshire 03801
Vestry Member

Approximately 2000 – 2002
Chase Home for Children
698 Michelle Road
Portsmouth, New Hampshire 03801
Member, Board of Directors

Approximately 1992 – 1996
Northeastern University School of Law Alumni/ae Association
400 Huntington Avenue
Boston, Massachusetts 02115
Member, Board of Directors

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

   I have not served in the military. I am 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.

   New Hampshire Bar Association Faculty Honor Roll (2003 – 2004, 2004 – 2005, 2005 – 2006, 2008 – 2009, 2009 – 2010, 2011 – 2012)

   Northeastern University School of Law, Head Teaching Assistant for first-year legal writing course (1990)

   Harvard University, Gottesman Award for Leadership, Winthrop House (1984)

   Harvard University, Awarded sophomore standing upon admission (1980)

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

   Committee on Cooperation with the Courts (2011 – present)
   Federal Magistrate Judges' Association (2010 – present)
   New Hampshire Bar Association (1991 – present)
   National Organization of Bar Counsel (2004 – 2010)
   American Bar Association (2004 – 2009)
   New Hampshire Supreme Court Professional Conduct Committee (2000 – 2004)
   New Hampshire Association of Criminal Defense Lawyers (1995 – 2003)

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 Hampshire, 1991

       There have been no lapses in my membership.

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

United States Court of Appeals for the First Circuit, 1993
United States District Court for the District of New Hampshire, 1993
New Hampshire Supreme Court, 1991

There have been no lapses in my membership.

11. **Memberships**:

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

Charles C. Doe American Inn of Court, Member (2010 – present)

Chase Home for Children (approximately 2000 – 2002)
Member, Board of Directors

Northeastern University School of Law Alumni/ae Association (approximately 1992 – 1996)
Member, Board of Directors

St. John's Episcopal Church (1995 – present)
Youth Group Leader (2008 – 2010)
Vestry Member (approximately 2000 – 2002)

Although James R. Muirhead, Esq., then a partner at the McLane firm, asked me, as an associate at McLane, to assist him in his role as Chairman of the Manchester City Government Review Task Force from 1993 to 1994, I do not otherwise recall serving as a formal member of this Task Force. I only list it here in an effort to be as inclusive as possible.

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

To my knowledge, none of the organizations listed in my response to 11a above currently discriminates or formerly discriminated on the basis of race, sex,

religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

With Muirhead, Hon. James R., "Federal Civil Litigation in the First Circuit," Vol. II. Ch. 19, *Practice in the District of New Hampshire*, Massachusetts Continuing Legal Education, Inc. (2011). In 2011, I made minor updates to this chapter; the original was written entirely by Judge Muirhead. Copy supplied.

On May 25, 2010, I posted questions about my computer on my "Mac User's Group" listserve. Copy supplied.

On May 3, 2008, I posted a link to information about iStabilize, software for MacOS X to a Yahoo iMovie group. Copy supplied.

On June 17, 2007, I posted questions about iMovie on a listserve called "themacintoshguy.com." Copy supplied.

Chart *Collateral Consequences of Motor Vehicle Convictions*, NEW HAMPSHIRE PUBLIC DEFENDER 2004 PRACTICE GUIDE (August 2004). I drafted the original version of this document with substantial assistance from a legal intern in my office, Beth Kelsch. Copy supplied.

With Linda J. Slamon, Esq., *Trial: Evidence Objections – Other Crimes and Misconduct: Rule 404(b)*; NEW HAMPSHIRE PUBLIC DEFENDER 2002 PRACTICE GUIDE (August 2002). I co-authored the original version of this document with Linda J. Slamon, Esq. The document has received substantial updates since. A copy of the substantially updated version is supplied. I was unable to locate the original.

Juvenile Bill of Particulars RSA 169-B:6(II), THE MITTIMUS (February 13, 1997). Copy supplied.

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

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.

September 23, 2009: I spoke in support of the nomination to the New Hampshire Superior Court of then-attorney David Garfunkel at his hearing before the New Hampshire Executive Council. Mr. Garfunkel was confirmed on October 7, 2009. I have no notes, transcript, or recording. The address of the New Hampshire Executive Council is 107 North Main Street, State House, Room 207, Concord, New Hampshire 03301.

May 17, 2006: I spoke in support of the nomination to the Rochester District Court of then-attorney Susan W. Ashley at her hearing before the New Hampshire Executive Council. Ms. Ashley was confirmed on June 7, 2006. I have no notes, transcript, or recording. The address of the New Hampshire Executive Council is 107 North Main Street, State House, Room 207, Concord, New Hampshire 03301.

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

I have not maintained a comprehensive record of my presentations and speeches, nor have I retained my calendars. Much of the material on this list is based on my best recollection. It is possible that I have omitted presentations for which I did not retain records and have no memory.

June 14, 2013: Rockingham County Bar Association CLE on "iPads and Legal Ethics," Portsmouth, New Hampshire. I provided "live" training for lawyers on the topic of document management on the iPad. I have no notes, transcript, or recording. The address for the Rockingham County Bar Association is c/o Tara C. Schoff, Esq., Tober Law Offices, PA, 381 Middle Street, P.O. Box 1377, Portsmouth, New Hampshire 03802.

May 17, 2013: "The Future of the Practice of Law/Access to Justice," a panel discussion sponsored by the New Hampshire Bar Association Leadership Academy Program," Concord, New Hampshire. I spoke on the topic of the use of technology by the judiciary. Notes supplied.

May 17, 2013; March 22, 2013; November 16, 2012; September 21, 2012; August 17, 2012; March 16, 2012; November 18, 2011; and April 22, 2011: I presided over naturalization ceremonies on these dates at the United States District Court for the District of New Hampshire, Concord, New Hampshire. Remarks supplied.

March 14, 2013: Table for Eight Mentoring Dinner, Manchester, New Hampshire. I was "mentor for the evening" at an informal question-and-answer session with members of the New Hampshire Women's Bar Association. I have no notes, transcript, or recording. The address for the New Hampshire Women's Bar Association is P.O. Box 915, Manchester, New Hampshire 03101.

January 24, 2013: United States District Court for the District of New Hampshire CLE on "iPad for Litigators," Concord, New Hampshire. I spoke on the topic of document management on the iPad, and my co-presenter, R. Matthew Cairns, Esq., spoke about using the iPad during trial. This was a "live" training session. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Hampshire is Warren B. Rudman United States Courthouse, 55 Pleasant Street, Concord, New Hampshire 03301.

October 4, 2012: "Federal Judge Open Forum," sponsored by the Federal Practice Institute, Concord, New Hampshire. I participated in this question-and-answer session with the other judges of this district court. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Hampshire is Warren B. Rudman United States Courthouse, 55 Pleasant Street, Concord, New Hampshire 03301.

July 17, 2012; October 20, 2011; and September 22, 2011: "Introduction to the iPad," Concord, New Hampshire. I provided iPad training for lawyers on these dates at the United States District Court for the District of New Hampshire. These were "live" training sessions. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Hampshire is Warren B. Rudman United States Courthouse, 55 Pleasant Street, Concord, New Hampshire 03301.

June 8, 2012: I participated in an informal lunch meeting with new members of the New Hampshire Bar to answer questions about discovery in federal court. The luncheon took place at the United States District Court for the District of New Hampshire in Concord, New Hampshire. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

June 5, 2012: New Hampshire Bar Admission Ceremony, Concord, New Hampshire. Remarks supplied.

February 16, 2012: "Sexual Harassment News and Views," Concord, New Hampshire. I was a panelist, along with Chief Judge Joseph N. Laplante, for a

question-and-answer session sponsored by the New Hampshire Bar Association's Employment Law Section. I spoke briefly on the topic of discovery issues in employment law cases. Notes supplied.

December 7, 2011: Charles C. Doe American Inn of Court, Durham, New Hampshire. I presented on the topic of GPS Tracking and the Fourth Amendment. Materials supplied.

November 3, 2011: Heronfield Academy Enrichment Series, Hampton Falls, New Hampshire. I participated in a question-and-answer session about the state and federal judicial systems in New Hampshire with Honorable Tina Nadeau, the Chief Justice of the New Hampshire Superior Court. Judge Nadeau and I answered questions from a moderator and then from the audience. I have no notes, transcript, or recording. The address for Heronfield Academy is 356 Exeter Road, Hampton Falls, New Hampshire 03844.

October 26, 2011: "Lunch with the Dean," Concord, New Hampshire. I attended a luncheon hosted by Dean John Broderick at the University of New Hampshire School of Law. I answered students' questions about my career. I have no notes, transcript, or recording. The address for the University of New Hampshire School of Law is Two White Street, Concord, New Hampshire 03301.

May 6, 2011: "The Path to the Bench: Demystifying the Judicial Selection Process for Women," Manchester, New Hampshire. I was a panelist along with several other female judges in New Hampshire. I gave no prepared remarks; it was an informal question-and-answer session. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

December 2010: "Bench and Bar," Concord, New Hampshire. I gave a short speech welcoming new members of the New Hampshire Bar at this annual "meet-and-greet" event. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

November 12, 2010: "Federal Judge Open Forum," Federal Practice Institute, Concord, New Hampshire. I participated in this question-and-answer session with the other judges of this district court. I have no notes, transcript, or recording. The address for the United States District Court for the District of New Hampshire is Warren B. Rudman United States Courthouse, 55 Pleasant Street, Concord, New Hampshire 03301.

October 4, 2010: Guest lecturer at Professor John Greabe's Civil Procedure class at the University of New Hampshire School of Law. Along with District Judge Gustavo Gelpi, who sits on the United States District Court for the District of Puerto Rico, I spoke to students about pleading requirements. I have no notes,

transcript, or recording. The address for Professor John Greabe is University of New Hampshire School of Law, Two White Street, Concord, New Hampshire 03301.

June 25, 2010: Swearing-in Ceremony of Landya B. McCafferty, United States Magistrate Judge for the District of New Hampshire, Concord, New Hampshire. Remarks supplied.

April 12, 2010: Panelist at the University of New Hampshire School of Law, Concord, New Hampshire. Law students asked a group of attorneys, including me, general questions about the practice of law in New Hampshire. I have no notes, transcript, or recording. The address for the University of New Hampshire School of Law is Two White Street, Concord, New Hampshire 03301.

April 5, 2010; April 12, 2010; October 14, 2009; April 13, 2009; April 9, 2008; November 19, 2007; April 11, 2007; April 12, 2006; November 16, 2005; April 11, 2005; September 15, 2004; November 4, 2004; and April 19, 2004: Guest lecturer for Professors Mitchell Simon, Esq. and Russell Hilliard, Esq., at the University of New Hampshire School of Law, Concord New Hampshire. I spoke to third-year law students on the topic of sanctions in attorney discipline cases in New Hampshire. I have no notes, transcript, or recording. The address for the University of New Hampshire School of Law is Two White Street, Concord, New Hampshire 03301.

March 5, 2010: New Hampshire Association for Justice CLE on "Ethics Blitz," Lincoln, New Hampshire. I spoke on the top of "Legal Ethics in the Digital Age: Issue Spotting." Materials supplied.

February 12, 2010: New Hampshire Bar Association Ethics Presentation, Concord, New Hampshire. I led a discussion using a set of legal ethics hypotheticals. Materials supplied.

June 19, 2009: New Hampshire Department of Justice Annual Training, Concord, New Hampshire. I presented with Alan Cronheim, Esq., on the topic of ethics issues faced by prosecutors. I have no notes, transcript, or recording. The address for the New Hampshire Department of Justice is 33 Capitol Street, Concord, New Hampshire 03301.

June 18, 2009: Nashua Bar Association panel discussion on legal ethics, Nashua, New Hampshire. I was on a panel with several other attorneys; we discussed legal ethics hypotheticals and answered questions of attendees. I have no notes, transcript, or recording. The address for the Nashua Bar Association is 29 Factory Street, Nashua, New Hampshire 03060.

June 10, 2009; December 10, 2008; December 12, 2007; June 6, 2007; December 13, 2006; June 7, 2006; December 24, 2005; June 8, 2005; December 8, 2004; and December 9, 2004: New Hampshire Bar Association CLE on Practical Skills

Workshop session on legal ethics, Concord, New Hampshire. I co-presented on these dates with Richard Uchida, Esq., at this CLE that the New Hampshire Bar Association requires of all new admittees. We used legal ethics hypotheticals to generate discussion. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

September 2008: New Lawyer Training for the New Hampshire Public Defender, Concord, New Hampshire. I lectured on legal ethics. I have no notes, transcript, or recording. The address for the New Hampshire Public Defender is Ten Ferry Street, Suite 425, Concord, New Hampshire 03301.

December 5, 2007: Charles C. Doe American Inn of Court, Durham, New Hampshire. I spoke on the attorney discipline system and legal ethics in New Hampshire. I have no notes, transcript, or recording. The Inn does not have a physical address.

June 28, 2007: New Hampshire Bar Association CLE on "The Laws Governing New Hampshire Lawyers," Concord, New Hampshire. I spoke on a panel with other lawyers at a mid-year Bar meeting in Concord, New Hampshire. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

September 22, 2006: New Hampshire Department of Justice Annual Training, Concord, New Hampshire. I do not recall specifics of this event, but I am certain I would have presented on a topic concerning legal ethics. I have no notes, transcript, or recording. The address for the New Hampshire Department of Justice is 33 Capitol Street, Concord, New Hampshire 03301.

June 16, 2006: New Hampshire Judicial Council training program, Concord, New Hampshire. I co-presented with Christopher M. Keating, Esq., on the topic entitled "Avoiding Professional Conduct Complaints: 10 Tips for Attorneys." I have no notes, transcript, or recording. The address for the New Hampshire Judicial Council is State House Annex, Room 424, 25 Capitol Street, Concord, New Hampshire 03301.

April 7, 2006: I attended an informal luncheon to answer questions about the New Hampshire attorney disciplinary system for attorneys at the New Hampshire Department of Justice in Concord, New Hampshire. I have no notes, transcript, or recording. The address for the New Hampshire Department of Justice is 33 Capitol Street, Concord, New Hampshire 03301.

February 16, 2006: I was a judge in a mock trial competition for students at the University of New Hampshire School of Law in Concord, New Hampshire. I have no notes, transcript, or recording. The address for the University of New Hampshire School of Law is Two White Street, Concord, New Hampshire 03301.

February 10, 2006: Discussion for Statewide Professionalism Day held at Strafford County Superior Court in Dover, New Hampshire. My recollection is that I led a discussion (along with a co-presenter, Thomas Velardi, Esq.) on professionalism for members of the New Hampshire Bar. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

February 1, 2006: Discussion at the Daniel Webster-Batchelder American Inn of Court, Bedford, New Hampshire. My best recollection is that I was invited to speak on the attorney discipline system and legal ethics in New Hampshire. I have no notes, transcript, or recording. The Daniel Webster-Batchelder American Inn of Court does not have a physical address.

April 1, 2005: New Hampshire Bar Association CLE on "The Nuts and Bolts of Criminal Law Practice in New Hampshire," Concord, New Hampshire. I do not recall specifics, but I would have presented on legal ethics. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

February 16, 2005: New Hampshire Bar Association CLE on "10 Traps That Lead to Professional Conduct Committee Issues," Concord, New Hampshire. I spoke on a panel with other lawyers at a mid-year Bar meeting on the topic of how to avoid malpractice and ethical complaints. I have no notes, transcript, or recording. The address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

September 23, 2004: New Lawyer Training for the New Hampshire Public Defender, Concord, New Hampshire. I lectured on legal ethics. I have no notes, transcript, or recording. The address for the New Hampshire Public Defender is Ten Ferry Street, Suite 425, Concord, New Hampshire 03301.

September 15, 2004: Guest lecturer for Professor Jennifer Sargent's professional responsibility class at Vermont Law School, South Royalton, Vermont. The topic concerned sanctions in attorney discipline cases. I have no notes, transcript, or recording. The address for the Vermont Law School is 164 Chelsea Street, South Royalton, Vermont 05068.

September 10, 2004: New Hampshire Public Defender Training Program, Concord, New Hampshire. I led a discussion on legal ethics using a set of hypotheticals and a "game show" format. I have no notes, transcript, or recording. The address for the New Hampshire Public Defender is Ten Ferry Street, Suite 425, Concord, New Hampshire 03301.

February 13, 2004: New Hampshire Bar Association CLE on "The New Attorney Disciplinary System," Concord, New Hampshire. I spoke on a panel with other lawyers at a mid-year Bar meeting. I have no notes, recording, or transcript. The

address for the New Hampshire Bar Association is Two Pillsbury Street, Suite 300, Concord, New Hampshire 03301.

September 5, 2003: New Lawyer Training for the New Hampshire Public Defender, Concord, New Hampshire. I lectured on legal ethics. I have no notes, transcript, or recording. The address for the New Hampshire Public Defender is Ten Ferry Street, Suite 425, Concord, New Hampshire 03301.

April 11, 2001: "Advanced Drug Defense," Manchester, New Hampshire. I presented on "Detention and Consent: Cutting Edge Issues in Search and Seizure Law." Materials supplied.

June 11, 1999: "Defense of Sexual Assault Cases," Manchester, New Hampshire. I presented on "Suggestibility of Child Witnesses." Materials supplied.

Technology Training for Federal Judges

Since joining the bench, I have presented numerous technology training sessions for federal judges.

April 29, 2013: "iPad for Judges." I taught this webinar to newly appointed federal magistrate judges via software controlled by the Federal Judicial Center. I have no notes, transcripts, or recordings. The address for the Federal Judicial Center is One Columbus Circle, NE, Washington, DC 20002.

January 30, 2013: "iPad for Judges, Part 2." I taught this webinar to judges of the United States District Court for the District of Arizona via software controlled by the Federal Judicial Center. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle NE, Washington, DC 20002.

January 28, 2013: "iPad for Judges, Part 1." I taught this webinar to judges of the United States District Court for the District of Arizona via software controlled by the Federal Judicial Center. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle NE, Washington, DC 20002.

December 7, 2012: "iPad for Beginners," First Circuit Judicial Conference, Newcastle, New Hampshire. This was a "live" presentation. I also created short instruction manuals and a set of "how-to" videos for the judges at this Conference. These videos were made available to all federal judges through links on the Federal Judicial Center website. Materials (including videos) supplied.

September 27, 2012: "iPad for Judges - Advanced." I taught this webinar, along with David Sparks, Esq., to a national audience of federal judges via software controlled by the Federal Judicial Center. Materials supplied.

September 25, 2012: "iPad for Judges - Beginner." I taught this webinar, along with David Sparks, Esq., to a national audience of federal judges via software controlled by the Federal Judicial Center. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle NE, Washington, DC 20002.

August 22, 2012, and August 24, 2012: FJC Phase I Orientation for Newly Appointed United States Magistrate Judges Information Technology Training, San Antonio, Texas. I was an instructor at this class, but I do not believe I contributed to the voluminous teaching materials. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle NE, Washington, DC 20002.

July 24, 2012: "iPad for Judges," FJC Workshop for United States Magistrate Judges II, Denver, Colorado. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle NE, Washington, DC 20002.

May 7, 2012: iPad Training for Judges of the United States Court of Appeals for the First Circuit, Boston, Massachusetts. This was a "live" training session. I have no notes, transcript, or recording. The address for the United States Court of Appeals for the First Circuit is One Courthouse Way, Suite 3700, Boston, Massachusetts 02210.

April 19, 2012: "iPad for Judges," FJC Workshop for United States Magistrate Judges II, Miami, Florida. Audio supplied.

August 15, 2011, and August 18, 2011: "iPad for Judges," conference sponsored by the Administrative Office of the United States Courts. I made several informal iPad presentations for employees of the federal courts at the CM/ECF Operational Practices Forum in National Harbor, Maryland. Audio supplied.

July 21, 2011: "Working on the Run - Using Kindles and iPads for Court Related Work," FJC Workshop for United States Magistrate Judges II, Atlanta, Georgia. Audio 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.

"Three Steps to an Ethical Path," NH BAR NEWS, Aug. 17, 2012. Copy supplied.

"Hon. McCafferty Featured at Judicial Open Forum," NH BAR NEWS, Feb. 18, 2011. Copy supplied.

"Landya McCafferty Joins Federal Bench as Magistrate," NH BAR NEWS, Jun. 18, 2010. Copy supplied.

I appeared on one occasion in 2007 as a guest on the Digital Photography Show with Scott Sherman. This was a radio podcast that was broadcast on "The Podcast Network." My memory is that I helped the host of the show interview a copyright lawyer about the legal issues involved in digital photography. I have no notes or other records from my appearance on this radio show. The Digital Photography Show is no longer on the air, and I was unable to obtain a copy of the podcast.

Bantz, Phillip, "Keene Lawyer Accused of Duping Paraplegic Client," entry on author's blog, http://phillipbantz.wordpress.com, May 21, 2009. Copy supplied.

James A. Kimble, "New Rules to Relieve Backlog of Complaints Against Attorneys," EAGLE TRIBUNE.COM, Apr. 1, 2007. Copy supplied.

"Former House Majority Leader Bosse in Legal Trouble Again," THE ASSOCIATED PRESS STATE & LOCAL WIRE, Aug. 30, 2006. Copy supplied.

Lisa Segal, "Tough But Fair," NH BAR NEWS, Jan. 23, 2004. Copy supplied.

"Sex Offender Pleads Guilty Though Facing Possible Life Sentence," THE ASSOCIATED PRESS STATE & LOCAL WIRE, May 15, 2001. Copy supplied. (This story was also reprinted as "Guilty of Rapes" in THE UNION LEADER, May 16, 2001.)

"Judge Overturns Teen's Robbery Conviction Because Police Withheld Evidence," THE ASSOCIATED PRESS STATE & LOCAL WIRE, Aug. 23, 2000. Copy supplied. (This story was also reprinted as "Court Overturns Teen's Conviction for Robbery," in THE UNION LEADER, Aug. 24, 2000.)

Jennifer Dillon, "U. New Hampshire Grad Clears Name of Felony Charges," THE NEW HAMPSHIRE, Apr. 23, 1999. Copy supplied.

"UNH Student Clears Name of Felony Charges," THE ASSOCIATED PRESS STATE & LOCAL WIRE, Apr. 9, 1999. Copy supplied.

Paula Tracy, "UNH Student Clears Name of Felony Charges," NEW HAMPSHIRE SUNDAY NEWS, Apr. 18, 1999. Copy supplied.

Jennifer Dillon, "Former U. New Hampshire Football Player Found Not Guilty in Stabbing," THE NEW HAMPSHIRE Feb. 2, 1999. Copy supplied.

Jennifer Dillon, "Alleged Stabbing at U. New Hampshire Stirs Lingering Controversy," THE NEW HAMPSHIRE, Dec. 8, 1999. Copy supplied.

Derek Rose, "Hogan Gets Two Years in Plea Bargain," THE UNION LEADER, May 28, 1997. Copy supplied.

"Man Not Guilty," THE UNION LEADER, Mar. 5, 1997. Copy supplied.

Derek Rose, "Lawyer: Indicted UNH Student Ryan Hogan Plans to Withdraw," THE UNION LEADER, Dec. 18, 1996. Copy supplied.

Derek Rose, "UNH Rape Case Dorm Hearing Set for Dec. 17," THE UNION LEADER, Dec. 11, 1996. Copy supplied.

Derek Rose, "Teen Indicted in Rape Still at UNH," THE UNION LEADER, Dec. 7, 1996. Copy supplied.

John Aloysius Farrell, "Simon Raises Investment of Time, Energy in New Hampshire," THE BOSTON GLOBE, Oct. 26, 1987. Copy supplied.

Kevin Carter, "UMass Shuts Out Batwomen's Streak," THE HARVARD CRIMSON, Apr. 23, 1984. Copy supplied.

Kevin Carter, "Batwomen Survive Tufts; Victory Preserves Streak," THE HARVARD CRIMSON, Apr. 18, 1984. Copy supplied.

Kevin Carter, "Batwomen Sweep Dartmouth Twinbill, 5-4, 5-2," THE HARVARD CRIMSON, Apr. 16, 1984. Copy supplied.

"Senior Co-Captain Receives Farewell," THE HARVARD CRIMSON, Feb. 27, 1984. Copy supplied.

Neal Shultz, "Batswomen Cream Curry College, 13-5," THE HARVARD CRIMSON, May 1, 1982. Copy supplied.

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

In May 2010, I accepted appointment and currently serve as the United States Magistrate Judge for the United States District Court for the District of New Hampshire. The authority of magistrate judges is derived from the Federal Magistrate Act of 1968, 28 U.S.C.A. § 631-37 (2006 & Supp. 2012). In the District of New Hampshire, the United States Magistrate Judge is given substantial authority to handle a wide range of criminal and civil cases. As the magistrate judge assisting with the criminal docket, I preside over all initial proceedings, including arraignments, bail revocation hearings, and preliminary hearings on complaints and probation violations. I also review and issue criminal complaints, arrest and search warrants, and I preside over the grand jury. As the magistrate judge assisting with the civil docket, I preside over civil cases and conduct

jury trials with parties' consent. In my two and one-half years as a magistrate judge, I have presided over three jury trials and approximately 213 other civil cases. Additionally, on dispositive motions referred to me by the district judges, I issue written reports and recommendations to the district judges. On non-dispositive motions, I hold hearings and resolve those matters by order. I conduct preliminary review of all civil cases filed by prisoners and pro se parties. I conduct mediations in civil cases upon referral from the district judges.

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

   I have presided over two cases that have gone to verdict or judgment.

   i. Of these, approximately what percent were:

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

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

   See attached list.

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

   1. *eClipse Enterprise Solutions, LLC v. EndoCeutics, Inc.*, No. 10-cv-00547-LM, United States District Court for the District of New Hampshire

      This was a four-day jury trial of a business dispute in which a software developer sued a customer for breach of contract based upon alleged failures to pay for services and to participate in a data-capture trial. The customer asserted a counterclaim for breach of contract and another counterclaim under the New Hampshire Consumer Protection Act ("CPA"). The breach-of-contract claims were tried to a jury, and the CPA claim was tried to the court. The jury found in favor of the plaintiff on its breach-of-contract claims and awarded $177,934 in damages. I granted judgment to the plaintiff on the defendant's CPA counterclaim. *See eClipse Enter. Solutions, LLC v. EndoCeutics, Inc.*, No. 10-cv-547-LM, 2012 WL 3688510 (D.N.H. Aug. 27, 2012).

Counsel for the Plaintiff:

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Counsel for the Defendant:

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Cook Little Rosenblatt & Manson PLLC
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2. *Torres-Mendez v. Antilus, et al.*, No. 10-cv-00352-LM, United States District Court for the District of New Hampshire

This was a three-day jury trial of an inmate's federal civil rights and state tort claims against a corrections officer and the county's department of corrections. Plaintiff alleged that the corrections officer used excessive force in violation of the Fourteenth Amendment and committed the state tort of battery during a physical altercation with him at the jail. Evidence showed that plaintiff suffered a broken rib from the altercation. Before trial, I ruled from the bench on five motions in limine. After the trial, and while the jury was deliberating, the parties settled the case.

Counsel for the Plaintiff:

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(603) 225-5240

Counsel for the Defendant:

John A. Curren, Esq.
Curtin Murphy & O'Reilly PC
One Tara Boulevard, Suite 309
Nashua, NH 03062
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3. *Universal Am-Can, Ltd. v. Concrete Systems, Inc.*, No. 11-cv-00030-LM, United States District Court for the District of New Hampshire

   This was a three-day jury trial of a business dispute in which a trucking company sued a customer for failing to pay a fuel surcharge to which it had allegedly agreed. The plaintiff asserted claims for breach of contract, quantum meruit, unjust enrichment, and violation of the Consumer Protection Act ("CPA"). The customer asserted counterclaims for violation of the CPA, breach of the implied covenant of good faith and fair dealing, and misrepresentation. Before trial, I granted summary judgment to the plaintiff on all of the defendant's counterclaims. *See Universal Am-Can, Ltd. v. CSI-Concrete Concrete Sys., Inc.*, No. 11-cv-030-LM, 2012 WL 579167 (D.N.H. Feb. 22, 2012). The plaintiff's breach-of-contract claim was tried to a jury, while the equitable claims and the CPA claim were tried to the court, with the jury providing an advisory verdict on the quantum meruit claim. The jury returned a defendant's verdict on the plaintiff's breach-of-contract claim, and recommended a plaintiff's verdict, and an award of $13,475, on the quantum meruit claim. After trial, I granted judgment to the plaintiff on its quantum meruit claim in the amount of $13,475, and granted judgment to the defendant on the plaintiff's CPA claim. *See id.*, 2012 WL 2627764 (D.N.H. July 5, 2012).

   Counsel for the Plaintiff:

   Marc R. Scheer Esq.
   Michael J. Tierney, Esq.
   Wadleigh Starr & Peters PLLC
   95 Market Street,
   Manchester, NH 03101
   (603) 669-4140

   Counsel for the Defendant:

   Matthew R. Johnson, Esq.
   Brian Moushegian, Esq.
   Devine Millimet & Branch PA
   111 Amherst Street
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   (603) 669-1000

4. *Bleish v. Moriarty, et al.*, No. 11-cv-00162-LM, United States District Court for the District of New Hampshire

   This case involved claims under the Federal Constitution and state law based upon the plaintiff's arrest for interfering with the arrest of another person at a public rally. The plaintiff claimed that she was arrested, in violation of her

First Amendment rights, for videotaping police officers. The defendants prevailed on both a motion for judgment on the pleadings, *see Bleish v. Moriarty*, No. 11-cv-162-LM, 2011 WL 6141271 (D.N.H. Dec. 9, 2011), and a motion for summary judgment, *see id.*, 2012 WL 2752188 (D.N.H. July 9, 2012).

Counsel for the Plaintiff:

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Counsel for the Defendants:

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Ten East Pearl Street
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5. *Bourne v. Arruda*, No. 10-cv-00393-LM, United States District Court for the District of New Hampshire

This was a case brought against local officials for comments they made concerning the plaintiff at a public meeting. The case involved numerous pre-trial discovery issues, but was resolved before trial. Early on, I granted a motion to dismiss plaintiff's gross negligence claim, his oath-of-office claim, and his retaliation claim. I also dismissed all but two of his defamation claims. *See Bourne v. Arruda*, No. 10-cv-393-LM, 2011 WL 2357504 (D.N.H. June 9, 2011). I later granted summary judgment to the defendants on the plaintiff's two remaining defamation claims. *See id.*, 2013 WL 93637 (D.N.H. Jan. 8, 2013).

The plaintiff was acting pro se.

Counsel for the Defendants:

Brian J.S. Cullen, Esq.
CullenCollimore PLLC
Ten East Pearl Street
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6. *Coach, Inc., et al. v. Gata Corp., et al.*, No. 10-cv-00141-LM, United States District Court for the District of New Hampshire

   This was a trademark infringement case brought against a flea market operator by a seller of designer leather goods. The case settled before trial, but along the way, I handled numerous discovery disputes and granted summary judgment to the plaintiffs on one claim. *See Coach, Inc. v. Gata Corp.*, No. 10-cv-141-LM, 2011 WL 1580926 (D.N.H. Apr. 26, 2011); *id.*, 2011 WL 2358671 (D.N.H. June 9, 2011).

   Counsel for the Plaintiffs:

   Kelly Martin Malone, Esq.
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   Counsel for the Defendants:

   Sean T. O'Connell, Esq.
   Shaheen & Gordon
   140 Washington Street
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   Dover, NH 03821
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   Thomas Morgan, Jr., Esq.
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7. *Collins v. University of New Hampshire, et al.*, No. 09-cv-00078-LM, United States District Court for the District of New Hampshire.

   This was a civil rights action asserted by a professor against the university that employed him, based upon the university suspending him with pay and banning him from campus after he was arrested by campus police for disorderly conduct and stalking. My predecessor, Magistrate Judge James R. Muirhead, granted the defendants judgment on the pleadings on two claims for false arrest. Thereafter, I granted the defendants summary judgment on the plaintiff's due process and defamation claims, *see Collins v. Univ. of N.H.*, 746 F. Supp. 2d 358 (D.N.H. 2010), and the Court of Appeals for the First Circuit affirmed, *see* 664 F.3d 8 (1st Cir. 2011).

Counsel for the Plaintiff:

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Counsel for the Defendants:

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8. *DAE Aviation, Inc. v. Aviation Managers, Inc., et al.*, No. 11-cv-00554-LM, United States District Court for the District of New Hampshire

This was a multi-party declaratory judgment action brought to determine the amount of insurance coverage available to an aviation-services company to cover claims made by the widow of the pilot of a plane the company serviced just before it was involved in a fatal crash. The crash occurred shortly after take-off as a result of a leak in the plane's oil line. I resolved all but a minor portion of the case on summary judgment, *see DAE Aviation Enters., Corp. v. Old Republic Ins. Co.*, No. 11-cv-554-LM, 2012 WL 3779154 (D.N.H. Aug. 31, 2012), and the parties settled what remained after summary judgment.

Counsel for the Petitioner:

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Counsel for the Respondents:

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Paul M. Koziell, Esq.
Drummond & Drummond
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9. *Precourt, et al. v. Fairbank Reconstruction Corp., et al.*, No. 10-cv-00337-LM, United States District Court for the District of New Hampshire

This case, brought against a beef supplier, a meat packer, and a grocery store, involved claims by the administrator of the estate of a woman who died after eating tainted ground beef that had passed through the hands of all three defendants. I granted summary judgment to the beef supplier on the plaintiff's claims that the supplier breached the implied warranty of fitness for a particular purpose and violated the CPA. *See Precourt v. Fairbank Recon. Corp.*, 856 F. Supp. 2d 327 (D.N.H. Mar. 5, 2012). On the eve of trial, the parties settled the remainder of the case.

Counsel for the Plaintiff:

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10. *Randall v. City of Laconia*, 10-cv-00050-LM, United States District Court for the District of New Hampshire

In this case, a homeowner sued the Town of Laconia, from which he had purchased his home, claiming that the Town had violated the federal Residential Lead-Based Paint Hazard Reduction Act of 1992. I granted summary judgment to the defendant, based on the statute of limitations, *see Randall v. City of Laconia*, No. 10-cv-050-LM, 2011 WL 1085679 (D.N.H. Mar. 2011), and the Court of Appeals for the First Circuit affirmed, *see* 679 F.3d 1 (1st Cir. 2012).

Counsel for the Plaintiff:

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Counsel for the Defendant:

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

1. *Walker v. N.H. Admin. Office of the Cts.*, No. 11-cv-421-PB, 2013 WL 672584 (D.N.H. Feb. 22, 2013).

Counsel for the Plaintiff:

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Counsel for the Defendants:

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2. *Ameriswiss Tech., LLC v. Midway Line of Ill., Inc.*, 888 F. Supp. 2d 197 (D.N.H. 2012).

Counsel for the Plaintiff:

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Counsel for Defendant:

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3. *DAE Aviation Enters., Corp. v. Old Republic Ins. Co.*, No. 11-cv-554-LM, 2012 WL 3779154 (D.N.H. Aug. 31, 2012).

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Drummond & Drummond
One Monument Way
Portland, ME 04101
(207) 774-0317

4. *Bleish v. Moriarty*, No. 11-cv-162-LM, 2012 WL 2752188 (D.N.H. July 9, 2012).

Counsel for the Plaintiff:

Stephen T. Martin, Esq.
Martin & Hipple PLLC
22 Bridge Street, Suite 3
Concord, NH 03301
(877) 645-2909 (Ext. 1)

Counsel for Defendants:

Brian J.S. Cullen, Esq.
CullenCollimore PLLC
Ten East Pearl Street
Nashua, NH 03060
(603) 881-5500

5. *Glenn v. N.H. State Prison Family Connections Ctr.*, No. 11-cv-475-JD, 2012 WL 2413934 (D.N.H. June 4, 2012), *report and recommendation approved*, 2012 WL 2401734 (D.N.H. June 26, 2012).

   The plaintiff was pro se.

   Counsel for Defendants:

   Nancy J. Smith, Esq.
   Office of the New Hampshire Attorney General, Civil Bureau
   33 Capitol Street
   Concord, NH 03301
   (603) 271-3658

6. *Precourt v. Fairbank Recon. Corp.*, 856 F. Supp. 2d 327 (D.N.H. 2012).

   Counsel for the Plaintiff:

   Robert E. Mazow, Esq.
   Mazow & McCullough PC
   Ten Derby Square, Fourth Floor
   Salem, MA 01970
   (978) 744-8000

   Counsel for Defendants:

   Ralph A. Weber, Esq.
   Gass Weber Mullins, LLC
   309 North Water Street
   Milwaukee, WI 53202
   (414) 223-3300

   Paula J. Clifford, Esq.
   Bonner Kiernan Trebach & Crociata LLP
   200 Portland Street, Suite 400
   Boston, MA 02114
   (617) 426-0380

   Andrew D. Dunn, Esq.
   Devine Millimet & Branch PA
   111 Amherst Street
   Manchester, NH 03101
   (603) 695-8503

7. *Michnovez v. Blair, LLC*, 795 F. Supp. 2d 177 (D.N.H. 2011).

Counsel for the Plaintiffs:

Alan L. Cantor, Esq.
Swartz & Swartz
10 Marshall Street
Boston, MA 02102
(617) 742-1900

Counsel for Defendant:

Jori L. Young, Esq.
Gloor Law Group
225 West Wacker Drive, Suite 1800
Chicago, IL 60606
(312) 752-3700

Donna Feeney, Esq.
Freeney & Frass, PLLC
225 Bridge Street
Manchester, NH
(603) 232-5469

Joel Thomas Emlen, Esq.
McLane Graf Raulerson & Middleton
900 Elm Street
Manchester, NH 03105
(603) 225-6464

8. *Bader v. Wrenn*, No. 11-cv-043-SM, 2011 WL 9374839 (D.N.H. Mar. 14, 2011), *report and recommendation approved*, No. 11-cv-043-SM (D.N.H. May 25, 2011), *aff'd*, 675 F.3d 95 (1st Cir. 2012).

Counsel for the Plaintiff:

Michael J. Sheehan, Esq.
Sheehan Law Office
Three North Spring Street, Suite 101
Concord, NH 03301,
(603) 225-5240

Counsel for the Defendant:

Danielle Pacik, Esq.
Deputy City Solicitor, City of Concord

41 Green Street
Concord, NH 03301
(603) 225-8505

9. *PC Connection, Inc. v. Crabtree*, 754 F. Supp. 2d 317 (D.N.H. 2010).

Counsel for the Plaintiffs:

Steven E. Grill, Esq.
Devine Millimet & Branch PA
111 Amherst Street
Manchester, NH 03101
(603) 669-1000

Anne E. Trevethick, Esq.
Day Pitney LLP
242 Trumbull Street
Hartford, CT 06103
(860) 275-0647

The defendant was pro se.

10. *Collins v. Univ. of N.H.*, 746 F. Supp. 2d 358 (D.N.H. 2010), *aff'd*, 664 F.3d 8 (1st Cir. 2011).

Counsel for the Plaintiff:

Paul McEachern, Esq.
Shaines & McEachern PA
282 Corporate Drive
P.O. Box 360
Portsmouth, NH 03802
(603) 436-3110

Counsel for the Defendants:

Martha Van Oot, Esq.
Jackson Lewis LLP
100 International Drive, Suite 363
Portsmouth, NH 03801
(603) 559-2700

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

Goldblatt v. Geiger, No. 10-CV-537-PB, 2011 WL 1362119 (D.N.H. Mar. 8, 2011) (report and recommendation (McCafferty, M.J.)), *report and*

recommendation adopted, 2011 WL 1362080 (D.N.H. Apr. 6, 2011) (Barbadoro, J.), *aff'd*, No. 12-1535 (1st Cir. Feb. 11, 2013), *petition for cert. filed*, 81 U.S.L.W. 3650 (U.S. May 4, 2013) (No. 12-1334).

Thurber v. Bank of New York Mellon, No. 12-CV-245-PB, 2012 WL 3156006 (D.N.H. July 18, 2012) (report and recommendation (McCafferty, M.J.)), *report and recommendation adopted*, 2012 WL 3155833 (D.N.H. Aug. 2, 2012) (Barbadoro, J.), *aff'd*, No. 12-2017 (1st Cir. Dec. 17, 2012), *petition for cert. filed*, No. 12-9976 (U.S. Apr. 26, 2013).

Starr v. Knierman, No. 10-cv-437-PB, 2011 WL 2680486 (D.N.H. June 21, 2011) (report and recommendation (McCafferty, M.J.)), *report and recommendation adopted*, 2011 WL 2680489 (D.N.H. July 7, 2011) (Barbadoro, J.), *aff'd*, 474 F. App'x 785 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 833, 184 L. Ed. 2d 651 (2013).

Blackmer v. U.S. Dep't of Justice, No. 10-CV-124-SM, 2010 WL 2710401 (D.N.H. July 7, 2010) (first report and recommendation (McCafferty, M.J.)) and No. 10-CV-124-SM (D.N.H. July 29, 2010) (second report and recommendation (McCafferty, M.J.)), *report and recommendations adopted*, 2010 WL 3608336 (D.N.H. Sept. 10, 2010) (McAuliffe, J.), *aff'd*, No. 10-2159 (1st Cir. June 2, 2011), *cert. dismissed*, 132 S. Ct. 1600, 182 L. Ed. 2d 155 (Feb. 21, 2012).

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.

Roy v. Wrenn, No. 12-cv-303-JD, 2012 U.S. Dist. Lexis 185994 (D.N.H. Dec. 14, 2012), *report and recommendation approved in part*, No. 12-cv-303-JD, 2013 WL 568475 (D.N.H. Feb. 13, 2013).

In this case, I recommended that the district judge dismiss all of the claims brought by a pro se prisoner against various officials of the New Hampshire Department of Corrections. I specifically recommended dismissal of a First Amendment claim that officials had retaliated against plaintiff by pursuing disciplinary proceedings against him in August 2012, having determined that the complaint failed to show that prison officials were motivated by any retaliatory intent. I further recommended that the district judge, upon dismissing all of the federal claims in the case, decline to exercise supplemental jurisdiction over the state claims. The district judge accepted my recommendation as to the federal claims, except for the First Amendment retaliation claim. The district judge found that the complaint stated a claim that defendants had retaliated against the plaintiff, in violation of the First Amendment, "by initiating a false disciplinary charge against him and finding him guilty on the charge without required due process." *Roy v. Wrenn*, No. 12-cv-303-JD, 2013 WL 568475, at *8 (D.N.H. Feb.

13, 2013). The district judge exercised supplemental jurisdiction over the state law claims and dismissed them for failure to state a claim upon which relief can be granted. *See id.*

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

As a magistrate judge, I issue orders on non-dispositive matters in cases that are referred to me and in cases over which I preside with consent of the parties. I also issue reports and recommendations on dispositive matters that the district judges refer to me. My non-dispositive orders include rulings on discovery motions, motions to amend the pleadings, motions to modify a scheduling order, and other miscellaneous motions. I issue hundreds of such orders in any given year. Very few of these civil orders are published, although they are all available through the court's Case Management Electronic Filing System (CM/ECF). In addition to CM/ECF, I believe all of my reports and recommendations are available on Westlaw or Lexis.

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.

Pepin v. Gerry, No. 11-cv-515-PB, 2013 WL 1165154 (D.N.H. Feb. 22, 2013), *report and recommendation approved*, 2013 WL 1155423 (D.N.H. Mar. 19, 2013).

Farrelly v. City of Concord, N.H., No. 10-cv-583-LM, 2012 WL 4513888 (D.N.H. Oct. 2, 2012), *vacated in part*, 2012 WL 6643278 (D.N.H. Dec. 20, 2010) (I vacated my previous order granting judgment on plaintiff's state-law claims and declined to exercise supplemental jurisdiction over them).

Ouahman v. Barnes, No. 11-cv-075-SM, 2012 WL 5303292 (D.N.H. Oct. 1, 2012), *report and recommendation approved*, 2012 WL 5303302 (D.N.H. Oct. 25, 2012).

Bleish v. Moriarty, No. 11-cv-162-LM, 2012 WL 2752188 (D.N.H. July 9, 2012).

Glenn v. N.H. State Prison Family Connections Ctr., No. 11-cv-475-JD, 2012 WL 2413934 (D.N.H. June 4, 2012), *report and recommendation approved*, 2012 WL 2401734 (D.N.H. June 26, 2012).

Burns v. Gerry, No. 06-cv-131-PB, 2012 WL 2072658 (D.N.H. May 9, 2012), *report and recommendation approved*, 2012 WL 2077187 (D.N.H. June 7, 2012).

Bleish v. Moriarty, No. 11-cv-162-LM, 2011 WL 6141271 (D.N.H. Dec. 9, 2011).

Lewis v. Warden, N.H. State Prison, No. 10-cv-274-JL, 2011 WL 4091853 (D.N.H. Aug. 8, 2011), *report and recommendation approved*, 2011 WL 4102346 (D.N.H. Sept. 14, 2011).

Starr v. Knierman, No. 10-cv-437-PB, 2011 WL 2680486 (D.N.H. June 21, 2011), *report and recommendation approved*, 2011 WL 2680489 (D.N.H. July 7, 2011), *aff'd*, 474 F. App'x 785 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 833, 184 L. Ed. 2d 651 (2013).

Merrimack Congregation of Jehovah's Witnesses v. Town of Merrimack, No. 10-cv-581-JD, 2011 U.S. Dist. LEXIS 36556 (D.N.H. Jan. 24, 2011), *report and recommendation approved*, No. 10-cv-581-JD, 2011 U.S. Dist. LEXIS 36090 (D.N.H. Mar. 31, 2011).

PC Connection, Inc. v. Crabtree, 754 F. Supp. 2d 317 (D.N.H. 2010).

Collins v. Univ. of N.H., 746 F. Supp. 2d 358 (D.N.H. 2010), *aff'd*, 664 F.3d 8 (1st Cir. 2011).

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

I decide recusal issues in accordance with 28 U.S.C. §§ 144 and 455, and the Code of Conduct for United States Judges. The federal court in New Hampshire does not use an automated recusal system. Rather, the court uses conflict-checking software as part of our case management system (CM/ECF). Each judge maintains a recusal list which contains the names of people and/or entities from whose cases the judge has decided recusal is always appropriate. I review that list periodically to ensure it is up to date. The software alerts me whenever a name on my recusal list appears in a newly-assigned case, or when a new party or attorney appears in a case. A "recusal flag" is then placed on the case in CM/ECF, and that flag effectuates my recusal.

As a former bar counsel, I deal with recusal issues that arise as a result of my having prosecuted lawyers for disciplinary infractions. Because these recusal issues are unique, and I could not find advisory opinions and decisions on point, I sought advice from the Committee on Codes of Conduct. The Committee approved of my approach. In short, my approach is to recuse whenever my impartiality might reasonably be questioned. For instance, I recuse in cases where the lawyer appearing before me is someone against whom I (as bar counsel) sought a serious sanction or is someone I prosecuted for an infraction that called into question that lawyer's honesty, particularly before a tribunal.

A litigant or party requested that I recuse in the following cases:

Sealed Proceeding, No. 13-fp-362, United States District Court for the District of New Hampshire: The plaintiff moved to recuse all judges and clerks in the District of New Hampshire who had worked on his prior cases, based on a non-specific claim of conflict of interest and bias. Judge Laplante denied the motion based upon findings that the plaintiff offered no specific reason for recusal, and that there was no actual reason for recusal.

Ryan v. Krause, No. 11-cv-00037-MJK, United States District Court for the District of Rhode Island: The plaintiffs, who had sued defendants affiliated with the Roman Catholic Diocese of Providence, moved to recuse me, citing my past employment and my spouse's past employment by St. Paul's School and my spouse's current employment by a parochial school in the Roman Catholic Diocese of Manchester. While the motion was pending, all of the district judges and I recused after a long-time court employee determined that she was a relative of a defendant.

Puiia v. Cross, et al., No. 12-cv-00054-PB, United States District Court for the District of New Hampshire: The plaintiff, who cited my relationships with members of the bar and courts in the state, moved for my recusal. After determining that a defendant in this case was represented in a related matter by an attorney who is on my recusal list, I recused.

King v. Friends of Kelly Ayotte, et al., No. 10-cv-00501-PB, United States District Court for the District of New Hampshire: The plaintiff moved for my recusal, asserting that I was biased, based upon the fact that lead counsel for the defendant had

been one of my supervising attorneys during my employment with the McLane firm in 1993, and that Senator Kelly Ayotte and I had worked for the same law firm. Ultimately, I recused because a person on my recusal list appeared as a party in the case.

Martin v. Kimball, et al., No. 11-cv-00129-PB, United States District Court for the District of New Hampshire: The plaintiff moved for my recusal, asserting that I was biased, based upon my past orders or statements in the case. The presiding judge in this case denied the motion as moot because it was filed after the referral to me had concluded.

United States, ex rel. Busse, et al. v. United States, et al., No. 10-cv-00321-JL, United States District Court for the District of New Hampshire: A plaintiff moved for my recusal, claiming that my past rulings in the case manifested bias. I found the bias claim to be unfounded and denied the motion.

Bourne v. N.H. Sup. Ct., et al., No. 12-cv-00251-PB, United States District Court for the District of New Hampshire: The plaintiff moved for my recusal, asserting that I had a conflict of interest because of my past employment as Disciplinary Counsel for the Attorney Discipline Office, which operated under the oversight of the New Hampshire Supreme Court. The presiding judge withdrew the referral of pending matters to me and denied the motion as moot.

Listed below are cases in which I recused sua sponte.

Villar v. Kimberly Dow, et al., No. 12-cv-00424, United States District Court for the District of New Hampshire: The plaintiff sued an employee of the United States Marshal's Office for New Hampshire. For that reason, I joined all of this court's district judges in recusing.

Schillinger v. Strafford Cnty. Super. Ct.. et al., No. 12-cv-00429-JD, United States District Court for the District of New Hampshire: I represented the petitioner when I was a public defender. His habeas petition was based, in part, on convictions I believed he obtained while I represented him. I recused because of my prior representation of the petitioner.

United States v. Mascoma Sav. Bank, et al., No. 11-cv-00567-GZS, United States District Court for the District of New Hampshire: One of the parties threatened a judge in this district. For that reason, I joined all of this court's district judges in recusing.

Elmo, et al. v. Bowditch & Dewey, et al., No. 12-cv-00216-PB, United States District Court for the District of New Hampshire: Prior to the referral in this case, I had conducted a mediation in a related case. For that reason, I recused.

Riley v. Colantuono et al., No. 12-cv-00175-MML, United States District Court for the District of New Hampshire: The plaintiff sued the United States Attorney for New Hampshire. For that reason, I joined all of this court's district judges in recusing.

Azubuko v. Muirhead et al., No. 12-cv-00165-MML, United States District Court for the District of New Hampshire: The plaintiff sued the former United States Magistrate Judge for the District of New Hampshire. For that reason, I joined all of this court's district judges in recusing.

Barnett v. Lynch, No. 12-cv-00051-JAW, United States District Court for the District of New Hampshire: The plaintiff sued my court's Chief Deputy Clerk. For that reason, I joined all of this court's district judges in recusing.

Gerhard v. United States, No. 11-cv-00498-GZS, United States District Court for the District of New Hampshire: The plaintiff threatened a judge in this district. For that reason, I joined all of this court's district judges in recusing.

Associated Merch. Grp., Inc., et al. v. Am. Mktg. & Capital, Inc., et al., No. 11-cv-00311-PB, United States District Court for the District of New Hampshire: I recused because an attorney on my recusal list appeared in the case.

Neeper v. N.H. State Prison, Warden, No. 11-cv-00135-PB, United States District Court for the District of New Hampshire: I recused because the attorney who represented the petitioner in the state-court action underlying this habeas petition was on my recusal list.

Pure Barnyard, Inc. v. Organic Labs., Inc., et al., No. 08-cv-00501-JL, United States District Court for the District of New Hampshire: I recused because an attorney on my recusal list appeared in the case.

Veale v. United States, No. 02-mc-00011, United States District Court for the District of New Hampshire: The plaintiffs in this case are restricted filers in this district. In connection with their motion seeking permission to file a claim under the Federal Tort Claims Act, they filed a letter from the Administrative Office of the United States Courts indicating that that office had considered and denied tort claims against the judges of this court. For that reason, I joined all of this court's district judges in recusing.

United States v. 43 Mill Rd., Kingston, N.H., et al., No. 06-cv-00421-SM, United States District Court for the District of New Hampshire: I conducted a settlement conference in this case. The case did not settle and was scheduled for a bench trial before me. In accordance with Canon 3C(1) of the Code of Conduct for United States Judges, a judge "shall disqualify" under such circumstances. I recused.

United States v. Isaacson, et al., No. 09-cv-00332-JL, United States District Court for the District of New Hampshire: I recused because an attorney on my recusal list appeared in the case.

United States v. Radkay, et al., No. 10-cv-00065-PB, United States District Court for the District of New Hampshire: I recused because an attorney who filed an appearance in the case was representing me in a lawsuit, *Ginsberg v. DeHart, et al.*, No. 10-cv-00452-DBH, United States District Court for the District of New Hampshire.

Riley v. Alford, et al., No. 10-cv-00218-GZS, United States District Court for the District of New Hampshire: The plaintiff sued the former United States Marshal for New Hampshire. For that reason, I joined all of this court's district judges in recusing.

Ford v. Bettez, et al., No. 10-cv-00444-SM, United States District Court for the District of New Hampshire: I recused because an attorney who filed an appearance in the case was representing me in a lawsuit, *Ginsberg v. DeHart, et al.*, No. 10-cv-00452-DBH, United States District Court for the District of New Hampshire.

Marston v. United States, et al., No. 10-cv-00278-WES, United States District Court for the District of New Hampshire: The complaint in this case included a claim against United States Probation & Pretrial Services, District of New Hampshire, and one probation officer. For that reason, I joined all of this court's district judges in recusing.

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

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

I have not held any public office other than judicial office. I have not had any unsuccessful candidacies for appointed 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 played no 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 1991 to 1992, I served as a law clerk to Honorable Norman H. Stahl, District Judge for the United States District Court for the District of New Hampshire.

From 1992 to 1993, I served as a law clerk to Honorable Norman H. Stahl, Circuit Judge for the United States Court of Appeals for the First Circuit.

From 1994 to 1995, I served as a law clerk to Honorable A. David Mazzone, District Judge for the United States District Court for the District of Massachusetts.

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.

1993 – 1994
McLane, Graf, Raulerson & Middleton, PA
900 Elm Street
Manchester, NH 03105
Litigation Associate

1995 – 2003
New Hampshire Public Defender Program
Ten Ferry Street
Concord, NH 03301
Staff Attorney

2003 – 2010
New Hampshire Attorney Discipline Office
Four Chenell Drive, Suite 102
Concord, NH 03301
Disciplinary 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.

Before my appointment as magistrate judge, I did not ever serve as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

My career as a practicing lawyer can be divided into three distinct categories and time-frames: I was in private practice from 1993 to 1994, I served as a public defender from 1995 to 2003, and I served as a Disciplinary Counsel for New Hampshire from 2003 to 2010.

Private Practice. In 1993, I joined the law firm of McLane, Graf, Raulerson & Middleton, and remained there for one year. As an associate at the McLane firm, I worked primarily in the Litigation Department. I worked on numerous marital cases, including a highly charged custody trial that I handled. In addition to marital work, I conducted research and handled discrete litigation assignments for corporate clients in the areas of contract law, environmental insurance defense, civil rights, and employment and education law.

Public Defender. From 1995 to 2003, I worked as Staff Attorney for the New Hampshire Public Defender program in the Strafford County (Dover, New Hampshire) office. I represented hundreds of indigent criminal defendants, both adults and juveniles charged with felonies and misdemeanors. I handled numerous jury and bench trials. From 2002 to 2003, I worked as an Assistant Appellate Defender for the New Hampshire Public Defender program. In that capacity, I drafted briefs and argued appeals before the New Hampshire Supreme Court on behalf of indigent criminal defendants.

Legal Ethics Prosecution. From 2003 to 2010, I worked for the New Hampshire Supreme Court Attorney Discipline Office as Disciplinary Counsel and practiced exclusively in the area of legal ethics. In that capacity, I prosecuted complaints of professional misconduct brought against attorneys in the State of New Hampshire. My practice was divided evenly between trial work and appellate advocacy. I litigated contested hearings before hearing panels, and I argued cases before both the Professional Conduct Committee and the New Hampshire Supreme Court. I resolved a significant percentage of my caseload with negotiated agreements, many of which required oral argument before the Committee

and the Court. I also handled all requests for reciprocal discipline, reinstatements and readmission, and any matters dealing with an attorney's interim or emergency suspension.

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

As an associate at the McLane Firm, the clients I served were individuals and corporations. My primary focus was in litigation.

As a public defender, I represented indigent criminal defendants, and thereby developed an expertise in criminal law.

As Disciplinary Counsel, I prosecuted attorneys in the State of New Hampshire who committed ethical misconduct and thereby developed an expertise in legal ethics. The vast majority of my work did not involve the representation of clients; rather, I was representing the attorney discipline system. However, when I argued cases before the New Hampshire Supreme Court, I was representing, as clients, either the Attorney Discipline Office or the Professional Conduct Committee. I represented the Attorney Discipline Office when I appealed a sanction decision of the Professional Conduct Committee. I represented the Professional Conduct Committee when I petitioned the New Hampshire Supreme Court to impose a suspension or disbarment ordered by the Professional Conduct Committee.

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.

100% of my career has been in litigation. As an associate at the McLane firm, I assisted partners on matters pending before the federal court. I drafted pleadings such as motions for summary judgment and appeared for a small number of pre-trial conferences. I handled one bench trial in state court; the case was a marital matter that settled near the completion of the trial.

From 1995 to 2002, as a Staff Attorney for the New Hampshire Public Defender program, I appeared in state courts almost daily and handled numerous jury and bench trials.

From 2002 to 2003, as an Assistant Appellate Defender, I appeared before the New Hampshire Supreme Court as lead counsel for oral argument in approximately 20 cases.

From 2003 to 2010, as Disciplinary Counsel, I appeared frequently before hearing panels in contested administrative hearings. In addition to contested hearings,

I argued numerous cases both before the Professional Conduct Committee and the New Hampshire Supreme Court.

i. Indicate the percentage of your practice in:
   1. federal courts: 1%
   2. state courts of record: 50%
   3. other courts: 0%
   4. administrative agencies: 49%

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 60 criminal cases (jury and bench trials) to verdict. I was lead or sole counsel on almost all of these. On approximately four of the jury trials, I served as a co-counsel. In addition, I have tried approximately 40 administrative hearings to judgment. I was lead counsel in each instance.

i. What percentage of these trials were:
   1. jury: 20%
   2. non-jury: 80%

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

I have not 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.

With respect to the criminal jury trials, I was unable to locate precise data about each of these cases despite making efforts to do so. With respect to the dates of these cases, I have provided my best estimates.

1. *In re O'Meara*, 164 N.H. 170 (2012), before a hearing panel of the New Hampshire Supreme Court Attorney Discipline Office ("ADO") and the Professional Conduct Committee ("PCC").

While I am not counsel in the reported opinion in this attorney-discipline case, I was the sole prosecutor and handled all of the underlying litigation in 2009 and 2010. Mr. O'Meara was charged with acting under a conflict of interest when he advised his clients to settle their personal injury case for $11.5 million while demanding a fee in an amount that the clients had not agreed to and did not want to pay him. Mr. O'Meara was also charged with deceit for testifying falsely before the arbitration panel that later heard the fee dispute. He contested all charges. After several days in trial and a contested sanction hearing, the hearing panel recommended Mr. O'Meara's disbarment from the practice of law. I handled the first phase of the oral argument before the PCC. After I was appointed to the bench in 2010, briefing and oral argument took place before the New Hampshire Supreme Court. Mr. O'Meara was ultimately disbarred.

Counsel for the Respondent:

Michael R. Callahan, Esq.
Gallagher, Callaghan & Gartrell
214 Main Street
Concord, NH 03301
(603) 228-1181

2. *In re Bosse*, 155 N.H. 128 (2007), before an ADO hearing panel, the PCC, and the New Hampshire Supreme Court.

While a licensed New Hampshire attorney, Mr. Bosse forged a signature on legal documents in a business transaction and then made misrepresentations about the validity of those documents to a third party involved in the transaction. I was the sole prosecutor in this case, which was litigated in 2006 and 2007. In May 2006, Mr. Bosse stipulated to the material facts and ethical violations, and the litigation concerned the appropriate sanction. I sought disbarment, and Mr. Bosse sought a short suspension. The PCC ordered a six-month suspension. I appealed that order to the New Hampshire Supreme Court. Following briefing and oral argument, the court ordered a two-year suspension.

Counsel for the Respondent:

Honorable David A. Garfunkel

Associate Justice, New Hampshire Superior Court
45 Chenell Drive, Suite 1
Concord, NH 03301
(603) 271-2030

3. *In re King*, No. 01-069, Attorney Discipline Office; and *In re Quinn*, No. 04-078, Attorney Discipline Office.

I was the sole prosecutor in these two related cases that were litigated from 2004 through 2007. In 2004, I brought charges against Mr. King for neglecting his clients in a probate matter. Mr. King did not respond to the charges, and upon my inquiry, claimed that he had never received the charging document. Following a contested hearing, the ADO hearing panel did not believe Mr. King's claim that he never received the charging document. During Mr. King's sanction hearing, at which I sought disbarment for his deceit, a partner in Mr. King's firm, Mr. Quinn, testified as a surprise witness that he (Mr. Quinn) had destroyed the charging document. Because Mr. Quinn had previously testified during a deposition that he had no knowledge of Mr. King's missing charging document, I pursued charges against Mr. Quinn for deceit. After a contested hearing, the hearing panel recommended a finding of "no misconduct." I challenged that finding before the PCC, which deferred to the hearing panel and dismissed the charges against Mr. Quinn. I decided not to appeal the dismissal to the New Hampshire Supreme Court. Mr. King stipulated to a one-year suspension from the practice of law.

Counsel for Mr. King:

William B. Parnell, Esq.
Parnell & McKay, PLLC
25 Nashua Road, Suite C4
Londonderry, NH 03053
(603) 434-6331

Counsel for Mr. Quinn:

Edmund J. Boutin, Esq.
Boutin Altieri, PLLC
One Buttrick Road
Londonderry, NH 03053
(603) 432-7419

4. *In re Reiner*, 152 N.H. 163 (2005), before the Hon. Douglas Gray (referee appointed by the New Hampshire Supreme Court); *In re Reiner*, 152 N.H. 594 (2005).

As Disciplinary Counsel and sole prosecutor, I litigated this matter before the New Hampshire Supreme Court in 2005. Mr. Reiner, a licensed New Hampshire attorney, was indicted on federal criminal charges. On the basis of his indictment, the New Hampshire Supreme Court issued an order of immediate suspension. Mr. Reiner contested that

suspension primarily on due process grounds, and the court ordered me to brief and litigate the matter. In its first reported opinion in this case, the court determined that it could lawfully suspend an attorney on the basis of an indictment alone, without first providing the attorney a hearing. In its second reported decision, the court lifted Mr. Reiner's suspension, ruling that the allegations in the indictment were insufficient to find that suspension was necessary for public protection.

Counsel for the Respondent:

Steven M. Gordon, Esq.
Shaheen & Gordon, PA
107 Storrs Street
Concord, NH 03301
(603) 819-4231

5. *State v. Spencer*, 149 N.H. 622 (2003).

While serving as an Assistant Appellate Defender, I drafted the brief and presented the oral argument before the New Hampshire Supreme Court in this case. My client was convicted on theft and forgery charges. My brief argued for reversal on grounds that my client's pre-*Miranda* silence and post-*Miranda* confession should have been suppressed. The facts below established that during her arrest, my client repeatedly proclaimed her innocence and accused the officers of having arrested the wrong person. An officer showed her surveillance photos that appeared to incriminate her, and she became silent in response. Thereafter, my client calmed down and told the officers she did not want to be held on bail because she had three young children at home. In response, an officer told her that, if she cooperated, they would argue for her release on bail and try to ensure she was reunited with her children. Following *Miranda* warnings, my client made a full confession. The New Hampshire Supreme Court ruled that the act of showing my client the surveillance photos did not constitute "interrogation" to which the Fourth Amendment applied, and the officer's promise to argue for her release on bail in exchange for her cooperation did not render her subsequent confession involuntary. Two justices dissented as to the pre-*Miranda* portion of the ruling.

Counsel for the State of New Hampshire:

Susan P. McGinnis, Senior Assistant Attorney General
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301
(603) 271-3671

6. *State v. Cushing*, Criminal No. 99 -S-746-F, before the Hon. Peter Fauver, Strafford County Superior Court.

My client was charged with multiple counts of kidnapping and aggravated felonious sexual assault, and he was tried in May of 2000. After several days of trial, the case ended in a mistrial due to prosecutorial misconduct. Before the state recharged the client, the case ended with a guilty plea to misdemeanors. I was assisted in the trial by a colleague, Attorney Randy Hawkes, but I served as lead counsel.

Co-Counsel for the Defendant:

Randy Hawkes, Executive Director
New Hampshire Public Defender Program
Ten Ferry Street
Concord, NH 03301
(603) 224-1236

Prosecutor:

Peter Odom, Esq.
The Odom Law Firm
1708 Peachtree Street, Suite 115
Atlanta, GA 30309
(866) 959-7322

7. *State v. Bill*, 99-cr-4438-4441, before the Hon. Bruce Larson, Rochester District Court.

My client was charged with several misdemeanor offenses. To the best of my recollection, the case went to trial in 1999. My client was convicted. During the sentencing phase of the case, I discovered significant exculpatory evidence that had been withheld by the Rochester Police Department. I then filed a motion to dismiss the charges. A lengthy hearing on that motion resulted in the dismissal of all charges. The case garnered a great deal of media attention, and I recall that the local paper published two editorials in support of my position that dismissal of the case was warranted. As a result of this case, the Rochester Police Department changed its policy with regard to the disclosure of evidence from internal investigations. I was the sole counsel for the defendant.

Prosecutor:

Diane Dubay, Esq.
Hearings Examiner
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301
(800) 852-3345

8. *State v. Dixon*, 144 N.H. 273 (1999).

My client was charged with three counts of aggravated felonious sexual assault. He was tried in 1998, in Strafford County Superior Court, before Judge Peter Fauver. After a jury trial that lasted several days, he was convicted on one count. Along with a colleague, I litigated the entire case until the appeal. The New Hampshire Supreme Court affirmed my client's conviction in the reported opinion cited above.

Co-Counsel for the Defendant:

John F. Durkin, Jr., Esq.
Wilson Bush Durkin & Keefe
184 Main Street, Suite 222
Nashua, NH 03060
(603) 595-0007

Prosecutor:

Honorable Susan W. Ashley
New Hampshire Circuit Court, 7th Circuit
Rochester Family Division
259 County Farm Road
Dover, NH 03820
(855) 212-1234

9. *State v. Monteiro*, No. 98-951 (I could not confirm whether this is a docket number in the district court (now the circuit court) or the superior court), before the Hon. Peter Fauver, Strafford County Superior Court.

My client, a student at the University of New Hampshire, was charged with second degree assault. There was a great deal of media attention about this case because my client was a member of the university's football team, and the university suspended him while his criminal case was pending. After a jury trial lasting almost one week, in 1998 or 1999, my client was acquitted. I was the sole counsel for the defendant in his criminal case, and I also represented him before the judicial conduct board at the university.

Prosecutor:

Honorable Susan W. Ashley
New Hampshire Circuit Court, 7th Circuit
Rochester Family Division
259 County Farm Road
Dover, NH 03820
(855) 212-1234

10. *State v. Hogan*, Criminal No. 98-S-30, before the Hon. Bruce Mohl, Strafford County Superior Court.

My client was charged with 19 counts of aggravated felonious sexual assault. This case, which was tried in 1997 or 1998, involved a large amount of pre-trial litigation, and included a defense expert on the suggestibility of child witnesses. After a lengthy jury trial, my client was acquitted on all charges. I shared the litigation responsibilities evenly with my colleague, Linda J. Slamon, Esq., although I handled the expert witness.

Co-Counsel for the Defendant:

Linda J. Slamon, Esq.
New Hampshire Public Defender's Office
15 Fourth Street, Suite 3
Dover, NH 03820
(603) 749-5540

Prosecutor:

Honorable Susan W. Ashley
New Hampshire Circuit Court, 7th Circuit
Rochester Family Division
259 County Farm Road
Dover, NH 03820
(855) 212-1234

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.)

Almost every significant legal activity I have pursued as an attorney has involved litigation. As Disciplinary Counsel, however, I was involved in the investigation of numerous matters that culminated in my seeking dismissal of the complaints, or resolution of the charges without litigation. Similarly, as a public defender, a large portion of my caseload was resolved short of litigation, with negotiated plea agreements. While I would not point to one case in this context as particularly significant, I consider my pursuit of non-litigated cases in both of those jobs an important aspect of my legal experience.

In 2000, while I was serving as a Public Defender, the New Hampshire Supreme Court appointed me to serve on the Professional Conduct Committee. I served on the Committee until the end of 2003. During my service as a member on this Committee,

New Hampshire had not yet adopted a "bar counsel model" for the prosecution of attorney misconduct cases. My service was quasi-judicial in nature: I investigated complaints against attorneys, wrote reports on those investigations for review by the full Committee, and then served on hearing panels at least once monthly to adjudicate claims against attorneys.

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

    I have not taught any college level or law school courses. After graduating from college, I taught at St. Paul's School, a residential preparatory school in Concord, New Hampshire. I recall the specific name of only one of the courses I taught: "Law and Government." I also taught courses in American and African-American History. I could not locate the syllabi.

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 uncompleted contracts or other future benefits from which I expect to derive compensation.

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

    I have no such plans.

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.

Other than those individuals and/or entities whose names appear on my recusal list, I do not believe there are any family members, parties, categories of litigators, or financial arrangements that are likely to present potential conflicts of interest for me were I to assume the position.

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

To the extent any such potential conflicts were to arise, I would resolve them through careful adherence to 28 U.S.C. §§ 144 and 455 (2006), and the Code of Conduct for United States Judges.

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

While a litigation associate at McLane, I represented at least one client on a pro bono basis. I recall that the case involved a child custody issue, but I do not remember any other details. I have not done any other pro bono legal work. While a public defender, I was prohibited by state statute from representing persons other than indigent criminal defendants, under appointment by the court. While Disciplinary Counsel, I abided by the policy of the Attorney Discipline Office not to engage in the practice of law outside of my duties as Disciplinary Counsel and, of course, as a United States Magistrate Judge, I am precluded from practicing law.

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.

Upon District Judge McAuliffe's announcement that he would be taking senior status effective April 1, 2013, I telephoned Senator Jeanne Shaheen's office to inform her that I was interested in being considered for the opening on the court. On February 28, 2013, I was interviewed by a member of Senator Shaheen's staff in Manchester, New Hampshire. On March 11, 2013, I was interviewed by Senator Shaheen in Dover, New Hampshire. On March 26, 2013, Senator Shaheen telephoned me to inform me that I was under consideration. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 26, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 23, 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
McCafferty, Landya B.	United States District Court District of New Hampshire	
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 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/07/2013
7. Chambers or Office Address		
US District Court 55 Pleasant Street Concord, NH 03301		

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 7	Name of Person Reporting McCafferty, Landya B.	Date of Report

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	St. Thomas Acquinas High School/Salary
2.	2013	St. Thomas Acquinas High School 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 7

Name of Person Reporting	Date of Report
McCafferty, Landya B.	

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
McCafferty, Landya B.	

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. TD Bank Account	A	Int./Div.	L	T	Exempt				
2. Neomedia Common Stock (NEOMD)		None	J	T					
3. Cord Blood American Common Stock (CBIA)		None	J	T					
4. ABA Retirement Fund (Retirement)									
5. -ABA Large-Cap Equity Fund	C	Dividend							
6. -ABA Small-Mid Cap Equity Fund	C	Dividend							
7. TIAA/CREF (Retirement)									
8. -CREF Stock	A	Dividend	J	T					
9. -CREF Equity Index	A	Dividend	J	T					
10. -CREF Global Equities	A	Dividend	J	T					
11. -TIAA Real Estate	A	Dividend	J	T					
12. -CREF Social Choice	A	Dividend	J	T					
13. Principal Financial Group (Retirement)									
14. -Principal Large US Equity Fund	B	Dividend							
15. The Standard (Retirement)									
16. -Mainstay Large Cap Growth	A	Dividend	K	T					
17. TIAA/CREF (Retirement)									

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
McCafferty, Landya B.	

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. -CREF Stock	C	Dividend	J	T					
19. -CREF Growth	D	Dividend	L	T					
20. -CREF Equity Index	C	Dividend	J	T					
21. -CREF Global Equities	C	Dividend	J	T					
22. -TIAA Real Estate	C	Dividend	J	T					
23. -CREF Social Choice	C	Dividend	J	T					
24.									
25.									

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
McCafferty, Landya B.	

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

Name of Person Reporting	Date of Report
McCafferty, Landya B.	

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/ Landya B. McCafferty

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		66	945	Notes payable to banks-secured (auto)		2	524
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		244	771	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		68	385
Real estate owned – personal residence		335	100	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		28	865				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		40	943				
				Total liabilities		70	909
				Net Worth		645	715
Total Assets		716	624	Total liabilities and net worth		716	624
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	
Core Blood America Inc. stock	$ 47
CREF Equity Index	24,219
CREF Global Equities	23,632
CREF Growth	79,794
CREF Social Choice	24,788
CREF Stock	24,320
Mainstay Large Cap Growth Fund	47,655
NeoMedia Technologies, Inc. stock	2
TIAA Real Estate	20,314
Total Listed Securities	$ 244,771

AFFIDAVIT

I, Landya B. McCafferty, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6-18-13
(DATE)

(NAME)

(NOTARY)

VALERIE H ALLEN
NOTARY PUBLIC
State of New Hampshire
My Commission Expires: 03/24/2015

Senator BLUMENTHAL. Thank you all.

I am going to yield to Senator Grassley for his questions before asking mine.

Senator GRASSLEY. Thank you for that courtesy.

For you, Mr. Morris, you probably anticipated a question on your Supreme Court decision *Western Tradition Partnership*, and basically I am asking you to explain a position, but let me give some background where I am coming from.

You joined a majority opinion that ignored the ruling of the Supreme Court, *Citizens United*. Dissenters from that opinion stated that although they preferred a different policy outcome, courts are obliged to follow the Supreme Court decision. Do not answer now, but the first question would be: Why did you not follow a clear Supreme Court precedent? And then I want to quote from a dissenting opinion: "Whether we agree with the Supreme Court's interpretation of the First Amendment is irrelevant. In accordance with our Federal system of Government, our obligations here are to acknowledge that the Supreme Court's interpretation of the U.S. Constitution is, for better or for worse, binding on this court, on the officers of this court, to apply the law faithful to the Supreme Court ruling." But, further, "When the highest Court in the country has spoken clearly on the matter of Federal constitutional law, as it did in *Citizens United*, the highest court in Montana is not at liberty to disregard or parse that decision in order to uphold State law. While politically popular, it is clearly at odds with the Supreme Court's decision." Why were you unable to join that view? Those are two questions that are very similar.

Go ahead, please.

JUSTICE MORRIS. In the *Western Tradition Partnership* case, we faced a challenge to a Montana statute that had been on the books since 1917. It was constitutional at the time it was passed. The U.S. Supreme Court in the Citizens United decision made it clear that based on the record before them, the federal statute at issue was unconstitutional. It implied that there were circumstances that may be available when a restriction on spending may be appropriate where there is sufficient evidence of corruption.

We looked at a different case than *Citizens United*. We looked at *Western Tradition Partnership*. The court examined the record in that case and the history of corruption in Montana that supported the passage of the statute in 1917 and determined that on that record that it could be held constitutional. We as a court have an obligation to uphold statutes of the legislature when possible when faced with constitutional challenges. We thought that given this record, there was a possibility that that statute could conform to the mandates of *Citizens United*. We obviously were wrong. The Court disagreed with us. They made it very clear to us. It is our obligation as a State court to follow *Citizens United* and as supplemented by the *Western Tradition's* reversal, and it would be my obligation as a federal judge to follow all precedents of the U.S. Supreme Court and the Ninth Circuit, if I were confirmed.

Senator GRASSLEY. I will have written questions for all of you because I only have time to ask each one of you one question.

In 2008, Mr. Meyer, Jeffrey Meyer, you signed a letter to Governor Rell and members of the Connecticut General Assembly in

support of repeal of the Connecticut death penalty. In 2011, you said that halting the repeal of the death penalty is "certainly our hope." Could you explain—well, could you please discuss your views on the constitutionality of the death penalty?

Mr. MEYER. Well, Senator Grassley, the Supreme Court has authoritatively ruled that the death penalty is constitutional in most circumstances. If I have the honor to be confirmed as a federal district judge, I would apply the law that the Supreme Court has directed.

My background with respect to the death penalty has principally involved the representation of Dr. William Petit, whose family was horribly murdered in Cheshire, Connecticut, in July 2007. I agreed to represent him, and in connection with the statement that you referenced, in 2011, I worked with him with respect to delaying the repeal of the death penalty in Connecticut as it would have intervened with and interfered with the ongoing trial of the second of the defendants who viciously murdered his family.

So I would be prepared, if confirmed, to support the application of federal law and the *Federal Death Penalty Act* if I had a particular case come before me.

Senator GRASSLEY. Okay. Ms. Watters, in *State* v. *Steglich* you ruled that certain Montana criminal statutes requiring a witness to an accident to simultaneously remain at the scene of the accident and render any reasonable amount of assistance to those injured in the accident, you said that that was unconstitutional on the face and as applied. Would you explain how you approach cases challenging the constitutionality of a statute?

Judge WATTERS. Thank you, Senator Grassley. Well, first, I approach those constitutionality issues from the position that the statute is constitutional and with an appreciation of the precedent that has been developed both in the State of Montana and the U.S. Supreme Court that statutes are presumed to be constitutional, and it is only in rare circumstances that they would be deemed not to be constitutional. And so that is how I approach issues with regard to constitutionality of the statutes.

Senator GRASSLEY. Ms. McCafferty, you spent a substantial portion of your career as an attorney in the New Hampshire Public Defender's Office. So the Committee, or at least I would like some assurance that you can give me that you will have no bias toward criminal defendants. And what has been your practice as a magistrate to ensure fairness to all parties?

Judge MCCAFFERTY. Thank you, Senator Grassley. It is essential to the administration of justice that all people who come before a federal judge—any judge for that matter—feel as though they are treated fairly and impartially. And I am deeply committed to that principle. I was a public defender, as you mentioned, for many years. I was also a prosecutor as bar counsel for many years for the Supreme Court of New Hampshire. And in all my dealings with everyone, I abided by fair treatment to all. I care deeply about that. And as a magistrate judge for the past three years, I have treated everybody who has come before me—and, again, I have obviously the government's attorneys, I have federal defenders and defense lawyers, corporations, defendants, and it is the highest duty of a

judge to treat everybody fairly and impartially, and I am committed to that, Senator.

Senator GRASSLEY. Let me thank you all, congratulate all of you, and let me ask you—or let me suggest that you respond to my questions in writing, and thank you for your courtesy.

[The questions of Senator Grassley appear as a submission for the record.]

Senator BLUMENTHAL. Thank you very much, Senator Grassley.

I want to ask each of you some general questions, but first to say how impressed I am with each of your distinguished backgrounds, your service, both public service and your service to your communities, and say that I really look forward to voting for you and supporting you. I think we are very, very fortunate to have people of your caliber willing to make the sacrifices. They are very real sacrifices that judges and their families make simply to go through this process, which is demanding in itself, as you know better than I.

But let me ask just generally each of you—and you can answer in order, beginning with Justice Morris—are there any particular personal qualities or traits or judicial philosophies that you hope to emulate?

Justice MORRIS. Well, I think one of the most important attributes of a judge is humility and recognizing that your role is simply to resolve a dispute between the parties presented to you and not to opine on issues of public policy or other things that may interest you and recognize the limited role you play in the process and to get a decision out as quickly as possible so that the litigants can get on with their lives.

Judge WATTERS. Senator Blumenthal, I think that there are a number of qualities that I think are important for a judge. I think that a judge has to be scholarly in the law. I think that a judge's integrity has to be above reproach. And I think that a judge has to have a very, very strong work ethic. I know that the caseload in the Billings Federal District Court is very large, and there are a lot of trials, and so it will be important to make sure that that is managed well, and that will require a strong work ethic and a dedication to the job, which I will bring to that job if I have the chance to be confirmed.

Senator BLUMENTHAL. Thank you.

Mr. MEYER. And, Senator I would agree with the values and virtues that my colleagues have indicated. My role models are many of the judges before whom I have appeared in the Connecticut Federal court, and including former Judge Mark Kravitz, who recently passed, whose qualities for intellectual acuity, fairmindedness, and general personal character were exemplary, exemplarily known both within Connecticut and nationally.

Senator BLUMENTHAL. Thank you.

Judge MCCAFFERTY. I agree with all of my colleagues. I would say that the most important qualities are fidelity to the rule of law, an ability to be fair and impartial, and as Judge Morris said, humility is critical. And humility is critical because a judge's thinking must be tethered to the language of statutes and precedents, and a judge without humility is less likely to be tethered to those and is more likely perhaps to impose his or her biases or beliefs in a

case. A judge with humility also is a judge who is more likely to have a temperament appropriate for the bench.

My role models are many. In my opinion, the Article III judges that I currently work with are really the gold standard of those principles, and I am very fortunate to be joining, if I am so lucky to be confirmed, that court.

Senator BLUMENTHAL. Let me ask all of you the next question, which has been somewhat anticipated by the answers given by two of the nominees. Who would be the judge or justices whom you most admire who you would seek to use as your model of service on the bench? Why don't we begin again—and there does not need to be a single one, or you can duck the question entirely if you——

[Laughter.]

Justice MORRIS. I would identify two. I had the privilege of serving up close as a law clerk for Chief Justice Rehnquist and for Justice O'Connor. I always admired Chief Justice Rehnquist, the way he operated the Court and managed the caseload and approached deciding cases. I had the opportunity to have many discussions with him over the course of that year.

And I also admired Justice O'Connor for her knowledge in particular of issues of significance of those in the West, such as American Indian law or water law.

Senator BLUMENTHAL. Thank you.

Judge Watters.

Judge WATTERS. I do not know that I could state a particular judge or justice that I would necessarily emulate, other than, I think, as I stated in my previous answer, I have been in front of a number of judges when I was a practicing attorney, and having been on the bench for over 15 years now. I just think it is very important for a judge to be a good listener, for those who appear before the judge in the courtroom to feel like they have been heard, and that the judge will give their positions the consideration that they deserve, that the judge does, in fact, look at each side of each issue and decide those issues according to the precedent and the statutes, and that the judge decide only those issues before her and that she try to do that in a very timely manner. And that would be what I would try to do and what I have tried to do in my career as a State district court judge and what I would continue to try to do if I am so lucky as to be appointed.

Mr. MEYER. Well, Senator, I could mention just about any of the judges and magistrates of the U.S. District Court in Connecticut. I would identify perhaps just three just because I happened to have extended criminal trials as a prosecutor before them.

One would be Chief Judge Alvin Thompson, who exemplifies, in my view, the model of intellectual engagement and humility and quiet calm in the courtroom.

A second would be Senior Judge Ellen Bree Burns, who continues to work as a senior judge in the district court, and she exemplifies a sense of wisdom and equanimity in the way that she conducts her courtroom proceedings.

And the third would be Judge Janet Arterton, who has extreme intellectual rigor in all that she does and also runs a very crisp courtroom and efficient control of her docket.

Those are just three of the judges that I would mention.

Judge MCCAFFERTY. I had the good fortune, when I graduated from law school, to clerk for Judge Norman H. Stahl. He was on the Federal District Court in New Hampshire when I started clerking for him, and then he moved up to the First Circuit, so I spent a year on both with him. He has been an inspiration to me. He is dedicated to the rule of law. He has an innate sense of fairness. He has a humble heart. And he has a real dedication to public service that has been an inspiration to me, and I will try to emulate him.

Senator BLUMENTHAL. Thank you.

Let me ask a question, again of all of you, which I think is important. Do you have any personal views that would make it impossible, any beliefs that go to the core of who you are, either your religious faith or any other beliefs that would make it impossible for you to follow precedents or decisions of the U.S. Supreme Court or the appellate courts?

Justice MORRIS. I do not.

Judge WATTERS. No, I do not.

Mr. MEYER. No, I do not.

Judge MCCAFFERTY. I do not.

Senator BLUMENTHAL. And do any of you disagree so strongly with any of those precedents or decisions of the higher courts, higher than the one on which you will hopefully serve, that would make it impossible for you to follow those precedents?

Justice MORRIS. I do not, not even the *Citizens United* case.

[Laughter.]

Judge WATTERS. No, I do not.

Mr. MEYER. No.

Judge MCCAFFERTY. No, Senator Blumenthal.

Senator BLUMENTHAL. Thank you. As I mentioned, I hope that we will deal expeditiously with your nominations. I hope that they will be voted favorably by this Committee as promptly as possible. We need judges in each of the districts that you have been nominated to serve, and, again, I just want to add my thanks to you and your families for your willingness to undertake this very profoundly important obligation. Each of you, as I know well from my own practice in the courts, both as a prosecutor and as a private attorney, are for many of our litigations the ultimate source of justice in the federal courts, and your voice and face, the personal traits that you have described, will have an enduring and profound impact on each of those litigants, not only in their lives but how they regard the quality of justice in this country.

So, again, my thanks to each of you, and I look forward, if I am ever allowed back in the courtroom, to perhaps appearing before you in your new roles. Thank you very much.

We are going to keep the record open for one week in case any of my colleagues have written questions that they wish to submit, and with that, this hearing is adjourned. Thank you.

Justice MORRIS. Thank you.

Judge WATTERS. Thank you.

Mr. MEYER. Thank you.

Judge MCCAFFERTY. Thank you, Senator.

[Whereupon, at 12:13 p.m., the Committee was adjourned.]

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Judicial Nominations
July 24, 2013

Today the Judiciary Committee welcomes five excellent judicial nominees, and I thank Senator Blumenthal for chairing this important hearing. The Committee will hear first from Nina Pillard, who is President Obama's nominee to fill one of the three current vacancies on the D.C. Circuit. Professor Pillard has had a distinguished career as a practitioner and as an academic. She earned a unanimous rating of "well qualified" from the ABA Standing Committee on the Federal Judiciary. She has argued nine cases before the Supreme Court and briefed 18 others on behalf of a range of clients. Professor Pillard spent her legal career in public service, in the Office of the Solicitor General and the Office of Legal Counsel, and at the American Civil Liberties Union and NAACP Legal Defense and Educational Fund. For the past 13 years she has worked as professor at my alma mater, Georgetown University Law Center. At Georgetown she serves as the Faculty Co-Director of the Supreme Court Institute, where she has helped prepare fellow lawyers in dozens of cases.

She is lucky enough to have family in the great State of Vermont. Her sister lives in Charlotte on the shore of our Great Lake, Lake Champlain. I understand Professor Pillard and her family spend quite a bit of time in Vermont, so I am especially pleased to welcome her to the Committee this morning.
At our last nominations hearing, a number of Republican members of the Committee made comments about the history of this Committee's consideration of nominees to the D.C. Circuit that were misleading at best. It is simply inaccurate to suggest that there is any comparison between a 2006 letter sent by Committee Democrats expressing concerns about a particular nominee and the current cynical effort by Committee Republicans to strip the D.C. Circuit of 3 of its 11 judgeships.

The 2006 letter made reference solely to the eleventh judgeship, and the caseload issue was raised, in addition to several substantive concerns about the nominee, only to point out the double-standard of Committee Republicans, who had blocked and opposed President Clinton's nominees to the D.C. Circuit's eleventh seat, even though the caseload was higher during the Clinton administration than in the Bush administration.

When the D.C. Circuit's caseload was around 190 pending appeals per active judge during the Clinton administration, Senator Grassley and other Republicans opposed filling the twelfth and even the eleventh seat, and delayed the confirmation of Merrick Garland. At the time, even Senator Hatch said that these Senators were "playing politics with judges" and that he was "sick of it." Of course, these Senate Republicans then had no problem filling the eleventh seat and

bringing the caseload to 121 pending appeals per active judge when a Republican president was making the nominations.

But now that the caseload has again risen, to 177 pending appeals per active judge, suddenly some Senate Republicans have decided that the eleventh, the tenth, and now even the ninth seats should not be filled, at least not by a Democratic president. The double-standard is obvious.

There is simply no precedent for this attempt by Committee Republicans to prevent three well qualified nominees from filling the three vacancies on the D.C. Circuit. The D.C. Circuit caseload argument has been made in earnest only by Senate Republicans when they wish to prevent a Democratic president from fulfilling his constitutional duty to nominate judges.

No Senate Democrat opposed the May 2003 confirmation of John Roberts to the D.C. Circuit, even though it brought the caseload all the way down to its lowest level in the past 20 years – 111 pending appeals per active judge. So I hope that we can work together to consider Professor Pillard's nomination, and those of Patricia Millett and Robert Wilkins, on the merit of the nominee.

The Committee also welcomes Landya McCafferty, nominated to the District of New Hampshire, Jeffrey Meyer, who is nominated to the District of Connecticut, and Brian Morris and Susan Watters, who are both nominated to judicial emergency vacancies in the District of Montana. All have the support of their home state Senators, and I look forward to continued bipartisan cooperation on the consideration of these judicial nominees.

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Questions for the Record for all nominees
Senator Ted Cruz
"Judicial Nominations" Hearing – 7/24/13

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

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

Cornelia Pillard
Nominee, United States Circuit Judge for the D.C. Circuit

1. You have extensive appellate experience, particularly before the Supreme Court of the United States. Certainly during that time you have reflected on the professional traits and judicial philosophies of the judges or Justices before whom you have appeared. Please describe for us some traits or judicial philosophy that you would like to emulate as a judge, if confirmed.

2. When is it appropriate for the federal government to preempt state law? If confirmed, what sources and approaches would you utilize to assess whether Congress or the Executive Branch in fact intended to preempt state law and acted within the scope of their authority in doing so?

3. Do you ascribe to the concept of a living Constitution? Please explain.

4. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

5. What role do you think a judge's opinions and views of the evolving norms and traditions of our society have in interpreting the written Constitution?

6. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

7. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

8. In an article you wrote in the Supreme Court Review about plenary power and the *Miller v Albright* decision, you concluded that after *Miller*, the "courts may now step in" "where the political branches abdicate." You also found that this case means that "the

government is no longer entitled to argue for extreme judicial deference" in some cases where Congress generally has plenary authority.

a. Under what conditions should courts step in fill in legislative gaps??

b. What should guide the court when it steps in to fill a legislative gap?

c. What are your views on the limits courts should impose upon themselves in such situations?

9. What would be your definition of an "activist judge"?

10. In general, Supreme Court precedents are binding on all lower federal courts. 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. In response to a question asked by Senator Flake, you said that not only are the substance of decisions binding as precedent but the methods of interpretation are binding as well.

    a. Please expand on the different methods of constitutional interpretation that you find to be binding in Constitutional Law and in what contexts those methods are specifically applicable.

    b. Please explain which method of constitutional interpretation that you would find to be the most persuasive.

    c. Please explain how original intent should be used when asked to interpret the Constitution?

12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

13. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

15. 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. What weight should a judge give legislative intent in statutory analysis?

17. In a recent Supreme Court decision, Justice Kennedy wrote that DOMA "humiliates" "demeans" "disapproves" and "seeks to injure" and that it is a "bare congressional desire to harm".

    a. As a federal judge, what role do you see for making findings of the intent of Congress when they write laws?

    b. When is legislative intent relevant in determining the outcome of a case?

    c. I expect all federal judges to follow the law and respect every citizen's first amendment religious liberty rights. What is your understanding of a church's right to define marriage how they see fit?

    d. Do you support the right of clergy to decline to marry any particular couple?

    e. Do you support the right of private individuals (such as photographers or wedding cake makers) to decline to provide services for same-sex weddings?

18. At your hearing, I asked about First Amendment rights and government mandates. Generally speaking, what is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

19. At your hearing, you were asked about your stance in the case of *Hosanna-Tabor Evangelical Lutheran Church v. EEOC* and you said, "I really called it wrong." While I appreciate your acknowledgement of "getting it wrong," I am not concerned with your ability to predict Supreme Court case outcomes. The fact that you advocated so ardently against the ministerial exception to employment decisions is worrisome to me because it reflects your views of the First Amendment free exercise rights. Please explain your understanding of the tension between free exercise rights and general applicability of laws.

20. In your hearing, you told us that you predicted the *Hosanna Tabor* case incorrectly. We had asked you if you found the ministerial exception unconstitutional. You previously stated that the Lutheran church's position a "substantial threat to the American rule of law". Please elaborate why you said this particular statement and describe how the position is a substantial threat to the American rule of law. Please be detailed and specific in your answer.

21. In discussing First Amendment rights and government mandates, you said that one would have to take into account religious rights and reproductive rights. How would you

balance those rights and what precedent would you look to guide you in finding the balance of these two rights?

22. In 2006 you wrote an entry in the Encyclopedia of American Civil Liberties entitled "Reproductive Freedom." In this entry you discuss current law and future directions and appear to criticize conscience rights protections when you write, "Legal restrictions on reproductive choice reach beyond the abortion procedure itself…Laws in several states now grant "conscience rights" to pharmacists and health care providers to refuse to facilitate abortions or even to fill prescriptions for contraceptives if they personally are opposed to such practices." How would you approach a case involving a challenge to these conscience rights?

    a. Do you understand the Constitution to protect the conscience rights of health-care providers?

    b. Under what scenarios do you understand the law to not protect these conscience rights?

23. You said in your hearing, "women's rights are facilitated by abortion". It is not clear to me how this is the case. Please explain the following:

    a. Before abortion was legal, were women's rights restricted by the fact that they could not get an abortion? If so, how so?

    b. In what way is abortion necessary to facilitate women's rights?

24. In your hearing, your response to questions from Senator Lee about your amicus brief on *Bray v Alexandria Women's Health Clinic* was that: "we were arguing that the provisions of the law might be deployed in current-day circumstances, and the contribution of our brief was talking about when and if protesters interfere with law enforcement." While you addressed the fact that there were "disparaging connotations" associated with using the same statute to address the KKK and current-day problems, you chose to overtly utilize these connotations and directly compare a pro-life group to the KKK in your writings after the Bray case was decided. You said the following:

    a. "*Just as* the Klan used force to subvert official efforts to extend new constitutional rights to the freed slaves, *so* Operation Rescue uses force to overwhelm official efforts to protect recently recognized rights the Constitution confers on women" (emphasis added).

This comparison appears to put the actions of Operation Rescue on equal footing with those of the KKK. Is this in any way representative of how you view pro-life advocacy groups that act as Operation Rescue does?

b. "Women's reproductive freedom is . . . under broad attack by Operation Rescue, a nationwide conspiracy to undermine the exercise of abortion rights. Defendants in this case, like the conspirators at whom § 1985(3) originally was aimed [referring to the Ku Klux Klan], seek forcibly to revoke constitutional rights that they have been unable to repeal through legal and political processes."

You were willing to use a statute to argue your client's cause that was not appropriate to use because you said there was no better statute. I am concerned that as a judge you will stretch statutes to mean more than they should be to suit the outcome you want as a judge. Please explain to the Committee how you came to the conclusion that it was acceptable to use this statute.

25. At your hearing, you said "I do not believe that the Supreme Court has ever held that the abortion right is protected by equal protection." But in your article entitled "Our Other Reproductive Choices" you wrote that "equal protection is also at the heart of the matter" when discussing reproductive rights. While you acknowledge that reproductive rights are "traditionally understood to be protected by the privacy aspect of the due process liberty guarantee" this assertion that we should find these rights in another constitutional doctrine is worrisome because it reflects your understanding of constitutional law.

    a. Please explain your argument that reproductive rights should be found in equal protection.

    b. Please explain in what situation you would find it more appropriate to apply equal protection to reproductive rights.

    c. Please explain where you feel that due process fails to protect reproductive rights.

    d. Please explain why you think that it is necessary that reproductive rights, such as abortion, should be protected by equal protection and due process.

26. According to your understanding of the law, please explain your understanding of when an individual first start receiving and stops receiving 14th amendment equal protection personhood rights?

    a. What equal protection personhood rights do the unborn have? (Please elaborate if it is different during different stages of development.)

b. What equal protection personhood rights do the newly (first few hours of life) born have?

c. What equal protection personhood rights do infants in their first week of life have?

d. What equal protection personhood rights do those who are in what are often called vegetative states have?

27. At your hearing, you said that you supported sex-education curriculum being developed at a local level. However, in a 2006 entry to the Encyclopedia of American Civil Liberties you wrote "Accurate health education can help to make abortion less necessary by teaching teens about reproduction and birth control; such education has, however, been vigorously opposed by the religious right, leaving some states requiring uninformative, "abstinence only" programs." If a challenge to a locality's decision to offer abstinence only sex education cam before you, how would you rule considering your views on sex education?

28. You have written extensively on the reform of the family. I am interested on how you would approach this as a judge, not as an academic.

    a. Under what circumstances should a non-parent be given parental rights either over a fit and able parent or jointly with a fit and able parent?

    b. Could a loving day-care provider of a child successfully petition for parental rights over the objection of the parent?

    c. Could a partner of a biological parent who has lived with the child successfully petition for parental rights over the objection of the biological parent?

29. Do you believe children have a fundamental right to know and be known by both their parents? When can this right be taken away?

30. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

31. Do you believe that the death penalty is an acceptable form of punishment?

32. 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. April 18, 2006: Speaker, "Briefing on Contraceptive Equity: Cummins v. Illinois"

b. February 28, 2006: Roundtable Discusssant, Yale Women Faculty Forum "Working for Care: Families and the Workplace"

c. September 17, 2044: Participant, Roundtable at Duke University School of Law, Conference on Interrogation, Detention and the Powers of the Executive.

33. In a comment you made about the *Stolt-Nielsen* case, you criticized "this court's hostility to class actions" as evidence of "conservative activism." I'm not familiar with the phrase, as conservatives on the bench are generally the opposite of activist. Could you define what characteristics comprise a conservative activist court?

34. You indicated that you were a member of the American Constitution Society from 2004 until 2008. Please describe to the Committee your work with the ACS. Specify what projects you worked on, what responsibilities you had, and what policies you advocated for during your time there.

35. Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution."

a. What is your view of the role of the courts on improving the lives of everyday citizens.

b. Can you please explain, in your view, the idea of what is a progressive perspective of the constitution?

c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?

e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

36. In sentencing, what consideration should a judge give to factors such as a defendant's race, age, marital status, or family status (whether or not the defendant has children)? Should two defendants who committed the same crime receive different sentences based on these factors?

37. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

38. What is the most important attribute of a judge, and do you possess it?

39. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

40. 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?

41. Previously, you have made comments about allowing cameras in the courtroom, stating, "When I think about it objectively and take my personal interests out of the picture, I think cameras should be there." Would you support legislation that allows for cameras in federal courtrooms, including the Supreme Court, and if allowed, what actions would you undertake to ensure cameras were operated in your courtroom? Please explain.

42. Miguel Estrada has a professional background similar to yours. Much of the objection to his nomination was focused on the request that internal Solicitor General memoranda be provided to the Committee. Do you think that was an appropriate request, and would it be appropriate for you to provide similar materials to the Committee in support of your nomination? Please explain.

43. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

44. Please describe with particularity the process by which these questions were answered.

45. Do these answers reflect your true and personal views?

Senator Jeff Sessions
Questions for the Record
Cornelia Pillard

1. At your hearing, in response to a question by Senator Flake, you testified that you believe judges should look to the original meaning of the words and phrases of the Constitution when applying them to current cases. You also testified that in your role as a judge you "would be bound by the precedents and the precedents that direct [judges] to look at the original meaning."

   a. Do you believe that judges are bound to follow the "original public meaning" of the text of the Constitution where it can be ascertained?

   b. Before your hearing, had you ever stated that "original public meaning," original meaning," or "original intent" methodology was the best way to interpret the Constitution? If so, when and to whom?

   c. In your testimony, by "original meaning," were you referring to the originalist methodology that aims to discern the meaning of a constitutional provision at the time that it was ratified; as distinct from original intent meaning what the Framers intended the meaning to be? If not, how do you define the phrase "original meaning"?

   d. Where the "original meaning" is not sufficiently clear to settle whether a democratic enactment violates a provision of the Constitution, is it proper for a judge to resort to other resources to decide the meaning of the provision? If so, please explain your view on the best way for a judge to do so, including what other resources you view as relevant and important. If not, does the lack of clarity require that the judge defer to the democratic enactment?

   e. Based on your current understanding of the original meaning of the Fourteenth Amendment, do you believe, or have you previously stated, that the original meaning (however you define that phrase) of the Fourteenth Amendment supports recognition of a constitutional right to abortion?

   f. Based on your current understanding of the original meaning of the Fourteenth Amendment, do you believe, or have you previously stated, that the original meaning (however you define that phrase) of the Fourteenth Amendment supports recognition of a constitutional right to same-sex marriage or of a constitutional obligation on the part of any government not to define marriage as the union of a man and a woman?

2. At your hearing you were asked whether you still hold the views that you made in a statement at a press briefing on the *Hosanna-Tabor* case, where you said that the position that the church has a First Amendment right to choose who it hires was a "substantial

threat to the American rule of law." You testified that you "called that case wrong," which appears to be an explanation of another part of your statement predicting how the court would rule. Below is the full statement:

> "The Lutheran Church-Missouri Synod defends its very broad version of the ministerial exception by arguing that teachers play a pivotal role in disseminating the faith and in being powerful, Christian role models for students. It is certainly plausible that religious organizations are more effective in their missions when everyone associated with them exemplifies in every possible respect the Church's teachings, and when the Church can command that its own dispute resolution processes oust any external legal system. But the Lutheran Church's position here is a substantial threat to the American rule of law – it would effectively empower any religion to create its own autonomous Vatican City-style regime for employment-law purposes, a sovereign unto itself over which the federal courts lack civil rights jurisdiction. It is hard to see the Supreme Court deciding that that is what the First Amendment law requires."

Your testimony addressed only your prediction on how the court would rule, not your statement that if the Court were to adopt the Lutheran Church's position, it would pose a "substantial threat to the American rule of law." Please take this opportunity to answer whether you still hold the view that "the Lutheran Church's position here is a substantial threat to the American rule of law."

3. You are the founding Academic Co-Director of and Professor at the Center for Transnational Studies. You have described that organization's mission as "based on recognition that now we need to make some shifts from nation- or region-centric to a more broadly transnational, even global, orientation." At your hearing, you were asked whether international human rights could be a potential source of social rights in the U.S., to which you answered: "Not unless Congress would so legislate."

   a. Before your hearing, had you ever stated that it is not appropriate to rely on foreign law in deciding the meaning of the U.S. Constitution? If so, when and to whom?

   b. Justice Breyer has offered this reason in defense of the practice of invoking foreign court decisions in deciding the meaning of the Constitution:

      > "[I]n some of these countries there are institutions, courts that are trying to make their way in societies that didn't used to be democratic, and they are trying to protect human rights, they are trying to protect democracy. They're having a document called a constitution, and they want to be independent judges. And for years people all over the world have cited the Supreme Court, why don't we cite them occasionally? They will then go to some of their legislators and others and say, 'See, the Supreme Court of the

> United States cites us.' That might give them a leg up, even if we just say it's an interesting example."

Do you agree with this reason or find it persuasive? If so, why?

c. Justice Breyer has also offered this reason why the decision of a foreign court may be relevant in deciding the meaning of the Constitution:

> "Well, it's relevant in the sense that you have a person who's a judge, who has similar training, who's trying to, let's say, apply a similar document, something like cruel and unusual or—there are different words, but they come to roughly the same thing—who has a society that's somewhat structured like ours. And really, it isn't true that England is the moon, nor is India. I mean, there are human beings there just as there are here and there are differences and similarities.... And the fact that this has gone on all over the world and people have come to roughly similar conclusions, in my opinion, was the reason for thinking it at least is the kind of issue that maybe we ought to hear in our court, because I thought our people in this country are not that much different than people other places."

Do you agree with this reason or find it persuasive? If so, why?

4. Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion?

5. In your article *Unitariness and Myopia: The Executive Branch, Legal Process, and Torture*, you wrote "[i]n the context of one-party dominance of the three branches, however, the rights-protecting effect of separation of powers is reduced." You further stated, "[f]ollowing 9/11, with Republicans dominating all three branches and war ongoing, risks of governmental myopia ran high." Is it your view that the judicial branch was "dominated" by "Republicans" following 9/11? If so, does such domination continue? If not, when did it end?

6. In your article *United States v. Virginia: the Virginia Military Institute, Where the Men are Men and So are the Women*, you wrote that "the length and magnitude of the *VMI* litigation attests to the inadequacies of the 'intermediate scrutiny' standard of constitutional review of sex-based policies and laws, such as VMI's male-only admissions policy." In addition, you appeared to express disappointment that the case of *Nguyen v. INS* used "a watered-down heightened scrutiny" and that the "the [*Nguyen*] decision adds weight to arguments that equal protection doctrine is, at least in some fact settings, substantially less skeptical than the Court's recent *Virginia* decision had seemed to establish."

a. What level of scrutiny do you believe current Supreme Court doctrine requires in reviewing sex-based policies?

b. Do you believe, or have you ever written, that sex-based policies should be reviewed under strict scrutiny, the same level of scrutiny required for race-based policies?

7. In your article *Plenary Power Underground in Nguyen v. INS*, you wrote "[o]ne reading of *Nguyen* is that equal protection doctrine may not (yet) be everything Nguyen and his father might have wished for, but at least the Court accorded them the same individual constitutional rights as United States citizens, and that is a particularly important advance for aliens generally. Viewed from that perspective, the individual's loss is a footnote to a larger victory: assuring aliens the full benefit of constitutional principles applicable to citizens."

a. Do you believe that illegal aliens should have the same individual constitutional rights as U.S. citizens?

b. What is included in the "full benefit of constitutional principles applicable to citizens"? Does this include a right to healthcare?

Senator Chuck Grassley
Questions for the Record

Brian Morris
Nominee, U.S. District Judge for the District of Montana

1. Please explain your views on the importance of judges to follow precedent and your commitment to doing so.

2. At your hearing, I asked about the *Western Tradition Partnership* case in which you joined a majority opinion that ignored the ruling by the Supreme Court of the United States in *Citizens United*. Part of your response was that "We thought that, given this record, there was a possibility that that statute could conform to the mandates of Citizens United." Even if one thought that the Montana law was narrowly tailored and the case warranted a special exception to Citizens United, there still is a problem with the majority opinion. Your colleague pointed out - "The problem, however, is that regardless of how persuasive I may think the Attorney General's justifications are, the Supreme Court has already rebuffed each and every one of them." The dissent also stated "Like it or not, *Citizens United* is the law of the land as regards corporate political speech. There is no Montana exception." The majority opinion you joined indicates that you believe there are situations, particularly when you do not agree with Supreme Court precedent, that precedent can be ignored.

    a. Can you explain why you thought there was a "Montana exception?

    b. Why were you unable to join in this dissent, which clearly recognized the need to follow precedent?

3. In a 2004 interview you stated that "the court can reflect changes in society." Is this still a part of your judicial philosophy? And can you explain your judicial philosophy after eight years on the Montana Supreme Court?

4. You wrote the majority opinion in *Kulstad v. Maniaci* which granted a parental interest to a third party despite the adoptive parent being fit and capable. This decision is especially troubling to me and I would like to ask you to clarify some issues.

    a. What is your understanding of parental constitutional rights?

    b. How does a third party's relationship with a child overcome, constitutionally, a fit and capable parent's right to raise the child?

    c. The dissent characterized your decision in this way: "The Court adopts an equitable, case-by-case inquiry to determine if a third party should be granted a parental interest of a child that must be balanced against a natural parent's rights." Do you disagree with this characterization?

d. If not, under what circumstances should a fit natural parent's rights be balanced against the desires of another interested adult?

e. The dissent said that the opinion of the court removed the "jurisdictional prerequisite" that has "protected parents against the claims of third parties, and thereby opens wide the door to such claims...potentially against all parents." Why did you join an opinion that removed such an important jurisdictional prerequisite?

f. The consequences of your opinion seem far reaching. The dissent pointed out that the decision "will open a Pandora's Box of potential attacks upon the right of fit and capable parents to raise their own children." What if, any, consequences do you see coming from this opinion?

5. What is the most important attribute of a judge, and do you possess it?

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

7. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

11. 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 assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

14. If confirmed, how do you intend to manage your caseload?

15. 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?

16. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Susan P. Watters
Nominee, U.S. District Judge for the District of Montana

1. In *State v. Steglich*, the Montana Supreme Court reversed your holding and was critical of how you reached your conclusion of unconstitutionality. It stated that you used the wrong standard and engaged in speculation about hypothetical situations that potentially render the statue void.

    a. Do you think the Montana Supreme Court's analysis of your decision was correct?

    b. Is there anything you learned from this decision that changed your approach to deciding cases?

2. During your time as a Montana District Judge, the Montana Supreme Court overturned many of your denials of motions to suppress evidence on the basis of illegal searches from your court. In one reversal, the Supreme Court found that the state had not met the high burden of proving the exigent circumstances required to justify the warrantless search. Another reversal involved your determination that the discovery of evidence was inevitable and the evidence should not be excluded.

    a. Although the specific facts in search and seizure cases are determinative, can you comment generally on the principles that guide you in these cases?

    b. Why did the application of those principles lead you to rulings that the Montana Supreme Court disagreed with in many of your cases?

3. As a state court judge for the past 15 years, your work has naturally focused on issues of Montana state law. If confirmed, how do you expect the federal bench to be different, and how do you plan to prepare for those differences, such as federal jurisdictional issues?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources

would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. If confirmed, how do you intend to manage your caseload?

14. 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?

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Jeffrey Alker Meyer
Nominee, U.S. District Judge for the District of Connecticut

1. At your hearing, I asked you about your views on the death penalty, but I would like a little further clarification. In 2008 you signed onto a letter to Governor Rell and Members of the Connecticut General Assembly in support of repeal of the Connecticut death penalty. Then in 2011, you said that halting the repeal of the death penalty is "certainly our hope." Can you explain this contradiction?

2. In *DePierre v US*, you argued that the mandatory minimum applying to drug trafficking offenses of crack cocaine should not apply to other forms of cocaine that could fall under the definition of having a "cocaine base." What is your view of mandatory minimums and how would you use Sentencing Guidelines in general, if you were confirmed?

3. You have written "Our privacy is ebbing away year by year," that "It's clearly beyond dispute that we are losing our actual protection," and also that "the right choice [for the Supreme Court] is to affirm our rights in our homes and our persons to be free, in the absence of emergency circumstances, from the warrantless use of dogs and sense-enhancing technology." What role would you have as a judge in terms of restricting incursions on privacy and how would you approach such cases?

4. In a 2011 article discussing a proposal to let non-citizen residents vote in municipal elections, you were quoted as saying "its strikes me as highly unlikely that the Constitution would prohibit this. It doesn't appear to require municipalities to screen for U.S. citizens."

    a. By that reasoning could municipalities enact other laws affecting municipal elections, so long as the U.S. Constitution had no prohibition?

    b. Or alternatively, if municipalities allow non-citizens vote in municipal elections, do the same rights that citizens enjoy apply to those non-citizens? For example could a municipality enact a law that let only male non-citizens vote, or restrict the voting age of non-citizens?

5. Some legal scholars have argued that judges should have discretion to sentence leniently in cases where defendants are remorseful, have dependents, are ill, have reformed, or are community heroes. To what extent do you think mercy has a place in the judicial process?

6. You were a panelist for a forum on federal judicial appointments sponsored by the Federalist Society at Quinnipiac University School of Law on September 26, 2007. You did not provide any notes, a transcript, or a recording. Please explain what you discussed on this panel and further your perspective on federal judicial appointments.

7. Please provide more detail on these two panels that you participated in.

   a. "Racial Profiling," March 5, 2008, Quinnipiac University School of Law, American Constitution Society.

   b. "Trade Sanctions in a 21st Century Economy," February 29, 2008, University of Pennsylvania School of Law.

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

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? Please explain.

15. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

16. 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?

17. If confirmed, how do you intend to manage your caseload?

18. 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?

19. 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?

20. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

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21. Please describe with particularity the process by which these questions were answered.

22. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Landya B. McCafferty
Nominee, U.S. District Judge for the District of New Hampshire

1. You have been a strong proponent of the use of technology in the courtroom, including by Judges. You can share your thoughts on that, if you wish, but I'm particularly curious regarding your views and current practice on the use of cameras in your courtroom.

    a. Are there privacy rights or other considerations in the courtroom that give you concern?

    b. If so, how can those concerns be addressed?

    c. What is the current policy and practice in your court regarding the use of cameras?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

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9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

11. If confirmed, how do you intend to manage your caseload?

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

13. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

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    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

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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

Responses of Cornelia Pillard
Nominee, United States Circuit Judge for the D.C. Circuit

1. **You have extensive appellate experience, particularly before the Supreme Court of the United States. Certainly during that time you have reflected on the professional traits and judicial philosophies of the judges or Justices before whom you have appeared. Please describe for us some traits or judicial philosophy that you would like to emulate as a judge, if confirmed.**

   Response: I believe that a federal judge must be a devoted guardian of the United States Constitution and laws. I have not specifically studied the philosophies of individual Justices, but there are qualities of judging that I respect and would strive to emulate in my own work as a judge, if confirmed. The power of Article III judges is confined to the cases and controversies before them. Accordingly, an appellate judge must meticulously read and understand the factual record to know precisely what issues are and are not presented in the appeal. A judge should read briefs with an open mind, and listen to and engage the advocates' arguments without prejudgment. Stability and predictability of judicial decisions is a cornerstone of the rule of law in the United States, and to achieve it I believe that judges must rigorously apply relevant precedent to new cases. Judicial opinions should clearly, logically and concisely set forth their premises, reasoning and conclusions. The effectiveness of our system of courts depends not only on judges being objective and impartial in application of law to fact, but also on the perceptions of the public and the parties appearing before the courts that judges are objective and impartial.

2. **When is it appropriate for the federal government to preempt state law? If confirmed, what sources and approaches would you utilize to assess whether Congress or the Executive Branch in fact intended to preempt state law and acted within the scope of their authority in doing so?**

   Response: By operation of the Constitution's Supremacy Clause, valid federal action can preempt state law explicitly or by implication, such as by occupying the field and thereby displacing state law or by creating an irreconcilable conflict with state law. *See generally Mut. Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013); *Wyeth v. Levine*, 555 U.S. 555 (2009). In deciding whether federal law preempted state law, I would apply the relevant preemption precedents, analyzing any express preemption provision to determine its scope and limits, and considering any potential conflict between state and federal law in light of the appropriate standards and presumptions.

3. **Do you ascribe to the concept of a living Constitution? Please explain.**

   Response: The phrase "living Constitution" can have different meanings for different people. I have not found the phrase, in any of its meanings, to be useful in teaching constitutional law, and have not developed a personal position on it.

4. **What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?**

   Response: I would be guided by the knowledge that the Constitution is the supreme law of the land, and that no official action in derogation of it can be valid. If I were confirmed to sit as a judge on the D.C. Circuit, I would apply the relevant constitutional provisions and Supreme Court and D.C. Circuit precedent. I would approach the task of constitutional review of statutes and regulations enacted by the coordinate branches of government with due respect for the constitutional stature and competence of those branches, and thus start from the established presumption of constitutionality. I also would apply established canons of constitutional avoidance to steer clear of any unnecessary resolution of constitutional questions.

5. **What role do you think a judge's opinions and views of the evolving norms and traditions of our society have in interpreting the written Constitution?**

   Response: A judge's opinions and views should have no role in interpreting the Constitution. In *Estelle v. Gamble*, 429 U.S. 97, 102 (1976), the Supreme Court referred to "evolving standards of decency" in determining what conduct is understood as "cruel and unusual" and thus prohibited by the Eighth Amendment, and I would be bound by *Estelle* as by all other precedents of the Supreme Court and the D.C. Circuit. I do not, however, understand *Estelle*'s method of constitutional interpretation to be generally applicable to constitutional questions beyond the Eighth Amendment.

6. **In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.**

   a. **When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

      Response: To identify the information pertinent to an appeal, an appellate judge should rely on the parties' briefing and arguments, together with the judge's own review of the opinions below, the factual record and relevant legal sources. In the event that a question arises in a particular case as to the propriety of consulting factual sources outside the record, such as on a matter susceptible of judicial notice, an appellate judge should look for direction to the relevant precedents and appellate rules, including Federal Rules of Appellate Procedure 10 and 16.

   b. **When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

      Response: An appellate judge should be guided by the applicable Federal Rules of Evidence and judicial precedents, such as the Supreme Court's opinions on

expert witness testimony. *See, e.g., Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993).

7. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

   Response: The United States Constitution is an American document framed by Americans to govern the United States as a distinct political community. The precedents of the Supreme Court and the D.C. Circuit rely on the relevant United States sources, such as the text and structure of our Constitution, to determine constitutional meaning without regard to any views of the "world community." D.C. Circuit judges are bound by and must follow those precedents.

   If I were confirmed as a judge, I would not rely on foreign courts' decisions to determine the meaning of the United States Constitution, except in the very limited instances in which the United States Supreme Court or D.C. Circuit precedents explicitly rely on foreign court decisions. For example, in interpreting the Seventh Amendment right to a trial by jury in civil cases, the Supreme Court has examined the common law in England at the time of the Amendment's adoption. *Chauffeurs, Teamsters, and Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990).

8. **In an article you wrote in the Supreme Court Review about plenary power and the *Miller v Albright* decision, you concluded that after *Miller*, the "courts may now step in" "where the political branches abdicate." You also found that this case means that "the government is no longer entitled to argue for extreme judicial deference" in some cases where Congress generally has plenary authority.**

   a. **Under what conditions should courts step in fill in legislative gaps?**

      Response: The article did not propose that courts should step in to fill legislative gaps. Rather, we sought to make the point that—despite the executive's constitutional oath and Take Care Clause obligations, and despite the constitutional oath of members of Congress—sometimes enacted law or regulations contain constitutional defects. In those circumstances, such an unresolved constitutional defect may present a justiciable question for the courts.

   b. **What should guide the court when it steps in to fill a legislative gap?**

      Response: A court addressing a potential constitutional defect in legislation or regulation should be guided by the Constitution, binding precedents interpreting the Constitution and the law with which it potentially conflicts.

   c. **What are your views on the limits courts should impose upon themselves in such situations?**

Response: Courts must in all situations await a properly presented constitutional case or controversy and apply doctrines of constitutional avoidance, presumptions of constitutionality and any other relevant limiting doctrines set forth in binding precedents.

9. **What would be your definition of an "activist judge"?**

Response: I would identify two somewhat distinct types of activism, both impermissible. The first type of activism occurs when a judge allows personal views or policy preferences to influence his or her application of the law to the facts of a case, and so renders a decision that is not evenhanded and faithful to the facts and/or the law. A second type of activism takes place when a judge exceeds the limitations of Article III by, for example, failing to observe jurisdictional limits on the court's power; reaching out to strike down as unconstitutional actions that should, under the doctrine of constitutional avoidance or otherwise, be sustained; or creating general federal common law unsupported by legislative authorization.

10. **In general, Supreme Court precedents are binding on all lower federal courts. 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. **In response to a question asked by Senator Flake, you said that not only are the substance of decisions binding as precedent but the methods of interpretation are binding as well.**

    a. **Please expand on the different methods of constitutional interpretation that you find to be binding in Constitutional Law and in what contexts those methods are specifically applicable.**

    Response: Please see below.

    b. **Please explain which method of constitutional interpretation that you would find to be the most persuasive.**

    Response: Please see below.

    c. **Please explain how original intent should be used when asked to interpret the Constitution.**

    Response: The duty of a judge is to follow the interpretive approaches that precedent dictates. The Supreme Court has in some cases employed originalism as a method of interpreting the Constitution, and I would apply such precedents. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008), the Court used an originalist methodology—specifically, original meaning—to read the

Second Amendment to protect an individual right to bear arms, and in *United States v. Jones*, 132 S. Ct. 945, 949-950 (2012), the Court relied on original meaning in deciding that physical trespass by public officials triggers the Fourth Amendment, so that police placement of a global positioning device on a car to gather information amounted to a search under the Amendment. The Supreme Court has not, however, adopted original meaning as a blanket methodology to be applied to all constitutional questions. For example, in *Dickerson v. United States*, 530 U.S. 428 (2000), the Supreme Court reaffirmed the requirement that the Miranda warning (based on *Miranda v. Arizona,* 384 U.S. 436 (1966)) be read to criminal suspects. If confirmed, I would be bound by *Dickerson*, even though the decision is not necessarily rooted in originalist methodology. In sum, whether or not the interpretive approaches of the Supreme Court and the D.C. Circuit's precedents can be described as flowing from any unified interpretive rubric, and regardless of whether I personally found any particular method to be persuasive, if confirmed as a judge I would be bound to apply them.

12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a case of first impression, I would start with the text, structure and other indicia of constitutional, statutory or regulatory meaning. In the absence of binding or determinative precedent, I would look to all available sources that might be persuasive or suggestive. Those would include decisions on closely related questions by the Supreme Court and the D.C. Circuit; the reasoning of the lower court opinion as well as of opinions of other federal courts on the same or closely related questions; secondary sources such as learned treatises or other recognized authorities, as well as counsel's arguments in the briefs and at oral argument. Taking all pertinent sources of guidance into account, I would seek to arrive at the resolution most faithful to the meaning of the constitutional provision or other law at issue.

13. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would be bound to apply a decision of the Supreme Court or the court of appeals on which I sat, even if I believed it to be in error.

14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A federal court must declare a federal statute unconstitutional if the statute exceeds the constitutional power of Congress or encroaches on constitutional rights. A federal court must declare a federal statute unconstitutional only in a properly presented

case or controversy, and only when the statute cannot, under canons of constitutional avoidance, be fairly read so as to avoid the constitutional defect.

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: Stability and predictability of judicial decisions is a cornerstone of the rule of law in the United States, and to achieve it judges must consistently and rigorously apply precedent to new cases. Precedent within the D.C. Circuit is binding on all future panels unless it has been superseded by a decision of the *en banc* court or the United States Supreme Court. *See* Fed. R. App. P. 35. On voting whether to recommend *en banc* consideration, as with all other issues, I would follow the law of the Supreme Court and of the D.C. Circuit as to the circumstances in which such consideration is warranted. The precedents recognize only limited and rare situations in which a court, sitting *en banc*, may overrule its own decisions, such as where there is extraordinary confusion or lack of clarity on an issue, or the precedent has become gravely unworkable. The rationale for judicial reconsideration of precedent, even through *en banc* review, is weaker when the question is statutory or regulatory than when it involves the Constitution, because Congress or an agency may change the law if it believes a court erred. In general, given the bedrock importance of the stability of precedent, mere disagreement with a prior D.C. Circuit panel's decision is not alone sufficient ground for the *en banc* court to overrule it.

16. What weight should a judge give legislative intent in statutory analysis?

Response: The relevance of legislative intent varies depending on the context. The text and structure of legislation are typically the best indicators of legislative intent, and are often determinative. Occasionally, legislative intent behind an otherwise constitutionally unproblematic law may be relevant, however, such as when a party alleges that facially neutral legislation was enacted with invidious intent in violation of equal protection guarantees. *See Arlington Heights v. Metropolitan Housing Dev. Corp.* 429 U.S. 252, 264-68 (1977). (I would note that the party challenging the official action bears the burden of proof that legislators in fact acted with prohibited intent). In determining whether legislative intent is relevant and how to discern it, I would follow applicable Supreme Court and D.C. Circuit precedents.

17. In a recent Supreme Court decision, Justice Kennedy wrote that DOMA "humiliates" "demeans" "disapproves" and "seeks to injure" and that it is a "bare congressional desire to harm".

a. As a federal judge, what role do you see for making findings of the intent of Congress when they write laws?

Response: If binding precedent required consideration of legislative intent beyond that which could be discerned through consideration of the text and

structure of legislation, I would follow the approach of such precedent in making any required findings.

b. **When is legislative intent relevant in determining the outcome of a case?**

Response: Please see my response to question 16, above.

c. **I expect all federal judges to follow the law and respect every citizen's first amendment religious liberty rights. What is your understanding of a church's right to define marriage how they see fit?**

Response: Whether or not a religious community chooses to recognize a marriage is a matter for that community to decide. To the extent that unresolved legal questions regarding the implications of any such recognition might come before me, I would decide them under applicable Supreme Court and D.C. Circuit precedents.

d. **Do you support the right of clergy to decline to marry any particular couple?**

Response: Whether or not clergy choose to recognize a marriage is a matter for that clergy member and the relevant religious community to decide. To the extent that unresolved legal questions regarding the implications of any such recognition might come before me, I would decide them under applicable Supreme Court and D.C. Circuit precedents.

e. **Do you support the right of private individuals (such as photographers or wedding cake makers) to decline to provide services for same-sex weddings?**

Response: These are issues that have not been resolved in the Supreme Court or the D.C. Circuit. In addressing any such claim, issues to be considered likely would include (1) An evaluation of the relevant First Amendment doctrines, including both freedom of speech and freedom of religion; (2) whether any neutral law of general applicability, such as federal, state or local antidiscrimination law, extended to the individuals' business activities and so purported to require the service to be provided to same-sex customers; (3) whether federal, state or local law provided an exemption for religious objectors to serving same-sex couples, *see generally* Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq*.

18. **At your hearing, I asked about First Amendment rights and government mandates. Generally speaking, what is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

Response: The Supreme Court has recognized that the interplay between the religion clauses includes some "play in the joints," such that state non-establishment interests do

not inevitably run afoul of individuals' free exercise rights. *See Locke v. Davey*, 540 U.S. 712, 718-19 (2004); *Walz v. Tax Comm'n of City of New York,* 397 U.S. 664, 669 (1970). Additionally, the Constitution limits the ability of government, ostensibly seeking to avoid establishing religion, to impose secularism, such as by singling out religion for unfavorable treatment or failing to accommodate religious practices. *See, e.g., Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520 (1993); *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136 (1987).

19. At your hearing, you were asked about your stance in the case of *Hosanna-Tabor Evangelical Lutheran Church v. EEOC* and you said, "I really called it wrong." While I appreciate your acknowledgement of "getting it wrong," I am not concerned with your ability to predict Supreme Court case outcomes. The fact that you advocated so ardently against the ministerial exception to employment decisions is worrisome to me because it reflects your views of the First Amendment free exercise rights. Please explain your understanding of the tension between free exercise rights and general applicability of laws.

Response: Tensions between free exercise rights and generally applicable state or federal laws implicate the Constitution; Supreme Court precedents, including *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 132 S. Ct. 694 (2012), and *Employment Division v. Smith*, 494 U.S. 872 (1990); and statutory law, including any generally applicable laws and, where relevant, the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*, Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc *et seq.*, or similar federal or state enactments. I have not advocated for or against the ministerial exception. In my personal notes for a press briefing, which I supplied to the Committee, I described the issue in the case, identified what was difficult about it, and offered a prediction of how the Court might resolve it. I noted that, although the Supreme Court had never before recognized a "ministerial exception" to generally applicable civil rights laws, the courts of appeals had done so. I stated that "[i]t would be unexceptional for the Court to conclude that the First Amendment prevent[s] courts from second-guessing religious communities' choice of their leadership, and keeps courts from adjudicating core questions of church doctrine." Where my prediction erred was in the difficult question of precisely how broadly the Court would define the exception—a problem for which the Court's own opinion in *Hosanna-Tabor* did not provide any easy formula. *Hosanna-Tabor,* 132 S.Ct. at 707 (declining to adopt a "formula" but concluding that the exception applied to the plaintiff teacher, "given all the circumstances of her employment"). I had predicted that the Court might hold that the neutral, generally applicable law prohibiting discrimination on the basis of disability applied to the firing of the plaintiff teacher because she held a type of position that the Church acknowledged that it had also filled with non-Lutheran laypersons. My prediction was consistent with the unanimous holding of the Sixth Circuit. I was nonetheless clearly wrong, as the unanimous Supreme Court has since held. If I were confirmed, I would have no difficulty applying the Supreme Court's holding in *Hosanna-Tabor,* or any other Supreme Court precedents.

20. In your hearing, you told us that you predicted the *Hosanna Tabor* case incorrectly. We had asked you if you found the ministerial exception unconstitutional. You previously stated that the Lutheran church's position a "substantial threat to the American rule of law". Please elaborate why you said this particular statement and describe how the position is a substantial threat to the American rule of law. Please be detailed and specific in your answer.

Response: The First Amendment protects religious freedom and, because of that important right, religious institutions have the right to be free from governmental interference in how they select or remove their religious leadership. In my notes, prepared before the Supreme Court rendered its *Hosanna-Tabor* decision, I pointed to some public consequences that might arise if the Court issued an especially broad decision against the petitioner, a teacher, in her employment discrimination case against the Lutheran church. Under a broad decision, institutions run by churches, temples or mosques could simply dub all of their employees—from accountants to janitors to cafeteria workers—as "ministers" or their equivalent, and thereby bar them from access to courts in cases of unlawful retaliation or discrimination. The Court's decision is in fact much more limited and contextually based. The Court noted that it was "reluctant ... to adopt a rigid formula for deciding when an employee qualifies as a minister," but emphasized that the respondent in this case "held herself out as a minister," had a "significant degree of religious training," and that her work involved "conveying the Church's message and carrying out its mission." *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 132 S. Ct. 694, 707-708 (2012). The Court's nuanced decision is not a "threat to the American rule of law."

21. **In discussing First Amendment rights and government mandates, you said that one would have to take into account religious rights and reproductive rights. How would you balance those rights and what precedent would you look to guide you in finding the balance of these two rights?**

Response: Questions regarding whether religious adherents are exempt from government mandates supporting contraception or other reproductive health benefits are not likely to be decided on constitutional grounds, because federal (and many states') statutory protection for conscience rights is more robust than that provided by constitutional precedents. *See* Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb *et seq.*; *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). Recent court of appeals decisions grappling with conscience rights and government mandates accordingly have relied principally on RFRA or state statutes that protect conscience rights. *See e.g., Conestoga Wood Specialties Corp. v. Sect'y of U.S. Dept. of Health and Human Svcs.*, 2013 WL 3845365 (No. 13-1144) (3d Cir. July 26, 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, 2013 WL 3216103 (No. 12–6294) (10th Cir. June 27, 2013) (en banc); *Grote v. Sebelius,* 708 F.3d 850 (7th Cir. 2013); *Korte v. Sebelius*, 2012 WL 6757353 (No. 12–3841) (7th Cir. Dec. 28, 2012); *Morr-Fitz, Inc. v. Quinn*, 2012 Ill. App. 4th 110398; 976 N.E.2d 1160 (2012). Doctrines of constitutional avoidance counsel deciding such issues on available statutory rather than First Amendment grounds.

Apart from the statutory protections for religious freedom and conscience rights, constitutional sources to be considered regarding the relationship between religious rights and state or federal mandates (such as mandates to provide or insure health services) could include the text of the Constitution itself; precedents regarding religious freedom such as *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 132 S. Ct. 694 (2012) (recognizing religious entity's exemption from neutral law of general applicability based on free-exercise and non-establishment rights); *Employment Division v. Smith*, 494 U.S. 872 (1990) (sustaining neutral law of general applicability against claim of religiously based exemption); and precedents regarding reproductive rights, such as *Gonzales v. Carhart*, 550 U.S. 124 (2007) (holding federal prohibition of an abortion method not an undue burden); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (reviewing abortion restrictions under due-process "undue burden" analysis); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (recognizing individuals' due process right to use contraception); and *Harris v. McRae*, 448 U.S. 297 (1980) (holding that right to abortion is not violated by government non-funding of abortion).

22. **In 2006 you wrote an entry in the Encyclopedia of American Civil Liberties entitled "Reproductive Freedom." In this entry you discuss current law and future directions and appear to criticize conscience rights protections when you write, "Legal restrictions on reproductive choice reach beyond the abortion procedure itself...Laws in several states now grant "conscience rights" to pharmacists and health care providers to refuse to facilitate abortions or even to fill prescriptions for contraceptives if they personally are opposed to such practices." How would you approach a case involving a challenge to these conscience rights?**

    a. **Do you understand the Constitution to protect the conscience rights of health-care providers?**

    Response: Please see below.

    b. **Under what scenarios do you understand the law to not protect these conscience rights?**

    Response: At this time, that precise constitutional issue has not yet been decided by the United States Supreme Court or the D.C. Circuit. Many sources of federal and state law, however, support conscience rights for individuals and religious organizations, as discussed in the response to Question 21, above. Among the issues currently under active consideration in many federal courts is whether and to what extent general business corporations have the same free exercise rights as individuals and religious organizations. *See e.g., Conestoga Wood Specialties Corp. v. Sect'y of U.S. Dept. of Health and Human Svcs.*, 2013 WL 3845365 (No. 13-1144) (3d Cir. July 26, 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, 2013 WL 3216103 (No. 12–6294) (10th Cir. June 27, 2013) (en banc); *Grote v. Sebelius*, 708 F.3d 850 (7th Cir. 2013); *Korte v. Sebelius*, 2012 WL 6757353 (No. 12–3841) (7th Cir. Dec. 28, 2012). If confirmed and if presented with such an issue, I

would look to relevant statutory and constitutional provisions, apply any relevant Supreme Court and D.C. Circuit precedent, and otherwise consider decisions from other courts which, though not binding, may be persuasive.

23. You said in your hearing, "women's rights are facilitated by abortion". It is not clear to me how this is the case. Please explain the following:

a. Before abortion was legal, were women's rights restricted by the fact that they could not get an abortion? If so, how so?

Response: Please see below.

b. In what way is abortion necessary to facilitate women's rights?

Response: At the hearing I did not assert that "women's rights are facilitated by abortion." I quoted the Supreme Court's observation in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), that "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Id.* at 856.

24. In your hearing, your response to questions from Senator Lee about your amicus brief on *Bray v Alexandria Women's Health Clinic* was that: "we were arguing that the provisions of the law might be deployed in current-day circumstances, and the contribution of our brief was talking about when and if protesters interfere with law enforcement." While you addressed the fact that there were "disparaging connotations" associated with using the same statute to address the KKK and current-day problems, you chose to overtly utilize these connotations and directly compare a pro-life group to the KKK in your writings after the Bray case was decided. You said the following:

a. "*Just as* the Klan used force to subvert official efforts to extend new constitutional rights to the freed slaves, *so* Operation Rescue uses force to overwhelm official efforts to protect recently recognized rights the Constitution confers on women" (emphasis added).

This comparison appears to put the actions of Operation Rescue on equal footing with those of the KKK. Is this in any way representative of how you view pro-life advocacy groups that act as Operation Rescue does?

Response: No. If I were confirmed as a judge, I would evenhandedly recognize the rights and responsibilities of all parties to appear before me. The advocate's role, however, is different from that of a judge, and the quotes referenced in both subparts of this question were written from the perspective of an advocate. Specifically, the quoted comparison in Question 24(b) is from an *amicus* brief filed in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993); the quoted comparison in Question 24(a) is from an article I wrote as a practicing

lawyer, directed at civil rights advocates, and published in 1993 in a civil rights litigation handbook. An advocate is obligated to use any reasonable argument to advance the client's cause, and the arguments you quote were legally reasonable and professionally responsible.

Congress enacted 42 U.S.C. § 1985(3), which was known as the "Ku Klux Klan Act," in response to actions of the Klan following the Civil War. Respondents in *Bray* advocated for the application of civil remedies provided in Section 1985(3) to anti-abortion clinic blockades. The case, and my advocacy, made no objection to anti-abortion advocacy or speech. The challenged conduct was the physical blockading of clinics by large groups of people seeking to prevent women from entering the clinics, even with the assistance of law enforcement personnel trying to open the way. The two sentences the question references used analogical reasoning to argue that such blockades were similar in legally relevant respects to some of the conduct that the 42d Congress outlawed when it enacted Section 1985(3). That contention was legally warranted by the detailed analysis we offered of the Court's precedents, the statute's text and its history. Before the Supreme Court decided *Bray*, no court had rejected the argument we made with respect to the applicability of Section 1985(3) to clinic blockades, and the four dissenting justices in *Bray* would have accepted it. Even in rejecting this claim as not properly raised, the Court majority acknowledged that the claim was non-frivolous under *Bell v. Hood*, 327 U.S. 678 (1946). *Bray*, 506 U.S. at 285. Congress, however, soon enacted the 1994 Freedom of Access to Clinic Entrances Act (FACE Act), 18 U.S.C. § 248. That Act provides federal criminal penalties and civil redress for the specific type of conduct challenged in *Bray*, and thus effectively supersedes use of § 1985(3) against such conduct. Although I made the arguments—prior to Congress enacting the FACE Act—that Operation Rescue's hindrance of law enforcement violated § 1985(3), I did not contend and do not believe that Operation Rescue is the moral equivalent of the Ku Klux Klan.

b. "Women's reproductive freedom is . . . under broad attack by Operation Rescue, a nationwide conspiracy to undermine the exercise of abortion rights. Defendants in this case, like the conspirators at whom § 1985(3) originally was aimed [referring to the Ku Klux Klan], seek forcibly to revoke constitutional rights that they have been unable to repeal through legal and political processes."

You were willing to use a statute to argue your client's cause that was not appropriate to use because you said there was no better statute. I am concerned that as a judge you will stretch statutes to mean more than they should be to suit the outcome you want as a judge. Please explain to the Committee how you came to the conclusion that it was acceptable to use this statute.

Response: Please see my response to Question 24(a), above.

25. At your hearing, you said "I do not believe that the Supreme Court has ever held that the abortion right is protected by equal protection." But in your article entitled "Our Other Reproductive Choices" you wrote that "equal protection is also at the heart of the matter" when discussing reproductive rights. While you acknowledge that reproductive rights are "traditionally understood to be protected by the privacy aspect of the due process liberty guarantee" this assertion that we should find these rights in another constitutional doctrine is worrisome because it reflects your understanding of constitutional law.

a. Please explain your argument that reproductive rights should be found in equal protection.

Response: The Supreme Court has held that the abortion right is protected as a due process privacy right, and observed in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), that the right has had practical implications for sex equality: "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Id.* at 856. The reference to equal protection that you quote from my article is not an assertion that the abortion right as such is, or should be, found in equal protection—an issue that I specifically stated in footnote 2 was "beyond the scope of this article." The article, *Our Other Reproductive Choices*, addressed "other" reproduction-related choices—not the right to abortion—that may affect the frequency of abortion in practice. Specifically, the article discussed potential equality issues—whether at the level of the Constitution, legislation or policy—that may arise when sex education in public schools relies on sex stereotypes to treat boys and girls unequally; when otherwise comprehensive prescription benefit insurance plans do not cover contraception; or when women and men are not afforded equal opportunities to work for pay while also caring for family dependents. The article expressly set aside any constitutional theorizing about the abortion right itself in favor of seeking "common cause between people opposed to legal abortion and those who support the abortion right." The article concluded that, "[i]f society were willing to recognize the demands of equality in these three areas, there might well be less need for abortion." Of course, discussing potential equality issues that might arise in these contexts as an academic is very different from analyzing a case that might present such issues were it to come before me. I understand the differences between the role of an academic and the role of a judge.

b. Please explain in what situation you would find it more appropriate to apply equal protection to reproductive rights.

Response: I am not aware of any cases in which the Supreme Court or the D.C. Circuit has applied equal protection analysis to the abortion right. The appropriate analysis would be the analysis supplied by the precedents of the Supreme Court, including *Gonzales v. Carhart*, 550 U.S. 124 (2007), and *Planned*

Parenthood v. Casey, 505 U.S. 833 (1992). If I were a judge, the analysis in court precedents is what I would find appropriate to apply.

c. **Please explain where you feel that due process fails to protect reproductive rights.**

Response: The above-referenced article argued that the right to abortion, as recognized under the Due Process Clause by the Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), does not provide full practical protection for the reproductive choice to bear a child, because "[p]eople who want children, whether or not they initially intended to get pregnant, often realize they cannot responsibly carry a pregnancy to term" and so may reluctantly opt for abortion. The article proposed that policies seeking to encourage pro-childbirth choices should recognize that "if mothers had more ability to participate in society as equals, women might feel less need for abortion." As a scholar, I took the view that equal protection and Congress's power to enforce it, more than the due process-based right to abortion, could provide the general conceptual framework for pro-childbirth policies based on enhanced maternal equality.

d. **Please explain why you think that it is necessary that reproductive rights, such as abortion, should be protected by equal protection and due process.**

Response: The abortion rights precedents use a due process analysis and do not hold that the abortion right is based on equal protection. If I were confirmed to the D.C. Circuit, I would follow those precedents as I would any other precedents. As a scholar I have not argued that it is necessary that abortion should be protected by equal protection. *See* Response to Question 25(a). To the extent that my academic writing on reproduction-related issues other than abortion presents any new understanding of sex equality, it might inform scholars, policy makers or advocates. If I were confirmed as a judge, however, it would be my responsibility and duty to apply the relevant precedents of the Supreme Court and the D.C. Circuit, not to theorize.

26. **According to your understanding of the law, please explain your understanding of when an individual first starts receiving and stops receiving 14th amendment equal protection personhood rights?**

a. **What equal protection personhood rights do the unborn have? (Please elaborate if it is different during different stages of development.)**

Response: Please see below.

b. **What equal protection personhood rights do the newly (first few hours of life) born have?**

Response: Please see below.

c. **What equal protection personhood rights do infants in their first week of life have?**

Response: Please see below.

d. **What equal protection personhood rights do those who are in what are often called vegetative states have?**

Response: The Supreme Court has not specifically addressed when equal protection personhood rights apply to the unborn, newborns, infants or persons in persistent vegetative states. The Court's cases have focused on due process, not equal protection, in recognizing the right to abortion. *Planned Parenthood v. Casey*, 505 U.S. 833, 846 (1992) ("Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment"). Additionally, the Supreme Court has noted that "the State may use its regulatory power to bar certain procedures and substitute others all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn," *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007)—although, again, the Court did not specifically address the State's interest in the life of the unborn in terms of an equal protection personhood right. I also do not believe the Supreme Court has specifically addressed when an individual is no longer considered to have Fourteenth Amendment personhood rights. The Court has held that individuals in persistent vegetative states have a potential liberty interest under the Due Process Clause in refusing unwanted life-sustaining medical treatment, *Cruzan v. Director, Missouri Dept. of Health,* 497 U.S. 261 (1990), but not in assisted suicide, *Washington v. Glucksberg*, 521 U.S. 702 (1997), and has held that a state does not violate equal protection by banning assisted suicide while allowing terminally ill patients to refuse life-saving treatment, *Vacco v. Quill*, 521 U.S. 793 (1997).

27. **At your hearing, you said that you supported sex-education curriculum being developed at a local level. However, in a 2006 entry to the Encyclopedia of American Civil Liberties you wrote "Accurate health education can help to make abortion less necessary by teaching teens about reproduction and birth control; such education has, however, been vigorously opposed by the religious right, leaving some states requiring uninformative, "abstinence only" programs." If a challenge to a locality's decision to offer abstinence only sex education came before you, how would you rule considering your views on sex education?**

Response: If I were confirmed as a judge, any personal views I might have about a particular issue would have no place in my judicial decision making. I would decide any legal challenge to abstinence-only sex education, as I would decide any issue, by looking to the relevant law and precedents.

28. You have written extensively on the reform of the family. I am interested on how you would approach this as a judge, not as an academic.

a. Under what circumstances should a non-parent be given parental rights either over a fit and able parent or jointly with a fit and able parent?

Response: Please see below.

b. Could a loving day-care provider of a child successfully petition for parental rights over the objection of the parent?

Response: Please see below.

c. Could a partner of a biological parent who has lived with the child successfully petition for parental rights over the objection of the biological parent?

Response: Family law is primarily the province of the states, not the federal government or its courts. I am unaware of any precedents of the United States Supreme Court or of the D.C. Circuit that would confer parental rights to (a) a non-parent over, or jointly with, a fit and able parent; (b) a day-care provider over the objection of the parent; or (c) a biological parent's partner over the objection of the biological parent. Parents' rights are fundamental and are specially protected under the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982). On this, as on any other issue, I would faithfully apply the relevant precedents.

29. Do you believe children have a fundamental right to know and be known by both their parents? When can this right be taken away?

Response: I am not aware of any directly controlling Supreme Court or D.C. Circuit precedent on this issue, which appears to implicate how anonymous adoption laws interact with parents' rights to direct the education and upbringing of their children. As this is an issue that might come before me were I to be confirmed as a judge, it would not be appropriate to speculate.

30. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court has expressly left open the question of the appropriate standard of Second Amendment review of federal and state gun regulations, but has suggested that review should be more demanding than rational basis. *District of Columbia v. Heller*, 554 U.S. 570, 628 n. 27 (2008). The D.C. Circuit calibrates the standard of review to the nature of the regulation and the degree to which it burdens the "core right of self-defense." *Schrader v. Holder*, 704 F.3d 980, 989 (D.C. Cir. 2013) (internal quotations and citation omitted) (applying intermediate scrutiny to a ban on gun

possession by common-law misdemeanants as a class); *see Heller v. District of Columbia*, 670 F.3d 1244, 1257, 1261-62 (D.C. Cir. 2011) (applying intermediate scrutiny to registration requirement and semi-automatic gun ban). On this, as on any other issue, I would faithfully apply the relevant precedents.

31. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held in a line of cases that the death penalty can be a constitutionally valid form of punishment in some circumstances. *Gregg v. Georgia*, 428 U.S. 153 (1976). If I were confirmed as a judge, I would be bound to apply the Supreme Court's precedents with respect to the death penalty, as on any other issue.

32. 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. April 18, 2006: Speaker, "Briefing on Contraceptive Equity: Cummins v. Illinois"

Response: I spoke about my amicus participation in a then-pending appeal to the Seventh Circuit in *Cummins v. Illinois*. *See* 2006 WL 951818 (7th Cir. 2006) (appellate brief). The case raised the question whether a state employer that offers otherwise-comprehensive prescription health benefits as part of its health plan but excludes coverage for prescription contraceptives, when the only FDA-approved prescription contraceptives are for women, violates Title VII's bar against sex discrimination. The *amicus* brief in which I participated was limited to a narrow question regarding whether, under Section 5 of the Fourteenth Amendment, Congress had validly abrogated Illinois' sovereign immunity through Title VII, including the Pregnancy Discrimination Act. The *amicus* brief argued that, in light of the Supreme Court's decision in *Nevada v. Hibbs*, 538 U.S. 721 (2003), the interpretation of Title VII that the appellant proposed was appropriate under Section 5 of the Fourteenth Amendment, such that, if accepted by the Seventh Circuit, it would bind state as well as private employers. My comments focused on the issue argued in the brief.

b. February 28, 2006: Roundtable Discusssant, Yale Women Faculty Forum "Working for Care: Families and the Workplace"

Response: I spoke about the implications for work-family balance of the Supreme Court's decision in *Nevada v. Hibbs*, 538 U.S. 721 (2003), a case in which I was lead Supreme Court counsel. The Court in *Hibbs* sustained the Family and Medical Leave Act's family-care provisions as appropriate legislation under Section 5 of the Fourteenth Amendment to remedy a widespread pattern of state sex discrimination against men in family leave policies and practices. I argued that family-friendly policies and practices should be sex-neutral and encourage

men to participate, to help to respond to the problem the Court in *Hibbs* identified of "mutually reinforcing stereotypes that only women are responsible for family caregiving and that men lack domestic responsibilities." *Id.* at 722.

c. **September 17, 2004: Participant, Roundtable at Duke University School of Law, Conference on Interrogation, Detention and the Powers of the Executive.**

Response: I spoke about the importance of internal executive-branch processes to obtaining the best legal advice on crucial matters of executive powers in the War on Terror. I discussed the benefits that might be gained from exposing proposed executive legal positions to robust internal debate, including diverse executive-branch expertise and perspectives, and to prompt public scrutiny where feasible and appropriate.

33. **In a comment you made about the *Stolt-Nielsen* case, you criticized "this court's hostility to class actions" as evidence of "conservative activism." I'm not familiar with the phrase, as conservatives on the bench are generally the opposite of activist. Could you define what characteristics comprise a conservative activist court?**

Response: An activist court or judge, whether conservative or not, is one that (1) allows personal views or policy preferences to influence application of the law to the facts of a case, and so renders a decision that is not evenhanded and faithful to the facts and/or the law, or (2) exceeds the limitations of Article III by, for example, failing to observe jurisdictional limits on the court's power; reaching out to strike down as unconstitutional actions that should, under the doctrine of constitutional avoidance or otherwise, be sustained; or creating general federal common law unsupported by legislative authorization. Both forms of activism are impermissible.

34. **You indicated that you were a member of the American Constitution Society from 2004 until 2008. Please describe to the Committee your work with the ACS. Specify what projects you worked on, what responsibilities you had, and what policies you advocated for during your time there.**

Response: I helped to identify issues and speakers of current interest for panels and programs to be sponsored by the American Constitution Society. I participated on occasion in conference calls to discuss and plan for such panels and programs. I participated as a speaker or moderator at ACS-sponsored programs, as reflected in my responses to this Committee's questionnaire. I had no role in policy development or advocacy for policies within the ACS.

35. **Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would**

help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution."

a. **What is your view of the role of the courts on improving the lives of everyday citizens.**

   Response: Courts fulfill their role in improving the lives of everyday citizens through consistent, rigorous and transparent application of law to fact in disputes that come before them.

b. **Can you please explain, in your view, the idea of what is a progressive perspective of the Constitution?**

   Response: This was neither my statement nor my terminology, and I am not familiar with the full context nor what Professor Edelman meant by it.

c. **What does the idea of a progressive perspective of the Constitution mean for the country, in your view?**

   Response: Without a more specific definition of what is meant by a progressive perspective of the Constitution, I cannot comment on what it might mean for the country. I do, however, recognize that critical analysis of and robust public debate among lawyers, academics, students and laypersons over constitutional law from a range of perspectives helps the profession and the public better to understand the nature of our constitutional democracy and to play informed and constructive roles within it.

d. **Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?**

   Response: I have not asserted that there are "right-wing distortions of the Constitution" that need to be countered.

e. **If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"**

   Response: If I were confirmed as a judge, I would not seek to promote any perspective on the Constitution other than that which the document itself and relevant precedent embodies. In my view, judges must understand and apply the Constitution free of distortions from any quarter.

36. In sentencing, what consideration should a judge give to factors such as a defendant's race, age, marital status, or family status (whether or not the defendant has children)? Should two defendants who committed the same crime receive different sentences based on these factors?

Response: Defendants who commit the same crime should be treated the same, except to the extent that the law provides that specific circumstances of individual defendants be taken into account. Federal law recognizes the importance of uniformity of sentences of similarly situated persons who commit the same offenses. *See* 18 U.S.C. 3553(a)(6) (referring to "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"). The Sentencing Guidelines, even though they are advisory, provide considered and useful guidance to achieve appropriate uniformity in sentencing. If I were confirmed as a judge and a case reviewing a criminal sentence came before me, I would be guided by applicable law on relevant sentencing considerations, as well as precedents requiring deference to the sentencing decisions of the district courts.

37. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: In my career I have worked as an advocate in and out of government, a legal advisor, a scholar, and a teacher. I understand that the role of a judge is distinct in important ways from each of the prior roles I have held. A judge must be a devoted guardian of the established American legal tradition, and must remain impartial, objective, and circumspect. My approach to reaching decisions would be to learn the record of each case thoroughly and accurately, and rigorously and impartially apply the law to the facts. Sources of information to which I would look for guidance would include the parties' briefs and arguments, opinions below, the constitutional, statutory, regulatory or other authoritative text at issue, and relevant precedents. My understanding also likely would be assisted by discussion with the other judges and with my law clerks.

I appreciate the gravity of the work of the D.C. Circuit and fully anticipate that, especially at first, it would pose challenges for me, as for any new judge. I cannot predict which aspects of this change would be the most difficult, but I trust that hard work, dedication, patience and the guidance of established judicial colleagues would ease the transition.

38. What is the most important attribute of a judge, and do you possess it?

Response: In my view, the most important attribute of a judge is rigorous and impartial application of the law to the facts. I believe that, were I to be confirmed as a judge, I would embody that attribute.

39. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: Yes, I think that collegiality is very important in federal appellate courts, as appellate judges must work together in relative isolation from the rest of the legal community, and they typically remain colleagues for the balance of their working lives. Openness to the views of colleagues helps any judge to test her or his own judgments, and the joint character of appellate decision making helps to ensure that court opinions are sound and widely accepted. I have striven throughout my professional life to establish and maintain cordial and respectful relations with all colleagues of whatever stature or role, and, were I to be confirmed, I would be committed to collegiality within the court.

40. 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 even-tempered, open-minded, treat all persons with dignity, and, above all, remain faithful to the law. That means that the judge should strive to understand and appreciate the interests and positions of the parties appearing before her and the views of judicial colleagues, even while she remains ultimately reliant on her own analysis, reason and judgment about what the law requires. In the face of the disagreements or strong feeling that important legal disputes may evoke, a judge should remain civil and dispassionate, inspiring confidence in and respect for the neutrality of the appellate process. I believe that I meet those standards.

41. Previously, you have made comments about allowing cameras in the courtroom, stating, "When I think about it objectively and take my personal interests out of the picture, I think cameras should be there." Would you support legislation that allows for cameras in federal courtrooms, including the Supreme Court, and if allowed, what actions would you undertake to ensure cameras were operated in your courtroom? Please explain.

Response: The quoted comment is not correctly attributed to me. I have never formally studied the question and do not have the benefit of the specifics of the legislation the question hypothesizes, and so I hesitate to express an opinion on it. I note that I have on one occasion publicly responded to a panel question by expressing concern about allowing cameras in the courtroom. (The panel took place on February 28, 2010 at the Peter Jennings Project on Journalism and the Constitution). My concern was that video broadcasting might create incentives for counsel to be showy and present arguments designed to arouse popular sentiments, rather than being strictly directed at the legal questions at hand. I do, however, note that the Supreme Court makes same-day transcripts and audio recordings available to the public, and the D.C. Circuit has decided to do so as well. I believe that those media have helped the public to better understand the work of the Supreme Court, and have not harmed the quality of argument before the Court. I welcome the parallel development in the D.C. Circuit.

42. Miguel Estrada has a professional background similar to yours. Much of the objection to his nomination was focused on the request that internal Solicitor General memoranda be provided to the Committee. Do you think that was an appropriate request, and would it be appropriate for you to provide similar materials to the Committee in support of your nomination? Please explain.

Response: Miguel Estrada and I were colleagues in the Office of the Solicitor General, and we were law school contemporaries at Harvard and fellow editors on the Harvard Law Review. Based on what I know of Mr. Estrada, I do not believe there was any need to review any internal Solicitor General memoranda to conclude that he was well qualified to serve on the D.C. Circuit and should have been confirmed.

Although I have not studied the question, I appreciate that there are strong reasons to protect the confidentiality of the decision making processes in the Solicitor General's Office. As many former Solicitors General have attested, candid advice on difficult and often controversial legal questions is facilitated by the assurance that the advice will be kept confidential. Any decision about disclosure of internal memoranda of the Office of the Solicitor General, were they sought, would properly rest with the executive branch. The executive branch position presumably would be informed by an assessment of the desirability and lawfulness of maintaining the long-standing policy of confidentiality of such memoranda.

43. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: I have had no contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding my nomination.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: I am not aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding my nomination.

44. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from the Office of Legal Policy in the Department of Justice on Wednesday, July 31, 2013. I reviewed the questions, referred to my papers and notes and to applicable legal research materials, and drafted answers to the questions. I submitted those answers for review by an attorney in the Office of Legal Policy, made revisions, and finalized my answers for submission to the Committee.

45. Do these answers reflect your true and personal views?

Response: Yes.

Senator Jeff Sessions
Questions for the Record

Responses of Cornelia Pillard
Nominee, United States Circuit Judge for the D.C. Circuit

1. **At your hearing, in response to a question by Senator Flake, you testified that you believe judges should look to the original meaning of the words and phrases of the Constitution when applying them to current cases. You also testified that in your role as a judge you "would be bound by the precedents and the precedents that direct [judges] to look at the original meaning."**

   a. **Do you believe that judges are bound to follow the "original public meaning" of the text of the Constitution where it can be ascertained?**

   Response: The duty of a judge is to follow the interpretive approaches that precedent dictates. The Supreme Court has in some cases employed originalism as a method of interpreting the Constitution, and I would apply such precedents. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court used an originalist methodology—specifically, original meaning—to interpret the Second Amendment to protect an individual right to bear arms, and in *United States v. Jones*, 132 S. Ct. 945, 949-50 (2012), the Court relied on original meaning in deciding that physical trespass by public officials triggers the Fourth Amendment, so that police placement of a global positioning device on a car to gather information amounted to a search under the Amendment. However, the Supreme Court has not adopted "original public meaning" as a blanket methodology to be applied to all constitutional questions. If confirmed, and if presented with a case involving a particular constitutional question, I would carefully examine Supreme Court and D.C. Circuit precedents relevant to the question and apply those precedents' interpretive approach.

   b. **Before your hearing, had you ever stated that "original public meaning," original meaning," or "original intent" methodology was the best way to interpret the Constitution? If so, when and to whom?**

   Response: I do not believe that I have ever stated that any single methodology was the best way to interpret the Constitution.

   c. **In your testimony, by "original meaning," were you referring to the originalist methodology that aims to discern the meaning of a constitutional provision at the time that it was ratified; as distinct from original intent meaning what the Framers intended the meaning to be? If not, how do you define the phrase "original meaning"?**

Response: As I stated in response to Senator Flake at my hearing, I believe that "precedents on method ... are equally binding on judges as the substance of the opinions themselves." The Supreme Court has looked to the original meaning of constitutional text (as you define it in your question), on two recent occasions, as I mentioned above—*Heller* and *Jones*. If confirmed, I would be bound by those as by any other precedents—their method and their substance. To the extent that another binding Supreme Court was based on another methodology, such as original intent rather than original meaning, I would equally be bound by that precedent.

d. **Where the "original meaning" is not sufficiently clear to settle whether a democratic enactment violates a provision of the Constitution, is it proper for a judge to resort to other resources to decide the meaning of the provision? If so, please explain your view on the best way for a judge to do so, including what other resources you view as relevant and important. If not, does the lack of clarity require that the judge defer to the democratic enactment?**

Response: Judges are bound in interpreting the Constitution to follow judicial precedent of their own court and higher courts. The Supreme Court's precedents make clear that, in addition to considering the text of a constitutional provision, judges may legitimately refer to constitutional structure and historical sources such as THE FEDERALIST PAPERS, and may be guided by canons of interpretation and prudential rules. If consulting those sources does not yield a clear result, deference to democratic enactments may be appropriate.

e. **Based on your current understanding of the original meaning of the Fourteenth Amendment, do you believe, or have you previously stated, that the original meaning (however you define that phrase) of the Fourteenth Amendment supports recognition of a constitutional right to abortion?**

Response: I have not developed or stated a view on original constitutional meaning and abortion rights. The Supreme Court has held in a line of cases that the Fourteenth Amendment's Due Process Clause supports a constitutional right to abortion in certain circumstances. *See Gonzales v. Carhart*, 550 U.S. 124 (2007); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). If I were confirmed as a judge, I would be bound to apply the Court's precedents with respect to abortion, as on any other issue.

f. **Based on your current understanding of the original meaning of the Fourteenth Amendment, do you believe, or have you previously stated, that the original meaning (however you define that phrase) of the Fourteenth Amendment supports recognition of a constitutional right to same-sex marriage or of a constitutional obligation on the part of any government not to define marriage as the union of a man and a woman?**

Response: I have not developed or stated a view on original constitutional meaning and the definition of marriage. The Supreme Court has not ruled on the existence or not of a constitutional right to same-sex marriage, nor on the constitutionality under the Fourteenth Amendment of state law defining marriage as the union of a man and a woman. *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013). In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Court held that the federal Defense of Marriage Act was unconstitutional, relying primarily on the Fifth Amendment, but with reference to the Fourteenth Amendment: "The liberty protected by the Fifth Amendment's Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws. While the Fifth Amendment itself withdraws from Government the power to degrade or demean in the way this law does, the equal protection guarantee of the Fourteenth Amendment makes that Fifth Amendment right all the more specific and all the better understood and preserved." *Id.* at 2695 (internal citation omitted). If I were confirmed as a judge, I would be bound to apply the Court's precedents with respect to marriage, as on any other issue.

2. **At your hearing you were asked whether you still hold the views that you made in a statement at a press briefing on the *Hosanna-Tabor* case, where you said that the position that the church has a First Amendment right to choose who it hires was a "substantial threat to the American rule of law." You testified that you "called that case wrong," which appears to be an explanation of another part of your statement predicting how the court would rule. Below is the full statement:**

> **"The Lutheran Church-Missouri Synod defends its very broad version of the ministerial exception by arguing that teachers play a pivotal role in disseminating the faith and in being powerful, Christian role models for students. It is certainly plausible that religious organizations are more effective in their missions when everyone associated with them exemplifies in every possible respect the Church's teachings, and when the Church can command that its own dispute resolution processes oust any external legal system. But the Lutheran Church's position here is a substantial threat to the American rule of law – it would effectively empower any religion to create its own autonomous Vatican City-style regime for employment-law purposes, a sovereign unto itself over which the federal courts lack civil rights jurisdiction. It is hard to see the Supreme Court deciding that that is what the First Amendment law requires."**

Your testimony addressed only your prediction on how the court would rule, not your statement that if the Court were to adopt the Lutheran Church's position, it would pose a "substantial threat to the American rule of law." Please take this opportunity to answer whether you still hold the view that "the Lutheran Church's position here is a substantial threat to the American rule of law."

Response: The First Amendment protects religious freedom and, because of that important right, religious observers and institutions are entitled to be free from

governmental interference in how they select or remove their religious leadership. In my notes, prepared before the Supreme Court rendered its *Hosanna-Tabor* decision, I explained that, although the Supreme Court had never before recognized a "ministerial exception" to generally applicable civil rights laws, the courts of appeals had done so. I stated that "[i]t would be unexceptional for the Court to conclude that the First Amendment prevent[s] courts from second-guessing religious communities' choice of their leadership, and keeps courts from adjudicating core questions of church doctrine." Where my prediction erred was in the difficult question of precisely how broadly the Court would define the exception. I pointed to some public consequences that might arise if the Court issued an especially broad decision against the petitioner, a teacher, in her employment discrimination case against the Lutheran church. Under a broad decision, institutions run by churches, temples or mosques could simply dub all of their employees—from accountants to janitors to cafeteria workers—as "ministers" or their equivalent, and thereby bar them from access to courts in cases of unlawful retaliation or discrimination. The Court's decision is in fact much more limited and contextually based. The Court noted that it was "reluctant ... to adopt a rigid formula for deciding when an employee qualifies as a minister," but emphasized that the respondent in this case "held herself out as a minister," had a "significant degree of religious training," and that her work involved "conveying the Church's message and carrying out its mission." *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 132 S. Ct. 694, 707-08 (2012). The Court's nuanced decision is not a "threat to the American rule of law."

3. **You are the founding Academic Co-Director of and Professor at the Center for Transnational Studies. You have described that organization's mission as "based on recognition that now we need to make some shifts from nation- or region-centric to a more broadly transnational, even global, orientation." At your hearing, you were asked whether international human rights could be a potential source of social rights in the U.S., to which you answered: "Not unless Congress would so legislate."**

   a. **Before your hearing, had you ever stated that it is not appropriate to rely on foreign law in deciding the meaning of the U.S. Constitution? If so, when and to whom?**

   I have not stated a view on that issue. I have referred to the Supreme Court citation to foreign sources in a set of notes for remarks at a judges' retreat that I provided to this Committee. (Discussion of the Supreme Court Term at the Eastern District of Pennsylvania Judges' Retreat on October 16, 2003.) My notes stated that the majority opinion in *Lawrence v. Texas*, 539 U.S. 558 (2003), "adverted to foreign legal sources" which "this Court has rarely done," and opined that the references to foreign sources were "confirmatory...rather than persuasive."

   If I were confirmed as a judge, I would not rely on foreign courts' decisions to determine the meaning of the United States Constitution, except in the very limited instances in which the United States Supreme Court or D.C. Circuit precedents explicitly rely on foreign court decisions. For example, in interpreting

the Seventh Amendment right to a trial by jury in civil cases, the Supreme Court has looked to the common law in England at the time of the Amendment's adoption. *Chauffeurs, Teamsters, and Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990).

b. **Justice Breyer has offered this reason in defense of the practice of invoking foreign court decisions in deciding the meaning of the Constitution:**

> **"[I]n some of these countries there are institutions, courts that are trying to make their way in societies that didn't used to be democratic, and they are trying to protect human rights, they are trying to protect democracy. They're having a document called a constitution, and they want to be independent judges. And for years people all over the world have cited the Supreme Court, why don't we cite them occasionally? They will then go to some of their legislators and others and say, 'See, the Supreme Court of the United States cites us.' That might give them a leg up, even if we just say it's an interesting example."**

Do you agree with this reason or find it persuasive? If so, why?

I do not read Justice Breyer's remarks as advocating that foreign court decisions should play any determinative role in deciding the meaning of the United States Constitution. In any event, as noted above, if I were confirmed as a judge I would not rely on foreign court decisions to determine the meaning of the United States Constitution except in the very limited instances in which the United States Supreme Court or D.C. Circuit precedents explicitly rely on foreign court decisions.

c. **Justice Breyer has also offered this reason why the decision of a foreign court may be relevant in deciding the meaning of the Constitution:**

> **"Well, it's relevant in the sense that you have a person who's a judge, who has similar training, who's trying to, let's say, apply a similar document, something like cruel and unusual or—there are different words, but they come to roughly the same thing—who has a society that's somewhat structured like ours. And really, it isn't true that England is the moon, nor is India. I mean, there are human beings there just as there are here and there are differences and similarities.... And the fact that this has gone on all over the world and people have come to roughly similar conclusions, in my opinion, was the reason for thinking it at least is the kind of issue that maybe we ought to hear in our court, because I thought our people in this country are not that much different than people other places."**

Do you agree with this reason or find it persuasive? If so, why?

Response: I do not read Justice Breyer's remarks as advocating that foreign court decisions should play any determinative role in deciding the meaning of the United States Constitution. Again, if I were confirmed as a judge I would not rely on foreign court decisions to determine the meaning of the United States Constitution except in the very limited instances in which the United States Supreme Court or D.C. Circuit precedents explicitly rely on foreign court decisions.

4. **Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion?**

Response: I have not stated a view on that issue, and any personal beliefs on that or other questions that might come before me if I were confirmed as a judge would not be relevant to how I would decide the issues. The Supreme Court has held in a line of cases that the death penalty is a constitutionally valid form of punishment in certain circumstances. *See Gregg v. Georgia*, 428 U.S. 153 (1976). If I were confirmed as a judge, I would be bound to apply the Court's precedents with respect to the death penalty, as on any other issue.

5. **In your article *Unitariness and Myopia: The Executive Branch, Legal Process, and Torture*, you wrote "[i]n the context of one-party dominance of the three branches, however, the rights-protecting effect of separation of powers is reduced." You further stated, "[f]ollowing 9/11, with Republicans dominating all three branches and war ongoing, risks of governmental myopia ran high." Is it your view that the judicial branch was "dominated" by "Republicans" following 9/11? If so, does such domination continue? If not, when did it end?**

Response: The point made in the text, and the supporting citations to THE FEDERALIST NO. 51 (James Madison) and to Daryl J. Levinson, *Empire-Building Government In Constitutional Law*, 118 HARV. L. REV. 915, 952 (2005), was principally about the political branches, and issues arising in the war on terror that I identified as involving "partially unreviewable power in the political branches." To the extent that the point referred to the Court, it was an observation that seven of the nine Justices of the Supreme Court at that time had been appointed by Republican presidents. In retrospect, the point might have been clearer if I had consistently limited my observations to the political branches. In any event, I would not want my comments to be read to imply that a judge's decisions are dictated by the party of the President who appointed him or her. To the contrary, in my view, such an implication is inaccurate and inconsistent with judicial independence and the legal, as distinct from political, nature of Article III courts. *See* THE FEDERALIST NO. 78 (Alexander Hamilton). Judges are bound to decide cases by impartial application of the law to the facts before them. Neither a judge's own personal politics, nor the politics of the appointing President, should play any role.

6. **In your article *United States v. Virginia: the Virginia Military Institute, Where the Men are Men and So are the Women*, you wrote that "the length and magnitude of the *VMI* litigation attests to the inadequacies of the 'intermediate scrutiny' standard of constitutional review of sex-based policies and laws, such as VMI's male-only admissions policy." In addition, you appeared to express disappointment that the case of *Nguyen v. INS* used "a watered-down heightened scrutiny" and that the "the [*Nguyen*] decision adds weight to arguments that equal protection doctrine is, at least in some fact settings, substantially less skeptical than the Court's recent *Virginia* decision had seemed to establish."**

   a. **What level of scrutiny do you believe current Supreme Court doctrine requires in reviewing sex-based policies?**

      Response: The Supreme Court has made clear that sex-based distinctions in the law are subject to review under "intermediate" constitutional scrutiny. *See Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 730-31 (2003). If confirmed as a judge, I would apply the Court's precedents with respect to the level of constitutional scrutiny applicable to sex-based classifications, as with any other issue.

   b. **Do you believe, or have you ever written, that sex-based policies should be reviewed under strict scrutiny, the same level of scrutiny required for race-based policies?**

      Response: In a brief that I drafted in my role as Assistant to the Solicitor General, the United States argued that classifications that deny opportunities to individuals based on their sex should be subjected to strict judicial scrutiny. *See* Brief for the Petitioner at 33-36, *United States v. Virginia*, 518 U.S. 515 (1996). As stated in response to part a. of this question, the Court has since made clear that intermediate scrutiny is the applicable standard, and that is the standard that I would apply as a judge if I were confirmed.

7. **In your article *Plenary Power Underground in Nguyen v. INS*, you wrote "[o]ne reading of *Nguyen* is that equal protection doctrine may not (yet) be everything Nguyen and his father might have wished for, but at least the Court accorded them the same individual constitutional rights as United States citizens, and that is a particularly important advance for aliens generally. Viewed from that perspective, the individual's loss is a footnote to a larger victory: assuring aliens the full benefit of constitutional principles applicable to citizens."**

   a. **Do you believe that illegal aliens should have the same individual constitutional rights as U.S. citizens?**

      Response: The Supreme Court has not held that illegal aliens have individual constitutional rights identical to those of United States citizens. *See, e.g., Fiallo v. Bell*, 430 U.S. 787, 792 & n. 4 (1977). In the decision my article examined,

Nguyen v. INS, 533 U.S. 53 (2001), the Court held that, because the challenged sex-based classification survived the intermediate scrutiny applicable to United States citizens, the Court had no need to "decide whether some lesser degree of scrutiny pertains because the statute implicates Congress' immigration and naturalization power." Id. at 61. If confirmed as a judge, I would apply the Court's precedents with respect to illegal aliens, as with any other issue.

b. What is included in the "full benefit of constitutional principles applicable to citizens"? Does this include a right to healthcare?

Response: I am not aware of any Supreme Court or D.C. Circuit precedent creating a constitutional right to health care, whether applicable to United States citizens or illegal aliens.

Questions for the Record for all nominees
Senator Ted Cruz
"Judicial Nominations" Hearing – 7/24/13

Responses of Cornelia Pillard
Nominee, United States Circuit Judge for the D.C. Circuit

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I believe that a federal judge must be a devoted guardian of the United States Constitution and laws. I have not specifically studied the philosophies of individual Justices, but I believe there are basic rules that apply to every federal judge. The power of Article III judges is confined to the cases and controversies before them. Accordingly, an appellate judge must meticulously read and understand the factual record to know precisely what issues are and are not presented in the appeal. A judge must read briefs with an open mind, and listen to and engage the advocates' arguments without prejudgment. Stability and predictability of judicial decisions is a cornerstone of the rule of law in the United States, and to achieve it I believe that judges must rigorously apply relevant precedent to new cases. Judicial opinions should clearly, logically and concisely set forth their premises, reasoning and conclusions. The effectiveness of our system of courts depends not only on judges being objective and impartial in the application of law to fact, but also on the perceptions of the public and the parties appearing before the courts that judges are objective and impartial.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The duty of a judge is to follow the interpretive approaches that precedent dictates. The Supreme Court has in some cases employed originalism as a method of interpreting the Constitution, and I would apply such precedents. For example, in *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008), the Court used an originalist methodology—specifically, original meaning—to read the Second Amendment to protect an individual right to bear arms, and in *United States v. Jones*, 132 S. Ct. 945, 949-950 (2012), the Court relied on original meaning in deciding that physical trespass by public officials triggers the Fourth Amendment, so that police placement of a global positioning device on a car to gather information amounted to a search under the Amendment. The Supreme Court has not, however, adopted original meaning as a blanket methodology to be applied to all constitutional questions. If confirmed, and if presented with a case involving a particular constitutional question, I would carefully examine Supreme Court and D.C. Circuit precedents relevant to the question and apply those precedents' interpretive approach.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: I believe that stability and predictability of judicial decisions is a cornerstone of the rule of law in the United States, and that to achieve it judges must consistently and rigorously apply precedent to new cases. Precedent within the D.C. Circuit is binding on all future panels unless it has been superseded by a decision of the *en banc* court or the United States Supreme Court. *See* Fed. R. App. P. 35. On voting whether to recommend *en banc* consideration, as with all other issues, I would follow the law of the Supreme Court and of the D.C. Circuit as to the circumstances in which such consideration is warranted. The precedents recognize only limited and rare situations in which a court, sitting *en banc*, may overrule its own decisions, such as where there is extraordinary confusion or lack of clarity on an issue, or the precedent has become gravely unworkable. The rationale for judicial reconsideration of precedent, even through *en banc* review, is weaker when the question is statutory or regulatory than when it involves the Constitution, because Congress or an agency may change the law if it believes a court erred. In general, given the bedrock importance of the stability of precedent, mere disagreement with a prior D.C. Circuit panel's decision is not alone sufficient ground for the *en banc* court to overrule it.

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 structure of the federal system provides important safeguards to state sovereignty, but the Supreme Court has made clear that the quoted statement from *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), does not render the protection of state sovereign interests non-justiciable. Instead, "[f]ederalism has more than one dynamic," *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011). When a question arises whether the federal government has encroached on state sovereignty, individuals and states may in appropriate circumstances seek judicial relief. *See Bond*, 131 S. Ct. at 2365; *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992). If I were confirmed as a judge, I would be bound to apply the Court's precedents with respect to the constitutional allocation of powers between the federal and state governments, as on any other issue.

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 stated that Congress, under the Commerce Clause and Necessary and Proper Clause, may regulate (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) "those activities having a substantial relation to" or that "substantially affect" interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). The Supreme Court has emphasized the non-economic nature of regulated activity in invalidating certain legislation as exceeding Congress's commerce power, *see, e.g., United States v. Morrison*, 529 U.S. 598 (2000), *Lopez*, 514 U.S. at 567. The Court has also, however, concluded that Congress may regulate non-economic activity where such regulation is "an essential part of a larger regulation of economic activity," *Lopez,* 514 U.S. at 561; *Gonzales v. Raich*, 545 U.S. 1, 24-5 (2005); *id.* at 34 (Scalia, J., concurring).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In enforcing limits on presidential actions, the Supreme Court has inquired into whether the President has acted pursuant to constitutional and statutory authority, whether his action has encroached on the authority of another branch, and whether his conduct violates the Constitution's limitations on federal power, such as in the Bill of Rights. *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952), set forth a framework for considering the constitutionality of presidential action. The Court has used that framework to review executive action in various cases, including *Medellin v. Texas*, 552 U.S. 491, 523-29 (2008), *Hamdi v. Rumsfeld*, 542 U.S. 507, 531, 536 (2004), and *Dames & Moore v. Regan*, 453 U.S. 654, 668-69, 674, 678 (1981). In order to be judicially enforceable, a limitation on a presidential order or other action must arise in the context of a justiciable case or controversy.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has identified various fundamental rights subject to substantive protection under the due process clause. The Court has stated that, "in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion," *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted), and the right to travel, *Chicago v. Morales*, 527 U.S. 41, 53-54 (1999). The Court also has "assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. at 720 (*citing Cruzan v. Missouri Dept. of Health*, 497 U.S. 261, 278-79 (1990)). The Court's substantive due process analysis guards against too-ready recognition of liberty rights as fundamental, lest the mere "policy preferences" of the justice be thereby constitutionalized and largely placed "outside the arena of public debate and legislative action." *Glucksberg*, 521 U.S. at 720.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Under the Supreme Court's precedents, "unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). The Court has subjected "suspect" classifications—for example, those based on race or ancestry—to strict constitutional scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). The Supreme Court has also treated sex- and illegitimacy-based classifications as "quasi-suspect," warranting an "intermediate" level of constitutional scrutiny. *United States v. Virginia*, 518 U.S. 515 (1995); *Clark v. Jeter*, 486 U.S. 456 (1988); *see City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). The Court also uses a higher degree of constitutional scrutiny to review classifications that impinge on the exercise of fundamental

rights, such as distinctions based on religion, protected speech or association, voting, or the exercise of fundamental liberty interests protected by the Due Process Clause. *Nordlinger*, 505 U.S. at 10.

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: The Court's precedents make clear that race-based affirmative action, if any, should terminate when the objectives for which it was adopted have been achieved. *Grutter v. Bollinger,* 539 U.S. 306, 342 (2003). The Court's strict-scrutiny precedents have imposed limitations on the consideration of race in higher education that are designed to prevent its unnecessary use. *See Fisher v. University of Texas at Austin*, 133 S. Ct. 2411, 2417-21 (2013). I cannot predict, however, when the Supreme Court might determine that reliance on race in decision making in public higher education is no longer necessary. If confirmed as a judge, I would be bound to apply the Court's precedents with respect to race-based precedent, as on any other issue.

Response of Brian Morris
Nominee for the United States District Court for the District of Montana
To Questions for the Record from Senator Chuck Grassley

1. **Please explain your views on the importance of judges to follow precedent and your commitment to doing so.**

   Response: Court precedents and the legal analysis contained in them allow people, businesses, and institutions to order their affairs in a manner that comports with the controlling law. This reliance drives the need for our courts to render decisions that strive for consistency and promote continuity in the law and society. I have been committed to this philosophy during my more than eight years on the Montana Supreme Court and the opinions that I have authored and the opinions that I have joined reflect this commitment.

2. **At your hearing, I asked about the *Western Tradition Partnership* case in which you joined a majority opinion that ignored the ruling by the Supreme Court of the United States in *Citizens United*. Part of your response was that "We thought that, given this record, there was a possibility that that statute could conform to the mandates of Citizens United." Even if one thought that the Montana law was narrowly tailored and the case warranted a special exception to Citizens United, there still is a problem with the majority opinion. Your colleague pointed out - "The problem, however, is that regardless of how persuasive I may think the Attorney General's justifications are, the Supreme Court has already rebuffed each and every one of them." The dissent also stated "Like it or not, *Citizens United* is the law of the land as regards corporate political speech. There is no Montana exception." The majority opinion you joined indicates that you believe there are situations, particularly when you do not agree with Supreme Court precedent, that precedent can be ignored.**

   a. **Can you explain why you thought there was a "Montana exception?**

      Response: I do not believe that a "Montana exception" exists for the *Citizens United* decision or any other decision of the United States Supreme Court. The United States Supreme Court in *Citizens United* determined that laws that burden political speech should be subjected to strict scrutiny. Strict scrutiny requires the government to prove that a law that restricts free speech furthers a compelling state interest and is narrowly tailored to that interest. The Montana Supreme Court in *Western Tradition Partnership* faced the question of whether the State of Montana had presented evidence of a compelling state interest and evidence of narrow tailoring to justify the restrictions on free speech contained in the Corrupt Practices Act. The State of Montana introduced evidence of corruption at the time that the Corrupt Practices Act was enacted to establish what the Montana Supreme Court believed to be a compelling state interest. In our opinion, the evidence in the record further demonstrated that the limits on free speech contained in the Corrupt Practices Act had not materially limited the political speech of the appellees. The Montana Supreme Court believed that the Corrupt Practices

Act could survive strict scrutiny under these unique circumstances. As a result, the Montana Supreme Court believed that its opinion and analysis in *Western Tradition Partnership* fully comported with the principles set forth by the United States Supreme Court in *Citizens United.*

The United States Supreme Court clarified that the Montana Supreme Court in *Western Tradition Partnership* had not applied properly its analysis in *Citizens United.* If confirmed as a federal district judge I would follow this precedent and any other precedent of the United States Supreme Court.

b. **Why were you unable to join in this dissent, which clearly recognized the need to follow precedent?**

Response: I did not join this dissent due to my belief that the State of Montana had presented evidence in the record of a compelling state interest and sufficient narrow tailoring of the Corrupt Practices Act to survive strict scrutiny under the standards set forth by the United States Supreme Court in the *Citizens United* decision. The United States Supreme Court clarified, however, that the Montana Supreme Court in *Western Traditions Partnership* had not applied properly its analysis in *Citizens United.* If confirmed as a federal district judge I would follow this precedent and any other precedent of the United States Supreme Court.

3. **In a 2004 interview you stated that "the court can reflect changes in society." Is this still a part of your judicial philosophy? And can you explain your judicial philosophy after eight years on the Montana Supreme Court?**

Response: The interview that this question references quotes me as saying that "the court can reflect changes in society in some cases, like privacy law, which has changed over the years. But overall, the high court should strive for consistency." This statement still comports with my view that some areas of the law, such as the notion of privacy, change over time to reflect advances in technology. For example, the United States Supreme Court recently held that the use by police of a GPS tracking device on a suspect's car for a month violated the Fourth Amendment. *See United States v. Jones*, 132 S. Ct. 945 (2012).

My judicial philosophy seeks to apply the law fairly to all litigants. The courts have a limited role in our constitutional system and I recognize the need to issue a narrow ruling that resolves the particular issues presented in a case without the need to comment on extraneous matters.

4. **You wrote the majority opinion in *Kulstad v. Maniaci* which granted a parental interest to a third party despite the adoptive parent being fit and capable. This decision is especially troubling to me and I would like to ask you to clarify some issues.**

a. **What is your understanding of parental constitutional rights?**

Response: The United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), affirmed that parents have "a fundamental liberty interest in the care, custody, and management of their children."

b. How does a third party's relationship with a child overcome, constitutionally, a fit and capable parent's right to raise the child?

Response: Montana's nonparent statute, set forth at Mont. Code Ann. § 40-4-228, requires a third party to have more than merely a relationship with a child to overcome a fit and capable parent's right to raise a child. The statute allows a third party to overcome a parent's constitutional right to raise the child only where the third party can establish that the parent has acted contrary to the parent-child relationship. The third party then must meet numerous criteria that reflect the fact that the third party has assumed a parental role for the care of the child.

c. The dissent characterized your decision in this way: "The Court adopts an equitable, case-by-case inquiry to determine if a third party should be granted a parental interest of a child that must be balanced against a natural parent's rights." Do you disagree with this characterization?

Response: No.

d. If not, under what circumstances should a fit natural parent's rights be balanced against the desires of another interested adult?

Response: The Montana legislature has determined that a fit natural parent's rights should be balanced against the desires of another interested adult only under the unusual circumstances where the parent has acted contrary to the parent-child relationship and the other interested adult can meet detailed standards to establish a parent-child relationship. The Montana legislature requires a party who seeks to establish a child-parent relationship, pursuant to Mont. Code Ann. § 40-4-228, first to demonstrate that the parent has acted contrary to the parent-child relationship, and then to meet numerous specific criteria. These criteria include a showing that the party has provided for the physical needs of the child by supplying food, shelter, and clothing; (2) that the party has provided the child with necessary care, education, and discipline; (3) that the party's relationship with the child existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfilled the child's psychological needs for a parent as well as the child's physical needs; and finally (4) that the party has met the child's need for continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home. Mont. Code Ann. § 40-4-228.

e. The dissent said that the opinion of the court removed the "jurisdictional prerequisite" that has "protected parents against the claims of third parties, and thereby opens wide the door to such claims...potentially against all

parents." Why did you join an opinion that removed such an important jurisdictional prerequisite?

Response: The Montana legislature included no jurisdictional prerequisite in the nonparent statute. In fact, the statute specifically provides that it is "not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section." Mont. Code Ann. § 40-4-228.

f. **The consequences of your opinion seem far reaching. The dissent pointed out that the decision "will open a Pandora's Box of potential attacks upon the right of fit and capable parents to raise their own children." What if, any, consequences do you see coming from this opinion?**

Response: I foresee few consequences arising from this opinion as the Montana Supreme Court has applied the nonparent statute only three times in the four years since the decision in *Kulstad v. Maniaci*. In the case with which I am most familiar, *In re M.M.G.*, 2012 MT 228, 366 Mont. 386, 287 P.3d 952 (Mont. 2012), M.M.G.s' biological mother "gave" one year-old M.M.G. to a woman at a gas station one day in 2001, after the woman had complimented the biological mother on her beautiful child. The woman did not know the biological mother. The woman and her husband cared for M.M.G. until she was 10 years old. The biological mother occasionally took M.M.G. for short visits. The biological mother failed to return M.M.G. from a weekend visit in 2010 and instead informed the couple that she was moving to Wyoming with M.M.G.

The district court dismissed the couple's petition for a parenting plan on the basis that the biological mother had not been adjudicated as unfit. I wrote an opinion that reversed the district court's dismissal of the couple's petition for a parenting plan because Montana law places no restriction on the type of parenting plan that a non-parent may seek after the non-parent has established a child-parent relationship. The opinion remanded the case to the district court to conduct a hearing to determine whether the couple had established a child-parent relationship, pursuant to the criteria set forth in Mont. Code Ann. § 40-4-228.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: The ability to apply the law fairly and impartially to all parties represents the most important attribute that a judge can possess. I believe that I have demonstrated my ability and commitment to remaining impartial and treating all parties fairly during my more than eight years on the Montana Supreme Court.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should possess an even-tempered and respectful demeanor. A judge also should exercise patience with all parties who appear before the court. Each element plays an equally important role in a successful judge. I believe that I have demonstrated that I possess each of these attributes during my eight years on the Montana Supreme Court.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Reliance on precedent helps ensure that our legal system delivers predictable and fair results for all parties. My own personal feelings, if any, regarding the correctness of a decision of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit would have no bearing on my obligation to follow the precedent of these courts if I were confirmed as a federal district court judge.

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: First I would look to any relevant statute to review its plain language. Unambiguous language in a controlling statute would resolve the dispute. The presence of ambiguous language would require me to apply the existing standards or canons of statutory construction, or potentially consider ancillary sources. Relevant ancillary sources would include relevant statutory findings and binding precedent of the United States Supreme Court, the United States Court of Appeals for the Ninth Circuit, and the United States District Courts. Finally, I would consider non-binding, but persuasive decisions, from other United States Courts of Appeal or other United States District Courts.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the precedent established by the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A court must start with the presumption that all statutes passed by Congress are constitutional. A court should declare a statute enacted by Congress to be unconstitutional only where the statute violates an express provision of the United States Constitution or

where Congress clearly has exceeded its authority to act under the United States 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.

12. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: I have served as a justice on the Montana Supreme Court for more than eight years. During that time, I have authored nearly 500 opinions, and joined thousands of other opinions that have remained grounded in precedent and faithful to the language of the statute at issue. No underlying political ideology or motivation played any role in the opinions that I authored, or the opinions of others that I joined.

13. **What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I have authored nearly 500 opinions during my service as a justice on the Montana Supreme Court that have addressed legal issues that range from criminal law, to commercial litigation, to property and water disputes, to family law, and to dependent and neglect cases. Any personal views of mine have played no role in the outcome of these cases.

14. **If confirmed, how do you intend to manage your caseload?**

Response: The parties deserve a prompt and fair resolution of their dispute. The Federal Rules of Civil Procedure mandate a pre-trial conference shortly after the filing of a complaint and an answer and full disclosure of all relevant information by the parties. I would use this pre-trial conference to establishing clear deadlines for the filing of motions, anticipate possible discovery disputes, and to set a firm and realistic trial date. I would supplement this pre-trial conference through the use of regular status conferences with the parties and counsel to ensure that the case stays on schedule.

15. **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: The judge plays a crucial role in controlling the pace and conduct of litigation in the federal courts. I would seek to render prompt decisions on motions filed by the parties, including motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Next I would seek to keep cases on track pursuant to the schedules

developed through the pre-trial conference. And finally, I would seek to use magistrate judges effectively to resolve pre-trial issues and civil cases.

16. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

    Response: I look first to the order of the trial court to understand the issues presented there, the trial court's resolution of the issues presented on appeal, and any findings of fact or credibility determinations made by the trial court. I then read the briefs filed by the parties and the relevant statutes and case law cited by the parties. And finally I review the record from the trial court to understand any disputed factual issues raised by the parties in their briefs.

17. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

       Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

       Response: No.

18. **Please describe with particularity the process by which these questions were answered.**

    Response: I received these questions on July 31, 2013. I drafted my responses to the questions. I reviewed my responses with lawyers from the Department of Justice. I asked lawyers for the Department of Justice to submit my responses on my behalf.

19. **Do these answers reflect your true and personal views?**

Response: Yes.

Response of Brian Morris
Nominee for the United States District Court for the District of Montana
to Questions for the Record from Senator Ted Cruz
"Judicial Nominations" Hearing – 7/24/13

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy seeks to apply the law fairly to all litigants. The courts have a limited role in our constitutional system and I recognize the need to issue narrow rulings that resolve the particular issues presented in a case without the need to comment on extraneous matters. I had the privilege of serving as a law clerk to Chief Justice William H. Rehnquist. This opportunity also exposed me directly to the work and work habits of other members of the United States Supreme Court. I have sought to model the way I approach deciding cases, the limited scope of my opinions, and importance of judicial efficiency from what I observed of Chief Justice Rehnquist.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The United States Supreme Court has looked to original intent and original public meaning to interpret various constitutional provisions when the plain language has proven ambiguous or insufficient. I would apply all relevant precedents when deciding cases, including the United States Supreme Court's precedents that rely on original intent and original public meaning, if I were confirmed as a federal district judge.

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 federal district court judge, I would have no authority to overrule the precedents of the United States Supreme Court or of the United States Court of Appeals for the Ninth Circuit. There are no circumstances under which I would attempt to overrule the precedents of these courts if I were confirmed as a federal district 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 excerpt from *Garcia v. San Antonio Metro Transit Authority* remains binding precedent and represents one form of protection of state sovereign interests. Other protections include express limits on federal power contained in the United States Constitution and judicial interpretations of the United States Constitution that have limited federal power. *See, e.g.*, *Printz v. United States*, 521 U.S. 898 (U.S. 1997). If I were confirmed as a federal district court judge, I

would apply *Garcia* and all other decisions of the United States Supreme Court regardless of my own personal feelings.

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 recognized in *United States v. Lopez*, 514 U.S. 549 (1995), three broad categories of activity where Congress has the authority to regulate: (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." I would apply these precedents if called upon to review Congress's authority to regulate non-economic activity.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The United States Supreme Court recognized the judicially enforceable limits on the President's power in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The United States Supreme Court determined that the President's power to issue executive orders or action "must stem either from an act of Congress or from the Constitution itself." I would apply these precedents if called upon to review 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?

Response: The United States Supreme Court in *Washington v. Glucksberg*, 521 U.S. 702, 721-22 (1997), described fundamental rights as those rights "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." (Quotations and internal citations omitted). The United States Supreme Court has recognized several fundamental rights for purposes of the substantive due process doctrine, including the right to marry, to have children, to direct the education and upbringing of one's children, and to marital privacy. *Glucksberg*, 521 U.S. at 720. I would apply these precedents if I were confirmed as a federal district judge.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has determined that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it involves a fundamental right, such as the right to vote or to travel, or when it involves a suspect class, such as race, alienage, national origin, or gender. I would apply these precedents if I were confirmed as a federal district judge.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have no specific expectations on this issue. If confirmed, I will apply all relevant precedents to any case that might involve racial preferences in public higher education.

Response of Susan P. Watters
Nominee to be U.S. District Judge for the District of Montana
to the Written Questions of Senator Chuck Grassley

1. **In *State v. Steglich*, the Montana Supreme Court reversed your holding and was critical of how you reached your conclusion of unconstitutionality. It stated that you used the wrong standard and engaged in speculation about hypothetical situations that potentially render the statue void.**

    a. **Do you think the Montana Supreme Court's analysis of your decision was correct?**

    Response: Yes. I respect the court's analysis and resulting opinion.

    b. **Is there anything you learned from this decision that changed your approach to deciding cases?**

    Response: My approach to deciding cases is an approach utilized by most judges, I believe. I review all of the documents on file; consider any oral argument, testimony or documentary evidence presented, if a hearing has been held; and review the authority relied on by the parties in support of their positions. I also conduct additional research. If the matter has been tried before me as a bench trial without a jury, I consider the evidence presented along with the applicable law and apply that law to the facts to reach a decision. I followed this approach in *Steglich*; however, the court arrived at a different conclusion based on its analysis and I respect its decision.

2. **During your time as a Montana District Judge, the Montana Supreme Court overturned many of your denials of motions to suppress evidence on the basis of illegal searches from your court. In one reversal, the Supreme Court found that the state had not met the high burden of proving the exigent circumstances required to justify the warrantless search. Another reversal involved your determination that the discovery of evidence was inevitable and the evidence should not be excluded.**

    a. **Although the specific facts in search and seizure cases are determinative, can you comment generally on the principles that guide you in these cases?**

    Response: When deciding a search and seizure issue related to a motion to suppress evidence, I hold a hearing and receive evidence. I determine the relevant facts based upon the evidence presented and apply the applicable statutes and the precedent set by the Montana Supreme Court and the United States Supreme Court to those facts to reach a decision.

b. Why did the application of those principles lead you to rulings that the Montana Supreme Court disagreed with in many of your cases?

Response: My response to question 13(f) of my Senate Questionnaire, lists all of the cases wherein I have been reversed or reversed in part by the Montana Supreme Court. In my fifteen years on the state court bench, I have been reversed in only two cases involving search and seizure questions, and I appreciate the opportunity to explain these cases.

In the first case mentioned above, the defendant was arrested by police after they learned that a "must appear" warrant had been issued for her. The police conducted a search incident to arrest, finding three cigarette packages on her person. One of the cigarette packages, located in the defendant's sock, contained a bindle and a baggie, the contents of which later tested positive for methamphetamine. The defendant was then taken to the Yellowstone County Detention Facility (YCDF). At trial, the defendant moved to suppress the evidence against her. I concluded that the police had exceeded the scope of a search incident to arrest when they searched the inside of the cigarette package, but that under the "inevitable discovery" exception to the exclusionary rule, the evidence did not have to be suppressed. I concluded that the inevitable discovery exception applied because the police testified that they always took people arrested on "must appear" warrants to either the YCDF or the Laurel Police Department (LPD), and that because jail personnel at YCDF are allowed to perform routine inventory searches, the contraband would have been discovered at YCDF. The Montana Supreme Court determined that in the particular fact scenario before me, it did not follow "as certainly as night follows day" – the standard set by Montana Supreme Court precedent - that the contraband would have been discovered because the defendant could have posted bond immediately at YCDF before a complete inventory search was conducted. In the alternative, had the defendant been taken to the LPD for booking, she might not have been subject to a complete inventory search because the LPD no longer has a jail. Given these facts, the Montana Supreme Court held that the inevitable discovery exception to the exclusionary rule did not apply. I respect the court's opinion.

In the second case mentioned above, I concluded that the automobile exception, requiring probable cause and exigent circumstances, applied to the search and denied the motion to suppress. The Montana Supreme Court, in a different case decided after my ruling, but prior to the appeal, held there was no longer an automobile exception to the search warrant requirement, but that an analysis of probable cause and exigent circumstances still applied. The Montana Supreme Court determined in my case that because the officer could have obtained a search warrant, exigent circumstances did not exist to justify the warrantless search. Once again, I respect the court's opinion. With respect to these cases and any others, I would have no difficulty following or applying precedent that reversed a decision I had made as a trial court judge.

3. **As a state court judge for the past 15 years, your work has naturally focused on issues of Montana state law. If confirmed, how do you expect the federal bench to be different, and how do you plan to prepare for those differences, such as federal jurisdictional issues?**

   Response: The most significant difference between the state and federal courts is subject matter jurisdiction. In order to prepare for the transition from the state court bench to the federal court bench, I have begun studying the materials provided by the Federal Judicial Center, including the Benchbook for U.S. District Court Judges, Fourth Edition and the many other resource materials the Federal Judicial Center has provided to me. I will study the Federal Rules of Criminal and Civil Procedure and the Federal Rules of Evidence. I would also reach out to the Chief Judge and the several senior judges in the District of Montana for assistance.

4. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe there are three important attributes that a judge should possess. A judge should be a student of the law and apply that law fairly and impartially. A judge's integrity should be beyond reproach. A judge should have a strong work ethic to handle the demands of a heavy caseload. I believe I have demonstrated these attributes during my tenure as a state court judge.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should be patient and allow all parties an opportunity to be heard. A judge should be courteous and respectful to those who appear before her. I believe I meet this standard.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: I am fully committed to following the precedent of the Ninth Circuit Court of Appeals and the United States Supreme Court faithfully and giving them full force and effect. In order for the judicial system to be fair and consistent, a judge must follow precedent. My personal views have no place in my judicial decision-making.

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: If the case involved interpretation of the United States Constitution, I would start with the text of the provision and consider the most closely analogous Supreme Court and Ninth Circuit precedent. If the case involved statutory interpretation, I would begin with the plain language of the statute. If the statute is unambiguous, I would apply the statute as written. If the statute is ambiguous, I would look to relevant canons of statutory interpretation, and Supreme Court and Ninth Circuit precedent. If these sources were still inconclusive, I would also review the legislative history.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: If confirmed as a district court judge, I would have an obligation to follow the precedent established by the Supreme Court and the Ninth Circuit. I would follow controlling precedent, regardless of any personal beliefs I might have.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Any laws duly enacted by Congress are presumed to be constitutional. I would begin my analysis from this point. I would declare a law unconstitutional only if, after reviewing Supreme Court and Ninth Circuit precedent, I determined the law clearly and unequivocally violated a provision of the Constitution or that Congress had exceeded 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, foreign law or the views of the "world community" should not be relied upon in determining the meaning of the Constitution.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

    Response: Political ideology or motivation should never play a role in a judge's decision-making process. During my fifteen-year tenure as a state court judge, I have always handled and decided my cases in a fair and impartial manner, without regard to any personal views I might have. If confirmed, I would continue to do the same.

12. **What assurances or evidence can you give this Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

    Response: The personal views of the judge should never play a role in her decision-making process. During my fifteen-year tenure as a state court judge, I have never allowed any personal views I might have to influence my decisions. If confirmed, I

would continue to be fair to all who appear before me, without regard to any personal views I might have.

13. If confirmed, how do you intend to manage your caseload?

Response: I understand that the workload in the District of Montana – Billings Division is very demanding. I have experience working in the most demanding district in the state of Montana as a state court judge. If I am confirmed, I will actively manage my caseload. I will strictly follow the requirements for speedy trials in criminal cases. I will utilize scheduling orders setting matters for trial with deadlines for adding parties, identifying experts, exchanging discovery, conducting depositions, filing motions for summary judgment, motions in limine and other pretrial motions. I will require the parties to adhere to these deadlines, absent a showing of good cause. I will strive to make rulings in an efficient and timely manner. Where appropriate, I will encourage mediation between the parties. If I am confirmed, I would also reach out to my colleagues in the District of Montana for guidance as to the best way to manage a demanding caseload.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I believe that judges have an essential role in controlling the pace and conduct of litigation in the courts. Some of the steps I would take to control my docket, if I were confirmed, are set forth in answer to Question 13, above.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I review the pleadings, motions, supporting and opposing briefs of the parties and consider any oral argument, testimony or documentary evidence presented when deciding contested motions. I also review the authority relied on by the parties in support of their arguments and conduct my own legal research as well. When the matter has been tried before me as a bench trial without a jury, I consider the evidence presented along with the applicable law and apply that law to the facts to reach a decision.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? In yes, please detail what individuals you had contact with, the dates of the contacts and the subject matter of the communications.

Response: No, I have not had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding my nomination.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No, I am not aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding my nomination.

17. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions by email from an official at the Department of Justice. I reviewed the questions, drafted the answers and submitted the draft answers to the official at the Department of Justice, who discussed them with me. I then finalized my answers and submitted them to the Department of Justice for submission to the Committee.

18. **Do these answers reflect your true and personal views?**

Response: Yes.

Response of Susan P. Watters
Nominee to be U.S. District Judge for the District of Montana
To the Written Questions of Senator Ted Cruz

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to treat all who appear before me with courtesy and respect and to faithfully follow precedent in order to provide fairness and consistency within the judicial system. I have not studied the judicial philosophies of the justices who served on the Warren, Burger, or Rehnquist courts, so I am not able to say whose 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: If confirmed, I would follow applicable precedent established by the Supreme Court and the Ninth Circuit to interpret the Constitution. For example, the Supreme Court has applied original meaning originalism in *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 judge, there would be no circumstance in which I would overrule precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The *Garcia* decision represents binding precedent. If confirmed as a district judge, I would be compelled to follow *Garcia,* as well as any subsequent precedent on this issue as established by the Supreme Court and the Ninth Circuit.

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 State v Lopez*, 514 U.S. 549, 558-559 (1995), Congress, under the Commerce Clause, "may regulate the use of the channels of interstate commerce", and may "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." Congress also may "regulate those

activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.* (citations omitted). If confirmed, I will apply the analysis set forth in *Lopez* and other applicable precedent established by the Supreme Court and the Ninth Circuit to determine whether an activity is within the scope of the Commerce Clause.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The judicially enforceable limits on the President's ability to issue executive orders or executive actions are set forth in Justice Jackson's concurring opinion in the Supreme Court decision, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would apply the *Youngstown* analysis to any cases involving the legality of presidential executive orders or actions.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that the "Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If confirmed, I would apply the precedent that has been set previously by the Supreme Court and the Ninth Circuit.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Strict scrutiny under the Equal Protection Clause applies when a government action applies to suspect classifications, such as race and national origin, and an intermediate level of scrutiny applies to quasi-suspect classifications such as gender and illegitimacy. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Do you "expect that (15) years from now, the use of racial preferences will no longer be necessary: in public higher education? *Grutter v. Bollinger,* 539 U.S. 306, 343 (2003).

Response: *Grutter* is binding precedent in this area of the law. As such, if confirmed, I would be bound to follow the *Grutter* case and any subsequent binding precedent, such as *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), in the area of affirmative action in higher education, regardless of any personal expectations or opinions.

Senator Chuck Grassley
Questions for the Record

Jeffrey Alker Meyer
Nominee, U.S. District Judge for the District of Connecticut

1. **At your hearing, I asked you about your views on the death penalty, but I would like a little further clarification. In 2008 you signed onto a letter to Governor Rell and Members of the Connecticut General Assembly <u>in support of repeal</u> of the Connecticut death penalty. Then in 2011, you said that <u>halting the repeal</u> of the death penalty is "certainly our hope." Can you explain this contradiction?**

   Response: In April 2008, I co-signed a letter on behalf of more than two dozen professors supporting repeal of Connecticut's death penalty law. I joined this letter because I had policy concerns about specific defects in Connecticut's death penalty law, including that it lacked safeguards against potential racial discrimination and that it lacked any mechanism for the review of a local county prosecutor's decision to seek the death penalty. Notably, Connecticut's law was unlike the federal death penalty process, which includes specific safeguards against racial discrimination and which has extensive consultation and discovery procedures for federal prosecutors to follow before the Attorney General of the United States—and only he or she—may decide that the death penalty should be charged. *See* 18 U.S.C. § 3593(f); United States Attorneys' Manual 10-100 *et seq.*

   In 2011, I represented Dr. William A. Petit, Jr., and as an advocate for my client, I worked to prevent the repeal of Connecticut's death penalty law. Dr. Petit had requested my legal advice and assistance in connection with his rights as a victim relating to the death penalty trials of two men who broke into his home in Cheshire, Connecticut, attacked and tied-up Dr. Petit, and then kidnapped, raped, burned, and murdered his wife and daughters. I agreed to represent Dr. Petit *pro bono* because I believe that the death penalty is an appropriate and just punishment for the most heinous kinds of crimes like the horrific murders of Dr. Petit's family. My policy concerns about the defects of Connecticut's law were not implicated by Dr. Petit's case. I attended the trials of the two murderers of Dr. Petit's family, and I worked with and co-testified with Dr. Petit before the Connecticut legislature in March 2011 in support of our proposed legislative reform to allow surviving victim family members in death penalty cases to present victim impact statements at trial. When the legislature appeared poised to repeal the death penalty, Dr. Petit, his sister, and I met with legislators in May 2011 to seek to persuade them not to repeal Connecticut's death penalty law, because the then-proposed repeal would have severely disrupted the ongoing trial of the second murderer of Dr. Petit's family. Our efforts were successful, and both murderers of Dr. Petit's family have been convicted and are now on Connecticut's death row. The Connecticut legislature later repealed Connecticut's death penalty law in 2012 but for future cases only and not for the murderers of Dr. Petit's family.

   I will note that my efforts as a law professor in 2008 and my efforts as an advocate for a client in 2011 would not impact how I would treat death penalty cases if I were confirmed to serve as a federal district judge. The United States Supreme Court has ruled that the

death penalty is constitutional, and I would follow the law concerning application of the death penalty in any case that might come before me.

2. **In *DePierre v US*, you argued that the mandatory minimum applying to drug trafficking offenses of crack cocaine should not apply to other forms of cocaine that could fall under the definition of having a "cocaine base." What is your view of mandatory minimums and how would you use Sentencing Guidelines in general, if you were confirmed?**

Response: Based on nearly ten years of service as a federal criminal prosecutor, I am familiar with and have charged criminal defendants with mandatory minimum crimes. The case of *DePierre v. United States*, in which I co-represented a criminal defendant, did not challenge the validity of mandatory minimum sentencing statutes in general; instead, we contended on the basis of wording of a particular statute that our client did not meet the criteria for the mandatory minimum statute to apply. If I were confirmed to serve as a federal district judge, my role would not be as an advocate for a client but to follow the law, including laws requiring imposition of a mandatory minimum sentence.

When I served as a federal criminal prosecutor, I also sought to have defendants sentenced in accordance with the United States Sentencing Guidelines. Although the Supreme Court has ruled that the Guidelines are no longer mandatory upon sentencing judges (*United States v. Booker*, 543 U.S. 220 (2005)), federal law still requires a district court to give "respectful consideration" to the Guidelines to determine an appropriate sentence (*Kimbrough v. United States*, 552 U.S. 85, 100 (2007) (citing 18 U.S.C. § 3553(a)). I also value the goal of the Guidelines to avoid unwarranted sentencing disparities. If I were confirmed to serve as a federal district judge, I would follow the law mandating consideration of the United States Sentencing Guidelines.

3. **You have written "Our privacy is ebbing away year by year," that "It's clearly beyond dispute that we are losing our actual protection," and also that "the right choice [for the Supreme Court] is to affirm our rights in our homes and our persons to be free, in the absence of emergency circumstances, from the warrantless use of dogs and sense-enhancing technology." What role would you have as a judge in terms of restricting incursions on privacy and how would you approach such cases?**

Response: The expansion of technological and sense-enhancing surveillance capabilities poses new challenges to personal privacy, and the Fourth Amendment as well as other statutory provisions of federal law protect individuals from unreasonable searches and seizures. For example, the Supreme Court has recently ruled that the Fourth Amendment applies when the police trespass on a person's front porch with a drug-sniffing dog to detect odors inside the person's home (*Florida v. Jardines*, 133 S. Ct. 1409 (2013)) and that the Fourth Amendment applies when the police attach and use a GPS tracking device to monitor the movements of a suspect's car (*United States v. Jones*, 132 S. Ct. 945 (2012)). If confirmed to serve as a federal district judge, I would apply these and other relevant precedents of the United States Supreme Court and the United States Court of Appeals for the Second Circuit in cases involving alleged incursions on privacy.

4. **In a 2011 article discussing a proposal to let non-citizen residents vote in municipal elections, you were quoted as saying "it strikes me as highly unlikely that the Constitution would prohibit this. It doesn't appear to require municipalities to screen for U.S. citizens."**

   a. **By that reasoning could municipalities enact other laws affecting municipal elections, so long as the U.S. Constitution had no prohibition?**

   Response: The above quote was intended to make the point that the explicit text of the federal Constitution does not prohibit state and local governments from permitting non-citizens to vote in municipal elections. With respect to whether municipalities could enact other laws affecting municipal elections, the United States Supreme Court has ruled that "the right of suffrage is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed." *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 665 (1966) (internal citation and quotations omitted). The 2011 news article referenced in the question above noted that the Connecticut State Constitution requires that all voters be citizens, and this separate requirement very likely forecloses the non-citizen voter proposal as a matter of state constitutional law.

   b. **Or alternatively, if municipalities allow non-citizens to vote in municipal elections, do the same rights that citizens enjoy apply to those non-citizens? For example could a municipality enact a law that let only male non-citizens vote, or restrict the voting age of non-citizens?**

   Response: If I were to be confirmed to serve as a federal district judge, I would address this question by reference to applicable legal precedent concerning application of the Equal Protection Clause to non-citizens. The Supreme Court has ruled that illegal aliens within the United States may be protected by the Equal Protection Clause. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 210-211 (1982). *See also Bernal v. Fainter*, 457 U.S. 216, 219 (1984) (noting that "[a]s a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny"). The precise application of the Equal Protection Clause in this context would require additional inquiry in light of more specific facts. To resolve any such issue, I would follow precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit.

5. **Some legal scholars have argued that judges should have discretion to sentence leniently in cases where defendants are remorseful, have dependents, are ill, have reformed, or are community heroes. To what extent do you think mercy has a place in the judicial process?**

Response: If I were to be confirmed as a federal district judge, my sentencing decisions would not be determined by the theories of legal scholars but by factors set forth as relevant by Congress, the Sentencing Commission, and higher courts of authority. The principal federal sentencing statute identifies the following general factors that a judge should consider at sentencing, to include "the nature and circumstances of the offense and the history and characteristics of the defendant," as well as "the need for the sentence imposed—(A) to reflect the seriousness of the offense, promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a). The statute also requires judges to sentence in light of "the need to avoid unwarranted sentencing disparities." *Ibid.* In addition, the United States Sentencing Guidelines furnish guidance about defendant-specific factors that may warrant consideration at sentencing. *See generally United States Sentencing Guidelines, Part H* (describing potential sentencing relevance of age, physical condition, mental and emotional conditions, employment record, family ties and responsibilities, military service, and record of prior good works).

6. **You were a panelist for a forum on federal judicial appointments sponsored by the Federalist Society at Quinnipiac University School of Law on September 26, 2007. You did not provide any notes, a transcript, or a recording. Please explain what you discussed on this panel and further your perspective on federal judicial appointments.**

Response: I do not recall the substance of my remarks at this panel. The principal participant for this panel was Ronald Cass, who is the former Dean of Boston University School of Law and who was invited by the Quinnipiac University Law School Federalist Society to speak on the topic of federal judicial appointments. I believe that I was invited by the Federalist Society as a faculty host/moderator for Dean Cass's visit. I have no notes and do not recall preparing any remarks. I do not have any developed views or perspective on federal judicial appointments.

7. **Please provide more detail on these two panels that you participated in.**

a. **"Racial Profiling," March 5, 2008, Quinnipiac University School of Law, American Constitution Society.**

Response: I recall few details of this event, and I have no notes or other record of my remarks. I believe that a co-panelist was a local police officer and recent alumnus of Quinnipiac University School of Law who spoke concerning his practical law enforcement experience. I believe I addressed the lack of enforcement of Connecticut's racial profiling law as later set forth in my commentary in the Connecticut Law Tribune: *Racial Profiling – Lift Rug, Sweep Under*, CONN. L. TRIB., Aug. 24, 2009 (copy previously supplied).

b. **"Trade Sanctions in a 21st Century Economy," February 29, 2008, University of Pennsylvania School of Law.**

Response: On the basis of my work investigating the United Nations trade sanctions and its humanitarian "oil-for-food" program in Iraq, I was invited to participate in this one-day symposium at the University of Pennsylvania Law School. Although I do not have notes or other records of my remarks at the symposium event, I recall that my presentation concerned the legality of so-called "secondary sanctions" and that the presentation served as the basis for my subsequent scholarly article that I published as part of this symposium in the University of Pennsylvania Journal of International Law. *See* Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PENN. J. INT'L L. 905 (2009) (copy previously supplied).

8. What is the most important attribute of a judge, and do you possess it?

Response: I believe that among the most important attributes of a judge is a deep commitment to impartiality. This attribute is the foundation for other judicial virtues, including rigorous review and research of the parties' presentation of the facts and law and true open-mindedness until the point of reaching a final decision. I believe I am committed to being impartial and will strive to cultivate and maintain this quality.

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: In my view, a judge must always treat all parties with courtesy and respect while also setting high expectations and standards for the parties to engage in prompt and efficient resolution of their disputes. A judge should also make clear his or her commitment to applying the rule of law regardless of personal preference. I believe I possess the appropriate temperament to be a judge and that, if confirmed, I would strive to maintain this temperament.

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: If confirmed as a federal district judge, I would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, regardless whether I might personally agree with such precedent.

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: If I were confirmed to serve as a federal district judge and confronted with a case of first impression, I would be guided by the text of any statute or provision at issue

and also by any analogous precedent from higher courts. If the text of the statute were ambiguous, I would resort to well established principles of interpretation that look to structure, context, and other indicia of the Framers' or legislative intent. For cases involving challenges to federal statutes, I would begin with the presumption that statutes are constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000). For cases involving administrative law, I would examine the application of agency deference principles. *See, e.g., Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984). For cases involving state law and state court judgments, I would be sensitive to federalism concerns and related statutes and doctrines that restrict the authority of federal judges to overturn state court judgments. *See, e.g., Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938); 28 U.S.C. § 2254(d).

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: If I were confirmed to serve as a federal district judge, I would apply the precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit regardless of any personal feelings I might have about the precedent. Although I could note my concerns about the correctness of a higher court decision, I would understand that I must follow the precedent and leave it to the higher court to decide whether to reconsider its own precedent. *See, e.g., Agostini v. Felton,* 521 U.S. 203, 237-38 (1997) (noting that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions" and that district courts also should follow precedent) (internal citation and quotations omitted).

13. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: If I were confirmed to serve as a federal district judge, I would understand that a statute enacted by Congress is presumed to be constitutional and that a federal court should declare a statute to be unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). In addition, under the doctrine of constitutional avoidance, a court should consider whether a statute may be interpreted in a manner that avoids a conclusion that it is unconstitutional. *See, e.g., Clark v. Martinez*, 543 U.S. 371, 381-82 (2005).

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: If I were confirmed to serve as a federal district judge, I would not rely on foreign law or the views of the world community to determine the meaning of the United States Constitution, except to the extent authorized or required by precedent of the United States Supreme Court or the United States Court of Appeals for the Second Circuit. *See,*

e.g., *United States v. Jones*, 132 S. Ct. 945, 949 (2012) (citing English common law precedent for purposes of interpreting the scope of the Fourth Amendment).

15. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: Political ideology and motivation have no place in judicial decisionmaking. If confirmed, my decisions would always be grounded in the text of the law and precedent. Based on my service of nearly ten years as a federal criminal prosecutor and other practical experience, I am confident that I would not permit any political ideology or motivations to influence my judicial decisions.

16. 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 confirmed, I would know that I must always be impartial and that I must put aside any personal views I might have to ensure that I am fair to all who appear before me. In light of my service of nearly ten years as a federal criminal prosecutor and other practical experience, I believe that I would not permit my personal views to influence my judicial decisions.

17. If confirmed, how do you intend to manage your caseload?

Response: I would understand the great importance of efficiently managing my caseload and promptly rendering decisions on filed motions. I would engage actively with counsel for all parties to set firm expectations and deadlines toward resolution of each case. I would also work closely with Magistrate Judges and exercise authority under Rules 16 and 26(f) of the Federal Rules of Civil Procedure to ensure appropriate constraints on discovery and the filing of motions.

18. 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: If confirmed to serve as a federal district judge, I would play an active role in controlling the pace and conduct of litigation to ensure against inappropriate delay in the resolution of cases. I would engage with all parties to set firm expectations and deadlines toward resolution of each case. I would also work closely with Magistrate Judges and use the tools available under the Federal Rules of Civil Procedure to ensure appropriate constraints on discovery and the filing of motions.

19. 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 to serve as a federal district judge, I would be acutely aware of the very different roles of an advocate and a judge. The role of a judge is not to assist or favor any one party but to be impartial always in finding facts and applying the law. I would reach decisions based upon allowing each of the parties a fair opportunity to present evidence and arguments. For questions of law, I would look first to the text of any applicable law and to any precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit. I expect that the most difficult part of the transition for me would be to ensure that I manage my caseload efficiently to meet the parties' expectations for prompt scheduling and decisionmaking.

20. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: I have not had any contact with the American Association for Justice (AAJ), with the AAJ Judicial Task Force, or with any individual or group that I know to be associated with the AAJ regarding my nomination.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: I am not aware of any endorsements or promised endorsements by the AAJ, the AAJ Judicial Task Force, or any individual or group associated with the AAJ regarding my nomination.

21. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on July 31, 2013. After reviewing the questions and conducting pertinent legal research and review of my records, I drafted responses to each of these questions and forwarded my draft responses to the Department of Justice's Office of Legal Policy. After receiving comments, I revised my responses and authorized the submission of my responses to the Committee.

22. Do these answers reflect your true and personal views?

Response: Yes.

Response of Jeffrey A. Meyer
Nominee to be United States District Judge for the District of Connecticut
to the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If I were confirmed to serve as a federal district judge, I would strive to treat all parties with respect, to be fair and impartial, to promptly decide cases that come before me, and to follow the law as written and as interpreted by higher courts including the United States Supreme Court and the United States Court of Appeals for the Second Circuit. I do not believe this judicial philosophy is most analogous to any one particular Justice of the United States 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 believe that the original intent and meaning of the words of the Constitution must be considered, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008), consistent with authoritative precedent of a higher court that has interpreted any particular provision of the Constitution.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If I were to be confirmed to serve as a federal district judge, I would follow precedent of the United States Supreme Court and the United States Court of Appeals for the Second Circuit. If presented with an issue of state law, I would also follow the precedent of relevant state courts as required under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). As a district court judge, I would not have authority to overrule the precedent of other courts.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed to serve as a federal district judge, I would be bound by and follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Authority* and by other decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit concerning the balance of federal and state sovereign powers under the Constitution. *See, e.g., Printz v. United States*, 521 U.S. 898, 918-922 (1997) (discussing Constitution's allocation of authority between federal and state sovereign governments).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: As I understand it, the power of Congress under the Commerce Clause, in conjunction with the Necessary and Proper Clause, may possibly extend in some instances to the regulation of non-economic activity if it is necessary to Congress's ability to regulate interstate commercial activity. *See, e.g.*, *Gonzales v. Raich*, 545 U.S. 1, 19 (2005) (upholding application of federal controlled substances law to prohibit home-grown cultivation and home-use of marijuana "because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity"). *See also id.* at 37-38 (Scalia, J., concurring in judgment) (noting in part that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce," but that "Congress may regulate noneconomic intrastate activities only where the failure to do so could ... undercut its regulation of interstate commerce") (internal citation and quotations omitted).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: If I were to be confirmed to serve as a federal district judge, I would consider several factors in determining a case that poses a challenge to an executive order or other executive action. First, Article III of the Constitution limits judicial power to genuine "cases or controversies," and the Supreme Court therefore requires that a plaintiff party establish standing (*i.e.*, injury, causation and redressability) in order for a court to consider imposing a limit on executive action. *See, e.g.*, *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146-47 (2013). Second, the Supreme Court has limited the authority of courts to intervene in matters that are committed to the discretion or determination of the political branches and thus within the scope of the "political question" doctrine. *See, e.g.*, *Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S.Ct. 1421, 1427 (2012). Third, in cases where the bounds of executive action are claimed to conflict with the constitutional lawmaking authority of Congress, the Supreme Court abides by a long-established tripartite framework to consider whether the President has exceeded his constitutional authority. *See, e.g.*, *Medellín v. Texas*, 552 U.S. 491, 524-25 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (Jackson, J., concurring)). In addition, judicially enforceable limits on executive action may stem from specific provisions of the Bill of Rights, *see, e.g.*, *Reid v. Covert*, 354 U.S. 1, 5-12 (1957) (plurality opinion), from the Constitution's reservation of certain powers to the States, *see, e.g.*, *Medellín*, 552 U.S. at 531, or from other specific statutory limitations or conditions on the exercise of presidential power, *see, e.g.*, *Hamdan v. Rumsfeld*, 548 U.S. 557, 613 (2006). Executive agency actions may also be judicially reviewable under the Administrative Procedure Act or other statutes specifically authorizing judicial review. *See, e.g.*, *Sackett v. EPA*, 132 S. Ct. 1367 (2012).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has ruled that a right is "fundamental" only if "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); *see also id.* at 720 (listing precedents involving "'liberty' specially protected by the Due Process Clause").

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has ruled that "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). *See also City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985) (noting that "strict scrutiny" applies to classifications based on "race, alienage or national origin" or when "laws impinge on personal rights protected by the Constitution," and further noting that otherwise "heightened" review applies for 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: If I were to be confirmed to serve as a federal district judge, I would be bound by and follow the decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit concerning affirmative action and whether and when racial preferences may no longer be necessary in public higher education. The Supreme Court has recently applied *Grutter v. Bollinger* to allow continued use of affirmative action for public higher education admissions but subject to a demanding burden of strict scrutiny review, requiring "a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications" and that "[t]he reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity." *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2420 (2013).

Response of Landya B. McCafferty
Nominee, U.S. District Judge for the District of New Hampshire,
To the Questions of Senator Chuck Grassley

1. **You have been a strong proponent of the use of technology in the courtroom, including by Judges. You can share your thoughts on that, if you wish, but I'm particularly curious regarding your views and current practice on the use of cameras in your courtroom.**

   Response: As a Federal Magistrate Judge, I am a proponent of judges using technology to increase efficiency and lower costs. I serve on the teaching faculty of the Federal Judicial Center's IT Training Program for New Magistrate Judges, and I also train judges across the country to use the iPad as a tool to assist them in achieving a paperless workflow.

   With respect to cameras in my courtroom, I follow the local rule of our court. That rule prohibits the use of cameras in the courtroom, with exceptions for certain types of proceedings, such as ceremonial events sponsored by the court. I am aware, however, that in September 2010, the Judicial Conference initiated a pilot program on cameras in the courtroom. I am not aware of the results of that pilot program. Depending on the outcome of that pilot program, I would be open to the concept of permitting cameras in the courtroom.

   a. **Are there privacy rights or other considerations in the courtroom that give you concern?**

      Response: Concerns could be raised about the privacy and safety of jurors, prospective jurors, victims of crime, juvenile witnesses, and other witnesses, such as confidential informants. One might also be concerned about litigants' rights to a fair trial and due process to the extent media presence or attention might unfairly impact the actions or concerns of participants in the matters before the court.

   b. **If so, how can those concerns be addressed?**

      Response: I believe those concerns could be addressed by well-considered local rules that, for example, prohibit the media from filming protected individuals, such as jurors and juvenile witnesses. Such rules appear to work well in many state courts. For instance, in New Hampshire, where broadcasting of court procedures is permitted, my understanding is that the media has respected the limits imposed by the state courts concerning the use of cameras in high profile cases.

c. **What is the current policy and practice in your court regarding the use of cameras?**

Response: Consistent with the policy of the Judicial Conference of the United States, our local rules prohibit the use of cameras in our courtrooms, with exceptions for certain types of proceedings, such as ceremonial events sponsored by the court.

2. **What is the most important attribute of a judge, and do you possess it?**

Response: While many attributes are critical (e.g., temperament), the most important attribute of a judge is fidelity to the rule of law. In my three years as a federal magistrate judge, I believe I have demonstrated that I adhere to the rule of law in all of my decisions. If fortunate enough to be confirmed by the Senate as a federal district court judge, I will continue to adhere to the rule of law in all of my decisions.

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: The appropriate temperament of a judge is marked by humility. A judge must function at all times with the understanding that she serves the people in her courtroom, and not the other way around. A judge must be courteous, respectful, and attentive to everyone in her courtroom, and must ensure that all litigants appearing before her have a full and fair opportunity to be heard.

In my courtroom, I treat everyone with respect. In all of my dealings with people throughout my career, I have been respectful and courteous. I believe I have a temperament marked by humility.

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am deeply committed to the rule of law, which includes following the precedents of higher courts and giving those precedents full force and effect, whether or not I agree with them. As a federal magistrate judge, I have always followed the controlling precedent from the Supreme Court and the Court of Appeals for the First Circuit. In deciding cases, my personal views are irrelevant; I apply the law.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: In deciding cases of first impression, I would first turn to the text of the applicable statute, regulation, or provision. If the language of the statute was unambiguous, that language would control. If the language was ambiguous, I would use the canons of statutory construction to assist me in interpreting the language. I would also consider precedents from other courts (i.e., courts outside the Supreme Court and First Circuit) that have interpreted the same or similar statutes -- precedents from other courts would not be controlling but would be worthy of consideration if persuasive. To the extent there were no precedents available whatsoever, I would be bound to follow the methodology employed by the Supreme Court and the Court of Appeals for the First Circuit in interpreting the statute in question.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: My personal belief about the correctness of a ruling of the Supreme Court or the Court of Appeals for the First Circuit is irrelevant. If confirmed as a district judge, I will be bound by the decisions of both courts and will follow controlling precedent at all times.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: Statutes enacted by Congress are presumed to be constitutional. It is appropriate for a federal court to declare a statute unconstitutional only under narrow circumstances, such as when Congress, in enacting the statute, clearly exceeded its authority under the Constitution or when the statute itself violates the Constitution. If it became necessary to consider the constitutionality of a particular statute, I would apply the standards established in the precedents of the Supreme Court and the Court of Appeals for the First Circuit.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

   Response: No. It is not proper for judges to rely on foreign law or the views of the "world community" in determining the meaning of the United States Constitution.

9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I can assure the Committee that I am deeply committed to the rule of law. The best evidence of that commitment is my record over the past three years as a federal magistrate judge. A review of my decisions will reveal that they have been grounded in precedent and the text of the law. I have never allowed my personal beliefs to influence my judicial decision-making, and, if confirmed as a district judge, I pledge continued adherence to the rule of law.

10. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I assure the Committee that I am deeply committed to the principle of equal treatment under the law. The best evidence of my commitment to put aside personal views and treat all who come before me fairly and impartially is my history as a federal magistrate judge. A review of my decisions will reveal that they are grounded in the law. Many of my hearings are tape-recorded, and if reviewed, they will provide further evidence of my fair and impartial treatment of all of the litigants who have come before me. If confirmed as a district judge, I pledge continued adherence to the principle of equal treatment under the law.

11. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will continue to manage my caseload as I have for the past three years as a magistrate judge. In accordance with the Federal Rules of Civil Procedure, and as soon as possible in my cases, I issue scheduling orders with strict discovery deadlines and firm trial dates. When necessary, I meet with counsel and use status conferences to ensure that litigants are moving their cases toward resolution. As a magistrate judge, one of my primary responsibilities is to manage discovery schedules and resolve discovery disputes for the district judges. I have found that being actively involved in the oversight of a case, and resolving discovery disputes expeditiously, keeps a case on track for trial. If confirmed, I intend to be actively involved in managing all aspects of my cases. In our district the Civil Justice Reform Act is taken very seriously and all the judges take pride in meeting the standards for timely and efficient disposition of matters pending before the court.

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 can and should play a major role in controlling the pace and conduct of litigation. If confirmed, I will play an active role in managing my cases. As early as possible in a case, I will issue a scheduling order with a firm trial date and strict discovery deadlines. I will meet with parties and counsel whenever necessary to assist in resolving disputes as expeditiously as possible. I will use my case managers efficiently to assist me in keeping a close eye on all my cases. Having served as a magistrate judge, I am aware of the benefits of using a magistrate judge to assist in controlling and managing a court's docket. I will make full use of a magistrate judge, but I will oversee all aspects of my cases.

13. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I approach my cases from the "bottom-up" rather than from the "top-down." That is, I do not approach cases with a fixed ideology or set of beliefs. Rather, I start with the facts and get a detailed understanding of the dispute and the parties before me. After I have a detailed understanding of the facts, I move to the governing law: any constitutional provisions, statutes, regulations, and/or case law. After I have an understanding of the applicable law, I apply the law to the facts of the case, fairly and impartially. Once I reach a decision, I communicate my decision to the parties in an accessible and understandable manner. It is my goal in every case that the litigants walk away from my courtroom, whether they have won or lost, with confidence that I listened carefully and gave fair consideration to their arguments.

14. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No, not to the best of my knowledge and belief.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

15. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions on July 31, 2013, and prepared responses. On August 9, 2013, 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.

16. **Do these answers reflect your true and personal views?**

Response: Yes.

Response of Landya B. McCafferty
Nominee, U.S. District Judge for the District of New Hampshire,
to the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I approach my cases from the "bottom-up" rather than from the "top-down." That is, I do not approach cases with a fixed ideology or set of beliefs. Rather, I start with the facts and get a detailed understanding of the dispute and the parties before me. After I have a detailed understanding of the facts, I move to the governing law: any constitutional provisions, statutes, regulations, and/or case law. After I have an understanding of the applicable law, I apply the law to the facts of the case fairly and impartially. Once I reach a decision, I communicate my decision to the parties in an accessible and understandable manner. It is my goal in every case that the litigants walk away from my courtroom, whether they have won or lost, with confidence that I listened carefully and gave fair consideration to their arguments.

I am unaware of whether my philosophy is analogous to any justice of the Warren, Burger, or Rehnquist Courts, but expect that virtually all justices would agree that my approach is appropriate for a district court judge.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court recently employed original meaning originalism to interpret the Constitution in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) and *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I will follow the precedents of the Supreme Court and the Court of Appeals for the First Circuit with respect to the form of originalism to employ in interpreting the Constitution.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district court judge, I would be duty-bound to apply the precedents of the Supreme Court and the Court of Appeals for the First Circuit; I could not (and would not attempt to) overrule them.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would follow *Garcia*, as I would any Supreme Court precedent, regardless of my personal views, if any.

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 held in at least two cases, *United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995), that Congress lacked the authority under the Commerce Clause to regulate certain types of non-economic activity. I would abide by these precedents, and any other precedents of the Supreme Court and the Court of Appeals for the First Circuit, in construing the scope of Congress's authority under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The judicially enforceable limits on the president's ability to issue executive orders or to take executive actions can be found in the Supreme Court's decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), specifically in Justice Jackson's concurring opinion. In short, the President's ability to issue an executive order "must stem either from an act of Congress or from the Constitution itself." *Id.* at 585. If confirmed, I would apply the three-part *Youngstown* framework, and any other precedents of the Supreme Court and the Circuit Court of Appeals, to determine the scope of executive authority.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that rights are "fundamental" for purposes of the substantive due process doctrine where they 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." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed as a district court judge, I would apply the precedents of the Supreme Court and the Court of Appeals for the First Circuit regarding 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: The Supreme Court has held that a classification based on race, alienage, national origin or gender should receive heightened scrutiny under the Equal Protection Clause. *See, e.g.*, *City of Cleburne v. Cleburne Living Ctr*, 473 U.S. 432, 440 (1985). If confirmed as a district court judge, I would apply the precedents of the Supreme Court and the Court of Appeals for the First Circuit regarding whether a classification should 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).

Response: If confirmed as a district court judge, I will be bound by the rulings of the Supreme Court and the Court of Appeals for the First Circuit regardless of my personal views or expectations concerning the use of racial preferences in public education.

O'MELVENY & MYERS LLP

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4 June, 2013

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VIA FACSIMILE AND MAIL

The Honorable Orrin G. Hatch
United States Senate
104 Hart Senate Office Building
Washington, DC 20510

Re: ***Nomination of Cornelia Pillard to U.S. Court of Appeals for the District of Columbia***

Dear Senator Hatch:

I write in strong support of the nomination of Cornelia Pillard to the U.S. Court of Appeals for the District of Columbia. Her academic credentials, which include *magna cum laude* degrees from Yale College and Harvard Law School, a tenured full professorship at Georgetown Law, as well as her impressive record as an appellate advocate, make her an exceptionally qualified candidate for this important court.

Ms. Pillard began her legal career as a law clerk to my dear friend and colleague, the late Judge Louis H. Pollak, on the Eastern District of Pennsylvania. You may remember that I worked with Lou Pollak and Thurgood Marshall on the legal team that won *Brown v. Board of Education* in the U.S. Supreme Court. Lou and I later served on the Board of the NAACP Legal Defense and Educational Fund, one of America's finest legal institutions.

Inspired by Judge Pollak, Ms. Pillard chose to work with the NAACP Legal Defense Fund as a litigator early in her career. In the tradition of many lawyers before her at the organization, she provided expert representation to victims of discrimination in courts across the country. She did excellent work, winning cases at the trial and appellate levels.

From the NAACP Legal Defense Fund, Ms. Pillard went on to commendable service in the Solicitor General's office where she developed an impressive record of wins before the U.S. Supreme Court in a wide range of cases from sex discrimination to congressional power to criminal procedure and qualified immunity for government officials.

†In association with Tumbuan & Partners

She has been a revered teacher at Georgetown for more than a decade and her work there, including as co-director of the Supreme Court Institute, has been widely praised for its thoughtfulness, inclusiveness, and fairness.

I hope you will regard Ms. Pillard's credentials as highly as I do and vote to confirm her.

"Take care...."

Sincerely,

William T. Coleman Jr.
Senior Partner and The Senior Counselor
of O'MELVENY & MYERS LLP

cc: Members of the Senate Judiciary Committee

WTC:ses

OMM_US:71585714.1

Hughes
Hubbard

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July 8, 2013

FIRST CLASS MAIL

Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of Cornelia Pillard

Dear Chairman Leahy and Ranking Member Grassley:

I am writing in support of the nomination of Professor Cornelia ("Nina") Pillard for a seat on the United States Court of Appeals for the District of Columbia Circuit. While I am a partner in the law firm of Hughes Hubbard & Reed LLP and a former Chairman of the Board of Directors of the American Arbitration Association ("AAA"), of which I continue to be an honorary member, this letter expresses only my personal views, not those of either organization.

I first met Nina Pillard in 2003, when I heard her argue a complex issue arising under the Federal Arbitration Act in the United States Supreme Court. The case was of interest to the AAA, of which I was then Chairman of the Law Committee. I was so impressed by Professor Pillard's mastery of the law and even-handed approach to the subject that I recommended to the AAA that she be invited to join the Board of Directors of that organization. The AAA is a not-for-profit corporation, and all outside members of its Board of Directors serve pro bono, without compensation. Nina Pillard was elected to be a member of the AAA's Board in 2005, and in 2009 was elected a member of its Executive Committee. My contact with her since 2005 has been primarily in that context.

The AAA has striven since it was established in 1926 to promote the resolution of disputes by arbitration and other forms of dispute resolution, and to administer arbitration proceedings fairly and competently, without regard to whether the parties to the arbitration are individual persons, large corporations, or even government agencies. Nina Pillard brought to the AAA's Board and

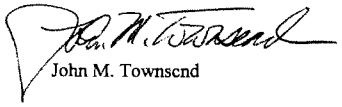
Executive Committee not only expertise in arbitration law, honed by years of work as an outstanding advocate and a highly respected law professor, but also a perspective independent of any of the groups that traditionally use the services of the Association. Professor Pillard has represented individuals as well as corporations and government agencies. Her independence of any constituency gives her credibility with all groups, and her consistently balanced, thoughtful, and objective assessments of how best to accommodate the competing interests of those groups make her a particularly valuable member of the AAA's governing body.

I would expect Nina Pillard to bring the same objectivity and balance to the D.C. Circuit, if the Senate should confirm her to that position, that she has brought to the AAA Board and Executive Committee. Her experience with the Legal Defense Fund, with the Solicitor General's Office and Office of Legal Counsel at the Department of Justice, and as a private advocate and law professor, in addition to her work with the AAA, has given her deep and extensive exposure to a wide range of legal issues. The respect she commands as a lawyer is demonstrated not only by her having been asked to argue nine cases in the Supreme Court, but also by her having become, through the Supreme Court Institute that she directs, one of the most sought-after coaches for other lawyers who are preparing for Supreme Court arguments, regardless of which side of the case they are arguing.

Nina Pillard has an admirable temperament for a judge. I have sat through numerous meetings with her at which difficult issues have been discussed at length, some of them contentious and some mind-numbingly tedious. I never in any of these observed her attention to wander or her temper to rise. She has been an attentive, constructive, engaged, and good-humored colleague at the AAA, and I would expect those same qualities, combined with her impressive intellect and deep knowledge of the law, to make Nina Pillard an outstanding member of the Court of Appeals.

The District of Columbia Circuit will profit from the addition of Professor Pillard's talents and abilities to that bench, and I respectfully urge that her nomination to that court be swiftly confirmed.

Sincerely yours,



John M. Townsend

62387808_1

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July 9, 2013

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

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

Dear Senators Leahy and Grassley:

I write as a former federal judge and Director of the Federal Bureau of Investigation regarding the nomination of Cornelia (Nina) Pillard to the U.S. Court of Appeals for the D.C. Circuit. As outlined below, I believe that Ms. Pillard has had invaluable work experience that makes her especially well-suited to the bench. While I do not know Ms. Pillard personally, others in the law enforcement community whom I know and respect are supporting her, and their views, combined with her superb experience and qualifications, convince me that she would make an excellent judge, especially on the DC Circuit, which requires someone with such experience and qualifications.

Ms. Pillard was an attorney in the Office of the Solicitor General and a Deputy Assistant Attorney General in the Office of Legal Counsel. As an attorney in the Solicitor General's office, she briefed and argued many cases defending criminal prosecutions, seeking to define the legal authorities for and limits on the investigation and prosecution of crime, and defending law enforcement officials sued for injuries allegedly caused in the course of their official duties. The Office of Legal Counsel is vital to the constitutional execution of the Executive Branch's responsibilities, and frequently advises the nation's law enforcement and intelligence agencies on their authorities and responsibilities. These experiences defending and advising law enforcement at the highest levels of the federal government will be invaluable in informing Ms. Pillard's views as a judge when these matters come before her.

Ms. Pillard has co-counseled cases with individuals with a range of political perspectives, and is Faculty Co-Director of Georgetown Law Center's Supreme Court Institute, which assists lawyers from around the country in preparing for Supreme Court arguments, without regard to issue or position. Ms. Pillard also has experience representing individuals seeking to protect their statutory and constitutional rights in the trial courts, the courts of appeal, and the Supreme Court.

She worked for the NAACP Legal Defense and Educational Fund, and had a one-year fellowship with the American Civil Liberties Union.

This rare combination of experience, both defending and advising government officials, and representing individuals seeking to vindicate their rights, would be especially valuable in informing her responsibilities as a judge, adjudicating rights disputes on a regular basis.

The D.C. Circuit is, as you know, an important court that hears cases of major public interest. It is well served by judges who have had experience in the Justice Department, as did Chief Judge Merrick Garland, Judges Brett Kavanaugh and Judith Rogers, and former Judges Robert Bork and John Roberts. In short, I believe that Ms. Pillard's experiences render her an excellent choice for the D.C. Circuit and urge her confirmation.

Sincerely,

William S. Sessions

Former Chief Judge, U.S. District Court for the Western District of Texas

Former Director, Federal Bureau of Investigation (1987-93)

#24105125_v1

July 17, 2013

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

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

Dear Senators Leahy and Grassley:

We are writing to urge the confirmation of Cornelia (Nina) Pillard to serve as a Judge on the United States Court of Appeals for the District of Columbia Circuit. We are former attorneys in the Office of Legal Counsel (OLC) of the United States Department of Justice, where Ms. Pillard served as a Deputy Assistant Attorney General during 1998-2000. Many of us worked with her in that office. We believe that Ms. Pillard has the skill, character, and objectivity that would make her a superlative judge on the D.C. Circuit. She was a respected leader and trusted advisor in OLC, valued for her fair-minded and meticulous approach to legal questions of all sorts. She is an exemplary nominee whom we wholeheartedly endorse.

As this Committee is aware, OLC serves a unique and critical role within the Executive Branch. OLC exercises the Attorney General's authority under the Judiciary Act of 1789 to provide advice on questions of law to the President and executive agencies. Pursuant to the Attorney General's delegation, OLC's principal function is to provide controlling advice to Executive Branch officials on legal questions that are centrally important to the functioning of the federal government. Many of those questions are novel and complex—from the arcane to the most weighty and contentious legal questions of the day. They include questions of constitutional principle and of detailed statutory and regulatory law.

The Office of Legal Counsel frequently advises on matters of national security and defense. That office provides advice to the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Homeland Security, and the Department of Defense, among other national security agencies. OLC also routinely deals with matters of administrative law, including statutory and regulatory validity and interpretation, which are staples of the D.C. Circuit's docket.

During her tenure at OLC, Ms. Pillard demonstrated exceptional legal skills and judgment and the ability and integrity to render dispassionate advice on what are often extremely difficult legal questions. Ms. Pillard was a careful and sought-out deputy on many of the office's most difficult issues. This experience gives her an appreciation of the distinct roles of the courts and the political branches, as well as the needs of and important limits on the Executive Branch. Ms. Pillard's

exemplary service in OLC, together with her stellar reputation as an appellate lawyer and scholar, make her especially suited to serve as a Judge on the United States Court of Appeals for the District of Columbia Circuit.

Sincerely,

Richard Bierschbach
Attorney-Advisor 2000-2001

Harold Bruff
Attorney-Advisor 1979-1981

Jonathan Cedarbaum
Deputy Assistant Attorney General, Principal Deputy Assistant Attorney General, and Acting Assistant Attorney General 2009-2011
Attorney-Advisor 1999-2002

Walter E. Dellinger
Assistant Attorney General 1993-1997

Joseph R. Guerra
Deputy Assistant Attorney General 1999-2001

Pamela A. Harris
Attorney-Advisor 1993-1996

Clare Huntington
Attorney-Advisor 1999-2004

Dawn E. Johnsen
Acting Assistant Attorney General 1997-1998
Deputy Assistant Attorney General 1993-1996

Martin S. Lederman
Deputy Assistant Attorney General 2009-2010
Attorney-Advisor 1994-2002

Robin Lenhardt
Attorney-Advisor 1998-2000

Randolph D. Moss
Assistant Attorney General 2000-2001
Acting Assistant Attorney General 1998-2001
Deputy Assistant Attorney General 1996-1998

Trevor Morrison
Attorney-Advisor 2000-2001

Beth Nolan
Deputy Assistant Attorney General 1996-1999

Todd Peterson
Deputy Assistant Attorney General 1997-1999

H. Jefferson Powell
Deputy Assistant Attorney General 1993-1994, 1996, 2011-2012

Jeannie S. Rhee
Deputy Assistant Attorney General 2009-2011

Teresa Wynn Roseborough
Deputy Assistant Attorney General 1994-1996

Richard Shiffrin
Deputy Assistant Attorney General 1993-1997

David A. Strauss
Attorney-Advisor 1979-1981

William M. Treanor
Deputy Assistant Attorney General 1998-2001

Jay Wexler
Attorney-Advisor 1999-2001

GEORGETOWN LAW

William Michael Treanor
Dean and Executive Vice President

July 17, 2013

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC

Senator Charles Grassley
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC

Dear Senators Leahy and Grassley:

We are law school deans, writing in our individual capacities in enthusiastic support of Cornelia (Nina) Pillard, whom President Obama has nominated to serve on the U.S. Court of Appeals for the D.C. Circuit. Professor Pillard is an accomplished lawyer, scholar, and teacher, and has devoted her career to public service and to training others in the best traditions of the law. Her confirmation to the D.C. Circuit would continue a long tradition of law professors serving on that court, including Antonin Scalia, Robert Bork, Ruth Bader Ginsburg, Harry T. Edwards and Douglas H. Ginsburg.

As a tenured professor of law at Georgetown, where she started her academic career in 1997, Pillard has taught hundreds of students in required academic subjects, including Constitutional Law and Civil Procedure. She is a beloved teacher and mentor, diligent in service to Georgetown and the larger community, and a productive and highly respected scholar. Professor Pillard also has extensive and wide-ranging experience in the practice of law. She has practiced at the trial level, in the courts of appeals and in the Supreme Court, handling both civil and criminal cases. She has served as a top-level executive branch lawyer in the Office of Legal Counsel. And, as an Executive Committee member of the Board of Directors of the American Arbitration Association, she has experience with the increasingly important law governing private dispute settlement. In her scholarly and professional work, Professor Pillard has shown herself to be fair-minded, sensible, a rigorous and sophisticated thinker, and a peerless advocate.

Professor Pillard's scholarship confirms her careful, respectful, and sensible approach to legal issues. She has questioned barriers to access to the courts, but at the same time recognized the need to deter unfounded litigation. She has critiqued doctrines that deny remedies to victims of government abuse without sound justification, and simultaneously questioned judicial constructs that leave individual government officials on the hook for reasonable legal mistakes in

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the line of duty. In her legal advocacy and scholarship, Professor Pillard shows a clear understanding of fundamental distinctions between the roles of courts and the political branches, and between law and culture, morality, politics or other important sources of norms that guide and constrain human behavior. Throughout her work, she has shown an appreciation of nuance and respect for opposing viewpoints, grounded in a profound commitment to fair process and fidelity to the law.

In short, Professor Pillard is a talented advocate, a brilliant legal mind, a sensible and moderate problem solver, and a careful thinker who has devoted her career to public service and work for others. We wholeheartedly urge that you confirm her to the D.C. Circuit.

Sincerely,

Dean Richard Bales, Ohio Northern University Claude W. Pettit College of Law
Dean Craig Boise, Cleveland State University Cleveland-Marshal College of Law
Dean John Broderick, University of New Hampshire School of Law
Dean John Carroll, Samford University Cumberland School of Law
Dean William M. Carter, Jr., University of Pittsburgh School of Law
Dean Christopher Edley, UC Berkeley School of Law
Dean JoAnne Epps, Temple University Beasley School of Law
Dean William Furgeson, University of North Texas Dallas College of Law
Dean Ken Gormley, Duquesne University School of Law
Dean Donald Guter, South Texas College of Law
Dean Chris Guthrie, Vanderbilt Law School
Dean Paul Mahoney, University of Virginia School of Law
Dean Gregory Mark, DePaul University College of Law
Dean Philip J. McConnaughay, Penn State University, The Dickinson School of Law
Dean Marc Miller, University of Arizona James E. Rogers College of Law
Dean Martha Minow, Harvard Law School
Dean Lawrence Mitchell, Case Western Reserve University School of Law
Dean Trevor Morrison, New York University School of Law
Dean Charles Nelson, Faulkner University Thomas Goode Jones School of Law
Dean Peter Pitegoff, University of Maine School of Law
Dean Robert Post, Yale Law School
Dean Dan Rodriguez, Northwestern University School of Law
Dean Patricia White, University of Miami School of Law
Dean David Yellen, Loyola University Chicago School of Law

By: William M. Treanor
Dean William M. Treanor
Georgetown University Law Center

**School names and titles are for identification purposes only and do not indicate support by the institution.

July 17, 2013

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

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

Dear Senators Leahy and Grassley:

We write as lawyers with extensive experience in law enforcement to support the confirmation of Cornelia (Nina) Pillard to the U.S. Court of Appeals for the D.C. Circuit. Some of us have been prosecutors; others have worked for the FBI or other law enforcement bodies. Among our signatories are two former Deputy Attorneys General, the former Assistant Attorney General in charge of the National Security Division, a prosecutor in the case against Timothy McVeigh and Terry Nichols for the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, a former FBI General Counsel, and a former assistant U.S. Attorney who led the Southern District of New York's unit specializing in investigating and prosecuting government corruption. Some of us have worked directly and extensively with Ms. Pillard, in government or elsewhere; others of us know her mainly by reputation, or through her academic work and published writing; but all of us believe that she would be an excellent judge. We urge her confirmation because she is unquestionably eminently qualified, and is a sensible and fair-minded lawyer and scholar who has worked extensively with law enforcement in her career. She brings to the bench sensitivity to the compelling need for effective and legitimate law enforcement in the modern era. She stands for fidelity to the law above all, and has demonstrated an unwavering commitment to the important, albeit limited, role of the courts in our federal system.

Ms. Pillard has devoted most of her career to public service, and much of that time she has represented and advised law enforcement officials. She served in both the Office of the Solicitor General and the Office of Legal Counsel. As an attorney in the Solicitor General's office, she briefed and argued several important cases that helped ensure that prosecutors and the police are able to do their jobs efficiently and effectively. In *Behrens v. Pelletier*, 516 U.S. 299 (1996), for example, Ms. Pillard won an important victory ensuring that local, state, and federal government officials can defend themselves adequately when sued, overturning an appellate court decision that had limited such officials' ability to appeal rulings denying them "qualified immunity." In *Ornelas v. United States*, 517 U.S. 690 (1996), she successfully defended the United States' position on the standard of appellate review of reasonable suspicion and probable cause, the defining thresholds for police searches and seizures. In *Lewis v. United States*, 518 U.S. 322 (1996), she successfully argued that the Sixth Amendment jury right does not extend to petty offenses, even in cases charging more than one such offense, thus protecting prosecutors'

ability efficiently to try such cases. In addition to those and other cases pressing law enforcement interests in the Supreme Court, in the Solicitor General's Office Ms. Pillard worked on countless other matters defending criminal convictions and shielding federal officials from civil damages lawsuits.

Ms. Pillard also served as a Deputy Assistant Attorney General in the Office of Legal Counsel, the office charged with advising the President, the Attorney General and federal law enforcement agencies on the scope of their authorities in criminal, civil and national security matters. Among others, that office provides advice to the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Homeland Security, and the Department of Defense. One of the OLC attorney's most important roles is to ensure that law enforcement officials and intelligence agencies have the tools necessary to keep Americans safe while simultaneously ensuring that these tools conform to constitutional and statutory limitations. Ms. Pillard's experience navigating that line gives her unique understanding of the obligations and needs of law enforcement.

As a scholar, Ms. Pillard has written on issues concerning law enforcement with a sensitive and balanced attention both to ensuring that law enforcement activities are consistent with constitutional constraints, and that law enforcement officials have the authority and the protection necessary to do their jobs effectively. She has written leading articles on how the OLC and the Solicitor General's office pursue national law enforcement and national security interests within legal and constitutional bounds, and on immunity doctrines as they affect law enforcement officials' daily activities. These articles show Ms. Pillard to be a careful and sensible scholar, rigorously attentive to legal doctrine, and cognizant of the ways that law affects government operations and the safety of our people and nation.

This letter takes no position on the ongoing controversy surrounding the appropriate number of judges on the D.C. Circuit. But we believe that if additional judges are to be confirmed, Ms. Pillard is superbly qualified, and will bring to the bench a wealth of experience and sound judgment in dealing with constitutional and statutory law as it affects the implementation of national security and law enforcement on a daily basis. We urge her swift confirmation.

Sincerely,

Robin Abrams
Former Deputy Chief of the Criminal Division for the U.S. Attorney's Office, Southern District of New York; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Martha Boersch
Former Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of California

Jeffrey Bornstein
Former Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of California

Sean Coffey
Former Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Miles Ehrlich
Former Trial Attorney, Public Integrity Section, DOJ; Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of California

Jamie Gorelick
Former Deputy Attorney General; General Counsel, Department of Defense

Michele Hirshman
Former First Deputy Attorney General, State of New York; Deputy Chief Appellate Attorney and Chief of General Crimes and Public Corruption Units, U.S. Attorney's Office, Southern District of New York; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Matthew Jacobs
Former Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of California

David Kris
Former Assistant Attorney General for National Security; Associate Deputy Attorney General, Department of Justice (DOJ); Attorney, Criminal Division, DOJ

Carl H. Loewenson, Jr.
Former Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Daniel Marcus
Former Associate Attorney General, DOJ; General Counsel, 9/11 Commission

Mark Matthews
Former Deputy Commissioner Services and Enforcement, Internal Revenue Service; Chief, Criminal Investigations Division, Internal Revenue Service (IRS); Deputy Assistant Attorney General, Tax Division, DOJ; Deputy Chief of the Criminal Division for the U.S. Attorney's Office, Southern District of New York; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Julie Rose O'Sullivan
Former Associate Counsel, Whitewater Independent Counsel's Office; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

David W. Ogden
Former Deputy Attorney General, Assistant Attorney General for the Civil Division, DOJ; Chief of Staff to the Attorney General, DOJ; Counselor to the Attorney General, DOJ; Associate Deputy Attorney General, DOJ; Deputy General Counsel, Department of Defense

Richard Olderman
Former Assistant U.S. Attorney, U.S. Attorney's Office, District of Columbia

Lisa Kate Osofsky
Former Deputy General Counsel, Federal Bureau of Investigation (FBI); Assistant U.S. Attorney, U.S. Attorney's Office for the Northern District of Illinois

Karen Popp
Former Associate White House Counsel; Attorney, Office of Legal Counsel, Department of Justice; Assistant U.S. Attorney, Eastern District of New York

Ismail Ramsey
Former Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of California

Stephen C. Robinson
Retired U.S. District Judge, Southern District of New York; former U.S. Attorney, District of Connecticut; Principal Deputy General Counsel, FBI; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Paul Rosenzweig
Former Deputy Assistant Secretary, Department of Homeland Security (DHS); Acting Assistant Secretary for International Affairs, DHS

John Savarese
Former Chief Appellate Attorney, U.S. Attorney's Office, Southern District of New York; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Howard Shapiro
Former General Counsel, FBI; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Paul Shechtman
Former Director of Criminal Justice New York State; Counsel to the District Attorney New York County; Chief Criminal Division, U.S. Attorney's Office, Southern District of New York

Mark Stein
Former Deputy Chief of the Criminal Division for the U.S. Attorney's Office, Southern District of New York; Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York

Beth Wilkinson
Former Special Attorney to the U.S. Attorney General in *United States v. McVeigh & Nichols*, DOJ; Special Counsel to the Deputy Attorney General (Terrorism and Violent Crime Section), DOJ; Assistant U.S. Attorney, Eastern District of New York; Special Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of Florida, in *United States v. Noriega*; Assistant to the General Counsel of the Army for Intelligence and Special Operations

July 17, 2013

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

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

Dear Senators Leahy and Grassley:

We write, as lawyers who practice before the Supreme Court, to urge you to confirm pending nominee, Cornelia (Nina) Pillard, to the U.S. Court of Appeals for the D.C. Circuit. Some of us have served in the Office of Solicitor General, as has Professor Pillard. Some of us have worked on cases with or against Professor Pillard. Some of us know her through her leadership of the Supreme Court Institute and her frequent volunteer service at moot courts and other bar events. We hold a range of political and jurisprudential views, but we speak together in support of Professor Pillard's confirmation. We believe that Professor Pillard has all the attributes to be an exceptional D.C. Circuit judge: she is extremely bright, sensible, respectful of the views of others, and dedicated to fair and impartial administration of the law.

Professor Pillard has had a broad-ranging legal career, including arguments in nine Supreme Court cases and briefs in dozens more. In the Supreme Court, her clients have included businesses, a taxpayer, students, homeowners and employees, as well as the United States and public officials in their private or governmental capacities. She worked as a career lawyer in the Solicitor General's Office. She not only has impressive trial and appellate litigation experience in federal courts around the country, but also, as a Deputy Assistant Attorney General in the Office of Legal Counsel, has been a top executive branch legal advisor. Professor Pillard is currently a tenured professor at Georgetown Law, where her core teaching responsibilities include the required first-year courses in constitutional law and civil procedure.

Professor Pillard is also Faculty Co-Director of the Supreme Court Institute (SCI), a unique project at Georgetown University Law Center, dedicated to improving practice before the Supreme Court. The SCI recruits professors and attorneys with experience in Supreme Court litigation to act as mock justices to help prepare lawyers for oral argument in the Court. The SCI offers its services impartially on a first-come, first-served basis to advocates with upcoming cases in the Supreme Court, and it has become so popular in recent years that it assisted lawyers in every case argued in the Court's last Term. Chief Justice Roberts, Justices Scalia and Ginsburg, and many others from the bench and bar have praised the work of the SCI in contributing to the quality of advocacy. Most of us have participated as advocates and/or Justices at SCI moot court sessions. Over more than a decade, Professor Pillard has personally mooted dozens of cases, whether the advocate is a first-time lawyer or former Solicitor General, doing her best to help each advocate develop and present the best argument possible to the Court, regardless of the issue in the case or the ideological position of the party being represented. We believe that Professor Pillard would bring to the D.C. Circuit unquestioned professional integrity and intellect, a breadth of experience, and dedication to fairness and the rule of law. We urge her confirmation.

Respectfully,

Donald B. Ayer
Jones Day
Deputy Solicitor General, 1986-1988

J. Scott Ballenger
Latham & Watkins LLP

H. Christopher Bartolomucci
Bancroft PLLC
Associate Counsel to the President, 2001-2003

Lisa S. Blatt
Arnold & Porter LLP
Assistant to the Solicitor General, 1996-2009

Richard P. Bress
Latham & Watkins LLP
Assistant to the Solicitor General, 1994-1997

Louis R. Cohen
Wilmer Cutler Pickering Hale and Dorr LLP
Deputy Solicitor General, 1986-1988

Drew S. Days III
Yale Law School
Solicitor General, 1993-1996

Walter Dellinger
O'Melveny & Myers LLP
Acting Solicitor General, 1996-1997

Edward C. DuMont
Wilmer Cutler Pickering Hale and Dorr LLP
Assistant to the Solicitor General, 1992-1996 & 1997-2001

H. Bartow Farr, III
Law Office of H. Bartow Farr
Assistant to the Solicitor General, 1976-1978

James A. Feldman
Lecturer in Law, University of Pennsylvania Law School
Assistant to the Solicitor General, 1989-2006

Jeffrey Fisher
Professor of Law
Co-Director, Stanford Law School Supreme Court Litigation Clinic
Stanford Law School

David C. Frederick
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
Co-Director, University of Texas Supreme Court Clinic
Assistant to the Solicitor General, 1996-2001

Jerrold J. Ganzfried
Holland & Knight
Assistant to the Solicitor General, 1981-1987

Irv Gornstein
Georgetown University Law Center
Assistant to the Solicitor General, 1994-2007

Michael H. Gottesman
Georgetown University Law Center

Jonathan D. Hacker
O'Melveny & Myers LLP

Mark E. Haddad
Sidley Austin LLP

Pamela S. Karlan
Kenneth and Harle Montgomery Professor of Public Interest Law
Co-Director, Stanford Law School Supreme Court Litigation Clinic
Stanford Law School

Neal Katyal
Georgetown University Law Center & Hogan Lovells
Acting Solicitor General, 2010-2011
Deputy Solicitor General, 2009-2010

Stephen B. Kinnaird
Paul Hastings
Lecturer in Law, University of Pennsylvania Law School

Jeffrey A. Lamken
MoloLamken LLP
Assistant to the Solicitor General, 1997-2003

Richard J. Lazarus
Howard and Katherine Abel Professor of Law
Harvard Law School
Assistant to the Solicitor General, 1986-1989

Robert A. Long
Covington & Burling LLP
Assistant to the Solicitor General, 1990-1993

Ronald Mann
Albert E. Cinelli Enterprise Professor of Law

Columbia Law School
Assistant to the Solicitor General, 1991-1994

Alan B. Morrison
George Washington University Law School

Carter G. Phillips
Sidley Austin LLP
Assistant to the Solicitor General, 1984-1986

Andrew J. Pincus
Mayer Brown LLP
Visiting Lecturer in Law, Yale Law School
Assistant to the Solicitor General, 1984-1988

Lawrence S. Robbins
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
Assistant to the Solicitor General, 1986-1990

Charles A. Rothfeld
Mayer Brown LLP
Visiting Lecturer in Law, Yale Law School
Assistant to the Solicitor General, 1984-1988

Kevin Russell
Goldstein & Russell, PC

Paul M. Smith
Jenner & Block LLP

Catherine E. Stetson
Hogan Lovells

Kathleen M. Sullivan
Quinn Emanuel Urquhart & Sullivan LLP
Former Dean, Stanford Law School

Laurence H. Tribe
Carl M. Loeb University Professor and
Professor of Constitutional Law
Harvard Law School

Barbara D. Underwood
Solicitor General of New York, 2007-present
Acting Solicitor General, United States, 2001
Principal Deputy Solicitor General, United States, 1998-2000

Lawrence G. Wallace
Deputy Solicitor General, 1970-2003
Assistant to the Solicitor General, 1968-1969

Seth P. Waxman
Wilmer Cutler Pickering Hale and Dorr LLP
Solicitor General, 1997-2001

Paul R.Q. Wolfson
Wilmer Cutler Pickering Hale and Dorr LLP
Assistant to the Solicitor General, 1994-2002

Christopher J. Wright
Wiltshire & Grannis
Assistant to the Solicitor General, 1984-1994

The views set forth in this letter are solely those of the individual signatories, and institutional affiliations are listed for identification purposes only.

GEORGETOWN LAW

Viet D. Dinh
Professor of Law

July 18, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Nomination of Cornelia Pillard

Dear Chairman Leahy and Ranking Member Grassley:

I write in support of the nomination of Professor Cornelia Pillard for the United States Court of Appeals for the District of Columbia Circuit.

Having been her colleague at the Georgetown University Law Center since 1997, I know well Professor Pillard's intellect, integrity and temperament. We have participated in the same academic community for more than fifteen years, attending countless scholarly workshops, faculty meetings and other law school events together. We have on occasion taught and advised the same students, and I know she is committed to teaching effectively in the classroom, mentoring students through their studies, and helping our graduates to achieve their career aspirations, whatever they may be.

I also know Professor Pillard in another relevant capacity, having argued *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721 (2003), alongside her in the Supreme Court. I was then President George W. Bush's Assistant Attorney General for Legal Policy and was asked to present the United States' defense of the constitutionality of the Family and Medical Leave Act. Professor Pillard, as lead Supreme Court counsel for respondent William Hibbs, argued the same side. We worked closely together, from developing the first ideas we each had for how to present the issues, to fine-tuning the details of how to frame our oral arguments before the Court. She argued the case brilliantly, having considered all sides of the case and refuting objections effectively and with respect. By a 6-3 vote, with the opinion written by then-Chief Justice Rehnquist, we prevailed and reaffirmed the power of Congress to enact necessary legislation to remedy discrimination.

600 New Jersey Avenue, NW Washington, DC 20001-2075
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dinhv@law.georgetown.edu

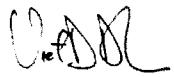
Based on our long and varied professional experience together, I know that Professor Pillard is exceptionally bright, a patient and unbiased listener, and a lawyer of great judgment and unquestioned integrity. We certainly do not agree on the merits of every issue, but Nina has always been fair, reasonable, and sensible in her judgments. She approaches faculty hiring, teaching and curriculum, and matters of faculty governance on their merits, without any ideological agenda--at times even against the tide of academic popularity to defend and respect different views and different types of people.

As we do not share academic specialties, I have not studied Professor Pillard's writings in full, but I know her to be a straight shooter when it comes to law and legal interpretation. She is a fair-minded thinker with enormous respect for the law and for the limited, and essential, role of the federal appellate judge -- qualities that make her well prepared to taken on the work of a D.C. Circuit judge. I am confident that she would approach the judicial task of applying law to facts in a fair and meticulous manner.

I understand the Judiciary Committee may be evaluating the optimal number of active judges for the District of Columbia Circuit. I do not know the answer to that recurring question, but I do know that Professor Pillard would bring great credit to the judges of the Circuit, whatever their numbers.

Please contact me should you have any questions or if I can provide further information.

Sincerely,



Viet D. Dinh

July 22, 2013

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: *Nomination of Cornelia T.L. Pillard to United States Court of Appeals for the District of Columbia Circuit*

Dear Chairman Leahy and Ranking Member Grassley:

We, the undersigned, have served in the U.S. armed forces and have worked to ensure that the military is able to take full advantage of the talents of dedicated women who wish to serve their nation. We write in strong support of the nomination of Cornelia (Nina) Pillard to the U.S. Court of Appeals for the District of Columbia Circuit.

Nina Pillard has exceptional credentials, a broad range of legal experience, and a reputation for being thoughtful and fair-minded. She has litigated at all levels of the federal courts, including the Supreme Court, where she has argued nine cases. Ms. Pillard is currently a tenured law professor at Georgetown University Law Center, where she has taught constitutional law, civil procedure, employment law and policy, and international and transnational law over the last fifteen years.

Throughout her career, Professor Pillard has dedicated herself to advancing principles of equality. She joined the NAACP Legal Defense and Education Fund, the organization that litigated *Brown v. Board of Education*, and litigated civil rights cases for five years. She later vindicated a state employee's right to take unpaid leave to care for his ailing wife under the Family and Medical Leave Act (FMLA), in *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003), successfully arguing that the FMLA was intended to remedy discriminatory assumptions that women are family caregivers.

We want to highlight Professor Pillard's role in one case that is emblematic of that dedication and has particular significance for us: *United States v. Virginia*, 518 U.S. 515 (1996). Although the military service academies had admitted women since the 1970s, the Virginia Military Institute (VMI), a public college in Virginia that has a tradition of an intensely disciplined "adversative" educational training, including barracks, uniforms, and a military-style hierarchy for students, did not. Many VMI graduates did, and continue to, enter military service after graduation.

While an Assistant in the U.S. Solicitor General's office, Professor Pillard wrote the legal briefs that challenged VMI's exclusion of women. She crafted the arguments that the failure to admit women violated the Equal Protection Clause of the U.S. Constitution. The briefs argued that VMI lacked a persuasive justification for excluding women, and instead relied on stereotypes about whether women could succeed in VMI's unique educational environment. In particular, the briefs contended that "[t]he continued exclusion of women from VMI . . . imparts the impermissible message that, as a matter of official policy, Virginia continues to believe that women are not suited for rigorous military training, or for military service or other leadership positions that require such training." The Supreme Court agreed: in a 7-1 decision, it found VMI's exclusion of women to be unconstitutional. The majority opinion stated unequivocally that "generalizations about 'the way women are,' estimates of what is appropriate for *most* women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description."

Our experience advocating for the full participation of women in the armed forces has shown us that women, indeed, are suited for rigorous military training, service, and leadership. Our military and our nation benefit when both women and men are able to fully contribute to the defense of our country. We support Professor Pillard's nomination because her accomplishments and credentials demonstrate that she has the qualifications to be a federal appellate judge, and because her dedication to principles of equality demonstrates that she will be a great one. We urge you to give her a swift and fair hearing, and vote to approve her nomination.

Sincerely,

Nancy R. Adams, Major General, USA (Ret.), RN, MSN, FAAN, Ft. Lauderdale, FL
Julia J. Cleckley, Brigadier General, ARNG (Ret.), Fredricksburg, VA
Gina S. Farrisee, Major General, USA (Ret.), Burke, VA
Evelyn "Pat" Foote, Brigadier General, USA (Ret.), Accokeek, MD
Claudia J. Kennedy, Lieutenant General, USA (Ret.), Hilton Head Island, SC
Dennis J. Laich, Major General, USA (Ret.), Powell, OH
Gale S. Pollock, Major General, USA (Ret.), CRNA, FACHE, FAAN, Falls Church, VA
Wilma L. Vaught, Brigadier General, USAF (Ret.), Falls Church, VA
Mary A. Baldy-Klotz, Lieutenant Colonel, NC, USA (Ret.), Dallas, TX
Margarethe Cammermeyer, Colonel, USAR (Ret.), Langley, WA
Marilla J. Cushman, Lieutenant Colonel, USA (Ret.), Springfield, VA
Sherry de Vries, Lieutenant Colonel, USMC (Ret.), Alexandria, VA
Debrah Feil, Lieutenant Colonel, NC, USA (Ret.), The Hills, TX
Elizabeth W. Fleming, Colonel, JA USAR (Ret.), Kodiak, AK
Norma L. Garrett, Colonel, USA (Ret.), San Antonio, TX
Lawrence Korb, Captain, USN (Ret.), Arlington, VA
Cindy McNally, Chief Master Sergeant, USAF (Ret.), Yorktown, VA
Robert (Mac) McNally, Chief Master Sergeant, USAF (Ret.), Yorktown, VA
Paul Mango, Pittsburgh, PA
Lory Manning, Captain, USN (Ret.), Arlington, VA
Debra D. Mark, Lieutenant Colonel, NC, USA (Ret.), Honolulu, HI

Stephanie Marshall, Colonel, USA (Ret.), Honolulu, HI
Joellen Oslund, Captain, USNR (Ret.), Castro Valley, CA
Dwayne Oslund, Captain, USNR (Ret.), Castro Valley, CA
Michael E. Pheneger, Colonel, USA (Ret.), Tampa, FL
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Loren Simpson, Command Sergeant Major, USA (Ret.), Virginia Beach, VA
Genie Davison Sorensen, Lieutenant Colonel, NC, USA (Ret.), Austin, TX
Alfonse P. Squitieri, Colonel, USA (Ret.), MD, FACS, DABU, Medford, NJ
Glenna L. Tinney, Captain, MSC, USN (Ret.), Alexandria, VA

Cc.: Senate Judiciary Committee

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July 22, 2013

VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Women's Bar Association's Endorsement of Cornelia (Nina) Pillard for Judge, U.S. Court of Appeals for the District of Columbia Circuit

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Women's Bar Association of the District of Columbia (WBA), I am writing to express the WBA's support for the nomination of Cornelia (Nina) Pillard to the U.S. Court of Appeals for the District of Columbia Circuit.

Our principal goal in endorsing judicial candidates is to ensure the appointment of qualified judges and, consistent with that goal, to increase the number of judges who support the mission of the WBA. We consider, in our recommendations, the candidate's background, level of experience, connection to the District of Columbia, record of public service, a demonstrated commitment to the equality of all litigants, and an attention to women's needs and concerns.

We evaluate each candidate for endorsement by reviewing his or her resume and other supporting documentation, and discussing the candidate's skills and character with references. We ask each person contacted specific questions regarding the candidate's qualifications, integrity, temperament, experience, and commitment to the concepts of equal opportunity and equal justice under law.

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbadc.org Web: www.wbadc.org

Ms. Pillard is exceptionally well-qualified for the position to which she has been nominated, and we believe that she would be an outstanding addition to the U.S. Court of Appeals for the District of Columbia Circuit. She graduated *magna cum laude* from Harvard Law School, where she served as the Book Review and Commentary Editor of the Harvard Law Review. After graduating, she clerked for Judge Louis H. Pollak on the United States District Court for the Eastern District of Pennsylvania. Ms. Pillard worked as an Assistant Counsel for the NAACP Legal Defense & Education Fund for five years. She then served as Assistant to the Solicitor General at the U.S. Department of Justice from 1994-1997. In 1997, she joined the faculty of the Georgetown University Law Center as an Associate Professor. From 1998-2000, she took leave from the law school to serve as a Deputy Assistant Attorney General in the Office of Legal Counsel in the United States Department of Justice. She subsequently rejoined the faculty, becoming a tenured professor in 2005, where she teaches constitutional law, civil procedure, employment law and policy, and international and transnational law, and has published many law review articles. During her outstanding career, Ms. Pillard has argued nine cases in the U.S. Supreme Court, and drafted briefs in dozens more. She has served as Faculty Co-Director of the Supreme Court Institute since 2011, which provides pro bono help to lawyers preparing for arguments before the Supreme Court.

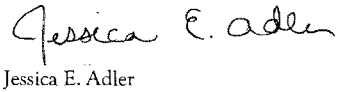
Ms. Pillard played a pivotal role in two key Supreme Court cases of importance to women. In *United States v. Virginia*, 518 U.S. 151 (1997), as an Assistant to the Solicitor General, Ms. Pillard wrote the briefs submitted by the United States government, which argued that the male-only admissions policy of the Virginia Military Institute (VMI) violated the Equal Protection Clause of the Constitution. VMI and The Citadel in South Carolina were the only two state colleges in the country that still excluded women. The briefs argued, in part, that gender stereotypes cannot provide a valid basis for sex-based distinctions by government actors. In a 7-1 decision, the Supreme Court agreed, and struck down VMI's admissions policy, and The Citadel, too, quickly opened its doors to women. Then, in 2003, as a member of the Georgetown Law faculty, Ms. Pillard volunteered to represent William Hibbs, a state employee who was fired because he sought to take unpaid leave under the Family and Medical Leave Act (FMLA) to care for his wife, in *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003). She successfully argued that state employers should be liable for damages for violations of the family leave provisions of the FMLA because Congress intended to remedy sex discrimination in passing the FMLA, and the Court in a 6-3 decision agreed.

Ms. Pillard was honored as the Public Interest Professor of the Year in 2005. She has served on the Board of Directors of the Center for WorkLife Law, and currently serves on the Executive Committee of the Board of Directors of the American Arbitration Association. Moreover, she has dedicated considerable time to mentoring others during her career: she mentored low-income girls through a Big Sister program as a college student; she has mentored countless law students during her 13 years as a professor; and she served on the Board of Friends of the Double Discovery Center at Columbia College, which works with low-income and first generation college Manhattan area youth each year to ensure academic skills building, high school graduation, college entrance and completion, and responsible adulthood.

Ms. Pillard's record of achievement, and unanimous rating of Well-Qualified, the highest rating available, from the ABA's Standing Committee on the Federal Judiciary, reflects her significant talents as an appellate litigator and scholar. Her legal career is remarkable for her accomplishments and the breadth and depth of her experience, and her reputation for fair-mindedness, collegiality, and dedication to principles of equal justice is well founded.

The WBA is proud to support Ms. Pillard's nomination and encourages the Senate to take prompt action to confirm her to the U.S. Court of Appeals for the District of Columbia Circuit. If you have any questions regarding this letter of support, please contact me at 202-898-0055 or at president@wbadc.org.

Sincerely,



Jessica E. Adler
President

cc: Cornelia Pillard, Esq.
Co-Chairs, WBA Judicial and Executive Endorsement Committee:
Ms. Sasha Battle
Ms. Rachel Levinson Waldman
Ms. Elizabeth Marvin
WBA Board of Directors

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
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The Leadership Conference
on Civil and Human Rights

1629 K Street, NW
10th Floor
Washington, DC
20006

202.466.3311 voice
202.466.3435 fax
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International Union, United Automobile Workers of America
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Compliance/Enforcement Committee Chair
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Anti-Defamation League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

July 23, 2013

Support Cornelia Pillard's Nomination to the D.C. Circuit

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the confirmation of Cornelia Pillard to the U.S. Court of Appeals for the District of Columbia Circuit. Ms. Pillard is a highly accomplished appellate lawyer and law professor with a wealth of diverse experience and a distinguished career in public service. Given her steadfast commitment to enforcing the rule of law and protecting the roles of the courts, Congress, the executive branch, and the states, Ms. Pillard will be an objective, thoughtful, and impartial voice on the court. We urge the Senate to vote "yes" on her confirmation.

Cornelia Pillard's credentials are outstanding and have earned her a "Unanimously Well Qualified" rating from the American Bar Association. As an appellate litigator, she has argued dozens of cases and issued more than 25 briefs in the U.S. Supreme Court. At the outset, Ms. Pillard will be prepared to handle an array of legal issues that the D.C. Circuit addresses, since she has argued cases involving constitutional law, national security, civil rights law, and administrative law, and has become a leading expert in arbitration law. Given these qualifications, it is no wonder her nomination has garnered the support of numerous former high-ranking government lawyers and law enforcement officials.

Cornelia Pillard graduated magna cum laude with Distinction from Yale College and magna cum laude from Harvard Law School. She then clerked for Judge Louis H. Pollack on the U.S. District Court for the Eastern District of Pennsylvania. She served in the Office of the Solicitor General from 1994-98, and then as Deputy Assistant Attorney General in the Office of Legal Counsel at the Justice Department from 1998-2000. After leaving the government, Ms. Pillard became a professor of law at Georgetown University Law Center, where she has taught for 15 years.

Ms. Pillard made her mark as a stellar litigator at the Department of Justice, briefing and arguing several landmark cases. She is credited with writing the winning briefs in *U.S. v. Virginia* (1997), which opened to women the last male-only military college, Virginia Military Institute. Ms. Pillard has continued to litigate a number of high profile cases while at Georgetown Law. For example, in *Nevada Dept. of Human Resources v. Hibbs* (2003), she served as lead counsel in the Supreme Court with the Bush administration as co-counsel, successfully representing Mr. Hibbs, a state employee, who was fired for seeking to use the Family and Medical Leave Act (FMLA). The Supreme Court upheld Mr. Hibbs' use of the FMLA in a majority decision written by then-Chief Justice Rehnquist.

In addition, Ms. Pillard has shared her tremendous expertise in appellate litigation with the broader legal community. As co-director of the renowned Georgetown Supreme Court Litigation clinic, she has demonstrated an unbiased approach to the rule of law and provided pro-bono assistance to scores of lawyers preparing for arguments before the Supreme Court. Her work has not only garnered the respect of advocates of all backgrounds, but many

accolades from Supreme Court Justices who have noted the improved quality of arguments in the Court.

Cornelia Pillard's record demonstrates her ability to make objective decisions on a number of multifaceted and prominent cases that will surely come before the court. Ms. Pillard will offer a unique perspective, given that she has represented a wide array of interests during her tenure in the Justice Department and while assisting attorneys at the Supreme Court Litigation Clinic. Her nomination to the D.C. Circuit is important not only because of her impeccable legal credentials and experiential diversity that she brings, but also because of the role this court plays in the administration of justice in our country.

The D.C. Circuit is responsible for deciding uniquely complex and nationally significant cases, with exclusive responsibility for hearing cases on environmental regulations, national security issues, and voting rights. It is also the court that most closely oversees federal agency action on issues including health care, consumer protection, workers' rights, and workplace safety. Yet the D.C. Circuit is operating with nearly one third of its congressionally mandated seats vacant. According to the Administrative Office of the U.S. Courts, "the caseload per active judge on the D.C. Circuit has risen more than 50 percent since 2005." As of December 31, 2012, there were 1,419 pending cases, meaning a caseload of 177.5 cases per active judge. Today, there are three fewer active judges on the D.C. Circuit than there were in 2005 when the case load was just 119 cases per active judge. It is contrary to the interests of justice for the court to operate understaffed.

The president has nominated an exceptional and renowned legal advocate to a vacancy on an important federal court. It is imperative that the Senate now makes a good-faith effort to provide prompt "advice and consent" by moving Ms. Pillard's nomination through the Senate Judiciary Committee and onto the Senate floor as quickly as possible. We urge you to support the nomination of Cornelia Pillard.

If you have any questions, please feel free to contact Sakira Cook, Senior Policy Associate, at cook@civilrights.org or (202) 263-2894.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

July 23, 2013

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Cornelia T.L. Pillard to the United States Court of Appeals for the District of Columbia Circuit*

Dear Senators Leahy and Grassley:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Cornelia (Nina) T.L. Pillard to the United States Court of Appeals for the District of Columbia Circuit.

Ms. Pillard is exceedingly well-qualified to serve on this important court. She graduated *magna cum laude* from Harvard Law School, where she served as the Book Review and Commentary Editor of the Harvard Law Review. She clerked for Judge Louis H. Pollak on the United States District Court for the Eastern District of Pennsylvania. Ms. Pillard worked as an Assistant Counsel for the NAACP Legal Defense & Education Fund, and then served as Assistant to the Solicitor General at the U.S. Department of Justice. In 1997, she joined the faculty of the Georgetown University Law Center. After a two-year leave to serve as a Deputy Assistant Attorney General in the Office of Legal Counsel in the United States Department of Justice, she rejoined the faculty and has taught there ever since.

During her career, Ms. Pillard has argued nine cases in the U.S. Supreme Court, and drafted briefs in over 25 cases. She is widely regarded as an expert in constitutional law, civil procedure, and trial practice, and has published numerous law review articles. Ms. Pillard was honored as the Public Interest Professor of the Year in 2005. While a member of the Georgetown Law faculty, she has served as the Academic Co-Director of the Center for Transnational Legal Studies, a Fellow of the Woodrow Wilson International Center for Scholars, and currently serves as Faculty Co-Director of the Supreme Court Institute. She chaired the Scholars' Reading Group for the American Bar Association's Standing Committee on the Federal Judiciary in 2005 and 2006, and assisted the Committee in reviewing the record of then-

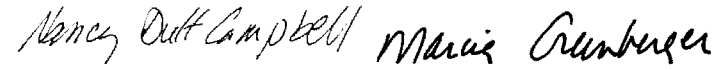
Judge Samuel A. Alito, who received a unanimous "Well-Qualified" rating from the Committee in connection with his nomination to be an Associate Justice of the United States Supreme Court. In addition to her leadership roles on the faculty of Georgetown Law, Ms. Pillard has served on the boards of directors of several nonprofit organizations, including the American Arbitration Association, where she currently serves on the Executive Committee. Ms. Pillard's many accomplishments are reflected by the unanimous "Well-Qualified" rating she received from the ABA Standing Committee on the Federal Judiciary.

Two aspects of Ms. Pillard's extraordinary career are particularly notable to the Center. First, Ms. Pillard played a key role in *United States v. Virginia*, 518 U.S. 151 (1997). In this case filed by the George H.W. Bush administration, Ms. Pillard wrote the briefs submitted by the U.S. Solicitor General that convinced the Supreme Court to declare unconstitutional the male-only admissions policy of the Virginia Military Institute (VMI). The briefs argued that gender stereotypes cannot provide a valid basis for sex-based distinctions by government actors, and the Supreme Court, in a 7-1 decision, agreed. Second, Ms. Pillard represented William Hibbs, a state employee who was fired because he sought to take unpaid leave under the Family and Medical Leave Act (FMLA) to care for his wife, in *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003). The Court, in a decision written by Chief Justice William Rehnquist, ruled that money damages under the FMLA's family-care provision are available against state, as well as private, employers, on the grounds that the provision constitutes "appropriate legislation" under the Fourteenth Amendment to redress pervasive sex discrimination. Ms. Pillard successfully argued that the provision was intended to remedy discrimination arising from assumptions that women, and not men, are family caretakers.

Ms. Pillard's litigation experience and her years of teaching constitutional law have established her as a legal expert committed to equal justice. We have known Ms. Pillard for many years, and as a result, we can personally attest to her incisive legal mind and thoughtful analyses, as well as to her excellent temperament and collegiality. In addition, Ms. Pillard's confirmation would increase the diversity on the D.C. Circuit Court of Appeals, where only five women have served as judges in the past 120 years.

For all of these reasons, the Center offers its strong support of Nina Pillard to the United States Court of Appeals for the District of Columbia Circuit and urges you to support her nomination. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,



Nancy Duff Campbell
Co-President

Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee

July 23, 2013

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Senator Charles Grassley
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senators Leahy and Grassley:

As alumni of the Virginia Military Institute and veterans of the U.S. military, we are writing to express our strong support for the confirmation of Cornelia (Nina) T.L. Pillard to the U.S. Court of Appeals for the D.C. Circuit.

Because of Professor Pillard's outstanding work on *United States v. Virginia* before the U.S. Supreme Court, our alma mater, VMI, opened its doors to female cadets in 1997. At that time, VMI and The Citadel in South Carolina were the nation's last male-only public colleges. Professor Pillard's victory on our behalf put an end to discriminatory exclusion of female college applicants once and for all.

Established in 1839, VMI is the oldest military college in the nation. For nearly 175 years, VMI has given outstanding education and training to its citizen-soldiers and has seen them excel in civilian and military leadership. Our alma mater takes pride in its rich tradition cultivating a love of learning and a commitment to service in the public and private sectors.

VMI gauges its success as an institution by measuring the societal contributions of its alumni. Professor Pillard would rank high for her work to open VMI to female cadets. The case was initiated by the George H.W. Bush Administration and made its way to the Supreme Court during Professor Pillard's tenure at the office of the Solicitor General of the United States. Professor Pillard drafted the five Supreme Court briefs for the United States and her winning arguments opened VMI's doors for women who have become leaders in the armed forces, elsewhere in public service, and in the private sector.

Absent her extraordinary work, women would have had no chance even to be considered for admission to VMI. Enabled by the *United States v. Virginia* decision, we all competed on equal terms for admission to and distinction at this esteemed institution. Josiah Bunting III, the Superintendent of VMI when female cadets were first integrated into the corps, has since called VMI's transition to coeducation "one of its finest hours." We couldn't agree more.

As VMI alumni who have benefited firsthand from this nominee's dedication to advancing the rule of law under our Constitution, we strongly urge you to confirm of Nina Pillard to the D.C. Circuit Court.

Sincerely,

Bree Adams Guiterman
LCDR USNR
VMI Class of 2004

Kylie Lowe
New Mexico State Police
VMI Class of 2012

Elizabeth C. Dobbins
First Lieutenant, USMCR
J.D., University of Virginia School of Law, 2013
VMI Class of 2010

Matthew Steven Lowe
Special Operations Pilot, 1st Lieutenant, United States Air Force
VMI Class of 2011

Arthur Bradford Morrill IV
Specialist, VAARNG
VMI Class of 2012

Robert L. Fendley
JD, American University Washington College of Law
VMI Class of 2010

Kylie Morgan Lowe
VMI Class of 2012

Samantha D. Henke
Second Lieutenant, U.S. Army
VMI Class of 2012

Raevon Pulliam
Mechanical Engineer
VMI Class of 2007

July 24, 2013

VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Endorsement of Cornelia (Nina) Pillard for Judge, U.S. Court of Appeals for the District of Columbia Circuit

Dear Chairman Leahy and Ranking Member Grassley:

The National Conference of Women's Bar Associations (the "NCWBA") proudly endorses and supports the nomination of Cornelia (Nina) Pillard to the U.S. Court of Appeals for the District of Columbia Circuit.

The NCWBA is an affiliate of the American Bar Association. Our members are women's bar associations from across the United States and Canada. Nationwide, the NCWBA represents approximately 35,000 women lawyers.

It is the mission of the NCWBA to advocate for the equality of women in the legal profession and in society by mobilizing and uniting women's bar associations to effect change in gender-based processes and laws. To that extent, one of the objectives of the NCWBA is to expand concrete methods by which legal practices can increase the diversity and representation of women lawyers at all levels in the practice of law, including increasing the number of women lawyers in federal and state judiciaries. The NCWBA recognizes the importance of descriptive representation: having judges who are representative of the population they serve. This is both

of critical symbolic and material importance because it generates group empowerment and leads to greater confidence in the judicial system and government in general. This can be achieved through gender and racial diversity on the bench.

Ms. Pillard is exceptionally well-qualified to be a Justice on the U.S. Court of Appeals for the District of Columbia Circuit. Ms. Pillard is a tenured professor at Georgetown University Law Center where she teaches constitutional law, civil procedure, employment law and policy, and international and transnational law. She has published numerous law review articles throughout her career. Importantly, Ms. Pillard has argued nine cases before the U.S. Supreme Court, and briefed many more. Since 2011, she has served as Faculty Co-Director of the Supreme Court Institute that provides *pro bono* assistance to lawyers preparing for arguments before the Supreme Court.

Ms. Pillard played a pivotal role in two key Supreme Court cases of importance to women. In *United States v Virginia*, 518 U.S. 151 (1997), as an Assistant to the Solicitor General, Ms. Pillard wrote the briefs submitted by the United States government, which argued that the male only admissions policy of the Virginia Military Institute ("VMI") violated the Equal Protection Clause of the Constitution. At the time, VMI and The Citadel in South Carolina were the only two state colleges in the country that still excluded women. Ms. Pillard's advocacy led to the Supreme Court striking down VMI's admissions policy, and The Citadel following suit to open its doors to women. In *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003), Ms. Pillard successfully argued that state employers should be liable for damages for violations of the family leave provisions of the FMLA because Congress intended to remedy sex discrimination by passing the FMLA.

Prior to teaching at Georgetown Law, Ms. Pillard was an advocate for the federal government, serving two tours at the Department of Justice and later joining the Office of the Solicitor General of the United States. Her legal abilities have been widely recognized and have earned her a unanimous rating of Well-Qualified from the ABA's Standing Committee on the Federal Judiciary.

The NCWBA proudly endorses and supports Ms. Pillard's nomination to the U.S. Court of Appeals for the District of Columbia Circuit. We recognize that for the past several years judicial vacancies have increased and remained unfilled on the federal bench. As women in the practice of law, we understand how important it is to have the judicial system working at full capacity and therefore encourage the Senate to take prompt action to confirm Ms. Pillard.

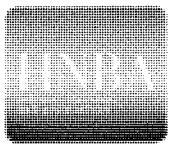
If you have any questions regarding this letter of support, please contact me at: 617-603-0552 or pberman@apslaw.com.

Sincerely,

Pamela Berman

President
National Conference of Women's Bar Associations

cc: Cornelia Pillard, Esq.



PETER M. REYES, JR.
NATIONAL PRESIDENT

August 07, 2013

Via Electronic Mail & Regular Mail

Hon. Kathryn Ruemmler
White House Counsel
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Hispanic National Bar Association Endorsement of Cornelia T.L. Pillard for the United States Court of Appeals for the District of Columbia Circuit

Dear Ms. Ruemmler:

The Hispanic National Bar Association ("HNBA") is pleased to support Cornelia T.L. ("Nina") Pillard's nomination for a Judge vacancy in the United States Court of Appeals for the District of Columbia Circuit. We believe, based on our research and deliberations, including an interview with Ms. Pillard's references and Ms. Pillard herself, that Ms. Pillard's extensive legal experience, including her impressive appellate work, makes her a qualified candidate for the United States Court of Appeals for the District of Columbia Circuit.

The HNBA undertakes a careful review of individuals who seek its endorsement. We ensure that candidates for endorsement meet the letter and the spirit of our endorsement policy, which includes such criteria as demonstrated professional qualifications and personal traits.

Ms. Pillard's exceptional legal career has been mostly dedicated to public service. As a *magna cum laude* graduate of Yale College and Harvard Law School, she began her legal career in a federal clerkship with the Honorable Louis H. Pollak. Ms. Pillard has worked as an Assistant Counsel for the NAACP Legal Defense and Education Fund, Inc. where she handled numerous individual and class-action racial discrimination cases and appeals. She also served time at the US Department of Justice as an Assistant to the Solicitor General and as Deputy Assistant Attorney General with the Office of Legal Counsel. In total, Ms. Pillard's Supreme Court work includes more than twenty-five cases that she has briefed and nine that she has argued before the Supreme Court. She currently serves as Faculty Co-Director of the Supreme Court Institute at the Georgetown University Law Center, where she assists lawyers from around the country in preparing for Supreme Court arguments, without regard to issue or position. The appellate

experience that Ms. Pollard has gained from her time as a practitioner in the public sectors provides her with highly desirable substantive experience that will serve a federal judge well.

In sum, the HNBA is pleased and proud to recommend Cornelia T.L. Pillard's nomination for a judicial position on the United States Court of Appeals for the District of Columbia Circuit. If we can be of further assistance in the nomination process, please let us know. You may contact us through our national office at (202) 223-4777 or directly at 612-367-8795. Thank you for your consideration.

Sincerely,

Peter M. Reyes, Jr.
HNBA National President

cc: Mr. Miguel Pozo, HNBA President-Elect
Mr. Robert Raben, HNBA Committee on Judicial Endorsements
Mr. Juan Sempertegui, HNBA Region V President

1200 18th STREET NW, SUITE 501 • WASHINGTON DC 20036
PHONE: 202-296-6889 • FAX: 202-296-6895 • WWW.THEUSCONSTITUTION.ORG

September 9, 2013

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

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that Nina Pillard be reported favorably out of Committee and confirmed promptly to the United States Court of Appeals for the District of Columbia Circuit.

Professor Pillard, a *magna cum laude* graduate of both Harvard Law School and Yale College, is exceptionally well-qualified to serve as a federal appellate judge. For more than a decade, she has been a Professor at the Georgetown University Law Center, where, in addition to teaching the next generation of lawyers, she has also helped direct the Supreme Court Institute, working to prepare counsel for oral argument before our Nation's highest court. The Institute's "moot court" services are provided without charge, as a public service, on a first-come, first-served basis (the Institute will generally "moot" only one side of a case), and without regard to the nature of the case, the parties, the arguments being made, or the affiliation or identity of the lawyers. The expert assistance offered by Professor Pillard and her colleagues at the Institute to improve advocacy before the Supreme Court is so helpful and sought-after that the first call a lawyer often makes after learning that the Court has agreed to review her client's case is to the Institute, to reserve its moot court services before her opponent does. This past Term, the Institute mooted counsel *in every one of the cases* argued before the Court.

Prior to her career in academia, Professor Pillard practiced law in the public interest sector and also served in the government, including as an Assistant to the Solicitor General and as the Deputy Assistant Attorney General. Professor Pillard's distinguished career and the breadth of her professional experience make her extremely well qualified to serve on the D.C. Circuit.

This conclusion is underscored by the diversity of voices supporting Professor Pillard's nomination. Those who have written to this Committee in support of Professor Pillard include the deans of prominent law schools, former members of the United States Armed Forces (including high-ranking

officers), noted legal advocates, and William Sessions, himself a former federal judge and the Director of the FBI, nominated to that position by President Ronald Reagan. The views of conservative legal scholar Viet D. Dinh, who served as the Assistant Attorney General for Legal Policy under President George W. Bush, exemplify the praise for Professor Pillard in these letters; he has written:

> Having been her colleague at the Georgetown University Law Center since 1997, I know well Professor Pillard's intellect, integrity, and temperament. . . I know her to be a straight shooter when it comes to the law and legal interpretation. She is a fair-minded thinker with enormous respect for the law and for the limited, and essential, role of the federal appellate judge -- qualities that make her well prepared to take on the work of a D.C. Circuit judge. I am confident that she would approach the judicial task of applying law to facts in a fair and meticulous manner. [1]

In her testimony before this Committee on July 24, Professor Pillard demonstrated that she understands clearly the difference between the roles she has played in her career as an advocate representing clients and as an academic, teaching and testing legal theories, and the new role she would take on if confirmed as a judge. In particular, Professor Pillard testified that, as a judge, she would put aside the bias a lawyer must have on behalf of a client and would take on a role of neutrality. And as a judge applying the Constitution, Professor Pillard appropriately explained that she would look to the text and original meaning of our Nation's charter, as well as to applicable Supreme Court precedent.

Professor Pillard clearly has the qualifications, experience, intellect and temperament to serve with great distinction on the D.C. Circuit. We urge every Senator to support her confirmation.

Respectfully,

Douglas T. Kendall
President

Judith E. Schaeffer
Vice President

cc: All Members, Senate Judiciary Committee

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[1] Letter from Viet D. Dinh to Hon. Patrick Leahy and Hon. Charles Grassley (July 18, 2013).

The Leadership Conference
on Civil and Human Rights

1629 K Street, NW
10th Floor
Washington, DC
20006

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202.466.3435 fax
www.civilrights.org

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Debra Ness
National Partnership for Women & Families
Priscilla Ouchida
Japanese American Citizens League
Terry O'Neill
National Organization for Women
Mark Pernotto
American Association of People with Disabilities
Dennis Van Roekel
National Education Association
Anthony Romero
American Civil Liberties Union
David Saperstein
Religious Action Center of Reform Judaism
Shanna Smith
National Fair Housing Alliance
Randi Weingarten
American Federation of Teachers

Compliance/Enforcement Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

September 11, 2013

Vote "Yes" on Cornelia Pillard's Nomination to the D.C. Circuit

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the confirmation of Cornelia Pillard to the U.S. Court of Appeals for the District of Columbia Circuit. Ms. Pillard is a highly accomplished appellate lawyer and law professor with a wealth of diverse experience and a distinguished career in public service. Given her steadfast commitment to enforcing the rule of law and protecting the roles of the courts, Congress, the executive branch, and the states, Ms. Pillard will be an objective, thoughtful, and impartial voice on the court. As a member of the Senate Judiciary Committee we urge the you to vote "yes" on her confirmation.

Cornelia Pillard's credentials are outstanding and have earned her a "Unanimously Well Qualified" rating from the American Bar Association. As an appellate litigator, she has argued dozens of cases and issued more than 25 briefs in the U.S. Supreme Court. At the outset, Ms. Pillard will be prepared to handle an array of legal issues that the D.C. Circuit addresses, since she has argued cases involving constitutional law, national security, civil rights law, and administrative law, and has become a leading expert in arbitration law. Given these qualifications, it is no wonder her nomination has garnered the support of numerous former high-ranking government lawyers and law enforcement officials.

Cornelia Pillard graduated magna cum laude with Distinction from Yale College and magna cum laude from Harvard Law School. She then clerked for Judge Louis H. Pollack on the U.S. District Court for the Eastern District of Pennsylvania. She served in the Office of the Solicitor General from 1994-98, and then as Deputy Assistant Attorney General in the Office of Legal Counsel at the Justice Department from 1998-2000. After leaving the government, Ms. Pillard became a professor of law at Georgetown University Law Center, where she has taught for 15 years.

Ms. Pillard made her mark as a stellar litigator at the Department of Justice, briefing and arguing several landmark cases. She is credited with writing the winning briefs in *U.S. v. Virginia* (1997), which opened to women the last male-only military college, Virginia Military Institute. Ms. Pillard has continued to litigate a number of high profile cases while at Georgetown Law. For example, in *Nevada Dept. of Human Resources v. Hibbs* (2003), she served as lead counsel in the Supreme Court with the Bush administration as co-counsel, successfully representing Mr. Hibbs, a state employee, who was fired for seeking to use the Family and Medical Leave Act (FMLA). The Supreme Court upheld Mr. Hibbs' use of the FMLA in a majority decision written by then-Chief Justice Rehnquist.

In addition, Ms. Pillard has shared her tremendous expertise in appellate litigation with the broader legal community. As co-director of the renowned Georgetown Supreme Court Litigation clinic, she has demonstrated an unbiased approach to the rule of law and provided pro-bono assistance to scores of lawyers preparing for arguments before the Supreme Court.

Her work has not only garnered the respect of advocates of all backgrounds, but many accolades from Supreme Court Justices who have noted the improved quality of arguments in the Court.

Cornelia Pillard's record demonstrates her ability to make objective decisions on a number of multifaceted and prominent cases that will surely come before the court. Ms. Pillard will offer a unique perspective, given that she has represented a wide array of interests during her tenure in the Justice Department and while assisting attorneys at the Supreme Court Litigation Clinic. Her nomination to the D.C. Circuit is important not only because of her impeccable legal credentials and experiential diversity that she brings, but also because of the role this court plays in the administration of justice in our country.

The D.C. Circuit is responsible for deciding uniquely complex and nationally significant cases, with exclusive responsibility for hearing cases on environmental regulations, national security issues, and voting rights. It is also the court that most closely oversees federal agency action on issues including health care, consumer protection, workers' rights, and workplace safety. Yet the D.C. Circuit is operating with nearly one third of its congressionally mandated seats vacant. According to the Administrative Office of the U.S. Courts, "the caseload per active judge on the D.C. Circuit has risen more than 50 percent since 2005." As of December 31, 2012, there were 1,419 pending cases, meaning a caseload of 177.5 cases per active judge. Today, there are three fewer active judges on the D.C. Circuit than there were in 2005 when the case load was just 119 cases per active judge. It is contrary to the interests of justice for the court to operate with such inadequate levels of staffing.

The president has nominated an exceptional and renowned legal advocate to a vacancy on an important federal court. The Senate Judiciary Committee should favorably report out Ms. Cornelia Pillard's nomination onto the Senate floor. We urge you to vote "yes" on her confirmation to the D.C. Circuit.

If you have any questions, please feel free to contact Sakira Cook, Senior Policy Associate, at cook@civilrights.org or (202) 263-2894.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

1101 Vermont Avenue, NW, Suite 710, Washington, DC 20005 • (202) 898-1661 • Fax: (202) 371-9744 • www.nationalfairhousing.org

September 18, 2013

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

Confirm Nina Pillard to United States Court of Appeals for the District of Columbia Circuit

Dear Chairman Leahy:

On behalf of the National Fair Housing Alliance, I write to urge you to confirm Nina Pillard for a life-time term as a judge of the U.S. Court of Appeals for the District of Columbia Circuit. Professor Pillard would only be the sixth woman in the 120-year history of the Court to serve as a judge. The Circuit is the most important circuit court in the country. Given special jurisdiction, it oversees the actions of federal agencies, with regard to civil rights, the environment, national security and other areas.

NFHA is a consortium of private, non-profit fair housing organizations from across the U.S. dedicated to promoting equal housing, lending and insurance opportunities through education, enforcement, training and research.

Professor Pillard is a nationally acclaimed, highly accomplished, and fair-minded attorney and law professor who has litigated many cases before the United States Supreme Court. Among those cases include her victory in *United States v. Virginia*, 518 U.S. 151 (1997). Professor Pillard authored the briefs that convinced the Supreme Court to open the Virginia Military Institute to women, ending the male-only admissions policy of the last state college in the country to bar admission on the basis of sex.

In her practice of law, Pillard has represented a wide range of clients, private and public, corporate and individuals. Professor Pillard has a strong connection to housing and the federal Fair Housing Act. She assisted in authoring the brief for the United States in *City of Edmonds v. Oxford House, Inc., 514 U.S. 725* (1995), leading to a Supreme Court decision helping people with disabilities secure greater access to housing.

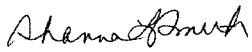
As a distinguished law professor at Georgetown University Law Center, she not only teaches students, but serves as Faculty Co-Director of Georgetown's Supreme Court Institute, where she helps to prepare attorneys for argument before the Supreme Court, regardless of the position at issue in the case.

Professor Pillard has had an exemplary career in public service. She has advised the executive branch on difficult issues of constitutional and statutory authority, while serving in the Office of Legal Counsel in the Department of Justice. In the Solicitor General's Office, Pillard repeatedly represented law enforcement in criminal and civil cases. These issues are often presented before the D.C. Circuit Court.

We urge you to support Professor Nina Pillard, who would be a superb judge and a wonderful addition to this very important court.

Please contact Deidre Swesnik at (202) 898-1661 or dswesnik@nationalfairhousing.org should you have any questions.

Sincerely,



Shanna L. Smith
President and CEO

CHAIR
Judy Perry Martinez
New Orleans, LA

Mailing Address:
2980 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa G. Arrowood
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THIRD CIRCUIT
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Philadelphia, PA 19104-2808

FOURTH CIRCUIT
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Charlotte, NC 28202-6021

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New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
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1103 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
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Chicago, IL 60606-6307

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Des Moines, IA 50309-4119

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Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
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D.C. CIRCUIT
Ronald A. Cass
10566 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-662-1761
denise.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Please respond to:
Judy Perry Martinez, Esquire
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

June 4, 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 Cornelia T. L. Pillard to the United States Court of Appeals for the District of Columbia Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Cornelia T. L. Pillard who has been nominated for a position on the United States Court of Appeals for the District of Columbia Circuit. As a result of our investigation, the Committee is of the opinion that for this position Professor Cornelia T. L. Pillard is Unanimously Well Qualified.

A copy of this letter has been provided to Professor Pillard.

Sincerely,

Judy Perry Martinez
Chair

cc: Professor Cornelia T. L. Pillard (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 4, 2013.

CHAIR
Judy Perry Martinez
New Orleans, LA

Mailing Address:
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THIRD CIRCUIT
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FOURTH CIRCUIT
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SIXTH CIRCUIT
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ELEVENTH CIRCUIT
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FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-662-1761
enise.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Please respond to:
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Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

May 29, 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 Brian Morris
To the United States District Court for the District of Montana

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Brian Morris who has been nominated for a position on the United States District Court for the District of Montana. As a result of our investigation, the Committee is of the opinion that for this position Justice Brian Morris is Unanimously Well Qualified, one abstention recorded.

A copy of this letter has been provided to Justice Brian Morris.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Brian Morris (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 29, 2013.

CHAIR
Judy Perry Martinez
New Orleans, LA

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FIFTH CIRCUIT
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D.C. CIRCUIT
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STAFF COUNSEL
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AMERICAN BAR ASSOCIATION

Please respond to:
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Email: judy.martinez@ngc.com

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

May 29, 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 Susan P. Watters
To the United States District Court for the District of Montana

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Susan P. Watters who has been nominated for a position on the United States District Court for the District of Montana. As a result of our investigation, the Committee is of the opinion that for this position Judge Susan P. Watters is Unanimously Qualified, one abstention recorded.

A copy of this letter has been provided to Judge Susan P. Watters.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Susan P. Watters (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 29, 2013.

30 Bank Street
PO Box 350
New Britain, CT 06050-0350
06051 for 30 Bank Street
(860)223-4400
fax (860)223-4488

August 1, 2013

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D. C. 20510

RECEIVED AUG 09 2013

RE: Nomination of Professor Jeffrey A. Meyer to the United States District Court

Dear Senator Leahy:

I am pleased to inform you that the Federal Judiciary Committee of the Connecticut Bar Association (CBA) has voted to rate Professor Jeffrey A. Meyer, the President's nominee for the United States District Court, as "qualified" by a unanimous vote.

The thirteen members of the CBA's Federal Judiciary Committee are charged with the responsibility of evaluating and reporting on the suitability of Connecticut candidates for service on the Federal Bench. The Committee rates all such federal judicial nominees as either "qualified" or "not qualified."

The Committee reviewed and discussed the nominee's background and qualifications, interviewed members of the Connecticut judiciary before whom the nominee appeared, members of the bar with whom he practiced and professors and students with whom he worked, and, finally, interviewed Professor Meyer on July 30, 2013. After the Committee determined that no further information or interviews were required, it voted on Professor Meyer's qualifications.

The CBA appreciates the opportunity to comment and participate in the judicial nominee review process. The CBA looks forward to Professor Meyer's successful confirmation and his service to the public and legal community as a judge on the United States District Court bench.

Very truly yours,

Kim Knox

Kimberly A. Knox, President
Connecticut Bar Association

KAK:ses
Cc: William H. Clendenan, Jr., Co-Chair, CBA Federal Judiciary Committee
James T. Shearin, Co-Chair, CBA Federal Judiciary Committee
Mark Dubois, CBA President Elect
William H. Clendenan, Jr., CBA Vice President
Barry Hawkins, CBA Past President
Alice A. Bruno, CBA Executive Director

CHAIR
Judy Perry Martinez
New Orleans, LA

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Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

June 10, 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 Jeffrey Alker Meyer to the United States District Court for the District of Connecticut

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jeffrey Alker Meyer who has been nominated for a position on the United States District Court for the District of Connecticut. As a result of our investigation, the Committee is of the opinion that for this position Professor Jeffrey Alker Meyer is Unanimously Well Qualified.

A copy of this letter has been provided to Professor Meyer.

Sincerely,

Judy Perry Martinez
Chair

cc: Professor Jeffrey Alker Meyer (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 10, 2013.

Defending Liberty
Pursuing Justice

CHAIR
Judy Perry Martinez
New Orleans, LA

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Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

May 29, 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 Landya B. McCafferty
To the United States District Court for the District of New Hampshire

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Landya B. McCafferty who has been nominated for a position on the United States District Court for the District of New Hampshire. As a result of our investigation, the Committee is of the opinion that for this position Magistrate Judge McCafferty is Unanimously Well Qualified.

A copy of this letter has been provided to Magistrate Judge McCafferty.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Landya B. McCafferty (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 29, 2013.

QUOTES FOR THE RECORD ON THE D.C. CIRCUIT'S CASELOAD

- **Former Chief Judge Harry Edwards** has said, "[R]eview of large, multi-party, difficult administrative appeals is the staple of judicial work in the D.C. Circuit. This alone distinguishes the work of the D.C. Circuit from the work of other Circuits; it also explains why it is impossible to compare the work of the D.C. Circuit with other Circuits by simply referring to raw data on case filings."

- **Chief Justice Roberts** has noted that "about two-thirds of the cases before the D.C. Circuit involve the federal government in some civil capacity, while that figure is less than twenty-five percent nationwide," and that less time-consuming "prisoner petitions—which make up a notable portion of the docket nation-wide on other courts of appeals—are a less significant part of its work." He also described the "D.C. Circuit's unique character, as a court with special responsibility to review legal challenges to the conduct of the national government."

- **Judge Laurence Silberman** has said "I very much agree…as to the unique nature of the D.C. Circuit's caseload, and therefore do not believe a direct comparison to the other circuits is called for."

- **Former Chief Judge Patricia Wald** has said "The D.C. Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, health-care reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record — all of which culminates in lengthy, technically intricate legal opinions… The nature of the D.C. Circuit's caseload is what sets it apart from other courts."

- **Former Chief Judge Douglas Ginsburg** has said "While the aggregate numbers of case filings and dispositions are highly relevant, the unique nature of the D.C. Circuit's jurisdiction is the most important consideration in evaluating this court's workload."

HON. ROBERT LEON WILKINS, OF THE DISTRICT OF COLUMBIA, NOMINATED TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT; TIMOTHY L. BROOKS, OF ARKANSAS, NOMINATED TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS; JAMES DONATO, OF CALIFORNIA, NOMINATED TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA; HON. BETH LABSON FREEMAN, OF CALIFORNIA, NOMINATED TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA; AND HON. PEDRO A. DELGADO HERNANDEZ, OF PUERTO RICO, NOMINATED TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO

WEDNESDAY, SEPTEMBER 11, 2013

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

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

Present: Senators Whitehouse, Feinstein, Franken, Grassley, and Lee.

Senator WHITEHOUSE. This hearing will come to order. We are here to consider the nominations of Robert Leon Wilkins, to be United States Circuit Judge for the District of Columbia Circuit; and in a second panel, for Timothy Brooks, James Donato, Beth Freeman, and Pedro Delgado Hernandez, to be United States district judges.

I think that what I will do—I believe that Senator Cardin is here to speak for Mr. Wilkins, and I think the other Senators are for the district judges, so let me proceed with Senator Cardin right now. And we will recess this hearing briefly at 10:05, in just a few minutes, for a moment of silence coincident with the moment of silence that will be held on the Senate floor in memory of the victims of the 9/11 attack, and in my view, in specific gratitude to those on United Airlines Flight 93, whose individual heroism has probably

been the thing that allows us to have this hearing in this building, which might not otherwise be here.

So, Senator Cardin, if I rap the gavel during your remarks, that is why, and we will just have a moment of silence and then continue. Senator Cardin.

PRESENTATION OF ROBERT LEON WILKINS, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT, BY HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Well, thank you, Senator Whitehouse, Senator Grassley. It is a pleasure to be back before the Senate Judiciary Committee, where I have very fond memories. So it is good to be back, and I am glad to be here on behalf of Judge Robert Wilkins for the DC Circuit. Mr. Chairman, I would ask that my entire statement be made part of the record.

Senator WHITEHOUSE. Without objection.

Senator CARDIN. Let me explain why I am here as a Maryland Senator for Robert Wilkins, who is a resident of the District of Columbia.

Senator WHITEHOUSE. I am sorry to interrupt. They have started the moment of silence on the floor.

[Moment of silence.]

Senator WHITEHOUSE. All right. Thank you. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Mr. Chairman, as I pointed out, I am here on behalf of a resident of the District of Columbia, Judge Wilkins, for several reasons.

First, as I know everyone here is aware, the residents of the District do not have resident Senators, but the District is the former land of Maryland, so the Maryland Senators take special interest in the residents of the District of Columbia. And I could not be more proud to be here on behalf of Judge Wilkins.

Judge Wilkins also has another direct connection to the State of Maryland that I think typifies his commitment to public service. He was the plaintiff in the civil lawsuit *Wilkins* v. *Maryland*. Judge Wilkins was a victim of racial profiling, and he decided to do something about it, and he joined in legal action against the Maryland State Police. And as a result of that legal action, there were landmark consent judgments entered into that have been the basis of effective action to deal with racial profiling. That lawsuit inspired President Clinton's Executive order and action by over half of our States to deal with the problems of racial profiling, and I am hopeful that the Congress will take up S. 1038, the *End Racial Profiling Act*.

My point is that Judge Wilkins saw an injustice, stepped forward to do something about it, and was effective in developing a strategy to help all the people of this country.

Judge Wilkins, I want to thank you, I want to thank your family for your commitment to public service and your willingness to step forward for this very important position on the DC Circuit.

Judge Wilkins has an excellent record of academic achievement, his public commitment, and community service. He is a native of Muncie, Indiana. He attained his B.S. cum laude of chemical engineering from Rose-Hulman Institute of Technology and a J.D. from

Harvard Law School. Following graduation, Judge Wilkins clerked for the Honorable Earl B. Gilliam of the U.S. District Court for the Southern District of California. He later served as staff attorney and head of special litigation for the Public Defender Service for the District of Columbia. He then practiced as a partner in *Venable* specializing in white-collar defense, intellectual property, and complex civil litigation before taking the oath as a judge on the district court for DC. The ABA has given him its highest recommendation unanimously.

Judge Wilkins also has a very distinguished record of community service. He played a key role in the passage of the federal statute establishing the National Museum of African American History, and then he has worked tirelessly to see that law implemented and continues in his interest to see that to fruition.

Judge Wilkins continues his pro bono work to this day. He currently serves as the court liaison to the Standing Committee on Pro Bono Legal Service of the Judicial Conference of the DC Circuit. To me, he has demonstrated his commitment to carrying out the oath of a judge to provide justice to all, regardless of their financial ability.

As a U.S. District Judge for the District of Columbia since 2011, Judge Wilkins has presided over hundreds of civil and criminal cases, including both jury and bench trials.

Mr. Chairman, we have already vetted this nominee, we have already voted on this nominee when we approved him for the DC District Court. He is eminently qualified. We are very fortunate for his willingness to continue to serve the public now in this critical appointment on the DC Court of Appeals. I would urge the Committee to favorably recommend his confirmation to the U.S. Senate.

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

Senator WHITEHOUSE. Thank you, Senator Cardin. We appreciate your statement of support.

And we are very honored to have Senator Feinstein, a senior Member of this Committee, here. Senator Feinstein is the Chairwoman of the Senate Intelligence Committee, so as you can imagine, she has been working terrifically hard in the past days and weeks as the serious situation has emerged, and we are grateful that she has the time to come to this hearing. I will recognize her now, because the press of other business will take her away from us after that. Senator Feinstein.

PRESENTATION OF JAMES DONATO, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND BETH LABSON FREEMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Well, thank you very much, Senator Whitehouse, and thank you for the very nice comments. I would like to speak very briefly on two distinguished nominees to serve on the Northern District of California.

I think as most people know, the way I do these judgeships is that we have a bipartisan screening committee of attorneys on both

sides, Democratic and Republican, in the State. And people submit their applications directly to these screening committees. They screen, they vet, and they make a recommendation to me, and that is how both of these nominees came about. Each one of them would fill a long-time judicial emergency vacancy on the Northern District of California, which has a caseload that is actually 24 percent above the Nation's average.

Let me begin with Judge Beth Freeman, who is sitting in the first row on my right. It is my understanding that her husband, William, her brother-in-law, David, and other family members and friends are here to support her today, and I would like to take the opportunity to say welcome to the heat in more than weather in Washington.

Judge Freeman graduated from the University of California at Berkeley in 1976 and Harvard Law School in 1979. She spent four years in private practice at two law firms, after which she began a career in public service by joining the San Mateo County Counsel's Office. She served as deputy county counsel for 18 years, from 1983 to 2001, representing county agencies and school districts in State and federal courts. In the County Counsel's Office, she tried more than 200 cases.

In 2001, she was appointed to the San Mateo Superior Court by the then-governor. She has presided over more than 1,000 trials, including over 150 jury trials, and she has substantial experience hearing both civil and criminal cases.

She has earned the deep respect of her colleagues who elected her assistant presiding judge in 2008 and presiding judge in 2010. And in the interest of full disclosure, my daughter called me last night and said, "I hope you are nice to my friend, Judge Freeman." My daughter is newly retired as the presiding judge in San Francisco.

Throughout 2011 and 2012, she led the San Mateo Court as presiding judge while deep judicial budget cuts were forcing severe cuts in judicial services, including courtroom closures and furloughs all across the State of California.

She is active in her community. She served as president, director, and secretary of the Junior Statesmen Foundation. She has also served as president of Peninsula Temple Beth El. I believe Judge Freeman will make an outstanding addition to the federal bench in San Jose.

Now let me turn to Jim Donato. His wife, Rhonda, and his daughter, Isabella, are here today, and I want to welcome them as well. I saw your smile, so I figured out who you are.

Jim Donato earned his B.A. also from UC-Berkeley in 1983, his master's also from Harvard in 1984, and his law degree from Stanford in 1988. Obviously, Stanford is preferable. He was a senior editor of the *Stanford Law Review*. Following law school, he clerked for Judge Procter Hug on the Ninth Circuit Court of Appeals.

In 1990, he joined the law firm of Morrison & Foerster, where he worked as an associate from 1990 to 1993. He then joined the city attorney's office in San Francisco, where he served from 1993 to 1996 as a deputy city attorney in the trial division. In his role, Mr. Donato was responsible for defending San Francisco and its

employees against civil claims, including Section 1983 claims against police officers.

In 1996, Mr. Donato returned to private practice, joining the law firm Cooley LLP, where he ultimately became a partner. In 2009, he joined the law firm Shearman & Sterling LLP as a partner. His work in private practice has focused on civil litigation in a variety of complex fields, including antitrust, unfair competition, trademark, and copyright law. He has been trial counsel in 10 cases, including a recent federal antitrust case.

Mr. Donato has published several articles on topics related to business litigation, including antitrust law, electronic discovery, and class action trials. He has also given back to the legal profession, serving with the Bar Association of San Francisco for many years, including as president in 2008. He has been named a Northern California Super Lawyer every year since 2004, and he has been an elected member of the American Law Institute since 2000.

He also is involved in his community, serving on the Parish Council of Newman Hall, Holy Spirit Parish, at UC-Berkeley, and as a director of the Berkeley Symphony.

I believe that Jim Donato's education, experience, and background in complex civil cases will be a great credit to the bench in Northern California, where we have many of these, which has—actually, the docket is 85 percent of those cases, civil cases.

Let me conclude by saying that these two outstanding nominees bring strong qualifications and experience to two judicial emergency vacant positions in the Northern District, and I hope both the Chairman here as well as the distinguished Ranking Member of this Committee will see fit to move them on as rapidly as possible.

I thank you for your courtesy, Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Senator Feinstein, and I know you have to leave.

Senator FEINSTEIN. Thank you.

Senator WHITEHOUSE. If Senator Boozman will indulge me for a moment, I will recognize our colleague from the other side of the building, Representative Pierluisi, who has been waiting patiently for a while. Representative Pierluisi.

PRESENTATION OF HON. PEDRO A. DELGADO HERNANDEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO, BY HON. PEDRO R. PIERLUISI, RESIDENT COMMISSIONER IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Representative PIERLUISI. Thank you. Senator Whitehouse, Ranking Member Grassley, and Members of the Committee, I am honored to be here on behalf of the 3.6 million U.S. citizens of Puerto Rico to introduce Judge Pedro Delgado Hernandez, who has been nominated by the President to serve on the U.S. District Court for the District of Puerto Rico.

Because Puerto Rico does not have U.S. Senators, I am grateful to the Committee for extending me, a Member of the House, an invitation to appear this morning.

I have known Judge Delgado Hernandez for longer than either he or I would like to admit. Indeed, when I was serving as Attorney

General of Puerto Rico in the early 1990s, he was nominated and confirmed as the territory's Solicitor General. Two decades later, I am particularly pleased and, indeed, rather moved to introduce him to this prestigious Committee now that he has been nominated for a lifetime appointment on the federal bench.

I believe that Judge Delgado Hernandez is an outstanding nominee. Based on his wide-ranging professional experience, his first-rate academic record, his sound judgment, his even temperament, and his passion for public service, Judge Delgado Hernandez is well prepared to handle the complex criminal and civil cases that would come before him.

Born and raised in Puerto Rico, Judge Delgado Hernandez received his undergraduate and law degrees from the University of Puerto Rico. He served as an editor of the *Law Review*, graduated magna cum laude, and earned the award given to the student with the highest GPA in criminal law.

Following law school, Mr. Delgado Hernandez served as a law clerk to the Honorable Juan Torruella in his capacity as Chief Judge of the U.S. District Court of Puerto Rico and then as a newly minted judge on the U.S. Court of Appeals for the First Circuit.

After his clerkship, Judge Delgado Hernandez worked as an associate and later as a partner at one of Puerto Rico's most prestigious law firms.

In 1993, Mr. Delgado Hernandez became Solicitor General of Puerto Rico, representing the Government of Puerto Rico in appellate matters.

In 1995, he was confirmed as a judge on the Puerto Rico Court of Appeals where he dealt with the full range of criminal and civil matters.

Judge Delgado Hernandez subsequently returned to private practice where he specializes in labor and employment law and has served as outside counsel to the Puerto Rico Elections Commission.

Judge Delgado Hernandez is also highly respected within the legal community in Puerto Rico for his knowledge of national law and ethics matters. If confirmed by the Senate, I am confident that Mr. Delgado Hernandez will work tirelessly to dispense justice based on the facts of the case at hand and free from any prejudice.

I hope this Committee will support his nomination. Thank you very much.

Senator WHITEHOUSE. Thank you, Representative. We appreciate very much that you have taken the trouble to come across the building to us.

I will now recognize my friend and colleague, Senator Boozman.

PRESENTATION OF TIMOTHY L. BROOKS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS, BY HON. JOHN BOOZMAN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BOOZMAN. Thank you very much, Senator Whitehouse, Senator Grassley, the rest of the Committee, for allowing me to be here and to speak at this important hearing today. I am very proud to be here to support Timothy L. Brooks' nomination as United States District Judge for the Western District of Arkansas. His ex-

tensive experience and impressive background unanimously qualify him for the position of district judge.

Born in Detroit, Michigan, in 1964, Tim is now a wholehearted Razorback, which is important in our State. He graduated from the University of Arkansas with an undergraduate degree in 1986, went on to receive his J.D. from the University of Arkansas School of Law, where he graduated cum laude, was a published member and research editor of the *Arkansas Law Review*, and a first-place winner in both negotiation and client counseling competitions.

During law school, Tim became a law clerk with Taylor Law Partners, located in Fayetteville, Arkansas. Upon graduation, he was retained by Taylor Law Partners as an associate. Tim became a partner at the Taylor Law Partners in 1993. While Taylor Law Partners has a diverse general trial practice, Tim's specific expertise has been focused on litigation encompassing workers' compensation claims, personal injury matters, Social Security disability, domestic relations, criminal defense, corporate transactional matters, and commercial litigation. Presently, his scope of work is more narrowly focused on complex civil litigation with an emphasis on commercial cases and medical malpractice.

Tim has an extensive courtroom experience involving both jury and non-jury trials. He has also accrued experience in alternative dispute resolution and bringing cases before the Arkansas Workers' Compensation Commission. In addition, since 2011, Tim has served as a member of the Arkansas Supreme Court Committee on Model Jury Instructions-Civil. The committee is tasked with the responsibility to review and analyze recently released appellate court decisions, statutes, and other legal authority to create or revise model jury instructions to accurately reflect the current state of Arkansas law.

An active member of his community, Tim is a volunteer lawyer for Ozark Legal Services and Arkansas Legal Aid, has served as counsel to the Junior League of Northwest Arkansas, and has taken a number of cases on a pro bono basis in order to assist those less fortunate with their legal battles.

In addition, he and his wife, Mary Beth, are well-respected members of the legal and business communities in and around northwest Arkansas, as well as members of the Century United Methodist Church in Fayetteville, the Public Education Foundation, Northwest Arkansas Community Foundation, and the United Way.

In the multitude of support letters on his behalf, I have read of Tim's trustworthiness, commitment to the legal profession, and dedication to his clients. He is a well-experienced and highly knowledgeable attorney whose reputation is untarnished. There is no hesitation or lack of confidence to be found amongst his peers and clients.

One of the most important things that we do in the Senate is the confirmation of judges, the process of selecting people with the right temperament and qualifications. I believe Tim Brooks will do an excellent job and that we will be proud of his future service on the bench. I congratulate him on his nomination and strongly support his confirmation.

Thank you.

Senator WHITEHOUSE. Thank you very much, Senator Boozman.

It is now my pleasure to recognize the Senator's colleague, Senator Mark Pryor, whose very distinguished service as the Attorney General of his home State makes his remarks here particularly welcome and weighty. We former Attorney Generals have to say that about each other.

Senator PRYOR. Exactly.

[Laughter.]

Senator WHITEHOUSE. But in the case of Senator Pryor, it is actually true. Senator Pryor, please.

PRESENTATION OF TIMOTHY L. BROOKS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS, BY HON. MARK L. PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you, and I appreciate all of you all for being here today and all the Members of the Judiciary Committee.

I am here to introduce Timothy L. Brooks of Fayetteville, and I also want to pay special tribute and thanks to his family and friends who came to DC today.

I also want to thank Senator Boozman. He and I partnered on this, and I think he would agree that we have a lot of very qualified people, but very quickly you saw the legal and business community and this community at large rally around Tim Brooks because he just brings so much to the table.

I was certainly proud to nominate him, and I am honored to share his qualifications or at least some of his qualifications with the Committee today.

When I look at judges and think about who ought to be a federal judge, I think of three things: First, is that person qualified? Second, do they have the proper judicial temperament? And, third, do they have the ability to be fair and impartial? And not only does Tim pass these three, he exceeds all three in many different ways. And, again, I have heard from around the business and legal community in his home parts of Arkansas, and they will tell you that he passes all three with flying colors.

He is a partner at the Taylor Law Partners there in Fayetteville, which is a well-established firm. He has been there for 24 years. He became a partner in 1993.

One of the things that I like about Tim is that he does not have one area of practice and that is it. He does a lot of different things. And he does some plaintiffs' work; he does some defense work. He does a lot of complicated legal representation. He is oftentimes in federal court, but he has also been in State court quite a bit. So just that experience in the courtroom with clients, trying to work through very complicated legal issues, really will make him an outstanding federal judge.

He did get two degrees, his undergraduate degree and his law degree, from the University of Arkansas. Go, Hogs, right? And also he was on the *Arkansas Law Review*. And, you know, it is not just the fact that he has excelled in the courtroom, which he has, but also he is rated as AV Preeminent by the Martindale-Hubbell Peer Review Service. Again, peer review. His colleagues think a lot of him. And the other thing that he has done—and Senator Whitehouse can relate to this, I am sure—is that in our State we

have a committee that the State Supreme Court appoints to periodically update the Model Jury Instructions, and he is on the Model Jury Instruction Committee-Civil in Arkansas. And believe it or not, that is like being on law review, and that takes a lot of work, because they have these monthly meetings, and they are constantly looking at the decisions that the various Arkansas courts have made.

So he is obviously a member of the Arkansas, the American, and the Washington County Bar, and he also—and Senator Boozman said this a few moments ago—does a lot of pro bono work, but that also includes a pretty large number of representing indigent clients, which is important to the legal profession.

I remember at one point I was talking to Tim about what a federal judge should be, and he said, "All parties, regardless of their socioeconomic position, seek the same thing: that justice be done to their cause in a fair and impartial manner." I think that is exactly the attitude we want to see in our federal judiciary, and we have a vacancy here in the Western District of Arkansas, and Tim Brooks is certainly an asset and will be an asset to the federal judiciary in Arkansas and around the country, and I wholeheartedly support his nomination.

So, again, I want to thank the Committee for having me today. Thank you very much.

Senator WHITEHOUSE. Thank you, Senator Pryor. It is welcome to this Committee to see you and Senator Boozman side by side supporting this nominee, and I hope that augurs for a swift and uneventful confirmation. Thank you both very much for being here. I know you have pressing business, and you are excused.

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

Senator WHITEHOUSE. The manner in which we will proceed now is for myself and the distinguished Ranking Member Senator Grassley to make opening statements. Judge Wilkins will be our first panel of one, and he is welcome to take his seat at the witness table, and we will recognize him very shortly. And at the conclusion of Judge Wilkins' remarks, we will have five-minute round for any questions that the Members present may care to ask.

Then we will call up the second panel of nominees, the nominees to the district courts, and once again have five-minute rounds of questions for all the Members who are here.

We gather in a serious way for these hearings because voting to confirm an individual to the federal bench is one of the most important and lasting decisions that a Senator can make. Every day we see federal judges make decisions that affect the lives of Americans in all walks of life in many important respects.

As they have that effect in the lives of ordinary Americans, it is very important that judges respect the role of Congress as the duly elected representatives of the American people; that they decide cases based on the law and the facts; that they not prejudge any case but listen to every party that comes before them; that they respect the precedent that comes from higher courts; and that they limit themselves to the issues that the court properly must decide.

I hope that each judicial nominee who we hear from today understands the importance of those principles.

Judicial nominees also must have the requisite legal skill and reputation to serve as a federal judge. Each of today's nominees has a very impressive record of achievement. As a result, I believe and hope that each nominee will receive prompt consideration. We certainly need good judges for our system of justice to function, and I think it is fair to say that around the world people look to America's system of justice as a model to be aspired to. So it is important for us to promptly confirm qualified members to these important positions.

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

Senator WHITEHOUSE. And, with that, I will turn to my very distinguished Ranking Member, Senator Grassley of Iowa.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I join you, Mr. Chairman, in welcoming our nominees who are here today with their families and friends. It is a milestone in each of the nominees' careers and a proud moment for their family and friends.

Today, of course, is also a somber anniversary of our Nation's history as we remember the tragic events of 9/11 and the lives that were lost. It also reminds us of the importance of the rule of law and the liberty we enjoy.

Today's hearing is the 12th judicial nominations hearing this year, during which we will have considered a total of 38 judicial nominees. That is a pretty remarkable pace. It is especially quick when compared to the pace of the first year of President Bush's second term. At this stage in that term, the Committee had only three hearings and five nominees. In fact, for the entire year of 2005, the Judiciary Committee held only seven hearings for a grand total of 18 judicial nominees. And so compare that to the 12 hearings and 38 nominees this year.

Judge Wilkins, you are currently serving on the U.S. District Court for the District of Columbia, and I thought maybe we would have the usual debate about the statistics of the district court. And since you did not bring that up, I am going to put my statement in the record, but I would like to make the audience——

Senator WHITEHOUSE. And I will put mine in, too.

[Laughter.]

Senator GRASSLEY. But I would like to make Judge Wilkins aware of the fact that we have this debate going on between the two political parties of whether or not we need the additional judges beyond the eight that are already there, and I have all sorts of statistics, and he will have countering statistics. I will put those in the record. I would appreciate your reading them, and anybody else that is interested, and just so you know that this is a debate that is beyond you as an individual, although it could impact you, whoever wins that debate.

But the way I see it, my case that I make in my remarks I am putting in the record is that we have the lowest caseload of any of

the districts and we do not need more judges. But we will leave that for another day.

Senator WHITEHOUSE. Very good, and the Ranking Member's full statement in that regard will, of course, be made a part of the record.

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

Senator WHITEHOUSE. Judge Wilkins, if I could ask you to stand and be sworn, please. Do you affirm that the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge WILKINS. I do, sir.

Senator WHITEHOUSE. Thank you. Please be seated. And I understand that you have family with you who you might wish to recognize, and let me allow you that opportunity. Please proceed. And let me add my personal welcome to them as well.

STATEMENT OF ROBERT LEON WILKINS, NOMINEE TO BE CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Judge WILKINS. Thank you, Senator Whitehouse. Yes, I do have my family here. All the way to my far left is my mother, Joyce Wilkins, who is here from Muncie, Indiana; and next to her is my dear wife of 18 years, Amy "Amina" Wilkins; and my two sons here behind me and to my right, Alim Wesley Wilkins and Bakari James Wilkins.

I would like to thank you, Senator Whitehouse and Senator Grassley, Ranking Member, for scheduling this hearing and holding it today. I know that you are busy all the time, but with world events, and particularly the fact that today is September 11th, this was an imposition on your schedules, and I appreciate you taking the time for me.

I would also like to thank Senator Feinstein, who was here earlier, and would like to thank, of course, Senator Franken and Senator Lee also for being here.

I have several guests here, and I will not call them all by name, but I have current colleagues who are here and some former colleagues and friends from many chapters of my life, and I thank all of them for being here today to support me and for, of course, all their support over the years.

I also have members of my staff here, and as I am sure you well know, I could not perform my duties without my staff, and I have a very—I had the pleasure and honor of having some very talented and loyal and hard-working staff over the years. And so my former and current law clerks are here as well as my current courtroom deputy.

So, with that, I would just like to again thank you for the opportunity to be here, and I am happy to answer your questions.

[The biographical information of Judge Wilkins follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Robert Leon Wilkins

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

   United States Circuit Judge for the District of Columbia 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.

   United States District Court for the District of Columbia
   333 Constitution Avenue, N.W.
   Washington, D.C. 20001

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

   1963; Muncie, Indiana

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

   1986 – 1989, Harvard Law School; J.D., 1989
   1982 – 1986, Rose-Hulman Institute of Technology; B.S. (*cum laude*), 1986

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

   2011 – present
   United States District Court for the District of Columbia
   333 Constitution Avenue, N.W.
   Washington, D.C. 20001
   United States District Judge

2002 – 2011
Venable LLP
575 Seventh Street, N.W.
Washington, D.C. 20004
Partner

2001 – 2002
Curry & Wilbourn
One Massachusetts Avenue, N.W., Suite 800
Washington, D.C. 20001
Contract Attorney (part-time)

1990 – 2001
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Contract Attorney (part-time) (2001)
Chief, Special Litigation (1995 – 2000)
Staff Attorney (1990 – 1995)

September 1990
DeFur Voran LLP
400 South Walnut Street, Suite 200
Muncie, IN 47305
Law Clerk

1989 – 1990
United States District Court for the Southern District of California
940 Front Street
San Diego, CA 92101
Law Clerk to the Honorable Earl B. Gilliam (since deceased)

Summer 1988
Harvard Law School
Placement at Various Addresses
Republic of South Africa
C. Clyde Ferguson Human Rights Fellow

Summer 1987
ACLU National Prison Project
1616 P Street, N.W., Suite 340 (former address)
Washington, D.C. 20036
Summer Law Clerk

September 1986 – June 1987
Harvard Law School

1563 Massachusetts Avenue
Cambridge, MA 02138
Assistant at student word processing center
(Work/study program)

Summer 1986
Ball Corporation
1509 South Macedonia Avenue (former address)
Muncie, IN 47302
Summer Engineering Intern

Other Affiliations (uncompensated):

2000 – 2011
Anacostia Coordinating Council
2401 Shannon Place, S.E.
Washington, D.C. 20020
Board of Trustees

2006 – 2011
District of Columbia Access to Justice Foundation
c/o Venable LLP
575 Seventh Street, N.W.
Washington, D.C. 20004
Board of Directors

2003 – 2011
District of Columbia Bar Foundation
2000 P Street, N.W., Suite 530
Washington, D.C. 20036
Advisory Committee

2002 – 2008
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Vice Chair of Board of Trustees (2007 – 2008)
Board of Trustees (2002 – 2007)

1994 – 1997, 2004 – 2007
Union Temple Baptist Church
1225 West Street, S.E.
Washington, D.C. 20020
Trustee

2004
Proud Legacy L.L.C.
(No physical address)
Managing Member

1999 – 2003
National African American Museum & Cultural Complex, Inc.
(From my private residence)
President of Board of Trustees

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

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

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:

"Superlawyers" Washington, D.C. (2007 – 2010)
"90 Greatest Washington Lawyers of the Last 30 years," *Legal Times* (2008)
"Washington's Top Lawyers: Education," *Washingtonian* (2007)
Honor Alumni Award, Rose-Hulman Institute of Technology (2005)
"Washington's Top Lawyers: Criminal Defense," *Washingtonian* (2004)
"40 under 40 most successful young litigators in America," *National Law Journal* (2002)
Henry W. Edgerton Civil Liberties Award, American Civil Liberties Union Fund of the National Capital Area (2001)
Pro Bono Attorney of the Year, American Civil Liberties Union of Maryland (2001)
"Practitioner of the Year," University of Maryland Black Law Students Association (1999)

Academic:

Harvard Civil Rights-Civil Liberties Law Review (1986 – 1989)
Executive Editor (1988 – 1989)
Editor (1987 – 1988)
C. Clyde Ferguson Human Rights Fellow (Summer 1988)
Herman A. Moench Distinguished Senior Commendation (awarded by the faculty and professional staff to the senior in the upper half of the graduating class who has demonstrated exemplary character) (1986)
Marathon Oil Outstanding Minority Scholarship Award (1985 – 1986)
National Achievement Scholarship (1982)

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

American Bar Association
District of Columbia Access to Justice Commission
Vice-Chair (2005 – 2008)
District of Columbia Access to Justice Foundation
Board of Directors (2006 – 2011)
District of Columbia Advisory Commission on Sentencing
District of Columbia Bar Foundation Advisory Committee
District of Columbia Juvenile Justice Advisory Group
District of Columbia Truth-In-Sentencing Commission
Judicial Council for the District of Columbia Circuit
National Association of Criminal Defense Lawyers
National Bar Association
Public Defender Service for the District of Columbia
Vice Chair of Board of Trustees (2007 – 2008)
Board of Trustees (2002 – 2007)
Standing Committee on *Pro Bono* Legal Services of the Judicial Conference of the District of Columbia Circuit
Court Liaison (2011 – present)
Washington Bar Association

10. **Bar and Court Admission**:

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

Massachusetts, 1990
District of Columbia, 1991

There have been no lapses in membership.

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

Supreme Court of the United States, 1994
United States Court of Appeals for the District of Columbia Circuit, 1996
United States Court of Appeals for the Federal Circuit, 2006
United States Court of Appeals for the Second Circuit, 2010
United States District Court for the District of Columbia, 1996
United States District Court for the District of Maryland, 2002

United States District Court for the Eastern District of Wisconsin, 2008

There have been no lapses in membership.

11. **Memberships**:

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

American Civil Liberties Union (2003 – 2010)
Anacostia Coordinating Council (2000 – 2011)
Board of Trustees (2000 – 2011)
Harvard Law School Alumni Association (2005 – present)
Hillcrest Community Civic Association (2001 – present)
Lambda Chi Alpha Fraternity, Theta Kappa Chapter, Rose-Hulman Institute of Technology (1982 – present)
Lawyers Club of Washington (2007 – present)
Minority Media & Telecommunications Council (2004)
National Museum of African American History and Culture Plan for Action Presidential Commission (2002 – 2003)
Chair, Site and Building Committee (2002 – 2003)
Union Temple Baptist Church (1991 – present)
Trustee (1994 – 1997, 2004 – 2007)

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.

Lambda Chi Alpha, founded in 1909, is a social fraternity that admits only males. I took no action to change that policy. To my knowledge, none of the other organizations 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.

This list represents the published material I have identified through searches of my files and internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

"Fix Sentencing Guidelines," The Atlanta Journal-Constitution, December 16, 2004 (co-authored with Representative John Lewis and Karl A. Racine). Copy supplied.

"Museum Bill in Jeopardy – Action Needed," AfriGeneas Military Research Forum Archive Post, September 24, 2003. Copy supplied.

"A Museum Much Delayed," Washington Post, March 23, 2003. Copy supplied.

"Museum Would Advance King's Vision," The Atlanta Journal-Constitution, January 20, 2003. Copy supplied.

"The Forgotten Museum," July 31, 2002. Copy supplied.

"How Much Longer Must We Wait?" Washington Post, August 5, 2001. Copy supplied.

"Actions Speak More Than Words," The Baltimore Sun, January 29, 2001 (co-authored with Jenkins J. Odoms Jr.). Copy supplied.

"Stop Racial Profiling," The Baltimore Sun, July 20, 2000. Copy supplied.

"Setback for D.C. Justice," Washington Post, June 5, 2000. Copy supplied.

"Federal Influence on Sentencing Policy in the District of Columbia: An Oppressive and Dangerous Experiment," 11 Fed. Sent. Rptr. 143-148 (Nov./Dec. 1998). Copy supplied.

"The South African Legal System: Black Lawyers' Views," 7 TransAfrica Forum 9 (Fall 1990). Copy supplied.

"Black Neighborhoods Becoming Black Cities: Group Empowerment, Local Control and the Implications of Being Darker than *Brown*," 23 Harv. C.R.-C.L. L. Rev. 415 (1988) (co-authored with Ankur J. Goel, Willie J. Lovett, Jr., and Robert Patten). Copy supplied.

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

This list represents the reports, memoranda and policy statements I have identified through searches of my files and internet databases. I serve and have served on multiple bar association committees and non-profit boards that may have issued statements with or without my personal involvement. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

Annual Report, March 1, 2006 – February 28, 2007, District of Columbia Access to Justice Commission, Washington, D.C., April 11, 2007. Copy supplied.

Report on Racial Profiling of the Working Group of Experts on People of African Descent, United Nations, Geneva, Switzerland, March 9, 2007. Copy supplied.

"District of Columbia Access to Justice Commission's Fiscal Year 2008 Public Funding Proposal," District of Columbia Access to Justice Commission, Washington, D.C., 2007. Copy supplied.

Annual Report, February 28, 2005 – February 28, 2006, District of Columbia Access to Justice Commission, Washington, D.C., April 2006. Copy supplied.

"District of Columbia Access to Justice Commission Proposal for Public Funding to Ensure Justice for All in the District of Columbia," Washington, D.C., March 14, 2006. Copy supplied.

Memorandum to Roger Sant, Chairman of the Executive Committee of the Smithsonian Board of Regents, regarding Historical Criticism of the Arts and Industries Building, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C., January 18, 2006. Copy supplied.

Letter to Lawrence M. Small, Secretary, Smithsonian Institution, regarding National Museum of African American History and Culture, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C., April 29, 2005. Copy supplied.

"Final Site Report," National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C., September 2003. Copy supplied.

Letter to Senator Chris Dodd, regarding National Museum of African American History & Culture, S. 1157, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C., June 6, 2003. Copy supplied.

"The Time Has Come," Report to the President and to the Congress, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C., April 2, 2003. Copy supplied.

"Preferred Site Analysis Report," National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C., December 3, 2002. Copy supplied.

"Timeline of Efforts to Build A National Museum Dedicated to African American History and Culture," National African American Museum & Cultural Complex, Inc., Washington, D.C., January 2002. Copy supplied.

Letter to Senators Daschle and Lott and Representatives Hastert and Gephardt regarding National Museum of African American History and Culture, National African American Museum & Cultural Complex, Inc., Washington, D.C., October 24, 2001. Copy supplied.

Memorandum to Representative John Lewis, Representative J.C. Watts, Senator Sam Brownback and Senator Max Cleland, regarding HR 1718./S829: National Museum of African American History and Culture Renovation Costs of the Arts and Industries Building, National African American Museum & Cultural Complex, Inc., Washington, D.C., September 7, 2001. Copy supplied.

Letter to Representative Don Young and Representative Robert Ney, Coalition of Supporters of Legislation to Establish the National Museum of African American History and Culture, Washington, D.C., June 18, 2001. Copy supplied.

Separate Report of the Public Defender Service for the District of Columbia to the Council of the District of Columbia Regarding the District of Columbia Advisory Commission on Sentencing, Public Defender Service for the District of Columbia, Washington, D.C., May 5, 2000. Copy supplied.

Report of the District of Columbia Advisory Commission on Sentencing, Washington, D.C., April 5, 2000. Copy supplied.

Preliminary Recommendations of the District of Columbia Advisory Commission on Sentencing, Washington, D.C., March 28, 2000. Copy supplied.

Criminal Sentencing Practices in the District of Columbia, 1993 – 1998, District of Columbia Advisory Commission on Sentencing, Washington, D.C., September 30, 1999. Copy supplied.

"The Commentary and Suggestions Report of the District of Columbia Truth In Sentencing Commission," District of Columbia Truth-In-Sentencing Commission, Washington, D.C., March 13, 1998. Copy supplied.

"Formal Recommendations of the District of Columbia Truth In Sentencing Commission, District of Columbia Truth-In-Sentencing Commission, Washington, D.C., January 31, 1998. Copy supplied.

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

This list represents the testimony, official statements and other communications relating to matters of public policy or legal interpretation that I have identified through searches of my files and internet databases. I serve and have served on multiple bar association committees and non-profit boards that may have issued communications with or without my personal involvement. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

July 28, 2010, United States Senate, Committee on the Judiciary, Confirmation Hearing on Nomination to be a United States District Judge for the District of Columbia. Transcript and written responses to questions for the record supplied.

January 10, 2008, Public Hearing on National Museum of African American History & Culture: Environmental Impact Statement & Section 106. Transcript supplied.

April 4, 2007, Public Hearing on Mayor's FY 2008 Budget Request for the Office of the Attorney General, Before the Council of the District of Columbia Committee on Public Safety and the Judiciary, Testimony of Peter B. Edelman, Chairman – D.C. Access to Justice Commission. Copy supplied.

January 30 – February 1, 2007, "The Problem of Impunity and Accountability Relating to Acts of Racial Profiling," Working Group of Experts on People of African Descent, United Nations, Geneva, Switzerland. Report supplied.

July 21, 2006, Letter to the Honorable Douglas H. Ginsburg regarding the 2006 District of Columbia Circuit Judicial Conference. Copy supplied.

April 11, 2006, Public Hearing on Mayor's FY 2007 Budget Request, Before the Council of the District of Columbia Committee of the Whole, Testimony of Peter B. Edelman, Chairman – D.C. Access to Justice Commission. Copy supplied.

March 27, 2006, Public Hearing on Mayor's FY 2007 Budget Request, Before the Council of the District of Columbia Committee on the Judiciary, Testimony of Peter B. Edelman, Chairman – D.C. Access to Justice Commission. Copy supplied.

February 8, 2005, Letter to Representatives Coble and Scott regarding Federal Sentencing Guidelines. Copy supplied.

September 5, 2003, Letter to the Honorable Colin L. Powell, Secretary of State, regarding the National Museum of African American History and Culture. Copy supplied.

July 9, 2003, United States House of Representatives, Committee on House Administration, "H.R. 2205, Legislation to Establish within the Smithsonian Institution a National Museum of African American History and Culture." Testimony supplied. Video available at http://www.c-spanvideo.org/program/177341-1.

April 21, 2003, Memorandum to James Hayes, Staff of Senator Ted Stevens, regarding the National Museum of African American History and Culture. Copy supplied.

February 25, 2003, Letter to Representative Eleanor Holmes Norton regarding the National Museum of African American History and Culture. Copy supplied.

February 20, 2003, Meeting of the Commission of Fine Arts, National Building Museum, Washington, D.C. Minutes and Powerpoint supplied.

July 19, 2001, United States House of Representatives, Committee on Government Reform, "The Benefits of Audio-Visual Technology in Addressing Racial Profiling." Testimony supplied.

July 16, 2001, Letter to Museum Supporters, regarding the National African American Museum & Cultural Complex, Inc. Copy supplied.

May 22, 2001, Congressional Black Caucus Hearing on Racial Profiling, Rayburn House Office Building, Washington, D.C. Notes of testimony supplied.

February 13, 2001, Maryland House of Delegates, Committee on Commerce and Government Matters, Testimony concerning House Bill 303, "Law Enforcement Officers – Vehicle Laws – Race Based Traffic Stops." Testimony supplied.

July 10, 2000, Memorandum of Robert Wilkins to All Councilmembers regarding Sentencing Reform Amendment Act of 2000. Copy supplied.

May 11, 2000, Testimony on Bill 13-696, the "Sentencing Reform Amendment Act of 2000." Summary of testimony supplied.

March 30, 2000, United States Senate, Committee on the Judiciary, Subcommittee on Constitution, Federalism, and Property Rights, "Racial Profiling within Law Enforcement Agencies." Testimony and transcript supplied. Video available at http://www.c-spanvideo.org/program/156313-1.

From 1998 to July 2000, I served on the Advisory Commission on Sentencing, as a representative of the Public Defender Service. Although I do not have personal copies of any minutes and the meetings were not public, in searching the internet, I have recently learned that the D.C. Sentencing and Criminal Code Revision Commission has posted minutes from some of the Advisory Commission's meetings in 2000 and later. The following minutes are attached:

January 12, 2000, Meeting. Minutes supplied.

February 2, 2000, Meeting. Minutes supplied.

February 16, 2000, Meeting. Minutes supplied.

February 23, 2000, Meeting. Minutes supplied.

March 1, 2000, Meeting. Minutes supplied.

March 8, 2000, Meeting. Minutes supplied.

March 15, 2000, Meeting. Minutes supplied

July 19, 2000, Meeting. Minutes supplied

I wrote letters to or appeared before the Council of the District of Columbia, Committee on the Judiciary on numerous occasions, as Chief of Special Litigation and as a staff attorney, to present information or positions on behalf of the Public Defender Service for the District of Columbia,

February 4, 1999, "Comments of the Public Defender Service for the District of Columbia Concerning Public Roundtable on Prisons and the Incarceration of Inmates from the District of Columbia." Testimony supplied.

May 13, 1998, "Comments of the Public Defender Service for the District of Columbia Concerning the Home and Community Juvenile Probation Supervision Act of 1998, Bill 12-596." Testimony supplied.

February 27, 1998, "Comments of the Public Defender Service for the District of Columbia on Bill 12-484, The Victim's Rights Establishment Act of 1997." Testimony supplied.

February 23, 1998, "Comments of the Public Defender Service for the District of Columbia Concerning the Truth in Sentencing Amendment Act of 1998, Bill 12-523 and The Advisory Commission on Sentencing Establishment Act of 1998, Bill 12-550." Testimony supplied.

November 6, 1997, "Comments of the Public Defender Service for the District of Columbia Concerning the Evidence of Battered Spouse Syndrome Act of 1997, Bill 12-15." Testimony supplied.

June 25, 1997, "Comments of the Public Defender Service for the District of Columbia Concerning Bill 12-268: 'The Public Safety and Law Enforcement Support Amendment Act of 1997' and Bill 12-280: 'The Law Enforcement Protection Amendment Act of 1997.'" Testimony supplied.

May 7, 1997, "Comments of the Public Defender Service for the District of Columbia Concerning Bill 12-12, 'The Distribution of Marijuana Amendment Act of 1997.'" Testimony supplied.

May 6, 1997, Letter to the Honorable Jack Evans regarding Parking Meter Breaking and Entering Amendment Act of 1997 – Bill No. 12-96. Copy supplied.

March 25, 1997, Letter to the Honorable Jack Evans regarding Bill 12-139, The Felony Murder Amendment Act of 1997. Copy supplied.

March 12, 1997, "Comments of the Public Defender Service for the District of Columbia Concerning the Felony Murder Amendment Act of 1997, Bill 12-139." Testimony supplied.

June 27, 1996, "Testimony of Jo-Ann Wallace, Director, Public Defender Service for the District of Columbia Before the House Committee on the Judiciary, H.R. 3565 'Violent Youth Predator Act of 1996.'" Testimony supplied.

May 8, 1996, "Comments of the Public Defender Service for the District of Columbia Concerning Adjustment Process for Nonviolent Juvenile

Offenders and Parent Participation in Court-Ordered Proceedings Act of 1996, Bill 11-622." Testimony supplied.

May 1, 1996, "Comments of the Public Defender Service for the District of Columbia Concerning the Sex Offender Registration Act of 1995, Bill 11-386." Testimony supplied.

April 17, 1996, "Comments of the Public Defender Service for the District of Columbia Concerning the Drug Paraphernalia Amendment Act of 1995, Bill 11-466." Testimony supplied.

March 14, 1996, Letter to Committee on the Judiciary in response to inquiry at the March 7, 1996 hearing on Bill 11-528, the Lorton Regulations Temporary Amendment Act of 1996. Copy supplied.

March 7, 1996, "Comments of the Public Defender Service for the District of Columbia Concerning the Lorton Regulations Approval Temporary Amendment Act of 1996, Bill 11-528." Testimony supplied.

February 15, 1996, Letter to Chairman William Lightfoot regarding Bill 11-475, the Juvenile Detention and Speedy Trial Amendment Act of 1995. Copy supplied.

January 31, 1996, "Comments of the Public Defender Service for the District of Columbia Concerning the Drug Rehabilitation Alternative to Prison Act of 1995, Bill 11-158." Testimony supplied.

January 3, 1996, "Comments of the Public Defender Service for the District of Columbia Concerning the Juvenile Detention and Speedy Trial Amendment Act of 1995, Bill 11-475." Testimony supplied.

October 25, 1995, "Comments of the Public Defender Service for the District of Columbia Concerning the Safe Streets Anti-Prostitution Amendment Act of 1995, Bill 11-439." Testimony supplied.

October 25, 1995, "Comments of the Public Defender Service for the District of Columbia Concerning Public Oversight Hearing on the Impact of the Joint Gun Initiative Conducted by the Metropolitan Police Department, the U.S. Attorney's Office, and the Bureau of Alcohol, Tobacco and Firearms." Testimony supplied.

October 11, 1995, "Comments of the Public Defender Service for the District of Columbia Concerning the Police Conduct Review Board Act of 1995, Bill 11-428." Testimony supplied.

September 25, 1995, "Comments of the Public Defender Service for the District of Columbia Concerning the Drug-Related Loitering Act of 1995." Testimony supplied.

September 21, 1995, "Comments of the Public Defender Service for the District of Columbia Concerning Oversight of Misdemeanor Streamlining Provisions of D.C. Act 10-238, the Omnibus Criminal Justice Reform Amendment Act." Testimony supplied.

July 26, 1995, Letter to Councilmember Jack Evans regarding "Safe Streets Anti-Prostitution Emergency Act of 1995." Copy supplied.

September 29, 1993, "Comments of the Public Defender Service for the District of Columbia Concerning Bill No. 10-98, The Omnibus Criminal Justice Reform Amendment Act, and Bill No. 10-268, The Misdemeanor Streamlining Amendment Act." Written testimony and unofficial transcript supplied.

January 6, 1999, District of Columbia Advisory Commission on Sentencing, Presentation on District of Columbia Truth in Sentencing Study. Transcript supplied.

From 1997 to 1998, I served on the District of Columbia Truth-In-Sentencing Commission. This Commission was created by Congress in the National Capital Revitalization and Self-Government Improvement Act of 1997 to review and make recommendations regarding sentencing law in the District of Columbia. As Chief of Special Litigation, I served as the representative of the Public Defender Service for the District of Columbia on this Commission and presented the views of the agency to the body.

February 23, 1998, Letter to Eric Holder, Deputy Attorney General, regarding the Truth-in-Sentencing Commission. Copy supplied.

January 27, 1998 meeting. Transcript supplied.

January 20, 1998, Commission Meeting. Transcript supplied.

January 19, 1998, Letter to Eric Holder, Deputy Attorney General, regarding the Status of the District of Columbia "Truth-in-Sentencing Commission." Copy supplied.

January 6, 1998, Commission Meeting. Transcript supplied.

January 1998, Opening Statement of the Public Defender Service to the District of Columbia Truth-in-Sentencing Commission. Copy supplied.

December 16, 1997, Commission Meeting. Transcript supplied.

December 9, 1997, Commission Meeting. Transcript supplied.

December 9, 1997, District of Columbia Truth-in-Sentencing Commission, Materials for Public Comment. Copy supplied.

November 25, 1997, Commission Meeting. Transcript supplied.

November 6, 1997, Commission Meeting. Transcript supplied.

October 28, 1997, Commission Meeting. Transcript supplied.

October 14, 1997, Commission Meeting. Transcript supplied.

September 30, 1997, Commission Meeting. Transcript supplied.

April 12, 1996, Letter to the Honorable Eugene Hamilton, Superior Court of the District of Columbia concerning the role of counsel in pre-petition diversion programs. 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.

This list represents the presentations I have identified through searches of my files and Internet databases and discussions with others to help refresh my memory. I serve and have served on multiple bar association committees and non-profit boards and in these capacities have frequently participated in public events. I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

May 22, 2013: Speaker, Remarks to the Attorney General and staff of the Civil Litigation Unit, Office of the Attorney General of the District of Columbia, Washington, D.C. Notes supplied.

April 13, 2013: Speaker, "Following Your Faith," Men's Empowerment Conference, Calvary Missionary Baptist Church, Muncie, IN. Notes supplied.

April 9, 2013: Master of Ceremonies, Reception hosted by the Standing Committee on *Pro Bono* Legal Services of the Judicial Conference of the District of Columbia Circuit to recognize law firms for their *pro bono* service, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

February 26, 2013: Speaker, Black History Month Program, Millennium Challenge Corporation, Washington, D.C. Remarks and Powerpoint supplied.

February 22, 2013: Speaker, Black History Month Program, White & Case LLP, Washington, D.C. Powerpoint supplied. (I gave the same remarks as those supplied for the February 26, 2013 event.)

February 8, 2013: Panelist, Effective Trial Advocacy in Employment Cases, Annual Conference of the Metropolitan Washington Employment Lawyers Association ("MWELA"), Washington, D.C. I have no notes, transcript or recording. The address of MWELA is 400 North Washington Street, Suite 300, Alexandria, VA 22314.

November 30, 2012: Speaker, Law Clerk Speaker's Forum about my personal career path to the bench, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

November 8, 2012: Speaker, Luncheon question and answer session with group of attorneys participating in training about effective trial advocacy, National Institute of Trial Advocacy, Washington, D.C. I have no notes, transcript or recording. The address of NITA is 1685 38th Street, Suite 200, Boulder, CO 80301.

October 26, 2012: Speaker, Remarks at the Investiture Ceremony of the Honorable Tracie M. Hunter, Hamilton County Juvenile Court, Cincinnati, OH. Remarks and press coverage supplied.

October 5, 2012: Speaker, Presentation to incoming law clerks on legal research, United States District Court for the District of Columbia, Washington, D.C. Notes supplied.

September 11, 2012: Presiding Judge, Remarks during Naturalization Ceremony, United States District Court for the District of Columbia, Washington, D.C. Notes supplied.

September 10, 2012: Presiding Judge, Remarks at Attorney Admissions Ceremony regarding the need for civility and for *pro bono* service, United States

District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

June 3, 2012: Speaker, Remarks at Social Justice Sunday church service, Sargent Memorial Presbyterian Church, Washington, D.C. I have no notes, transcript or recording, but the topics of the remarks were similar to those at the Men's Prayer Breakfast on April 10, 2011, for which remarks have been provided. The address of Sargent Memorial is 5109 Nannie Helen Burroughs Avenue, N.E., Washington, D.C. 20019.

May 18, 2012: Speaker, Remarks during Litigation Skills Training Workshop about my career and the importance of *pro bono* service, Washington Council of Lawyers, Washington, D.C. I have no notes, transcript or recording. The address of the Washington Council of Lawyers is 555 Twelfth Street, N.W., Suite 210, Washington, D.C. 20004.

April 20, 2012: Speaker, Remarks at the Investiture Ceremony of the Honorable Peter A. Krauthamer, Superior Court for the District of Columbia, Washington, D.C. Notes and press coverage supplied.

April 20, 2012: Panelist, "Two Decades of *Daubert*: Junk Science Replaced By Junk Rulings?" American Bar Association, Litigation Section Annual Conference, Washington, D.C. Notes supplied.

March 29, 2012: Master of Ceremonies, Reception hosted by the Standing Committee on *Pro Bono* Legal Services of the Judicial Conference of the District of Columbia Circuit recognizing law firms for their *pro bono* service, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

March 21, 2012: Judge on Three-judge Panel, Ames Moot Court Semi-Final Competition, Harvard Law School, Cambridge, MA. I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA.

February 10, 2012: Speaker, Law Clerk Speaker's Forum about my personal career path to the bench, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

December 13, 2011: Presiding Judge, Remarks at Naturalization Ceremony, United States District Court for the District of Columbia, Washington, D.C. I

have no notes, transcript or recording, but the remarks would have been similar to those that I made on September 11, 2012, for which notes have been provided. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

December 6, 2011: Master of Ceremonies, Reception hosted by the Standing Committee on *Pro Bono* Legal Services of the Judicial Conference of the District of Columbia Circuit recognizing the service of *pro bono* counsel, United States District Court for the District of Columbia, Washington, D.C. Remarks and press coverage supplied.

December 5, 2011: Presiding Judge, Remarks during Attorney Admissions Ceremony regarding the need for civility and for *pro bono* service, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

November 15, 2011: Speaker, Remarks during meeting of Sigma Delta Tau Legal Fraternity regarding my personal career path to the bench and effective litigation tactics, Sigma Delta Tau, Washington, D.C. I have no notes, transcript or recording. The address of Sigma Delta Tau is 1412 Primrose Road, N.W., Washington, D.C. 20012.

October 28, 2011: Panelist, "Sentencing Advocacy in the 21st Century," American Bar Association Criminal Justice Section 2011 Fall Conference, Washington, D.C. I have no notes, transcript or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

October 27, 2011: Master of Ceremonies, Reception hosted by the Standing Committee on *Pro Bono* Legal Services of the Judicial Conference of the District of Columbia Circuit recognizing federal government lawyers for their *pro bono* service, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

October 4, 2011: Speaker, Presentation to incoming law clerks on legal research, United States District Court for the District of Columbia, Washington, D.C. (I used the same notes as those supplied for the event on October 5, 2012).

September 17, 2011: Panelist, "Road to the Robe: Mapping a Path to the Bench" panel discussion during the Celebration of Black Alumni, Harvard Law School, Cambridge, MA. I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 1, 2011: Speaker, Introductory meeting and question and answer session with the United States Attorney and staff of the civil and criminal divisions, United States Attorney for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States Attorney for the District of Columbia is 555 Fourth Street, N.W., Washington, D.C. 20530.

July 21, 2011: Speaker, Introductory meeting and question and answer session with the Attorney General and staff of the Civil Litigation Unit, Office of the Attorney General of the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the Office of the Attorney General of the District of Columbia is 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

July 20, 2011: Speaker, Introductory meeting and question and answer session with clerk's office staff, United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

July 19, 2011: Speaker, Introductory meeting and question and answer session with the Federal Defender and staff, Federal Public Defender for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the Federal Public Defender for the District of Columbia is 625 Indiana Avenue, N.W. #550, Washington, D.C. 20004.

June 13, 2011: Speaker, Remarks at my Investiture Ceremony, United States District Court for the District of Columbia, Washington, D.C. Transcript supplied.

April 10, 2011: Speaker, Remarks at Men's Prayer Breakfast, Sargent Memorial Presbyterian Church, Washington, D.C. Remarks supplied.

April 8, 2011: Judge, Mock Court Competition for High School Youth, Historical Society of the District of Columbia Circuit, Washington, D.C. I have no notes, transcript or recording. The address of the Historical Society of the District of Columbia Circuit is E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, NW., Room 4726, Washington, D.C. 20001.

March 25, 2011: Speaker, Remarks at Law Clerk Speaker's Forum regarding my personal career path to the bench. United States District Court for the District of Columbia, Washington, D.C. I have no notes, transcript or recording. The address of the United States District Court for the District of Columbia is 333 Constitution Avenue, N.W., Washington, D.C. 20001.

March 1, 2011: Speaker, Remarks at my swearing-in, United States District Court for the District of Columbia, Washington, D.C. Transcript supplied.

March 25, 2010, Panelist, Patent Marking 2010: Developments Your Company Needs to Know Webinar, Venable LLP, Washington, D.C. Powerpoint supplied.

March 1, 2010: Speaker, Remarks at the Attorney Admission Ceremony, United States District Court for the District of Columbia, Washington, D.C. Remarks supplied.

September 19, 2009: Speaker, Meeting of the National Museum of the American Latino Commission, Washington, D.C. Outline and notes supplied.

April 20 – 24, 2009: Panelist, "Voices" – Sponsored by the United Nations High Commissioner for Human Rights, United Nations Durban Review Conference, Geneva, Switzerland. Remarks supplied.

March 11, 2009: Master of Ceremonies, Reception in Celebration of Mary Church Terrell Postage Stamp, Venable LLP, Washington, D.C. I have no notes, transcript or recording. The address of Venable LLP is 575 Seventh Street, N.W., Washington, D.C. 20004.

February 6, 2009: Speaker, Black History Month program, Public Defender Service for the District of Columbia, Washington, D.C. Remarks and Powerpoint supplied.

August 5, 2008: Speaker, District of Columbia Democratic Party fundraiser, Washington, D.C. Remarks supplied.

April 11, 2008: Moderator, Panel on "Building a Pipeline to a Diverse Generation of Trial Attorneys," District of Columbia Judicial and Bar Conference, Washington, D.C. I have no notes, transcript or recording. The address of the District of Columbia Bar is 1101 K Street, N.W., Suite 200, Washington, D.C. 20005.

January 21, 2008: Speaker, Martin Luther King Day Celebration, Rose-Hulman Institute of Technology, Terre Haute, IN. Remarks, Powerpoint, and press coverage supplied.

May 11, 2007: Panelist, "Cyber Crimes and Hacking" ALI-ABA Course of Study on Internet Law for the Practical Lawyer, ALI-ABA, Washington, D.C. Outline and Powerpoint supplied.

March 14, 2007: Speaker, Guest lecture for Professor James Forman to criminal procedure class, Georgetown University Law Center, Washington, D.C. I have

no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

June 10, 2006: Speaker, Remarks at Men's Day Program, Calvary Missionary Baptist Church, Muncie, IN. Notes supplied.

April 1, 2006: Panelist, "Racial and Religious Profiling: Its Definition & Legality in a Post-September 11th World," National Association of Muslim Lawyers, George Washington University Law School, George Washington University Muslim Law Students Association, Muslim Advocates, Capital Area Muslim Bar Association, Washington, D.C. I have no notes, transcript or recording. The address of the National Association of Muslim Lawyers is 315 Montgomery Street, Eighth Floor, San Francisco, CA 94104.

February 22, 2006: Speaker, Black History Month – The Founding of the National Museum of African American History & Culture, American Academy of Physician Assistants, Alexandria, VA. I have no notes, transcript or recording. The address of the American Academy of Physician Assistants is 2318 Mill Road, Suite 1300, Alexandria, VA 22314.

November 18, 2005: Moderator, Panel on "The War on Terrorism," Criminal Practice Institute, Washington, D.C. Powerpoint supplied.

November 2, 2005: Panelist, "Sentencing in the Post-*Booker* Era," District of Columbia Bar, Washington, D.C. Powerpoint and press coverage supplied.

July 19, 2005: Speaker, Remarks at "Celebrating Diversity" program, Ameren Corporation, St. Louis, MO. Notes and Powerpoint supplied.

March 16, 2005: Speaker, Guest lecture for Professor James Forman at criminal procedure class, Georgetown University Law Center, Washington, D.C. I have no notes, transcript or recording. The address of the Georgetown University Law Center is 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

November 20, 2004: Panelist, "Race and Incarceration Since *Brown*," Criminal Practice Institute, Washington, D.C. Powerpoint supplied.

February 11, 2003: Panelist, Presentation at Town Hall Meeting regarding the History of Efforts to Create the National Museum of African American History and Culture, National Museum of African American History and Culture Plan for Action Presidential Commission, Washington, D.C. Handout supplied.

November 20, 2002: Panelist, "Racial Profiling: Past, Present and Future," Islamic Legal Forum, Hispanic Law Students Association ("HLSA") and Black Law Students Association ("BLSA"), American University Washington College of Law, Washington, D.C. I have no notes, transcript or recording. The address

of the HLSA and BLSA at the Washington College of Law is 4801 Massachusetts Avenue, N.W., Washington, D.C. 20016.

September 18, 2002: Speaker, Guest lecture for Professor Cynthia Jones on racial profiling issues at criminal law class, American University Washington College of Law, Washington, D.C. I have no notes, transcript or recording. The address of the American University, Washington College of Law is 4801 Massachusetts Avenue, N.W., Washington, D.C. 20016.

April 18, 2002: Panelist, Panel on Racial Profiling issues, District of Columbia Judicial Conference, Washington, D.C. I have no notes, transcript or recording. The address of the District of Columbia Court of Appeals is Historic Courthouse, 430 E Street, N.W., Washington, D.C. 20001.

October 30, 2001: Panelist, "On Paper: Appellate Briefs," District of Columbia Bar Continuing Legal Education Seminar on Appellate Litigation, Washington, D.C. Notes supplied.

April 16, 2001: Awardee, Remarks upon receiving the Henry W. Edgerton Civil Liberties Award, ACLU of the National Capital Area, Washington, D.C. Remarks supplied.

December 8, 2000: Panelist, Panel on Racial Profiling issues during "Race, Police and the Community" Conference, Harvard Law School, Cambridge, MA. I have no notes, transcript or recording. The address of Harvard Law School is 1563 Massachusetts Avenue, Cambridge, MA 02138.

October/November 2000, Panelist, Proposals for the Criminal Justice Agenda of Incoming Administration, Criminal Practice Institute/Appellate Practice Institute, the Georgetown University Criminal Justice Clinic, and the Criminal Law and Individual Rights Section of the D.C. Bar, Washington, D.C. I have no notes, transcript or recording, but press coverage is supplied. The address of the Public Defender Service for the District of Columbia is 633 Indiana Avenue, N.W., Washington, D.C. 20004.

August 16, 2000: Panelist, "Restructuring Sentencing in the Nation's Capital," American Sociological Association Annual Meeting, Washington, D.C. I have no notes, transcript or recording. The address of the American Sociological Association is 1430 K Street, N.W., Suite 600, Washington, D.C. 20005.

June 20, 2000: Speaker, Criminal Defender Training Program Summer Series – The New Sentencing Laws in the District of Columbia, Public Defender Service for the District of Columbia, Washington, D.C. Notes supplied.

April 2000: Panelist, Panel on unknown legal topic, District of Columbia Judicial Conference, Washington, D.C. I have no notes, transcript or recording. The

address of the District of Columbia Court of Appeals is Historic Courthouse, 430 E Street, N.W., Washington, D.C. 20001.

March 14, 2000: Speaker, "A National African American Museum and Cultural Center," District of Columbia Public Library – Takoma Park Branch, Washington, D.C. I have no notes, transcript or recording. The address of the District of Columbia Public Library – Takoma Park Branch is 416 Cedar Street N.W., Washington, D.C. 20012.

March 3, 2000: Panelist, "Addressing Declining Rights in an Era of Declining Crime," 35th Anniversary Symposium, Harvard Civil Rights – Civil Liberties Law Review, Cambridge, MA. Transcript supplied.

Unknown date, 2000: Panelist, Panel on Racial Profiling issues, Delaware State Judicial Conference, Unknown city in Delaware. I have no notes, transcript or recording. The address of the Delaware Supreme Court is 55 The Green, Dover, DE 19901.

November 1999: Panelist, "Advanced Sentencing," District of Columbia Criminal Practice Institute, Washington, D.C. I have no notes, transcript or recording. The address of the Public Defender Service for the District of Columbia is 633 Indiana Avenue, N.W., Washington, D.C. 20004.

October 8, 1999: Panelist, "Police Brutality, Driving While Black and the New Juvenile Justice Bill: The System v. The Community," National Conference of Black Lawyers Annual Conference, Detroit, MI. I have no notes, transcript or recording. The address of the National Conference of Black Lawyers is P.O. Box 240583, Borough Hall, NY 11424.

August 8, 1999: Panelist, "Race and the Criminal Justice System," American Bar Association, Atlanta, GA. I have no notes, transcript or recording, but press coverage is supplied. The address of the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

April 17, 1999: Panelist, "Driving While Black?: A Study in Search and Seizure," National Bar Association Judicial Council, Brooklyn, NY. I have no notes, transcript or recording. The address of the National Bar Association is 1225 11th Street, N.W., Washington, D.C. 20001.

March 27, 1999: Panelist, "Media Impact on Racial Stereotypes in the Criminal Justice System" at Annual Sylvania Woods Conference on African Americans and the Law, American University Washington College of Law, Washington, D.C. I have no notes, transcript or recording. The address of the American University Washington College of Law is 4801 Massachusetts Avenue, N.W., Washington, D.C. 20016.

Unknown date, 1999: Panelist, Unknown topic, National Conference of State Governments meeting, Unknown location. I have no notes, transcript or recording. I included this event based upon my vague recollection, but I have no specific recollection of the event, its location, or the sponsor.

April 1998: Panelist, Unknown topic, District of Columbia Judicial Conference, Washington, D.C. I have no notes, transcript or recording. The address of the District of Columbia Court of Appeals is Historic Courthouse, 430 E Street, N.W., Washington, D.C. 20001.

November 1997: Panelist, "Recent Developments in the Law," District of Columbia Criminal Practice Institute, Washington, D.C. I have no notes, transcript or recording. The address of the Public Defender Service for the District of Columbia is 633 Indiana Avenue, N.W., Washington, D.C. 20004.

September 12, 1997: Panelist, "African Americans and Police Brutality," Congressional Black Caucus Annual Convention, Washington, D.C. Video available at http://www.c-spanvideo.org/program/90871-1.

January 19, 1997: Speaker, "Civil Rights from the 1960's to the 1990's – Has Anything Really Changed?" Celebration of Martin Luther King Day, South Orange Civic Association, South Orange, NJ. Remarks supplied.

November 1996: Panelist, "Recent Developments in the Law," District of Columbia Criminal Practice Institute, Washington, D.C. I have no notes, transcript or recording. The address of the Public Defender Service for the District of Columbia is 633 Indiana Avenue, N.W., Washington, D.C. 20004.

November 1995: Panelist, "Fourth and Fifth Amendment Motions," District of Columbia Criminal Practice Institute, Washington, D.C. Notes supplied.

November 1994: Panelist, "Fourth Amendment Motions," District of Columbia Criminal Practice Institute, Washington, D.C. I have no notes, transcript or recording. The address of the Public Defender Service for the District of Columbia is 633 Indiana Avenue, N.W., Washington, D.C. 20004.

December 1, 1998, Speaker, Forum on Presence of Minority Faculty, Civil Liberties Union at Harvard and the Harvard Foundation, Cambridge, MA. I have no notes, transcript or recording, but press coverage is supplied. The address of Harvard University is Massachusetts Hall, Cambridge, MA 02138.

October 24, 1988: Speaker, Introduction of Reverend Jesse Jackson, Sr. at event, Harvard University, Cambridge, MA. Remarks 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 generally not given interviews since becoming a judge. Prior to taking the bench, I had many occasions to be interviewed by various media outlets. I have thoroughly searched my files and Internet databases in an effort to produce as complete a list of these as I could, but it is still possible there are some I was not able to identify or locate.

"America's Story Through a Black Lens," USA Today, February 22, 2012.

Charles J. Ogletree Jr., THE PRESUMPTION OF GUILT 101-114 (Palgrave McMillan 2010). Copy supplied.

"Judges Hear Request to See Police Bias Reports," Baltimore Sun, September 30, 2009. Copy supplied.

"Full Maryland Court of Appeals Hears Racial Profiling Documents Case," Maryland Daily Record, September 30, 2009. Copy supplied.

"Maryland Court Hearing Held on Racial Profiling Records," Associated Press, September 29, 2009. Copy supplied.

"Maryland Morning with Sheilah Kast," WYPR, September 29, 2009. Audio supplied.

"Maryland Court Hears Racial Profiling Case," WAMU, September 29, 2009. Summary supplied.

"Racial Profiling Records Hearing Held," Fox 5 D.C. News, September 29, 2009. Copy supplied.

"Bringing a Case Against Racial Profiling," United Nations radio, May 29, 2009. Copy supplied.

"Racial Profiling Goes Before Maryland Appeals Court," WAMU radio, May 12, 2009. Summary supplied.

"Police Records Sought," Baltimore Sun, May 12, 2009. Copy supplied.

"A Black American Discusses Racial Discrimination in the United States at the Conference Against Racism," United Nations Radio, April 22, 2009. Transcript supplied.

"Voices . . . that should be heard," United Nations Television, April 6, 2009. Video supplied.

"For Ousted Juror, A Grand Fight for Answers," Legal Times, March 2, 2009. Copy supplied.

"Venable Celebrated for JTBF Support," Venable LLP Website, September 30, 2008. Copy supplied.

"The 90 Greatest Washington Lawyers of the Last 30 Years," Legal Times, May 19, 2008. Copy supplied.

"Rose-Hulman Celebrates MLK Day," WTWO TV, January 21, 2008. Copy supplied.

"Plaintiffs Urge Settlement Of Lawsuit Over Racial Profiling, MD," Class Action Reporter, November 21, 2007. Copy supplied.

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

Since March 1, 2011, I have served as a United States District Judge for the United States District Court for the District of Columbia. I was nominated by President Obama on May 20, 2010, and confirmed by the United States Senate on December 22, 2010. The United States District Court is the trial court within the federal court system that hears nearly all categories of civil and criminal matters over which there is federal subject-matter jurisdiction.

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

In the past two years as a United States District Judge, I have presided over hundreds of civil and criminal cases, including ten civil cases that went to judgment following a trial. One case was tried twice because of a hung jury during the first trial, and one case required a jury trial on some claims and a bench trial on other claims.

i. Of these, approximately what percent were:

jury trials:	75%
bench trials:	25%
civil proceedings:	100%
criminal proceedings:	0%

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

Please see attached list.

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

The cases are listed in alphabetical order.

1. *3M Co. v. Boulter*, 842 F. Supp. 2d 85 (D.D.C. 2012), *appeal dismissed* 2012 WL 5897085 (D.C. Cir. Oct. 19, 2012).

The Plaintiff in this matter, 3M Company, filed an eight-count complaint against Defendants Davis, Davis & Associates, PLLC and Davis–Block LLC (collectively, the "Davis Defendants"); Porton Capital Technology Funds and Porton Capital, Inc. (collectively the "Porton Defendants"); and Boulter, asserting a number of claims, including commercial defamation, tortious interference with contract and prospective business relations, and civil

conspiracy. Thereafter, all Defendants (except Boulter, who had not been served) filed motions to dismiss pursuant to either Rule 12(b)(2) or 12(b)(6) of the Federal Rules of Civil Procedure. In addition, those Defendants also filed a "special motion to dismiss pursuant to the District of Columbia Anti–SLAPP Act of 2010." After those motions were filed, the District of Columbia was permitted to intervene "solely for the limited purpose of presenting argument to defend the validity of the Anti–SLAPP Act." Following extensive briefing and argument, I granted the Porton Defendants' motion to dismiss for lack of personal jurisdiction and the Davis Defendants' motion to dismiss for failure to state a claim, for all claims except the commercial defamation claim. I also held that the special motion to dismiss procedure mandated by the D.C. Anti–SLAPP Act conflicts in several fundamental respects with the Federal Rules of Civil Procedure, and, accordingly, I held that the Act cannot apply to a federal court sitting in diversity pursuant to *Hanna v. Plumer*, 380 U.S. 460 (1965), and its progeny. The Davis Defendants and the District noted interlocutory appeals from the order denying the special motion to dismiss pursuant to the Anti-SLAPP Act, but those appeals were later dismissed following a settlement between the Plaintiff and the Davis Defendants. Boulter was eventually served and, like the defendants before him, filed a motion to dismiss pursuant to Federal Rules 12(b)(2) and 12(b)(6) and a "special motion to dismiss" pursuant to the D.C. Anti–SLAPP Act. I granted the motion to dismiss for lack of personal jurisdiction, and once again, denied the special motion to dismiss. None of the parties (including the District as intervenor) appealed any of the rulings relating to claims against the Porton Defendants, and the entire case is therefore terminated.

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2. *Grunewald v. Jarvis*, --- F. Supp. 2d ----, 2013 WL 987770 (D.D.C. Mar. 14, 2013).

Plaintiffs—five Washington, D.C. residents and an animal rights organization—sued the National Park Service and Department of the Interior over a plan to reduce the deer population in Washington, D.C.'s Rock Creek Park ("Park") that would likely involve shooting and killing deer either with guns or with bows and arrows. Plaintiffs claimed that the government, in developing its plan, failed to comply with the laws establishing the Park itself and the National Park Service, as well as the National Environmental Policy Act. The action was brought pursuant to the Administrative Procedure Act. Both parties moved for summary judgment. Following extensive briefing and argument, I found that plaintiffs had not met their burden of showing that the deer management plan was arbitrary, capricious or an abuse of discretion, given the abundant evidence in the administrative record showing that the deer population in the Park is above what scientists have concluded is healthy for the long-term management of the Park and the reasoned consideration of various alternative plans. I therefore granted the defendants' motion for summary judgment and denied the plaintiffs' motion for summary judgment. The matter is pending before the Court of Appeals.

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Defendants' counsel:

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3. *International Swaps and Derivatives Ass'n v. United States Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259 (D.D.C. 2012).

Plaintiffs International Swaps and Derivatives Association and Securities Industry and Financial Markets Association (collectively "Plaintiffs") challenged a recent rulemaking by Defendant United States Commodity Futures Trading Commission ("CFTC") setting position limits on derivatives tied to 28 physical commodities. The CFTC promulgated the Position Limits Rule pursuant to the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The central question for the Court was whether the CFTC promulgated the Position Limits Rule based on a correct and permissible interpretation of the statute at issue. I held that the relevant Dodd–Frank amendments to the Commodity Exchange Act of 1936 lent themselves to more than one plausible interpretation, and therefore the CFTC was required to interpret the ambiguities in the statute before promulgating the regulation. Accordingly, I granted the Plaintiffs' motion for summary judgment. The matter is pending before the Court of Appeals.

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4. *Libertarian National Committee, Inc. v. Federal Election Comm'n*, --- F. Supp. 2d ----, 2013 WL 1097792 (D.D.C. Mar. 18, 2013). Additional opinion denying motion to alter or amend judgment at *Libertarian Nat'l Comm. v. FEC*, --- F. Supp. 2d ----, No. 11-cv-562 (RLW), 2013 WL 2948171 (D.D.C. June 17, 2013).

   Plaintiff Libertarian National Committee, Inc. ("LNC") has been left a bequest that it is unable to take in one lump sum payment because Defendant Federal Election Commission ("FEC") believes that because Plaintiff is a political party and due to the large amount of the bequest, to do so would violate the Federal Election Campaign Act ("FECA"). The FEC instead required that the LNC receive annual payments from the bequest at the maximum contribution amount a living individual could donate. Thus the LNC would receive the full bequest, but over a number of years. The LNC is challenging the constitutionality of FECA as applied to bequests under the theory that bequests should be immediately available in full. The LNC sought to enjoin the FEC from enforcing FECA with respect to bequests and also requested certification of one question to the en banc United States Court of Appeals for the District of Columbia. The motion for certification was granted in part and denied in part, and the question of whether the FEC's restriction violated the First Amendment rights of the LNC was certified to the en banc Court of Appeals for its consideration. The matter is pending before the Court of Appeals.

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5. *McCutcheon v. Federal Election Comm'n*, --- F. Supp. 2d ----, 2012 WL 4466482 (D.D.C. Sept. 28, 2012) (3 Judge Panel), *probable jurisdiction noted* 133 S. Ct. 1242 (2013).

   Plaintiffs McCutcheon and the Republican National Committee challenged the aggregate campaign contribution limits Congress enacted in the Federal Elections Campaign Act of 1971 ("FECA") as unconstitutional. FECA currently imposes contribution limits stratified to track both the identity of the contributor and the identity of the receiver. Individuals, however, cannot necessarily contribute as much as they might wish within these limits; they must also comply with a second regulatory tier: a set of aggregate contribution limits. In an opinion written by Circuit Judge Janice Rogers Brown and joined by all members of the three-judge panel, the challenge was dismissed. Plaintiffs appealed the matter to the Supreme Court, and the Supreme Court noted probable jurisdiction on February 19, 2013.

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6. *McKinney v. United States Postal Service*, 2013 WL 164283 (D.D.C. Jan 16, 2013), and *McKinney v. United States Postal Service*, 2013 WL 2367798 (D.D.C. May 31, 2013)

   This is a class action lawsuit brought by Plaintiff McKinney on behalf of herself and all other similarly situated beneficiaries, seeking to recover unpaid interest on additional death benefit amounts that were paid, or that should have been paid, by the United States Postal Service pursuant to an Annuity Protection Program. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), I found that the proposed class satisfied numerosity, commonality, typicality, and adequacy prerequisites for class certification as well as predominance requirement for maintainability, but deferred full ruling on the certification

motion pending limited discovery efforts aimed at the manageability aspect of the Rule's "superiority" prong. After this limited discovery was completed, I concluded that the proposed class action satisfied the "superiority" prong of Rule 23(b)(3), and I granted the motion for class certification and appointed class counsel. The case is currently in the discovery phase and still pending.

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7. *In Re: Science Applications International Corp. Backup Tape Data Theft Litigation*, MDL No. 2360 and 12-mc-347.

A total of eight related class action lawsuits were brought in four different jurisdictions, arising out of the September 2011 theft of computer tapes containing personally identifiable and protected health information of approximately 4.9 million active duty and retired service members and their families. The Defendants in the actions are Science Applications International Corporation (SAIC), TRICARE Management Activity, the U.S. Department of Defense and the Secretary of Defense. SAIC, a common defendant in each of the eight lawsuits, succeeded in having this matter assigned by the Judicial Panel on Multidistrict Litigation (JPML) for coordinated pretrial proceedings pursuant to 28 U.S.C. 1407. The JPML assigned the matter to me, and I have therefore consolidated all eight cases for pretrial proceedings and discovery, entered a preliminary scheduling order, appointed interim lead and liaison counsel for the putative plaintiff class, ordered the plaintiffs to file an amended consolidated complaint, and set a briefing schedule on motions to dismiss. The case is currently pending.

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8. *Securities and Exchange Commission v. Securities Investor Protection Corporation*, 842 F. Supp. 2d 321 (D.D.C. 2012); 872 F. Supp. 2d 1 (D.D.C. 2012). Additional opinion denying motion to intervene at *SEC v. Securities Investor Protection Corp.*, Civil Action No. 11-mc-678 (RLW), Dkt. No. 43 (D.D.C. Sept. 4, 2012) (copy supplied), *aff'd per curiam*, No. 12-5304, 2013 WL 1164306 (D.C. Cir. Mar. 12, 2013).

This case is an outgrowth of the 2009 collapse of a group of companies owned or controlled by Robert Allen Stanford. Stanford allegedly sold more than $7 billion worth of certificates of deposit ("CDs") that were issued by the Stanford International Bank, Ltd. ("SIBL"), an Antiguan bank. The CDs were marketed by the Stanford Group Company, a now-defunct broker-dealer that was registered with the SEC and that was a member of the Securities Investor Protection Corporation ("SIPC"). The Securities and Exchange Commission ("SEC") contends that Stanford actually misappropriated billions of dollars and operated a fraudulent "Ponzi scheme" in which obligations of the CDs were paid using the proceeds from the sale of new CDs rather than from earnings, liquid assets or reserves. The SEC brought an action seeking an order compelling the SIPC to file application under the Securities Investor Protection Act ("SIPA") for a protective decree with the United States District

Court for the Northern District of Texas. If filed, the SIPC application would have sought to commence a liquidation proceeding in the Texas federal court pursuant to Section 5(a)(3) of SIPA, but the SIPC refused to file. This was the first instance in the 42 years since SIPA was enacted that the SEC had ever filed such an application; thus there were several issues of first impression. In the first opinion, I ruled that the action could be prosecuted as a summary proceeding, rather than by a full court trial at common law. In the second opinion, I denied the application because the SEC failed to meet its burden, by a preponderance of the evidence, of proving that SIPC has "refus[ed] . . . to commit its funds or otherwise to act for the protection of customers of any member of SIPC." The matter is pending before the Court of Appeals.

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9. *State of Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012) (3 Judge Panel).

Pursuant to Section 5 of the Voting Rights Act of 1965, Texas sought a declaratory judgment that Senate Bill 14 ("SB 14"), a newly-enacted law requiring in-person voters to present a photo ID, "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race[,] color," or "member[ship] [in] a language minority group." 42 U.S.C. §§ 1973c(a), 1973b(f)(2). To satisfy Section 5's effect requirement, Texas was required to demonstrate that SB 14 will not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141 (1976). In an opinion written by Circuit Judge David S. Tatel and joined by all members of

the three-judge panel, the Court found that Texas had failed to meet its burden of proof and that, if implemented, SB 14 would likely have a retrogressive effect. Accordingly, Texas's request for a declaratory judgment was denied. The issue of whether Section 5 of the Voting Rights Act is unconstitutional is still pending in our court, but Texas has also appealed the matter to the Supreme Court.

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(202) 305-7766

Intervenors' counsel (principal ones):

Ezra David Rosenberg
Dechert LLP
902 Carnegie Center, Suite 500
Princeton, NJ 08540
(609) 955-3200

Debo P. Adegbile
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
(212) 965-2249

Nancy Abudu
American Civil Liberties Union Foundation Inc.
230 Peachtree Street, N.W., Suite 1440
Atlanta, GA 30303
(404) 523-2721

Chad W. Dunn
Brazil & Dunn
4201 FM 1960 West, Suite 530
Houston, TX 77068
(281) 580-6310

Joseph Gerald Hebert
Law Office of Joseph Gerald Hebert
191 Somervelle Street, Suite 405
Alexandria, VA 22304
(703) 628-4673

10. *United States v. Talbott and Ransom*, Criminal No. 11-cr-357.

Defendants Talbott and Ransom pled guilty to conspiracy to commit bank fraud, conspiracy to commit mail fraud, and conspiracy to defraud the government. From 2004 to 2011, the defendants engaged in three distinct fraudulent schemes, resulting in millions of dollars in losses to their victims. While operating a property management company, the defendants stole the rental payments and security deposits from their clients, and they issued numerous fraudulent bills for services that were not rendered or that were inflated. The defendants also engaged in mortgage fraud schemes in which they twice refinanced their home and provided forged lien release documents to the settlement company so that they could fraudulently take possession of the loan proceeds. The defendants also filed false federal and D.C. tax returns. The total amount of the fraud was nearly $3 million. After the defendants pled guilty, I sentenced them to lengthy terms of incarceration. Both defendants have appealed the length of their sentences, and both matters are pending before the Court of Appeals.

Counsel for the government:

David S. Johnson
United States Attorney for the District of Columbia
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 252-7962

Counsel for defendant Talbott:

Matthew G. Kaiser
The Kaiser Law Firm, PLLC
1750 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 640-2850

Counsel for defendant Ransom:

Joseph Roll Conte
Law Offices of J.R. Conte, P.L.L.C.
400 Seventh Street, N.W.
Washington, D.C. 20004
(202) 638-4100

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.

The cases are listed in alphabetical order.

1. *3M Co. v. Boulter*, 842 F. Supp. 2d 85 (D.D.C. 2012), *appeal dismissed* 2012 WL 5897085 (D.C. Cir. Oct. 19, 2012).

Plaintiff's counsel:

Kenneth John Pfaehler
SNR Denton US LLP
1301 K Street, N.W., Suite 600 East Tower
Washington, D.C. 20005
(202) 408-6468

Michael J. Collins
Bickel & Brewer
1717 Main Street, Suite 4800
Dallas, TX 75201
(214) 653-4000

Davis Defendants' counsel:

Raymond Gerard Mullady, Jr.
Blank Rome
Watergate
600 New Hampshire Avenue, N.W.

Washington, D.C. 20037
(202) 772-5828

Porton Defendants' counsel:

Christopher E. Duffy
Boies, Schiller & Flexner LLP
575 Lexington Avenue
7th Floor
New York, NY 10022
(212) 446-2300

The District of Columbia's counsel:

Ariel B. Levinson-Waldman
Office of the Attorney General for the District of Columbia
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 724-6630

2. *Alec L. v. Jackson*, 863 F. Supp. 2d 11 (D.D.C. 2012).

Plaintiffs' counsel:

Julia A. Olson
Wild Earth Advocates
2985 Adams Street
Eugene, OR 97405
(541) 344-7066

Defendants' counsel:

Martin F. McDermott
United States Department of Justice
Environment and Natural Resources Division, Environmental Defense Section
601 D Street, N.W.
Washington, D.C. 20004
(202) 514-4122

3. *Grunewald v. Jarvis*, --- F. Supp. 2d ----, 2013 WL 987770 (D.D.C. Mar. 14, 2013).

Plaintiffs' counsel:

Katherine A. Meyer
Meyer Glitzenstein & Crystal

1601 Connecticut Avenue, N.W., Suite 700
Washington, D.C. 20009
(202) 364-4092

Defendants' counsel:

Caitlin Brynna Imaki
United States Department of Justice
Environmental & Natural Resources Division, Natural Resources Section
601 D Street, N.W., Suite 3137
Washington, D.C. 20004
(202) 305-0247

4. *Hardy v. District of Columbia*, 283 F.R.D. 20 (D.D.C. 2012).

Plaintiffs' counsel:

Henry A. Escoto
Law Office of Henry A. Escoto
806 Seventh Street, N.W., Suite 301
Washington, D.C. 20001
(202) 898-4700

Defendant's counsel:

Robert C. Utiger
Office of the Attorney General for the District of Columbia
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 442-5168

5. *International Swaps and Derivatives Ass'n v. United States Commodity Futures Trading Comm'n*, 887 F. Supp. 2d 259 (D.D.C. 2012).

Plaintiffs' counsel:

Eugene Scalia
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W., Suite 900
Washington, D.C. 20036
(202) 955-8500

Defendant's counsel:

Jonathan L. Marcus
United States Commodity Futures Trading Commission

1155 21st Street, N.W.
Three Lafayette Centre
Washington, D.C. 20581
(202) 418-5649

6. *Ivy Sports Medicine, LLC v. Sebelius,* 2013 WL 1455271 (D.D.C. Apr. 10, 2013)

Plaintiffs' counsel:

Mark A. Heller
Matthew M. Hoffman
Goodwin Procter LLP
901 New York Avenue, N.W.
Washington, D.C. 20001
(202) 346-4116

Defendant's counsel:

Adrienne Elise Fowler
United States Department of Justice, Office of Consumer Protection Litigation
450 Fifth Street, N.W., Suite 6400
Washington, D.C. 20530
(202) 514-9471

7. *Libertarian National Committee, Inc. v. FEC,* --- F. Supp. 2d ----, 2013 WL 1097792 (D.D.C. Mar. 18, 2013).

Plaintiff's counsel:
Allen Joseph Dickerson
Center for Competitive Politics
124 South West Street, Suite 201
Alexandria, VA 22314
(703) 894-6800

Alan Gura
Gura & Possessky, PLLC
101 North Columbus Street, Suite 405
Alexandria, VA 22314
(703) 835-9085

Defendant's counsel:

Kevin Paul Hancock
David Brett Kolker
Federal Election Commission

999 E Street, N.W.
Washington, D.C. 20463
(202) 694-1000

8. *Nu Image, Inc. v. Does 1-23,322*, 799 F. Supp. 2d 34 (D.D.C. 2011).

   Counsel for Plaintiffs:

   Thomas Mansfield Dunlap
   Dunlap Weaver PLLC
   199 Liberty Street, S.W.
   Leesburg, VA 20175-2715
   (703) 777-7319

   [Note that the defendants were never served and never made an appearance.]

9. *Securities and Exchange Commission v. Securities Investor Protection Corporation,* 842 F. Supp. 2d 321 (D.D.C. 2012).

   Plaintiff's counsel:

   Matthew T. Martens
   United States Securities and Exchange Commission
   100 F Street, N.E.
   Washington, D.C. 20549
   (202) 551-4481

   Defendant's counsel:

   Eugene Frank Assaf Jr.
   Kirkland & Ellis LLP
   655 15th Street, N.W.
   Washington, D.C. 20005
   (202) 879-5196

   Josephine Wang
   Securities Investor Protection Corp.
   805 15th Street, N.W., Suite 800
   Washington, D.C. 20005
   (202) 371-6728

10. *Securities and Exchange Commission v. Securities Investor Protection Corporation*, 872 F. Supp. 2d 1 (D.D.C. 2012), *aff'd*, 2013 WL 1164306 (D.C. Cir. Mar. 12, 2013).

Plaintiff's counsel:

Matthew T. Martens
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(202) 551-4481

Defendant's counsel:

Eugene Frank Assaf Jr.
Kirkland & Ellis LLP
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(202) 879-5196

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Securities Investor Protection Corp.
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Washington, D.C. 20005
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e. Provide a list of all cases in which certiorari was requested or granted.

McCutcheon v. FEC, --- F. Supp. 2d ----, 2012 WL 4466482 (D.D.C. Sept. 28, 2012) (3 Judge Panel). Appeal to U.S. Supreme Court filed Oct. 26, 2012, as No. 12-536. Probable jurisdiction noted on Feb. 19, 2013, *see* 133 S. Ct. 1242 (2013).

James v. FEC, --- F. Supp. 2d ----, 2012 WL 5353565 (D.D.C. Oct. 31, 2012) (3 Judge Panel). Appeal to U.S. Supreme Court filed Nov. 30, 2012, as No. 12-683, *see* 81 USLW 3329 (Nov. 30, 2012).

Stanton v. District of Columbia Court of Appeals, Dkt. No. 11-cv-613, Case No. 23, U.S.C.A. D.C. Cir. Case No. 12-7027, affirmed July 18, 2012. Petition for writ of certiorari filed on Jan. 8, 2013, as No. 12-921. Certiorari denied, 133 S. Ct. 1726 (Apr. 1, 2013).

State of Texas v. Holder, 888 F. Supp. 2d 113 (D.D.C. 2012) (3 Judge Panel). Appeal to U.S. Supreme Court filed on Feb. 19, 2013, as No. 12-1028.

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.

Lesesne v. Doe, --- F.3d ----, 2013 WL 1405763 (D.C. Cir. Apr 09, 2013). In this case, a former inmate at the District of Columbia jail brought a *pro se* action against the District of Columbia, the Department of Corrections and corrections officials alleging constitutional claims based on deliberate indifference to his medical needs and common law claims of intentional infliction of emotional distress. I granted the defendant's motion to dismiss, finding that the federal constitutional claims should be dismissed for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act (PLRA), and that the common law claims failed to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) (copy supplied). The Court of Appeals partially reversed my order, holding that the exhaustion requirements of the PLRA did not apply to this plaintiff because he was not incarcerated at the time he filed the lawsuit, an argument that was made for the first time on appeal by counsel appointed as *amicus*. The Court of Appeals affirmed the dismissal of the common law claims.

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

As a district court judge, I have filed all of my memorandum opinions using the federal judiciary's electronic filing system, which automatically publishes each opinion on the court website. In addition, Westlaw, Lexis and other publishers gather those opinions from the court website to include in their electronic databases. Therefore, I believe that I have no unpublished opinions.

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

Libertarian Nat'l Comm. v. FEC, --- F. Supp. 2d ----, No. 11-cv-562 (RLW), 2013 WL 2948171 (D.D.C. June 17, 2013)

Libertarian National Committee, Inc. v. FEC, --- F. Supp. 2d ----, 2013 WL 1097792 (D.D.C. Mar. 18, 2013)

Motley-Ivey v. District of Columbia, --- F. Supp. 2d ----, 2013 WL 543877 (D.D.C. Feb. 14, 2013)

Teton Historic Aviation Foundation v. United States, --- F. Supp. 2d ----, 2013 WL 208951 (D.D.C. Jan. 18, 2013)

Wellington v. Fulwood, 2013 WL 140254 (D.D.C. Jan. 11, 2013)

Neighborhood Assistance Corp. of America v. Consumer Financial Protection Board, --- F. Supp. 2d ----, 2012 WL 5995739 (D.D.C. Dec. 3, 2012)

McCutcheon v. Federal Election Comm'n, --- F.Supp.2d ----, 2012 WL 4466482 (D.D.C. Sept. 28, 2012) (3 Judge Panel), *probable jurisdiction noted* 133 S. Ct. 1242 (2013)

Dearth v. Holder, --- F. Supp. 2d ----, 2012 WL 4458447 (D.D.C. Sept. 27, 2012)

Whitehead v. District of Columbia Child Support Services Division,--- F. Supp. 2d ----, 2012 WL 4373472 (D.D.C. Sept. 26, 2012)

Hardy v. District of Columbia, 283 F.R.D. 20 (D.D.C. 2012)

Esposito v. Dep't of Treasury, 2012 WL 1076155 (D.D.C. Mar. 30, 2012)

Wesby v. District of Columbia, 841 F. Supp. 2d 20 (D.D.C. 2012)

Colbert v. Cincinnati Police Dep't, 867 F. Supp. 2d 34 (D.D.C. 2011)

Moffett v. Prudential Life Insurance Company of America, 2011 U.S. Dist. LEXIS 107063 (D.D.C. Sept. 21, 2011)

Kvech v. Holder, 2011 WL 4369452 (D.D.C. Sept. 19, 2011)

National Tobacco Co., L.P. v. District of Columbia, 2011 WL 4442771 (D.D.C. Sept. 14, 2011)

Pai v. United States Citizenship and Immigration Services, 810 F. Supp. 2d 102 (D.D.C. 2011)

Vardon v. Federal Reserve System, 2011 WL 3847168 (D.D.C. Aug. 31, 2011), *aff'd*, 448 Fed. Appx. 77 (D.C. Cir. Jan. 11, 2012)

Moten v. Hatch, 2011 WL 3847437 (D.D.C. Aug. 30, 2011)

Nu Image, Inc. v. Does 1-23,322, 799 F. Supp. 2d 34 (D.D.C. 2011)

Okpala v. District of Columbia, 775 F. Supp. 2d 135 (D.D.C. 2011), *amended*, 819 F. Supp. 2d 13 (D.D.C. 2011)

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

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

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

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

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

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

The District Court uses an automated conflict check system. I maintain a list of persons, parties and law firms who cannot appear before me due to an actual conflict of interest or the appearance of such a conflict, and the system automatically flags any such matters. Due to my recent former partnership with Venable LLP, I still recuse myself from all matters where Venable LLP is counsel or a party. In addition, I recuse myself from any matter that was pending in the Public Defender Service for the District of Columbia during my time of service in that office. No party has ever asked me to recuse from a case.

Sher v. SAF Financial, Inc., 1:11-mc-00088-JDB. I recused sua sponte. Venable represented an interested party in the underlying dispute.

Popal et al. v. Fiore et al., 1:11-cv-00801-JEB. I recused sua sponte. Venable represented a party.

Goodman et al. v. Merck Sharp & Dohme Corp. et al., 1:11-cv-00954-HHK. I recused sua sponte. Venable represented a party.

Brown v. United States, 1:11-cv-01734-RWR. I recused sua sponte. The petitioner was challenging his conviction, and at the time of his conviction, he was represented by the Public Defender Service for the District of Columbia while I was employed there.

Fanning v. Interstate Brands Corp., 1:11-cv-01764-RJL. I recused sua sponte. Venable represented a party.

Najmah Rashad v. Washington Metropolitan Area Transit Authority, 12-cv-00863-RMC. I recused sua sponte. Venable represented a party.

Douglas v. District of Columbia Housing Authority et al., 1:12-cv-01418-ESH. I recused sua sponte. Venable represented a party.

United States v. Torres, et al., 1:11-cr-00219-ABJ. I recused sua sponte. I approved wiretap requests that were used to procure evidence during the grand jury investigation; therefore a different judge should be assigned to handle the case after an indictment is returned, in case a motion to suppress that evidence is filed and the wiretap authorization must be reviewed.

Bishop et al v. Merck Sharp & Dohme Corp. et al., 1:12-cv-00281-RBW. I recused sua sponte. Venable represented a party.

Sibley v. Obama, 1:12-cv-01832-JDB. I recused sua sponte. Because plaintiff's lawsuit challenged President Obama's qualifications to serve as President, I recused due to volunteer work for the 2008 Obama for President campaign prior to taking the bench.

United States v. Sears, Roebuck & Co. et al., 1:13-cv-00005-RBW. I recused sua sponte. Venable represented a party.

Delta Sigma Theta Sorority, Inc. v. Bivins et al., 1:13-cv-00252-BAH. I recused sua sponte. Plaintiff was represented by close personal friend and former employer.

United States v. Jesse Jackson, Jr., Criminal No. 13-cr-58 and *United States v. Sandra Stevens Jackson*, Criminal No. 13-cr-59. On February 15, 2013, these cases were assigned to me. On February 19, 2013, I offered to recuse *sua sponte*; disqualification was waived by all parties on that same date. The Defendants are the son and daughter-in-law of Reverend Jesse Jackson, Sr. During law school, I served as a co-chair of Harvard Law School Students for Jackson, supporting Reverend Jackson's 1988 presidential campaign, and I introduced him at a campus event that year. On March 21, 1999, while an attorney, I appeared as a guest on a show hosted by Reverend Jackson on the CNN network entitled "Both Sides with Jesse Jackson" to discuss my *Wilkins v. State of Maryland* civil rights lawsuit. Because of that prior relationship, I offered to recuse from the cases, but the prosecution and both Defendants agreed to waive any potential disqualification and asked that I stay on the case. Subsequently, on April 12, 2013, Harvard Law School Professor Charles Ogletree entered an appearance as counsel for Jesse Jackson, Jr. Because of my close professional and personal relationship with Professor Ogletree, I recused from both cases on April 16, 2013.

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

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or

appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

2005 – 2008
District of Columbia Access to Justice Commission
Appointed by the District of Columbia Court of Appeals

2002 – 2003
National Museum of African American History and Culture Plan for Action Presidential Commission
Appointed by the United States Senate

1998 – 2000
District of Columbia Advisory Commission on Sentencing (now known as the District of Columbia Sentencing and Criminal Code Revision Commission)
Pursuant to D.C. Law 12-167, one member of the commission was required to be a representative of the Public Defender Service of the District of Columbia, and Jo-Ann Wallace, the Director of the agency, appointed me to serve as that representative.

1998 – 2000 (approximate)
District of Columbia Juvenile Justice Advisory Group
Pursuant to administrative order of the Mayor of the District of Columbia, one member of the Advisory Group was required to be a representative of the Public Defender Service of the District of Columbia, and Jo-Ann Wallace, the Director of the agency, appointed me to serve as that representative.

1997 – 1998
District of Columbia Truth-In-Sentencing Commission
Pursuant to Public Law 105-33, one member of the commission was required to be a representative of the Public Defender Service of the District of Columbia, and Jo-Ann Wallace, the Director of the agency, appointed me to serve as that representative.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Jackson for President (1988), Co-chair of Harvard Law School Students for Jackson, provided voluntary assistance with voter registration and canvassing.

Obama for President (2008), Member of Committee of Lawyers for Obama, provided voluntary assistance with fundraising, canvassing and vetting.

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

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

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

From 1989 to 1990. I served as a law clerk to the Honorable Earl B. Gilliam (now deceased), District Judge on the United States District Court for the Southern District of California.

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

From August 2000 to May 2002, I primarily did non-legal volunteer work advocating for the creation of a national museum dedicated to African American history and culture. I also practiced alone as a contract attorney out of my home during that time for the Public Defender Service for the District of Columbia and for Curry & Wilbourn.

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

September 1990
DeFur Voran LLP
400 South Walnut Street, Suite 200
Muncie, IN 47305
Law Clerk

1990 – 2002
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Staff Attorney (1990 – 1996)
Chief, Special Litigation (1996 – 2000)
Contract Attorney (part-time) (2000 – 2002)

2001 – 2002
Curry & Wilbourn
One Massachusetts Avenue, N.W., Suite 800
Washington, D.C. 20001

Contract Attorney (part-time)

2002 – 2011
Venable LLP
575 Seventh Street, N.W.
Washington, D.C. 20004
Partner

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

I have never served as a mediator or arbitrator.

b. Describe:

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

When I started practicing law in 1990 following my clerkship, my practice consisted exclusively of criminal appellate and trial work.

I served in the Public Defender Service for the District of Columbia from 1990 to 2000. From 1990 to 1995, I was principal counsel in several appeals to the District of Columbia Court of Appeals, including interlocutory appeals involving complex issues, such as collateral estoppel and preventive detention, and appeals following convictions for serious offenses such as murder, armed robbery and mayhem. In addition, I was lead trial counsel in hundreds of cases before the Superior Court of the District of Columbia, beginning with juvenile matters, then misdemeanors and concluding with serious felonies such as rape, kidnapping, armed robbery and murder. Around 1995, my practice began to include some civil work, primarily in consent decree enforcement, but it remained primarily a criminal practice.

From August 2000 to May 2002, my practice was as a part-time contract attorney for Curry & Wilbourn and the Public Defender Service, and I worked almost exclusively on civil matters. For Curry & Wilbourn, I worked on civil rights, commercial law, real property and trust and estate litigation matters. For the Public Defender Service, I served as lead counsel in the constitutional challenge to the newly enacted District of Columbia sex offender registration statute in the district court and in the United States Court of Appeals for the District of Columbia Circuit.

While at Venable from 2002 to 2011, my practice consisted of white collar criminal defense, intellectual property litigation and complex commercial

litigation arising from business disputes, primarily in federal courts around the country. I was first or second chair in numerous litigation matters in a variety of subject areas, including patents, trademarks, bankruptcy, products liability, corporations and civil rights at the trial court level. In addition, I managed or assisted with appellate matters in the District of Columbia Court of Appeals, the United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for the Second Circuit.

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

From 1990 to 2002, my typical clients were indigent individuals who were facing charges or had been convicted or adjudicated in either the juvenile delinquency or adult criminal justice systems. During that time, I specialized in criminal law, and to a lesser degree, civil rights law. From 2002 to 2011, my typical clients were individuals and companies facing investigation or charges in white collar criminal matters or companies, both large and small, involved in intellectual property or commercial disputes. During that time, I maintained my specialties in criminal and civil rights law and began to develop a specialty in patent 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.

From 1990 to 1996, my practice was 100% litigation, and I appeared in court very frequently. From 1996 to 2002, my practice was approximately 50% litigation and 50% public policy, though I still appeared in court fairly frequently. From 2002 to 2011, nearly 100% of my practice was in litigation, and I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: >65%
   3. other courts:
   4. administrative agencies: <5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 30%
   2. criminal proceedings: 70%

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

I have tried approximately 25 to 30 cases to verdict or final decision over my entire career, the vast majority during my tenure with Public Defender Service for the District of Columbia. I estimate that of those trials, I was sole counsel in approximately 70% of those cases, chief counsel in approximately 15% and associate counsel in approximately 15%.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury 20%

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

I have represented parties seeking certiorari review in the following matters, serving as the primary author of each petition for writ of certiorari:

District of Columbia v. Jerry M., 738 A.2d 1206 (D.C. 1999), *cert. denied*, 529 U.S. 1118 (2000). Copy of petition available at 1999 WL 35127016.

United States v. Smith, 685 A.2d 380 (D.C. 1996), *cert. denied*, 522 U.S. 856 (1997). Copy of petition supplied.

In re M.E.B., 638 A.2d 1123 (D.C. 1993), *cert. denied*, 513 U.S. 883 (1994). Copy of petition 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. *Robert L. Wilkins, et al. v. State of Maryland*, Docket No. 93-cv-00468-CCB (D. Md.) and *NAACP, et al. v. Maryland State Police*, Docket No. 98-cv-1098-FPS (D. Md.). Reported at *Maryland State Conference of NAACP Branches v. Maryland*

State Police, 2007 WL 2914913 (D. Md., Oct. 3, 2007); *Maryland State Conference of NAACP Branches v. Maryland State Police*, 454 F. Supp. 2d 339 (D. Md. 2006); *Maryland State Conference of NAACP Branches v. Maryland Dep't of State Police*, 72 F. Supp. 2d 560 (D. Md. 1999). Judge Catherine Blake and Magistrate Judge Paul Grimm handled the case initially, and then it was transferred to Magistrate Judge James Bredar and Judge Frederick Stamp (sitting by designation from the Northern District of West Virginia); 1993 – 2008.

The *Wilkins* case was a "racial profiling" civil rights lawsuit that arose out of an incident in which I and three family members were stopped and detained for a search by a drug-sniffing dog by the Maryland State Police while returning from a funeral in Chicago. In 1995, we reached a landmark settlement that required systematic statewide compilation and publication of highway traffic stop and search data by race. In 1998, we filed a new lawsuit on behalf of the Maryland NAACP and several individuals as a putative class action, alleging that the Maryland State Police engaged in "racial profiling" in traffic stops and searches along I-95 in Maryland, and litigation to enforce the settlement agreement in the *Wilkins* case was consolidated with the *NAACP* case. In 2003, the parties agreed to resolve the demands for equitable relief in the *Wilkins* case and the *NAACP* case by entering into another landmark consent decree that required that the Maryland State Police take a number of further actions, including hiring an independent consultant, installing video cameras in its vehicles, requiring an internal investigation of all citizen complaints of racial profiling, assigning a senior officer to review all racial profiling complaints and data, and providing the Maryland NAACP with quarterly reports containing detailed information on the number, nature, location and disposition of racial profiling complaints. The portion of the *NAACP* case involving the requests for damages by individual motorists was settled in April 2008. These cases and the data have been examined and described in thousands of books, scholarly articles and popular media publications and inspired an Executive Order by President Bill Clinton, legislation in the House and Senate, and legislation in at least twenty-eight states prohibiting racial profiling and/or requiring data collection. I was the lead plaintiff in the *Wilkins* case, but I also participated in the *Wilkins* and *NAACP* cases as co-counsel, assisting the lead lawyers in the case with legal research, litigation strategy, drafting pleadings and settlement negotiations.

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2. *Kimberly-Clark Worldwide, Inc. v. Tyco Healthcare Group LP*, 635 F. Supp. 2d 870 (E.D. Wis. 2009). This matter was before Judge William Griesbach; 2009 – 2010.

   I represented Kimberly-Clark, which owns a patent for endotracheal tubes with an innovative feature that helps prevent fluid from leaking past the tube's cuff and aspirating into the lungs of intubated patients, thereby helping to prevent those patients from contracting pneumonia. Kimberly-Clark sought a preliminary injunction against Tyco Healthcare, which had recently begun marketing an endotracheal tube in the United States that copied the patented feature. The parties engaged in expedited fact and expert discovery in advance of an evidentiary hearing on the request for a preliminary injunction. Following the hearing, the court ruled that Kimberly-Clark had established a likelihood of success on the merits with its showing that the patent was valid and was being infringed, but the court ruled that

Kimberly-Clark would not suffer irreparable harm pending trial and that the public interest would not be served by a preliminary injunction. Subsequently, the case was resolved by settlement, with Tyco agreeing to license Kimberly-Clark's patented technology. I served as lead counsel for Kimberly-Clark.

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3. *Janssen Pharmaceutica N.V., et al., v. Eon Labs Manufacturing Inc.*, Docket No. 01-CV-2322 (NG) (MDG), 374 F. Supp. 2d 263 (E.D.N.Y. 2004), *aff'd*, 134 Fed. Appx. 425 (Fed. Cir. June 13, 2005); *see also Janssen Pharmaceutica N.V. v. Eon Labs Mfg., Inc.*, 2003 WL 25819555 (E.D.N.Y. Nov. 25, 2003). This matter was before Judge Nina Gershon; 2002 – 2005.

I represented the plaintiff, Janssen Pharmaceutica, the owner of a patent for pharmaceutical beads used in an innovative antifungal medication in a lawsuit against Eon Labs. Eon had received FDA approval to manufacture and market a generic version of the antifungal medication, and Janssen brought suit pursuant to the federal Hatch-Waxman Act to obtain injunctive relief against Eon. Following a bench trial, the court reached a split verdict, rejecting Eon's challenges to the validity of the patent, but also finding that Eon's formulation of the medication did not infringe Janssen's patent. The case was appealed to the Federal Circuit, and the trial court ruling was affirmed. I acted as second chair in the case and assisted with all aspects of the case from discovery, through motions practice, trial and appeal.

Co-counsel:

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Opposing Counsel:

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4. *Doe No. 1 v. Williams*, 167 F.Supp.2d 45 (D.D.C. 2001), *rev'd in part*, 2003 WL 21466903 (D.C. Cir. 2003). This matter was before Judge Ellen Segal Huvelle; 2001 – 2003.

I acted as lead counsel for plaintiffs in a class action lawsuit challenging the District of Columbia Sex Offender Registration Act on constitutional and Privacy Act grounds, obtaining temporary, preliminary and permanent injunctive relief in the District Court. While the case was on appeal, the Supreme Court of the United States upheld the sex offender registration statutes of Connecticut and Alaska, and based on those rulings, the U.S. Court of Appeals for the D.C. Circuit reversed the injunctions in part.

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5. *Newman v. Borders, Inc.*, 257 F.R.D. 1 (D.D.C. 2009); *Newman v. Borders, Inc.*, 530 F. Supp. 2d 346 (D.D.C. 2008). This case was before Judge Richard Roberts; 2007 – 2010.

   This case was brought pursuant to 42 U.S.C. § 1981, alleging that Newman was discriminated against while shopping at a Borders bookstore in Washington. Borders filed a motion to dismiss, which was granted in part and denied in part, and the matter proceeded through discovery. The parties reached a confidential settlement of the matter. I represented Borders, serving as co-lead counsel in the case.

   Co-counsel:

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6. *Chase v. Public Defender Service*, 956 A.2d 67, 28 IER Cases 967 (D.C. 2008); 2003 – 2008.

   In this case, I represented the Public Defender Service for the District of Columbia in various challenges brought by Chase to his termination from the agency. In a case of first impression, the D.C. Court of Appeals was asked to construe the impact of the passage by Congress of the National Capital Revitalization and Self-Government Improvement Act of 1997 upon the status of the Public Defender Service. The court held that Revitalization Act altered the charter of the Public Defender Service such that its employees were not subject to the same personnel procedures as employees of the District of Columbia government, upholding the agency's right to terminate Mr. Chase. I served as lead counsel in the matter, overseeing the briefing and strategy on appeal and in prior proceedings before an administrative law judge and the District of Columbia Superior Court.

   Co-counsel:

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Opposing counsel:

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7. *Martin v. United States,* 647 A.2d 1135 (D.C. 1994); *Martin v. United States*, 614 A.2d 51 (D.C. 1992); *Martin v. United States*, 606 A.2d 120 (D.C. 1991); 1990 - 1994.

Mr. Martin was convicted of first-degree murder in the D.C. Superior Court, and I represented him in the appeal of the conviction and in subsequent proceedings. This was my very first case with the Public Defender Service, and I wrote the brief and argued the appeal. The D.C. Court of Appeals reversed the conviction, holding that the trial court erred by refusing to grant a mistrial when Mr. Martin's co-defendant pled guilty in the middle of trial and made statements during his guilty plea that were exculpatory as to Mr. Martin. Following the reversal, I was junior counsel in the trial court, where we actively litigated bond review and collateral estoppel motions leading up to his retrial, and I played a lead role in the briefing and argument of the appeals of those issues. Mr. Martin eventually entered an *Alford* plea to voluntary manslaughter.

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8. *District of Columbia v. Jerry M.*, 738 A.2d 1206 (D.C. 1999), *cert. denied*, 529 U.S. 1118 (2000). The case was before then-judge Richard A. Levie; 1995 – 2000.

This matter involved a consent decree entered in the District of Columbia Superior Court in 1986 on behalf of juveniles detained in secure facilities pending trial or following adjudication. I served as co-lead counsel for the plaintiffs, litigating the violation of various consent decree provisions due to overcrowding and inadequate medical care, housing conditions, food and education. I tried two contested civil contempt proceedings to verdict, including a landmark motion to place the school of the Oak Hill detention center school in receivership due to repeated educational failures, particularly violations of federal special education requirements. The Court of Appeals reversed the receivership order.

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9. *United States v. Smith*, 685 A.2d 380 (D.C. 1996), *cert. denied*, 522 U.S. 856 (1997). The matter was before Judge Henry Greene; 1995 – 2002.

I represented Ms. Smith in a series of cases, including a case in the Superior Court of the District of Columbia charging her with two counts of stalking, two counts of blackmail and three counts of felony threats. This was a landmark prosecution for at least two reasons. First, the case was unique because it was the first blackmail case to be tried in the District of Columbia in at least 20 years. Secondly, the case was unique because it was one of the first prosecutions under the District of Columbia's new stalking statute. Following extensive motions practice and lengthy hearings, Judge Henry Greene granted the defense motions to dismiss the stalking counts on constitutional grounds. Following a trial on the remaining charges, Ms. Smith obtained not guilty verdicts on all counts except one blackmail count, on which there was a hung jury. The government appealed the dismissal of the stalking charges, and the Court of Appeals reversed and reinstated those charges. Ms. Smith eventually pled guilty to a misdemeanor charge. I was co-lead counsel in the case.

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10. *United States v. Gibson*, 1995 FEL 001293. This case was before Judge Frederick Weisberg in the Superior Court of the District of Columbia; 1995 – 1996.

    I was appointed to represent Mr. Gibson following an incident in which he and another man attempted to rob a taxi driver using an inoperable BB gun. The taxi driver stopped his car in a busy intersection, resisted, disarmed Mr. Gibson, and was fighting with Mr. Gibson when an off-duty police officer in his street clothes came upon the scene. The off-duty officer approached the men, pulled his gun and was pointing it at the men when a police squad car came upon the scene. After exiting the squad car, one of those officers shot the off-duty officer, killing him. Mr. Gibson was arrested at the scene and charged with armed robbery of the taxi driver and felony murder of the off-duty police officer. The case and the incident received a great deal of media attention and scrutiny due to the death of the police officer and the circumstances of the shooting. Following vigorous advocacy, the felony murder charges were dismissed and Mr. Gibson was permitted to plead guilty to armed robbery. I acted as lead counsel in the case, though I was assisted and supervised by co-counsel.

    Co-counsel:

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    Opposing counsel:

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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List

any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I spent a substantial amount of time from 2003 to 2011 on a litigation matter in which I represented Enron Creditors Recovery Corp. in an adversary proceeding that was originally filed in the United States Bankruptcy Court for the Southern District of New York, seeking to recover $1.1 billion in payments made on commercial paper notes prior to maturity and just six weeks prior to Enron's bankruptcy filing. Enron alleged that, after its financial difficulties became public, the market for its commercial paper collapsed and its commercial paper dealers and note-holders pressured Enron to draw on its $3 billion revolver and to prepay the notes at their accrued par value, which was substantially in excess of their market value. Enron sought to recover the $1.1 billion in prepayments as voidable preferences under the Bankruptcy Code from approximately 200 defendants. Enron recovered the equivalent of approximately $500 million in settlements, and three defendants who did not settle were awarded summary judgment by the United States District Court for the Southern District of New York, and that ruling was affirmed by the U.S. Court of Appeals for the Second Circuit.

In addition, I was involved in several significant non-litigation legal activities. First, I was involved with the District of Columbia Truth-in-Sentencing Commission and the District of Columbia Advisory Commission on Sentencing, serving as the representative of the Public Defender Service for the District of Columbia on those bodies, which were tasked with making legislative and policy recommendations to the Council for the District of Columbia. Secondly, I was appointed by the United States Senate to serve on the National Museum of African American History and Culture Plan for Action Presidential Commission, and I chaired its Site and Building Committee. In addition to studying various policy and administrative issues, this Presidential Commission addressed legal issues relating to subjects such as governance of federal agencies and the Smithsonian, appropriations and fundraising, and building on the National Mall. The Presidential Commission also drafted proposed legislation and made recommendations to Congress. Finally, I was invited to provide testimony or participate in panel discussions in numerous meetings on the subject of racial profiling, including before the United States Senate, the United States House of Representatives, the United Nations, the American Bar Association, and various other organizations.

I have not engaged in lobbying activities 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. I occasionally have spoken to a class as a guest lecturer, and I have helped supervise and teach at trial advocacy workshops.

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

    None.

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

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

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       Due to my recent former partnership with Venable LLP, I still recuse myself from all matters where Venable LLP is counsel or a party. At some point in the next few years, I plan to stop recusing from all Venable matters, and I would instead recuse myself only from 1) cases in which Venable LLP is either a party or counsel for a party and the litigation involves events that occurred prior to my departure from the firm, 2) cases involving matters in which I may have played some role in the past, and 3) cases involving a former client with whom I had a long-standing relationship or about whom I gained confidential information or knowledge that may be potentially relevant to the litigation. In addition, I would

consider and disclose, as appropriate, any other relationships with the parties or counsel in all matters and recuse myself as appropriate. Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include family members, relatives, close friends, former clients, former partners, or matters pending in any law firm in which I was formerly associated. In addition, I would recuse myself from any matter that was pending in the Public Defender Service for the District of Columbia during my time of service in that office.

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

If confirmed, I will handle all matters including actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

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

I have actively served the disadvantaged throughout my entire legal career. I currently serve as the Court liaison to The Standing Committee on *Pro Bono* Legal Services of the Judicial Conference of the District of Columbia Circuit. During my ten-year tenure with the Public Defender Service for the District of Columbia, I served the disadvantaged virtually full-time. From 1992 prior to my joining Venable in 2002, I donated thousands of hours of my time to the *Wilkins v. State of Maryland* and *NAACP et al. v. Maryland State Police* cases. During my time with Venable from 2002 to 2011, I continued my work on those two cases, and I also represented clients in other pro bono matters involving child custody, social security disability, asylum, public information act requests and other matters, for a total of more than 1500 hours from 2002 to 2011.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On March 15, 2013, an official from the White House Counsel's Office spoke to me about my potential interest in serving on the United States Court of Appeals for the District of Columbia Circuit. After that day, I was in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On May 2, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 17, 2013, I met with the White House Counsel in Washington, D.C. On June 4, 2013, President Obama submitted my nomination to the United States 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
Wilkins, Robert L.	U.S. Court of Appeals for the District of Columbia Circuit	6/4/2013
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**
United States Circuit Judge	☑ Nomination Date 6/4/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 6/4/2013
7. Chambers or Office Address		
U.S. District Court for the District of Columbia 333 Constitution Avenue N.W. Washington, D.C. 20001		

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 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 6/4/2013

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	Venable LLP - Partnership Income	$86,939.00
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	American Public Health Association - Scholarship
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
Wilkins, Robert L.	6/4/2013

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.	Everhome Mortgage	Mortgages - Rental Properties	O
2.	Neinet	Loan - Educational	None
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Wilkins, Robert L.	6/4/2013

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. Rental Property #1 - Muncie, IN	D	Rent	L	W	Exempt				
2. Rental Property #2 - Muncie, IN	D	Rent	L	W					
3. Rental Property #3 - Muncie, IN	D	Rent	L	W					
4. Rental Property #4- Muncie, IN	D	Rent	L	W					
5. Rental Property #5 - Muncie, IN	D	Rent	L	W					
6. Rental Property #6 - Muncie, IN	D	Rent	L	W					
7. Rental Property #7 - Muncie, IN	D	Rent	L	W					
8. Rental Property #8 - Muncie, IN	D	Rent	L	W					
9. Cabrillo FCU Accounts	A	Int./Div.	M	T					
10. Justice FCU Accounts	A	Int./Div.	L	T					
11. IRA #1 - Charles Schwab Funds									
12. -CRM Small Cap Value Instl	A	Int./Div.	K	T					
13. -American Funds EuroPacific Gr R6	A	Int./Div.	K	T					
14. -PIMCO Total Return Instl	D	Int./Div.	M	T					
15. -Vanguard Total Bond Market Index Si		None	K	T					
16. -Schwab Stable Value Instl III		None							
17. -Federated Govt Obligs Instl		None	L	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Wilkins, Robert L.	6/4/2013

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. IRA #2 - ING Plans									
19. -SSgA Target Retirement 2030 Fund		None	L	T					
20. -Ridge Worth Small Cap Growth Stock Fund	B	Int./Div.	J	T					
21. Engraving & Printing FCU Account	A	Int./Div.	J	T					
22. Industrial Centre FCU Accounts	A	Int./Div.	J	T					
23.									
24.									

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 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 6/4/2013

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

Part III: All unearned income, etc from Venable LLP was paid in 2011.
Part VII: Estimated fair market value of each property is much lower than the assessed value. Fair market values appear below:
Rental Property #1 ($89,000)
Rental Property #2 ($89,000)
Rental Property #3 ($89,000)
Rental Property #4 ($85,000)
Rental Property #5 ($85,000)
Rental Property #6 ($85,000)
Rental Property #7 ($85,000)
Rental Property #8 ($85,000)

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Wilkins, Robert L.	Date of Report 6/4/2013

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/ **Robert L. Wilkins**

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
(as of May 30, 2013)

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		241	630	Notes payable to banks-secured (auto)		1	905
U.S. Government securities – Series EE			450	Notes payable to banks-unsecured			
Listed securities – see schedule		422	762	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule	1	131	969
Real estate owned – see schedule	1	203	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		90	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		324	267				
				Total liabilities	1	133	874
				Net Worth	1	148	235
Total Assets	2	282	109	Total liabilities and net worth	2	282	109
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
CRM Small Cap Value Fund	$28,416
American Funds EuroPacific Growth Fund	27,986
PIMCO Total Return Fund	201,277
Vanguard Total Bond Market Index Fund	17,106
Federated Government Obligations Fund	71,543
SSgA Target Retirement 2030 Fund	64,507
RidgeWorth Small Cap Growth Stock Fund	11,927
Total Listed Securities	$ 422,762

Real Estate Owned	
Personal residence	$ 511,000
Rental Property #1	89,000
Rental Property #2	89,000
Rental Property #3	89,000
Rental Property #4	85,000
Rental Property #5	85,000
Rental Property #6	85,000
Rental Property #7	85,000
Rental Property #8	85,000
Total Real Estate Owned	$ 1,203,000

Real Estate Mortgages Payable	
Personal residence	$ 474,072
Rental Property #1	84,478
Rental Property #2	81,598
Rental Property #3	81,872
Rental Property #4	82,164
Rental Property #5	82,088
Rental Property #6	81,832
Rental Property #7	81,789
Rental Property #8	82,076
Total Real Estate Mortgages Payable	$ 1,131,969

AFFIDAVIT

I, Robert L. Wilkins, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/24/2013
(DATE)

Robert L. Wilkins
(NAME)

PATRICIA K. MICHALOWSKIJ NOTARY PUBLIC EXP. 5-31-2018 DISTRICT OF COLUMBIA

Patricia K. Michalowskij
(NOTARY)

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 24th day of June, 2013
Patricia K. Michalowskij
Patricia K. Michalowskij, Notary Public, D.C.
My commission expires May 31, 2018.

Senator WHITEHOUSE. Thank you very much, Judge Wilkins.

Before we proceed to the questioning—and as the Chairman, I am going to be here through the entire hearing, so I will reserve my questioning until the end and allow other Senators the opportunity to ask their questions, and then proceed to other business if they need to. So in a moment, Senator Grassley will begin the questioning, followed by Senator Franken, followed by Senator Lee, and such others as may join thereafter.

But before we get to that, I want to ask unanimous consent to put into the record letters of support of your nomination from the National Organizations of Black Law Enforcement Executives; from the National Bar Association; from a large group described as an ad hoc group of African American Am Law 100 Managing Partners, and Fortune 1000 General Counsel Leaders of the National Bar in that sense; from the National Women's Law Center; from the Leadership Conference on Civil and Human Rights; and other letters as well. Without objection, they will be made part of the record.

[The letters appear as submissions for the record.]

Senator WHITEHOUSE. I will turn now to the Ranking Member.

Senator GRASSLEY. Judge Wilkins, I would like to get a sense of your judicial philosophy, so I am going to read to you a few assertions regarding constitutional law. I would like to get your reaction to them. These are not your assertions, but as I assess your judicial philosophy, I would like to hear how you respond, whether you agree or disagree, and why or why not. And I would have one, two, three, four, five of these that I would read, and then I would like to have relatively short answers so I can get to some other questions.

"Reproductive rights should be doubly constitutionally protected by overlapping liberty and equality guarantees."

Judge WILKINS. I am not sure of the context for the quote, Senator, but my understanding of the—I have not held—I am sorry. I have not handled a reproductive rights case, I think, in the two and a half years I have been on the bench. But my understanding of the law in that area is that the reproductive rights are founded upon the rights to privacy in the Constitution. And, of course, I would follow whatever the Supreme Court precedent is in that regard.

Senator GRASSLEY. Okay. The second one is: "Reproductive rights, including the rights of contraception and abortion, play a central role in freeing women from historically routine conscription into maternity."

Judge WILKINS. Again, I do not know the context of that quote, sir, but I would follow Supreme Court precedent in this area, as I have all other precedent when I handle cases.

Senator GRASSLEY. Okay. The third one: "Reproductive rights really are fundamentally about sex equality."

Judge WILKINS. Again, I am not familiar with that statement, so it is hard for me to react to it, sir. But—so I really do not know what else to say about it.

Senator GRASSLEY. Okay. I am not going to go to the other two. I might submit them for response in writing.

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

Senator GRASSLEY. My second question: What is your understanding of the constitutionality of States to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?

Judge WILKINS. This is not an area that I am really familiar with or where I have handled any litigation.

Senator GRASSLEY. Why don't you respond to that in writing then?

Judge WILKINS. Yes, I will do that.

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

Senator GRASSLEY. Three, why do you want to be an appellate judge? I would like to have you describe your interest in transitioning from trial work to appellate work, and how would you prepare yourself for that transition, if confirmed?

Judge WILKINS. Well, I am not considering this because I am unhappy in my current job, so I will tell you that much. I enjoy being a trial court judge, and I have really loved it for the last two and a half years. But I have had the privilege to serve on some three-judge panel cases where I have worked with colleagues, including colleagues on the court of appeals, and so I have experienced the collaborative decision making that that entails, and I have enjoyed that. And so I was intrigued by the prospect and interested in the prospect of serving further in that context on the court of appeals.

Senator GRASSLEY. Okay. As a federal public defender, you once said you were someone who was pretty good at "begging for mercy." As a federal judge, how have you responded to defense counsel who beg for mercy for their clients?

Judge WILKINS. Well, as an advocate, that was my job, was to zealously advocate for my clients, and oftentimes as a public defender that meant I was begging for mercy.

As a judge, of course, I am duty-bound to follow the law and to consider the arguments made by both sides. And in the criminal law context at sentencings, I certainly do that, consider the arguments of both sides. And sometimes I guess I have ruled in favor of the prosecution, and sometimes I have ruled more in favor of the defense, and sometimes I have ruled in between. But I try to give even consideration to all sides.

Senator GRASSLEY. Could I ask one more question?

Senator WHITEHOUSE. Of course, please.

Senator GRASSLEY. You have said that you admire attorneys who remember the "humanity of the client." You have also stated that it is important to "understand the persons being punished." It sounds a little bit like empathy standards that sometimes we debate are they right or wrong for a judge to have. So I would like to have you explain your views on the role that empathy should have in the judicial process.

Judge WILKINS. Thank you, Senator. I guess my view is that judges should understand all aspects of the issues that are before them, so they should understand the intent and context of Congress in passing whatever the law is that might be at issue, the intent and context of the Framers with the constitutional provision that may be at issue, and, of course, the intent and understanding

of the parties when they were engaging in whatever the activities were that led to the dispute.

And so in that context, I think that empathy means having an understanding or trying to endeavor to understand all sides of the dispute and all perspectives that are relevant to the disputes.

Senator GRASSLEY. This is my last question. In one talk, you said that you question how much progress the United States has made in the fight against racial discrimination and whether the courts are fully equipped to right those wrongs. So my question is: What is the court's role in a general sense in righting societal wrongs?

Judge WILKINS. Well, the courts, of course, first and foremost must follow precedent in fashioning any remedies that they do to—in that case I think I was talking about a constitutional—or a practice that was alleged to be unconstitutional and probably in the context of racial profiling, I think, were those remarks. And I think that the purpose of the court is to fashion remedies that courts can and should fashion, and other times remedies should be sought in the political process or in other processes outside of the courts, and the courts do not need to get involved in that.

Senator GRASSLEY. Thank you, Mr. Chairman. Thank you, Judge Wilkins.

Judge WILKINS. Thank you, Senator.

Senator WHITEHOUSE. Thank you very much, Senator Grassley.

I will turn now to Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Judge Wilkins, congratulations on your nomination. It is good to see you again.

Judge WILKINS. Thank you, Senator. I believe you were—I was honored to have your presence at my last confirmation hearing.

Senator FRANKEN. Thank you. That is very kind.

When you appeared before the Committee in 2010, I thanked you for your service on the DC Public Defender Service and the DC Access to Justice Commission, and I asked you what would you do as a federal judge to continue to promote access to justice. And I appreciated your answer. This is what you said: "I think that as a judge on the U.S. district court, you have to be mindful of your obligation to make sure that justice is blind and that justice is equal, and that a person who perhaps does not have all the resources is not affected unfairly on the merits because of that."

Now that you have had a couple of years on the bench, I am interested in your current thoughts on access to justice generally and to the judge's role in promoting that access.

Judge WILKINS. Thank you, Senator Franken. I currently serve as the—our circuit Judicial Council has a pro bono committee that works on these issues, and there is a judge that is not a member of the committee but serves as a liaison between the committee and the court as that committee does their work on access to justice issues. And I was honored to be appointed to serve as the judicial liaison to that committee, and that committee has been very active in trying to encourage the members of the private bar to get more involved in pro bono cases and assisting the court when the court needs lawyers to take appointments to cases that have some potential merit but no one to represent them, either on the plaintiff side

or the defense side. And so I have tried to work on that issue in that context.

Senator FRANKEN. Judge Wilkins, we have some real problems with our criminal justice system. At alarming rates, we are imprisoning nonviolent people who suffer from addiction or mental illness. This country has five percent of the world's population, but we have about a quarter of the inmates in the world. I have heard from sheriffs in my State who say that a high proportion of inmates under their supervision should be in treatment programs and not in prison or in their jails. Mass incarceration has a huge financial cost, a huge moral cost, and public safety cost.

You were a public defender for 10 years. You have been a federal judge for a couple of years now. I know that you care deeply about this issue. Can you share your thoughts on it? And based on your experience, do you have any insights or advice you can give us as law makers to improve the criminal justice system?

Judge WILKINS. Well, thank you, Senator. Of course, in my former life as an advocate, my former agency, the Public Defender Service, while I was there, spoke out a lot about this issue from the perspective of an advocate and from the perspective of an agency that represented clients within the system. And, of course, now that I am a judge, I leave the policy to the elected representatives and the citizens and just try to interpret and uphold the law.

I guess if I had any advice it would be that there is a lot of data, I guess, that the U.S. Sentencing Commission and others have gathered about the criminal justice practices, and I have found that a lot of times that data does not get adequate consideration and, you know, reports are written and they sit on shelves and gather dust, and that we could all benefit and all benefit from examining where we have been in the data to know where best we should go.

Senator FRANKEN. Thank you, Judge Wilkins, and congratulations to you and your family.

Judge WILKINS. Thank you so much.

Senator FRANKEN. And welcome to the family. Thank you.

Judge WILKINS. Thank you, Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Lee is recognized.

Senator LEE. Thank you, Mr. Chairman. I have a statement that I would like to submit for the record regarding some of the——

Senator WHITEHOUSE. Without objection.

Senator LEE [continuing]. DC Circuit. Thank you.

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

Senator LEE. Thank you, Judge Wilkins, for joining us today. I am glad that your family is here with us. I especially appreciate the fact that your sons are here, and they even appear to be quite interested in the proceedings of the Committee.

[Laughter.]

Senator LEE. Your judicial service thus far has prepared them for long hearings, and apparently they have sat through some of your judicial proceedings, I am imagining.

Judge WILKINS. They are very patient.

Senator LEE. Yes, they seem to know exactly what is going on here, too. That is fantastic.

I would like to talk a little bit more about your judicial philosophy. Starting out, tell me if you have—do you have any U.S. Supreme Court Justice that has served over the last century or so who you would identify as best reflecting your judicial philosophy?

Judge WILKINS. I do not think that I really—that there is a Justice that I believe has the same philosophy as me. My philosophy generally has been over the last two and a half years to try to really focus on the case in front of me and nothing more, to be mindful of the importance of judicial restraint, decide the issue that needs to be decided, do not reach out and try to decide other issues; and, of course, not to bring any preconceived notions to my decision making and let the facts and the law lead wherever they lead and the case be decided on its merits and that is it.

Senator LEE. As you decide each case, do you have in mind a particular approach that you take toward interpreting a statute? For example, would you describe yourself as a textualist, an intentionalist, a purposivist, as any other kind of "-ist"?

Judge WILKINS. I think that perhaps it is because of the way that I am wired and because of my background as a chemical engineering major undergrad, I like rules, and so I try to look very closely at text and adhere to the text and adhere—and try to find whatever the governing principle is that applies to the particular context or interpreting that text or deciding that issue and find that and apply that rule or that text strictly.

Senator LEE. When the text appears to conflict with what you believe the legislative body had in mind, how does that factor in? What do you do to resolve that?

Judge WILKINS. Well, that is an important question. It is also a difficult situation because, of course, probably the best evidence of what the legislature intended is what they wrote in the statute and what was passed. And if that statute is—the meaning of that text is clear and plain and unambiguous, I am duty-bound to apply it as written. Even if I think that perhaps Congress may have intended something slightly different, that is not the way that I understand my job is to—my job is not to overrule the plain meaning of text.

Senator LEE. In light of that, where and in what way does legislative history play a part in your interpretation of the statute?

Judge WILKINS. If the meaning of the text is clear, then the precedent from the Supreme Court and our circuit is that that should end the matter, because I apply the plain meaning of the text. But if that meaning is ambiguous, then I would, of course, also look to the legislative history and other aids, to statutory construction to try to interpret the meaning of those words in the text.

Senator LEE. Once you get into that inquiry, in your opinion is all legislative history equal? Or are there some kinds of legislative history—some legislative history data points that are more reliable or less reliable than others?

Judge WILKINS. Well, I think courts believe—or courts have stated that some legislative history is a little bit more persuasive than others; if something is in a committee report or a conference committee report, that that might be more persuasive than just a floor statement of a single Senator or House Member, depending upon

the context of that statement. But I think you have a duty to look at all of it and then try to determine what it means.

Senator LEE. And then, last, I think I heard you mention that you had brought your law clerks with you today. What would they say about you?

Judge WILKINS. That is a tough one. I think they would say——

[Laughter.]

Judge WILKINS. I think they would say that I am tough but fair.

Senator LEE. Thank you, sir, and thank you, Mr. Chairman.

Senator WHITEHOUSE. We certainly got a little burst of smiles in the back of the room when Senator Lee asked that question. I assume those identify your former clerks.

Judge WILKINS. I hope you did not subpoena them.

[Laughter.]

Senator WHITEHOUSE. I do not think that will be necessary.

So how on Earth do you get from chemical engineering to law school?

Judge WILKINS. Well, I initially went to college thinking that I wanted no part of graduate school, that four years more would be enough after high school, and so I was very interested in science and math at that time, and chemistry, and so I focused on chemical engineering. But as I went through that—matriculated through college, I became more interested in law, in public policy issues, and so I made the transition to law school.

Senator WHITEHOUSE. Judge Wilkins, during my opening statement, I mentioned a number of principles that I identified as ones that I feel judges should comport themselves with. One is to respect the role of Congress as the duly elected representatives of the American people. Another is to decide cases based on the law and the facts without prejudging any case after listening carefully to every party that comes before the court. A third is to respect precedent from the higher courts. And the fourth is for judges to limit themselves to the issues that the court must decide.

Are those principles that you agree with and are comfortable with?

Judge WILKINS. Yes, Senator Whitehouse. I think that is an excellent set of guideposts for all judges to follow, and I certainly follow those guideposts.

Senator WHITEHOUSE. I appreciate that you have come out of both active practice and trial court experience, and I would like to have a brief conversation with you about the jury as an institution. As we all know, the jury appears three separate times in the Constitution and Bill of Rights. In the Revolutionary War, the protection of the civil jury from British encroachment was one of the clarion calls to battle and one of the reasons that we fought for our independence. The original Constitution prior to the Bill of Rights banged into the ire of the American people that the civil jury was not adequately protected with the result that the Seventh Amendment was added specifically protecting the civil jury. And it has really, I think, quite a noble and significant constitutional history and an important part in our system of government, not just as a fact-finding appendage to a court but as actually a part of the broader American system of government.

Alexis de Tocqueville wrote that the jury is, before everything, a political institution, one ought to consider it as a mode of the sovereignty of the people. And a century or more before that, Blackstone explained one reason why the jury is so important. He wrote that, "[T]he most powerful individual in the state will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression must be examined and decided by 12 indifferent men . . . "

Now, those last two words need a little bit of editing now. "Indifferent" had a different meaning then than it does now. It simply meant impartial. And obviously men and women now serve on juries. But with those adjustments, I think that that description of the role of the jury stands true.

He also had, I think, a wise political sense that the executive and legislative branches can be sometimes brought under the sway of powerful interests in a way that is antithetical to the public interest. And in that respect, the jury of ordinary men and women provides sort of a final backstop when things go wrong, when the Governor is in your enemy's pocket, when the legislature is controlled by the lobbyist, when the press have quipped up public sentiment against you, the courtroom and the jury are supposed to be immune from that, and as Blackstone said, to prevent "the encroachments of the more powerful and wealthy citizens."

So I detect a strain in certain current judicial philosophies of trying to deny, minimize, inhibit, cripple the jury system. And I think that it has a lot to do with that role as an institution that prevents the encroachments of the more powerful and wealthy citizens. More powerful and wealthy citizens do not always appreciate having their encroachments prevented. And so we have, I think, a bit of a struggle over the role of the jury in this country right now, and I would like to hear your comments on that and whether you see particularly the civil jury as more than just a fact-finding appendage to the court.

Judge WILKINS. Thank you, Senator Whitehouse. I just completed a jury trial this past Thursday, and the jury reached a verdict, and I told the jurors, as I tell all the jurors in all of my cases, how important it is what they are doing, that they are literally implementing the Seventh Amendment to the Constitution, of our Bill of Rights to the Constitution, with their service, to try to help them understand the grave importance of what they do when they sit as jurors. And so I understand and appreciate your remarks, and as an advocate, I was a strong proponent of the jury system, and as a judge, I have seen nothing to change my views of the jury system. I think the jurors take their obligations very seriously. They are very diligent in trying to understand the evidence and follow the law and reach the correct result based on the evidence and the law. And I have been very impressed with all of the jurors and all of the juries that I have observed as a judge.

Senator WHITEHOUSE. I urge you to keep that good feeling about juries in mind as, I hope, you proceed to this next judicial office. It is clearly inconvenient to certain powerful interests who think they have got the executive branch of government under control and who think their lobbyists have got the legislative branch of government all tied up and who think that they have kind of got

the system fixed for their benefit, to suddenly face 12 good men and women true, and have them disrupt what the big interests had been able to achieve in the other branches.

But I do think that that disruption, however inconvenient to powerful interests, by a civil jury is a part and an important part of what the Founding Fathers had in mind when they built the system of divided powers, in some cases even conflicting powers, that is occasionally a source of frustration to us, but I think in the long sweep of history a source of pride not only to our country but also a lesson to our world.

So I wish you well in your process forward. I thank you for bringing your family here with us today, and I hope that we can have a quick vote on your confirmation. Thank you very much, and thank you for your service on the district court.

Judge WILKINS. Thank you, Senator, and I appreciate again the Committee's time and consideration. And it is an honor for me to have been nominated, of course, by the President, and it is an honor for me to appear before this body for your consideration. Thank you.

Senator WHITEHOUSE. Thank you, Judge Wilkins. You are excused, and we will call up the next panel.

[Pause.]

Senator WHITEHOUSE. Let me call this hearing back to order. If I could ask the nominees to remain standing, we can proceed with the oath. If you would 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. BROOKS. I do.

Mr. DONATO. I do.

Judge FREEMAN. I do.

Judge DELGADO. I do.

Senator WHITEHOUSE. Thank you. Please be seated.

Today is a somewhat unusual day in that it is the 12th anniversary of the attacks on our country on September 11th, and the service of remembrance and commemoration here in the Senate is taking place now, and that is why Senator Grassley has had to excuse himself. And he wanted me to pass on to you that it indicates no disrespect for you or for the important positions for which you are nominees, and I perfectly understand that many of my colleagues are there right now. My duty requires me to be here in this hearing; otherwise, I would be as well. But it is not for lack of interest in you or judicial nominations that there are some empty seats here. It is for a very important reason.

Let me welcome each of you, and why don't we begin right across the line here, starting with Mr. Donato. Let me invite you to give whatever opening statement you would like to make and whatever recognitions you would like to offer of family and friends who are present at this point.

Mr. Donato, please proceed.

STATEMENT OF JAMES DONATO, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. DONATO. Thank you, Mr. Chairman. Let me begin by thanking you and the other Members of the Committee for having us in on this somber day.

I also want to acknowledge with gratitude the nomination of the President in sending my name to the Committee for consideration for the district court. I am deeply honored by that.

I am very appreciative for the gracious remarks that Senator Feinstein made earlier today and for recommending me to the White House for consideration for the Northern District of California.

I do have a number of guests that I would like to acknowledge, starting with my wife, Rhonda, and my daughter, Isabella, who are behind me. Rhonda and I met many years ago when we were legal assistants before going to law school. We went to law school at about the same time, served on the Ninth Circuit at about the same time, and today she is a staff attorney at the Northern California Innocence Project, working on those cases. Sometimes you will hear the advice that lawyers should not marry other lawyers. That advice is wrong. You should reject it. It is one of the best things you can do.

Also with me is our youngest child, Isabella, a freshman at Berkeley High and a recent powerhouse addition to the Berkeley High volleyball team, where she is a cool and efficient libero, for those of you who are volleyball aficionados.

Our two sons—Nate, who is a junior at the University of California, majoring in Japanese, and our middle son, Vince, a junior at Berkeley High—had pressing academic commitments and could not be here today.

I am happy to welcome a number of friends and family joining virtually in true Silicon Valley fashion to the Webcast. That includes my parents, Alice and Tony, who are in their 80s. They live in Northern California. Both of them spent their careers in public service. My father was a local city administrator for his career, my mother a public school teacher. Their example and their ideals are a big part of why I am here today.

I would also like to welcome my sister, Valerie, and my younger sister, Antonia, and their families. I am happy to say I have a number of friends who are showing their support by watching today, ranging from Australia to California to the East Coast, including my good friend and old trial partner, Mike Klisch, who is sitting behind me and is a local resident.

And I will end by acknowledging my friends, partners, and colleagues at Shearman & Sterling. I understand that the proceedings today are being broadcast throughout the firm's offices in the United States and in London, and I am thrilled to be a member of the Shearman family. It has been a great privilege practicing at the firm, and I welcome them today as well.

[The biographical information of Mr. Donato follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   James Joseph Donato

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

   United States District Judge for the Northern District of California

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

   Office: Shearman & Sterling LLP
   Four Embarcadero Center
   Suite 3800
   San Francisco, California 94111

   Residence: Berkeley, California

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

   1960; Pasadena, 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.

   1985 – 1988, Stanford Law School; J.D., 1988

   1983 – 1984, Harvard University; A.M., History, 1984

   1978 – 1983, University of California, Berkeley; B.A., History, 1983

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

2009 – present
Shearman & Sterling LLP
Four Embarcadero Center
San Francisco, California 94111
Partner

1996 – 2009
Cooley LLP
101 California Street
San Francisco, California 94111
Partner (1998 – 2009)
Special Counsel (1996 – 1998)

1993 – 1996
San Francisco City Attorney's Office
Fox Plaza
San Francisco, California 94102
Deputy City Attorney, Trial Division

1990 – 1993
Morrison & Foerster LLP
345 California Street
San Francisco, California 94104
Associate

September 1989 – November 1989
Law office of Robert Logan
San Jose, California (street address currently unknown)
Intern/Legal Assistant

1988 – 1989
United States Court of Appeals for the Ninth Circuit
50 South Virginia Street
Reno, Nevada 89501
Law Clerk to the Honorable Procter Hug, Jr.

Summer 1988
Hale & Dorr
60 State Street
Boston, Massachusetts 02109
Summer Associate

Spring 1988
Research Assistant to Professor D. Farber
Stanford Law School

559 Nathan Abbott Way
Stanford, California 94305

Summer 1987
Orrick, Herrington & Sutcliffe
405 Howard Street
San Francisco, California 94105
Summer Associate

Spring 1987
Research Assistant to Professor R. Weisberg
Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305

Summer 1986
California Department of Justice
455 Golden Gate Avenue
San Francisco California 94102
Summer Clerk

1984 – 1985
McCutchen Doyle Brown & Enersen
Three Embarcadero Center
San Francisco, California 94111
Legal Assistant

Other affiliations (uncompensated):

2010 – present
Berkeley Symphony
1942 University Avenue
Berkeley, California 94704
Director

1990 – present
Bar Association of San Francisco
301 Battery Street
San Francisco, California 94111
President (2008)
President-Elect (2007)
Treasurer (2006)
Secretary (2005)
Justice Gap Committee (2011 – present)
Food from the Bar Campaign (2011)
Nominating Committee (2009)

Marriage Fairness Task Force (2008 – present)
Charitable Giving Task Force (2006)
Judiciary Committee (2003 – 2005)
Board of Directors (2000 – 2001)
President of the Barristers Club of the Bar Association of San Francisco (young lawyers chapter) (1997)

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.

   Professional:

   Fellow, American Bar Foundation (2010 – present)
   Northern California Super Lawyer (2004 – 2013)
   Legal 500 for antitrust law (2013)
   Northern California Innocence Project Pro Bono Firm of the Year (2013)
   Award of Merit, Bar Association of San Francisco (2012)
   Benchmark Litigation for antitrust law (2011)
   Legal 500 for healthcare law (2011)

   Academic:

   Duniway and Yee scholarships at Stanford Law School
   Senior Editor, Stanford Law Review
   Scholarship at Harvard Graduate School of Arts and Science
   Phi Beta Kappa, University of California, Berkeley

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 (2009 – present)

   American Bar Foundation (2009 – present)
   Fellow

   American Law Institute (2000 – present)
   Elected Member (2000 – present)

ALI Outreach Committee (2012)
Adviser, Restatement (3d) of Torts (2008 – 2011)

Bar Association of San Francisco (1990 – present)
Justice Gap Committee (2011 – present)
Food from the Bar Campaign (2011)
Nominating Committee (2009)
President (2008)
Marriage Fairness Task Force (2008 – present)
President-Elect (2007)
Treasurer (2006)
Charitable Giving Task Force (2006)
Secretary (2005)
Judiciary Committee (2003 – 2005)
Board of Directors (2000 – 2001)
President of the Barristers Club of San Francisco (young lawyers chapter) (1997)

Federal Bar Association (approximately 2000 – 2007)

Northern California Innocence Project (2007 – 2010)
Advisory Board

10. **Bar and Court Admission**:

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

California, 1990
Hawaii, 2012

There have been no lapses in membership.

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

Supreme Court of the United States, 2002
United States Court of Appeals for the Ninth Circuit, 1990
United States Court of Appeals for the First Circuit, 2008
United States District Court, Northern District of California, 1990
United States District Court, Eastern District of California, 1990
United States District Court, Central District of California, 1991
United States District Court, District of Colorado, 1997
United States District Court, Eastern District of Michigan, 1997
United States District Court, Southern District of California, 2000

State of California, 1990
State of Hawaii, 2012

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.

Berkeley Symphony (2011 – present)
Director

Newman Hall Holy Spirit Parish (2007 – 2010)
Parish Council

College Preparatory School (2008 – 2009)
Fifty Forward 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.

ABA Section of Antitrust Law, Antitrust Law Developments (Jonathan Gleklen, et al. eds., 7th ed. 2012) (contributing writer). Copy supplied.

Equal Justice Under Law: We can afford civil Gideon Daily Journal, Oct. 10, 2011 (with James Brosnahan). Copy supplied.

Beikoku Class Action no Saishin Jitsumu. 39 Kokusai Shoji Homu, Journal of the Japanese Institute of Int'l Bus. Law, no. 8, 2011. Copy supplied.

Beikoku Class Action no Saishin Jitsumu. 39 Kokusai Shoji Homu, Journal of the Japanese Institute of Int'l Bus. Law, no. 6, 2011. Copy supplied.

Beikoku Class Action no Saishin Jitsumu., 39 Kokusai Shoji Homu, Journal of the Japanese Institute of Int'l Bus. Law, no. 4, 2011. Copy supplied.

The Role of Technology in Evidence Collection: Leading Lawyers on Preserving Electronic Evidence, Developing New Collection Strategies, and Understanding the Implications of Social Media, Practical E-Discovery Issues 7 (Jo Alice Darden ed.) (2011). Copy supplied.

Defending a Class Action Trial, Daily Journal, July 19, 2010. Copy supplied.

California Supreme Court Holds 'Pass-On' Defense Unavailable in Antitrust Suit (Shearman & Sterling LLP client publication July 2010). Copy supplied.

Judicial Independence Must Be Respected, The Bar Association of San Francisco, Sept. 9, 2008. Copy supplied.

Our Enduring Mission, 34 San Francisco Attorney, no. 4, 2008. Copy supplied.

New Standards for an Enduring Problem, 34 San Francisco Attorney, no. 3, 2008. Copy supplied.

The Justice Gap, 34 San Francisco Attorney, no. 2, 2008. Copy supplied.

Standing Together in Public Service Through The Law, 34 San Francisco Attorney, no. 1, 2008. Copy supplied.

Are We Rome? 32 San Francisco Attorney, no. 3, 2006. Copy supplied.

Section 17200: Reform Comes In From The Cold, 14 Ass'n of Bus. Trial Lawyers J., no. 2, 2005.

At Sidebar, 50 Federal Lawyer, May 2003. Copy supplied.

Dworkin and Subjectivity in Legal Interpretation, 40 Stan. L. Rev. 1517 (1988). Copy supplied.

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

I served as a board member from 2000 to 2001 and as an officer from 2005 to 2008 for the Bar Association of San Francisco. During that time, the Bar Association signed on to or requested the preparation of amicus briefs. The Bar Association also periodically prepared reports on diversity initiatives. Although I did not personally prepare these letters, briefs, or reports, I did vote on their submission or publication in my capacity as an officer or board member of the Bar Association. I have listed the materials on which I voted that I was able to identify after searching my records and consulting with the Bar Association.

Amicus Letter to the California Supreme Court re Proposition 8 (November 10, 2008). Copy supplied.

Report on Lesbian, Gay, Bisexual and Transgender Issues (November 2007). Copy supplied.

Signatory to Amicus Brief by the Bar of the City of New York in support of affirming a decision in *Hepting v. AT&T*, 439 F. Supp. 2d 974 (N.D. Cal. 2006), denying a motion to dismiss a challenge to AT&T's participation in a warrantless surveillance program. Copy available at 2007 WL 1899190.

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.

Signatory to Letter by the Bar Association of San Francisco to California Judicial Council re state court budget cuts (July 21, 2011). Copy supplied.

Signatory to Letter by the Bar Association of San Francisco to Senator Patrick Leahy re Nomination of Magistrate Judge Edward Chen (Sept. 14, 2009). Copy supplied.

During my tenure as a board member or officer of the Bar Association of San Francisco, the Bar Association periodically sent letters to public bodies and issued press releases. Although I did not personally prepare or recall these letters or press releases, I may have voted on their submission or publication in my capacity as an officer or board member of the Bar Association:

Letter by the Bar Association of San Francisco to California State Senators re SB 511, 609 and 756 (Sept. 5, 2007). Copy supplied.

Press Release by the Bar Association of San Francisco re Evaluation of Superior Court Judicial Candidate (June 2, 2006). Copy supplied.

Letter by the Bar Association of San Francisco to Senators Dianne Feinstein, Barbara Boxer, Arlen Specter and Patrick Leahy re nomination of Judge Samuel Alito to the United States Supreme Court (Jan. 10, 2006). 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 21, 2013: I gave an acceptance speech at the Northern California Innocence Project dinner in Redwood City, California, for an award recognizing pro bono service. I have no notes, transcripts or recordings for this event. The address of the Northern California Innocence Project is Santa Clara University School of Law, 900 Lafayette Street, Suite 105, Santa Clara, California 95050.

September 28, 2012: I participated in a small-group meeting of the American Law Institute in San Francisco, California, about a potential privacy law project. I have no notes, transcripts or recordings for this event. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

October 22, 2011, and September 27, 2012: I delivered opening remarks at events in San Francisco, California, for local members of the American Law Institute. These remarks were introductions of other speakers. I gave similar remarks in San Francisco, California, to local members of the American Law Institute on September 23, 2010, March 22, 2011. I have no notes, transcripts or recordings for these events. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

March 22, 2011: I was a panelist for a Bar Association of San Francisco event on women in the law. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San

Francisco, California 94111.

October 14, 2011: I was a panelist on class action trials at the ABA 15th National Institute on Class Actions. I have no notes, transcripts or recordings for this event, but press coverage is supplied. The address of the American Bar Association is Chicago Headquarters, 321 North Clark Street, Chicago, Illinois 60654.

October 19, 2010: I made introductory remarks at a seminar in Palo Alto, California, hosted by Shearman & Sterling LLP on antitrust issues facing technology companies. I have no notes, transcripts or recordings for this event. The address of Shearman & Sterling LLP is Four Embarcadero Center, San Francisco, California, 94111.

September 23, 2010: I delivered opening remarks at an event in San Francisco, California, for local members of the American Law Institute. These remarks were introductions of other speakers. I have no notes, transcripts or recordings for these events. The address of the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

March 25, 2010: I was a panelist in San Francisco, California, at the No Glass Ceiling: Crossing the Finish Line conference hosted by the Bar Association of San Francisco. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

2008 and 2009: As President of the Bar Association of San Francisco, I made several short introductions and speeches at award ceremonies, officer installations, and other bar events in San Francisco, California, and other California locations. I have no notes, transcripts or recordings for these events. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

December 18, 2008: I delivered remarks in San Francisco, California, at the Annual Meeting of the Bar Association of San Francisco on the end of my term as president and the installation of the new president. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

November 24, 2008: I delivered remarks in San Francisco, California, at a meeting of the State Bar of California on the topic of bar association legal referral services. I have no notes, transcripts or recordings for this event. The address of the State Bar of California is 180 Howard Street, San Francisco, California 94105.

October 28, 2008: I delivered introductory remarks in San Francisco, California, at the Bridging the Justice Gap: The Right to a Lawyer conference hosted by the

Bar Association San Francisco. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

October 11, 2008: I delivered introductory remarks in San Francisco, California, at Annual Gala for the Volunteer Legal Services Program of the Bar Association San Francisco. I have no notes, transcripts or recordings for this event, but press coverage is supplied. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

May 20, 2008: I spoke in Washington, D.C., at the American Law Institute's annual meeting on the occasion of the retirement of President Michael Traynor. Transcript supplied.

April 17, 2008: I delivered introductory remarks in San Francisco, California, at a public forum hosted by the Bar Association San Francisco on candidates for election to Superior Court. I have no notes, transcripts or recordings for this event. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

April 4, 2008: I delivered introductory remarks in San Francisco, California, at a Bar Association of San Francisco conference on Law Office Diversity, Inclusion and Retention. I have no notes, transcripts or recordings for this event, but press coverage is supplied. The address of the Bar Association of San Francisco is 301 Battery Street, San Francisco, California 94111.

December 19, 2007: I gave a speech to the Bar Association of San Francisco at my installation as president in San Francisco, California. Copy of my remarks, *Standing Together in Public Service Through The Law*, have been supplied in response to Question 12a.

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.

Interview in Law360, June 25, 2012, on the burden of proof for fines in criminal antitrust cases. Copy supplied.

Northern California's Newest Federal Judge a Piedmonter, Contra Costa Times, March 29, 2012. Copy supplied.

Donato Receives Bar Association of San Francisco's Award of Merit for Pro Bono Efforts, Shearman & Sterling LLP press release, March 15, 2012. Copy supplied.

20th Anniversary of Food From The Bar Campaign Brings in record Amount, Bar Association of San Francisco press release, July 7, 2011. Copy supplied.

Team Files Brief on Behalf of California's Poorest Residents in Groundbreaking Tax Case, Shearman & Sterling LLP press release, Dec. 15, 2010. Copy supplied.

Shearman & Sterling's Second Bay Area Seminar Examines EU and International Merger Control, Shearman & Sterling LLP press release, Nov. 22, 2010. Copy supplied.

DOJ/FTC Horizontal Merger Guidelines, Shearman & Sterling LLP press release, Oct. 19, 2010. Copy supplied.

NCIP Newsletter, Santa Clara Law School (Fall 2010). Copy supplied.

Cooley Announces Details of 2009 Diversity Fellowship Program, Cooley Godward LLP press release, March 4, 2009. Copy supplied.

Bar's Referral Service Idea Sparks Outcry, Oakland Employment Lawyer blog, Nov. 24, 2008. Copy supplied.

Woes that Felled 2 S.F.Law Firms Shaking Industry, San Francisco Chronicle, Nov. 1, 2008. Copy supplied.

State Bar Announces Diversity Award Winners, U.S. States News, Aug. 21, 2008. Copy supplied.

BASF Diversity Director Yolanda Jackson Named Deputy Executive Director, Bar Association of San Francisco press release, June 17, 2008. Copy supplied.

Bar Association Gives its Qualified Support for Judge, San Francisco Weekly, May 21, 2008. Copy supplied.

BASF First to Support ACLU Death Penalty Guidelines Resolution in California, Bar Association of San Francisco press release, April 4, 2008. Copy supplied.

Cooley Godward Kronish Announces Diversity Fellowship Program (Cooley LLP press release Jan. 31, 2008). Copy supplied.

District Court Dismisses Tyco Antitrust Suit, Competition Law360, Jan. 24, 2008. Copy supplied.

BASF's New President Putting Public Education First, The Recorder, Jan. 14, 2008. Copy supplied.

Lawyers Working to Defeat the Death Penalty, 34 San Francisco Attorney, no. 3,

2008. Copy supplied.

The Civil Gideon Movement: Justice for All, 34 San Francisco Attorney, no. 2, 2008. Copy supplied.

Profile of a President, 34 San Francisco Attorney, no. 1, 2008. Copy supplied.

'Rare Bird' Prepares to Helm SF Bar Association, Daily Journal, Dec. 19, 2007. Copy supplied.

Schools Settle Achievement Test Lawsuit, The Daily Californian, Nov. 21, 2000. Copy supplied.

Deal Behind School's Reversal on English Tests Suit, San Francisco Examiner, Nov. 17, 2000. Copy supplied.

Schools Put State Exam to the Test in Court, San Francisco Chronicle, Nov. 1, 2000. Copy supplied.

Precedent Setting Trial Set for the City Disputed Test Policy State Wants to Include Limited-English Kids, San Francisco Examiner, Oct. 30, 2000. Copy supplied.

English-only Testing Gets Day in Court, San Diego Union-Tribune, Oct. 28, 2000. Copy supplied.

Trial Will be the Test of English-Only Exams 4 Bay Area Districts Argue They're Unfair to Students Newly Learning the Language, San Francisco Examiner, Oct. 20, 2000. Copy supplied.

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

I have not held any judicial offices.

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 offices.

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 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 served as a volunteer polling place monitor for the Democratic Party in the 2008 presidential election in Liberty City, Florida.

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

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

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

I served as a Judicial Law Clerk to the Honorable Procter Hug, Jr., Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced law alone at any time in my legal career.

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

June – July 1988
Hale & Dorr
60 State Street
Boston, Massachusetts 02109
Summer Associate

September 1989 – November 1989
Law Office of Robert Logan
San Jose, California (street address currently unknown)
Intern/Legal Assistant

1990 – 1993
Morrison & Foerster LLP
345 California Street
San Francisco, California 94104
Associate

1993 – 1996
San Francisco City Attorney's Office
Fox Plaza
San Francisco, California 94102
Deputy City Attorney, Trial Division

1996 – 2009
Cooley LLP
101 California Street
San Francisco, California 94111
Special Counsel (1996 – 1998)
Partner (1998 – 2009)

2009 – present
Shearman & Sterling LLP
Four Embarcadero Center
Suite 3800
San Francisco, California 94111
Partner

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

I have served as a court-appointed mediator for the Northern District of

California since approximately 2002. I typically handle one or two mediations per year. The cases referred to me by the Court are generally civil rights actions against state or local law enforcement departments and officers, typically for claims of excessive force. As a court-appointed mediator, I do not give formal opinions about the law or the facts. My role is limited to promoting settlement negotiations between the parties. All communications during the mediations are privileged under state and federal law.

b. Describe:

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

After the end of my judicial clerkship, I worked for approximately two months as a part-time intern for a sole practitioner, Robert Logan, in San Jose, California. Mr. Logan was a former city attorney and an acquaintance of my father. I provided legal assistant services to Mr. Logan on a very limited part-time basis.

From 1990 to 1993, I worked as a junior associate at Morrison & Foerster in San Francisco. I assisted in civil litigation and land use cases mainly as defense counsel for corporations in matters involving contract claims, RICO, CEQA, CERCLA, business torts, and other civil issues. I performed research and analysis, document drafting, written and deposition discovery, case management and other tasks. I also worked on pro bono matters, including an immigration asylum case and environmental cases.

From 1993 to 1996, I entered government service as a Deputy City Attorney in the Trial Division of the San Francisco City Attorney's Office. I was responsible for defending San Francisco and its employees in a wide range of civil litigation matters, including complex personal injury cases and Section 1983 civil rights claims against San Francisco Police and Sheriff Officers. My duties involved handling every aspect of each case from the initial response to the complaint through motion practice, discovery, and settlement or trial. I tried several civil cases before juries on behalf of the City and County of San Francisco.

From 1996 to 2009, I returned to private practice as a special counsel and partner in the San Francisco office of Cooley LLP. My practice consisted of civil litigation in a broad array of substantive fields including antitrust and unfair competition, class actions, consumer fraud and warranty, privacy, contracts, business torts, Lanham Act, False Claims Act, Section 1983, RICO, copyright, mergers and acquisitions, technology licenses, and other fields. I took cases to bench and jury trials while at Cooley. In

addition to these matters, I was active in pro bono cases, including assisting in a dispute over public housing that was decided by the United States Supreme Court in 2002 (*HUD v. Rucker*, 535 U.S. 125 (2002)). I was also the chair of the firmwide Diversity Committee for several years.

Since 2009, I have practiced as a partner in the San Francisco office of Shearman & Sterling LLP. My practice continues to involve the same broad array of civil litigation matters that I handled at Cooley. I tried a federal antitrust class action case before a jury while at Shearman. I have continued to handle pro bono matters, including a California state habeas petition on behalf of an inmate in conjunction with the Northern California Innocence Project. I am also a member of the firm's Diversity Committee.

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

At all stages of my time in private practice, my clients typically have been American and international technology and Internet companies, consumer manufacturing and services companies, and medical device companies. Since 2002, I have focused on antitrust cases.

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

My practice has always been 100% litigation. I am typically in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 10%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I have tried six cases to verdict or final decision. I was lead or co-lead counsel in four and associate counsel in two.

In addition, I have tried four other cases that settled during trial before submission

to the jury or bench. I was lead or co-lead counsel in each of these 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.

HUD v. Rucker, 535 U.S. 125 (2002) (opposition brief to petition for certiorari , 2001 WL 34090276; brief for the respondents, 2001 WL 1705900).

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) *Masimo Corp. v. Tyco Healthcare et al.*, No. 2:02-cv-04770-MRP-AJW, United States District Court for the Central District of California, Judge Mariana Pfaelzer (2002 – 2007).

This case involved antitrust claims under Sherman Act Section 1 and Section 2, and Clayton Act Section 3, for unreasonable restraints, monopolization, and exclusionary conduct in the U.S. market for pulse oximeters. On behalf of defendant Tyco Healthcare, I served as second chair in the five-week jury trial on liability and damages. After the jury verdict, I was lead counsel for the post-trial motion for Judgment as a Matter of Law that successfully reversed some of the liability findings and set aside damages entirely for a new trial. I was lead counsel in the damages re-trial. The verdict was reduced by approximately 90% after re-trial. The case involved multiple economists as experts on liability and damages issues, as well as multiple party and third-party witnesses.

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(2) *Natchitoches Parish Hosp. Service District v. Tyco Healthcare et al.*, 1:05-cv-12024-PBS, District of Massachusetts, Judge Patti B. Saris (2006 – 2010).

This case was an antitrust consumer class action under Sherman Act Section 1 and Section 2 for unreasonable restraints, monopolization, and exclusionary conduct in the U.S. market for sharps disposal containers. After substantial motion practice, including multiple rounds of briefing and argument on class certification, the case went to trial before a jury in Boston. This is one of the relatively few times an antitrust class action has gone to trial. The case settled the night before closing argument after three weeks of trial, on terms favorable to my client. I was lead counsel throughout the case and at trial. The case featured multiple economists as expert witnesses on liability and damages issues. The case involved several important antitrust issues, including whether above-cost discounts could amount to anticompetitive conduct. The case also raised important questions about class certification in Section 2 cases where putative class members were subject to highly variable discounting arrangements, and certain class members (namely distributors) had financial interests in conflict with other class members (direct purchasers). The class certification issues were sufficiently novel and complex that the court retained an independent expert to assist it.

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(3) *Malaney v. UAL Corp.*, No. 3:10-cv-02858-RS, United States District Court for the Northern District of California, Judge Richard Seeborg (2011 – present).

This is an antitrust case under Clayton Act Section 7 challenging the merger of United and Continental airlines. I have been lead counsel for United since preliminary injunction proceedings were handled by other counsel. After denial of the injunction, plaintiffs filed amended complaints seeking damages and other relief. I won dismissal of the case with prejudice on a motion to dismiss. Plaintiffs have appealed and the matter is fully briefed and pending for argument in the Ninth Circuit. This case raised issues about the proper pleading of a relevant product market and the application of Section 7 case law through *United States v. General Dynamics Corp.*, 415 U.S. 486 (1974).

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(4) *In re Carrier IQ Inc. Consumer Privacy Litigation.*, No. 12-md-2330-EMC, United States District Court for the Northern District of California, Judge Edward Chen (2012 – present).

This case is a consumer class action alleging wiretapping and other privacy and consumer claims relating to use of the Carrier IQ product on cell phones. Carrier IQ provides network monitoring services for service providers such as AT&T, Sprint, and other carriers. Plaintiffs allege that Carrier IQ also surreptitiously collects and transmits personally identifiable information about consumers without consent. The case is a multi-district litigation matter that has been assigned to the Northern District of California. I am lead counsel for defendant LG Electronics, which manufactures handsets allegedly loaded with the Carrier IQ product. The case is in active litigation with a motion to compel arbitration pending before the court. The case raises important issues about the application of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*, and multiple consumer and state law privacy statutes, to cell phones. It also raises important issues of compelling arbitration and class action waivers under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and *AT&T Mobility LLC v. Concepcion*, 563 U.S. ___, 131 S.Ct. 1740 (2011).

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(5) *O&R Construction, LLC, v. Dun & Bradstreet Credibility Corporation, Dun & Bradstreet Corporation, and Dun & Bradstreet, Inc.*, No. 2:12-cv-02184-TSZ, Western District of Washington, Judge Thomas S. Zilly (2012 – present).

This case is a consumer class action that originally alleged antitrust and consumer claims relating to the sale of certain credit building and monitoring products to small businesses. I am lead counsel for defendant Dun & Bradstreet. The case is in active litigation. After a motion to dismiss the original complaint, plaintiff filed an amended complaint that dropped the antitrust claims we had challenged as legally insufficient. A new motion to dismiss the amended complaint is pending.

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(6) *Southeast Missouri Hosp. v. Bard et al.*, No. 1:07-cv-00031-TCM, Eastern District of Missouri, Magistrate Judge Thomas C. Mummert, III (2006 – 2008).

This case was an antitrust consumer class action for unreasonable restraints, monopolization, and exclusionary conduct in the U.S. market for urology catheters. Plaintiffs alleged claims based on above-cost discounts and other pricing programs. I was lead counsel for defendant Tyco Healthcare. I won dismissal with prejudice on our motion at the pleading stage, primarily on the grounds that plaintiffs failed to plead facts sufficient to show substantial anticompetitive foreclosure by Tyco Healthcare, and that the market shares of independent business entities could not be aggregated to show foreclosure absent conspiracy allegations.

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(7) *Hindin v Agilent*, No. CGC-02-406137, San Francisco Superior Court, Judge John Munter (2008 – 2010).

This case was a California False Claims Act action for alleged fraud in healthcare reimbursements and the sale of medical devices to the State of California. I was lead counsel for defendant Agilent. The case settled in mediation on terms favorable to my client. The California False Claims Act closely follows the federal False Claims Act, and the case raised complicated questions about government health care payments and contract certifications in the false claims context.

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(8) *Stewart et al. v. Gogo, Inc.*, No. 12-cv-05164-EMC, United States District Court for the Northern District of California, Judge Edward M. Chen (2012 – present).

This case is a consumer antitrust class action alleging monopolization and exclusive dealing under Sherman Act Section 1 and Section 2, and California state law analogs, in the U.S. market for in-flight Internet connectivity on commercial aircraft. I am lead counsel for defendant Gogo. We won dismissal of the amended complaint without prejudice and anticipate bringing another motion to dismiss if plaintiffs amend. The case is in active litigation. The case raises issues about the definition of a relevant product market and the determination of substantial foreclosure in new and rapidly developing technology markets.

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(9) *Larscom v. UTStarcom*, JAMS arbitration, Judge Eugene Lynch (Ret.) (2002 – 2004).

This case involved a dispute between Larscom and UTStarcom over a license for telecommunications hardware. I was lead counsel for plaintiff Larscom in a technology license dispute. The case went to binding arbitration, and I won all of the damages and costs requested by my client.

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(10) *In re Jack* Edward *Sagin*, No. H039151, California Court of Appeal for the Sixth District (2009 – present).

This case is a pro bono matter involving a habeas corpus petition for an incarcerated inmate based on new DNA evidence acquired post-conviction. The case raises novel issues involving innocence claims based on the absence of incriminating DNA. We are co-counsel with the Northern California Innocence project. The case is active and pending.

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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.)

In addition to my caseload, I have served as an officer or board member in several organizations focused legal discourse and the delivery of pro bono legal services. I have been very involved in the Bar Association of San Francisco throughout my career. The Bar Association of San Francisco is one of the leading bar organizations in the United States, and is very active in the delivery of legal services. In 1997, I was the president of the Barristers Club of the Bar Association of San Francisco, which is the the young lawyers division of the bar association. I also was a board member of the Bar Association of San Francisco from 2000 to 2001 and as the president in 2008. As an officer and board member, I was responsible for the administration and operation of the bar and participated in discussions and votes on setting bar policy. I have also served as the co-chair of the Bar Association of San Francisco Civil Gideon Committee since 2011. This committee investigates ways of obtaining legal counsel for indigent individuals and families in civil litigation matters involving housing, child custody and similar matters. From 2007 to 2010, I have also been an advisory board member of the Northern California Innocence Project. As an advisory board member, I was responsible for the administration and operation of the organization. Finally, I was elected to be a member

of the American Law Institute in 2000. The ALI is a national limited membership organization engaged in scholarly work to clarify the law, primarily at the state common law 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.

    Approximately ten years ago, I taught one semester of first-year contracts at San Francisco Law School. 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.

    If confirmed, I would receive compensation payments for my work to date upon separation from Shearman & Sterling LLP. I would also receive retirement benefits under an HR-10 Plan maintained by Shearman, which have already vested. Depending on the date of termination of my service with Shearman, I might also receive retirement benefits under a pension plan.

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.

I am not aware of any potential conflicts of interest likely to be presented by family members. I would recuse myself, for at least some initial time period, from any case being handled by my current law firm. I would also recuse myself from cases on which I previously worked, and from any case where, due to professional or personal relationships with a party or attorney involved, my impartiality might reasonably be questioned. Overall, I will follow the provisions of the Code of Conduct for United States Judges and other relevant canons or statutes.

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

If confirmed, I will resolve any potential conflict of interest pursuant to the Code of Conduct for United States Judges and all other applicable rules of ethics.

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 regularly engaged in pro bono work throughout my career. I have worked on many pro bono cases since starting my practice in 1990, and have also served in organizations such as the Bar Association of San Francisco that are dedicated to providing pro bono legal services. Some matters have involved referrals from the Northern District of California judges to represent prisoners without counsel in Section 1983 cases, typically over prison condition issues and excessive force claims. In 2002, I second-chaired a pro bono case involving public housing policy that was heard by the United States Supreme Court. As my career progressed, I have regularly supervised younger lawyers in pro bono matters for which they have primary responsibility. Most recently, I have spent significant amounts of time handling a civil habeas petition for a pro bono client in conjunction with the Northern California Innocence Project. I have also served as a court-appointed mediator for the Northern District of California since approximately 2002 on a pro bono (non-fee) basis.

26. **Selection Process**:

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

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

In the fall of 2012, the Chair of Senator Feinstein's selection committee for the Northern District of California contacted me about submitting an application for a District Judge appointment. I submitted a written application in October 2012 and met with the committee shortly afterward in San Francisco, California. In late November 2012, I met with Senator Feinstein's state-wide chair in San Diego, California, for a further interview. In early March 2013, I was advised by officials from the Office of Legal Policy at the Department of Justice that Senator Feinstein had forwarded my name to the White House as a potential nominee for an open seat in the Northern District of California, and I have been in contact with officials from OLP since then. On April 25, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 20, 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
Donato, James J.	United States District Court for the Northern District of CA	07/02/2013
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 nominee	☑ Nomination Date 06/20/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 06/10/2013
7. Chambers or Office Address		
Shearman & Sterling, Four Embarcadero Center, San Francisco CA 94111		

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.	Shearman & Sterling LLP	Partner
2.	Director	Berkeley Symphony
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

Name of Person Reporting	Date of Report
Donato, James J.	07/02/2013

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	Shearman & Sterling LLP partner compensation	$1,113,098.48
2. 2012	Shearman & Sterling LLP partner compensation	$879,204.68
3. 2013 YTD	Sjearman & Sterling LLP partner compensation	$761,311.38
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	Santa Clara Univeristy Law School salary
2. 2013	Santa Clara University Law School 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

Name of Person Reporting	Date of Report
Donato, James J.	07/02/2013

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
Donato, James J.	07/02/2013

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 529 Plan #1	C	Int./Div.	M	T	Exempt				
2. -- Vanguard Income Portfolio									
3. Vanguard 529 Plan #2	C	Int./Div.	M	T					
4. -- Vanguard Conservative Growth Portfolio									
5. Vanguard 529 Plan #3	C	Int./Div.	M	T					
6. -- Vanguard Moderate Growth Portfolio									
7. Brokerage Account #1									
8. -- Vanguard CA Inter Term Tx-Exempt FD Admiral Shares	A	Int./Div.	K	T					
9. -- Vanguard Inter Term Tx-Exempt FD Admiral Shares	A	Int./Div.	J	T					
10. -- Vanguard LTD Term Tx-Exempt FD Admiral Shares	A	Int./Div.	K	T					
11. -- Vanguard Short Term Tx-Exempt FD Admiral Shares	A	Int./Div.	K	T					
12. Brokerage Account #2									
13. -- Schwab Advisor Cash Reserve	A	Interest	L	T					
14. IRA #1									
15. -- SPDR S&P500 ETF TR	A	Int./Div.	J	T					
16. -- DFA US Lrg Cap Value Portfolio Instl	A	Int./Div.	J	T					
17. -- PIMCO Low Duration III FD Instl	A	Int./Div.	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
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Name of Person Reporting	Date of Report
Donato, James J.	07/02/2013

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. -- PIMCO Real Return FD Instl	A	Int./Div.	J	T					
19. -- Vanguard Infl Protected Sec FD Admiral Shares	A	Int./Div.	J	T					
20. IRA #2									
21. -- SPDR S&P500 ETF TR	A	Int./Div.	K	T					
22. -- Vanguard REIT	A	Int./Div.	J	T					
23. -- PIMCO Foreign Bond FD Unhedged Instl	A	Int./Div.	J	T					
24. -- PIMCO Low Duration III FD Instl	A	Int./Div.	J	T					
25. -- PIMCO Total Return FD Instl	A	Int./Div.	J	T					
26. Brokerage 401(k) Account									
27. -- Ishares DJ Select Div FD Select Div Index FD	A	Int./Div.	J	T					
28. -- Ishares TR MSCI EAFE FD Index FD	B	Int./Div.	L	T					
29. -- PowerSHS QQQ Trust SER 1	B	Int./Div.	K	T					
30. -- SPDR S&P500 ETF TR	B	Int./Div.	L	T					
31. -- Vanguard REIT	A	Int./Div.	J	T					
32. -- DFA Emerg Mkts Core Equity Port Instl	A	Int./Div.	K	T					
33. -- DFA Intl Sm Cap Value Port Instl	A	Int./Div.	K	T					
34. -- DFA Intl Small Co Port Instl	A	Int./Div.	J	T					

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

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Name of Person Reporting	Date of Report
Donato, James J.	07/02/2013

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. -- DFA Int'l Value Port Instl	A	Int./Div.	K	T					
36. -- DFA Real Estate Securities Port Instl	A	Int./Div.	K	T					
37. -- DFA US Large Cap Value Port Instl	A	Int./Div.	K	T					
38. -- DFA US Micro Cap Port Instl	A	Int./Div.	K	T					
39. -- DFA US Small Cap Port Instl	A	Int./Div.	K	T					
40. -- DFA US Small Cap Value Port Instl	A	Int./Div.	K	T					
41. -- Gateway FD CL Y	A	Int./Div.	K	T					
42. -- PIMCO Foreign Bond FD Unhedged Instl	A	Int./Div.	K	T					
43. -- PIMCO Foreign Bond FD Instl Class	B	Int./Div.	L	T					
44. -- PIMCO Low Duration FD Instl	B	Int./Div.	L	T					
45. -- PIMCO Real Return FD Instl	A	Int./Div.	K	T					
46. -- PIMCO Short Term Instl	A	Int./Div.	J	T					
47. -- PIMCO Total Return FD Instl	D	Int./Div.	L	T					
48. -- Vanguard Equity Income FD Admiral Shares	B	Int./Div.	K	T					
49. -- Vanguard Infl Protected Securities Admiral Shares	A	Int./Div.	J	T					
50. -- Vanguard Short Term Bond Index Signal	D	Int./Div.	L	T					
51. -- Vanguard Total Bond Market Index Signal	D	Int./Div.	L	T					

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Donato, James J.	07/02/2013

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. -- Schwab Advisor Cash Reserve	A	Interest	J	T					
53. Shearman & Sterling HR-10 (no control)	A	Int./Div.	M	T					
54. Cooley 2001 CO Fund	A	Distribution	J	T					
55. Cooley 2002 VC Fund	A	Distribution	K	T					
56. Cooley 1999 VC Fund	A	Distribution	K	T					
57. Cooley I-2000 Fund	A	Distribution	K	T					
58. Cooley I-1999 Fund	A	Distribution	K	T					
59. New Resource Bank stock	A	Dividend	J	T					
60. IRA #3	B	Int./Div.	L	T					
61. -- Vanguard Wellington Fund									
62. Wells Fargo Cash Accounts	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $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
Donato, James J.	07/02/2013

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Donato, James J.	Date of Report 07/02/2013

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/ **James J. Donato**

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		110	145	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	538	363	Notes payable to relatives			
Unlisted securities – see schedule		51	853	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		789	530
Real estate owned – personal residence	2	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
Shearman & Sterling HR-10 plan		181	563				
				Total liabilities		789	530
				Net Worth	3	642	394
Total Assets	4	431	924	Total liabilities and net worth	4	431	924
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	
DFA Emerging Markets Core Equity Fund	$ 31,838
DFA International Small Cap Value Portfolio	16,634
DFA International Small Company Fund	10,057
DFA International Value Fund	14,386
DFA Real Estate Securities Fund	24,633
DFA US Large Cap Value Fund	54,188
DFA US Micro Cap Fund	21,538
DFA US Small Cap Fund	20,387
DFA US Small Cap Value Fund	39,548
Gateway Fund	21,092
iShares Dow Jones Select Dividend Index Fund	13,371
iShares MSCI EAFE Index Fund	59,907
PIMCO Foreign Bond (Unhedged)	23,101
PIMCO Foreign Bond Fund (U.S. Dollar-Hedged)	56,730
PIMCO Low Duration Fund	73,842
PIMCO Real Return Bond	25,200
PIMCO Short-Term Fund	10,110
PIMCO Total Return Bond Fund	77,835
PowerShares QQQ Trust	25,434
Schwab Advisor Cash Reserves	104,558
SPDR S&P 500 ETF Trust	119,331
Vanguard California Intermediate-Term Tax-Exempt Fund	30,456
Vanguard Conservative Growth Portfolio -529	123,239
Vanguard Equity Income Fund	34,161
Vanguard Income Portfolio -529	101,523
Vanguard Inflation-Protected Securities Fund	18,705
Vanguard Intermediate-Term Tax-Exempt Fund	928
Vanguard Limited-Term Tax-Exempt Fund	39,428
Vanguard Moderate Growth Portfolio -529	110,601
Vanguard REIT ETF	13,613
Vanguard Short-Term Bond Index Fund	64,420
Vanguard Short-Term Tax-Exempt Bond Fund	32,632
Vanguard Total Bond Market Index Fund	72,957
Vanguard Wellington Fund	51,980
Total Listed Securities	$1,538,363

Unlisted Securities	
Cooley 1999-VC Fund	$ 12,201
Cooley 2001-CO Fund	3,610
Cooley 2002-VC Fund	22,343
Cooley I-1999 Fund	681
Cooley I-2000 Fund	3,018
New Resource Bank stock	10,000
Total Unlisted Securities	$ 51,853

Real Estate Mortgages Payable	
Personal residence – mortgage	$ 711,295
Personal residence – home equity line of credit	78,235
Total Real Estate Mortgages Payable	$ 789,530

AFFIDAVIT

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

6/24/13
(DATE)

(NAME)

(NOTARY)

See attached California Jurat with Affiant Statement

CALIFORNIA JURAT WITH AFFIANT STATEMENT GOVERNMENT CODE § 8202

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 24th (Date) day of June (Month), 2013 (Year), by

(1) James Donato (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) ~~(;~~

~~(and~~

~~(2)~~ _____ (Name of Signer),

~~proved to me on the basis of satisfactory evidence to be the person who appeared before~~ me.)

ANNELI F. LOEFFLER
Commission # 1950896
Notary Public - California
San Francisco County
My Comm. Expires Sep 3, 2015

Signature Anneli F. Loeffler (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

RIGHT THUMBPRINT OF SIGNER #1	RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here	Top of thumb here

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

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Senator WHITEHOUSE. Thank you, Mr. Donato. I appreciate that very much.

Mr. Brooks.

STATEMENT OF TIMOTHY L. BROOKS, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF ARKANSAS

Mr. BROOKS. Thank you, Senator Whitehouse. I certainly appreciate your role in chairing this Committee hearing. I also very much appreciate Senator Leahy and Senator Grassley for arranging and scheduling this hearing on our nominations.

I especially want to thank Senator Pryor for recommending me to the White House. I really appreciate the trust and confidence that he has placed in me for this role. And I also want to thank Senator Boozman for his support. We have two very good Senators in our State of Arkansas, and they always put the interests of Arkansas above all else, and I appreciate their collegiality and their both supporting my nomination.

Of course, I would also like to thank the President for giving me the honor of the nomination.

I would like to introduce some family members that are here with me today, first and foremost, my wife, Mary Beth. Anyone who has been a trial lawyer knows that it is not easy being a trial lawyer's spouse. There is a lot of extra duties that fall upon them when you are in the middle of a long jury trial, and Mary Beth has certainly been my rock.

I also have my 11-year-old son, Sam, somewhere in the courtroom, and he is apparently on his best behavior today. I have not heard a peep out of him, which is somewhat unusual. But this has been a great experience for him.

We have two daughters, one of whom is a junior in college in New York and was not able to be with us today. I also have another daughter who is starting her first year as a science teacher at a junior high back home in Bentonville, and she could not be with us either.

I am very pleased that our good friends, Shawn and Julie Walker, made the trip from Arkansas. They are very good friends, and it means a lot to have them here.

My parents passed away a few years ago, and I know that they are here in spirit, and they would be very proud. But I am pleased very much to have my in-laws here, Mary Beth's parents, Brad and Mary Ellen Jesson, who just mean so much to me. But I am especially honored that my father-in-law, Brad, was able to be here. He is a lawyer, and his very first job out of law school was to clerk for John Miller, who was the very distinguished United States District Judge for the Western District of Arkansas for many, many years and also a former Member of the Senate. Brad went on to be Chief Justice of the Arkansas Supreme Court, and so he has been not only an inspiration to me as my father-in-law, but also an inspiration to me in my legal career.

Thank you very much, Senator.

[The biographical information of Mr. Brooks follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Timothy Lloyd Brooks

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

   United States District Court Judge for the Western District of Arkansas

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

   Taylor Law Partners, LLP
   303 East Millsap Road
   P.O. Box 8310
   Fayetteville, Arkansas 72703

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

   1964; Detroit, Michigan

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 Arkansas School of Law; J.D., 1989

   1983 – 1986, University of Arkansas; B.S.B.A., 1986

   1982 –1983, Liberty Baptist College; no degree received

   1982 (Spring Semester), University of Arkansas; no degree received

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

1987 – present
Taylor Law Partners, LLP
(f/k/a Mashburn & Taylor)
303 East Millsap Road
Fayetteville, Arkansas 72703
Partner (1993 – present)
Associate (1989 – 1993)
Law Clerk (1987 – 1989)

1986
First National Bank of Springdale
(n/k/a First Security Bank)
100 West Emma Avenue
Springdale, Arkansas 72764
ATM Operations

Other Affiliations:

2005 – present
Sanity, LLC
(Entity which owns the law office building)
P.O. Box 8310
303 East Millsap Road
Fayetteville, Arkansas 72703
Managing Member

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

   I have not served in the military. I did timely 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.

   AV Rated by Martindale-Hubbell (2012 – present)
   Member and Research Editor of the *Arkansas Law Review* (1987 – 1989)
   First Place, Negotiation Competition, University of Arkansas School of Law (1988 and 1989)
   First Place, Client Counseling Competition, University of Arkansas School of Law (1989)
   Recipient of the United States District Judge John E. Miller Memorial Scholarship (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.

American Association for Justice (1989 – 2010)
American Bar Association (1989 – present)
Section of Litigation (1989 – present)
Center for Professional Responsibility (2009 – present)
American Bar Endowment (1989 – present)
American Judicature Society (2012 – present)
Arkansas Bar Association (1989 – present)
Arkansas Supreme Court Committee on Model Jury Instructions – Civil (2011 – present)
Arkansas Trial Lawyers Association (1989 – 2010)
Eighth Circuit Bar Association (2012 – present)
Washington County Bar Association (1989 – present)
William B. Putman American Inn of Court (1997 – 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.

Arkansas, 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.

United States Supreme Court, 2013
United States Court of Appeals for the Eighth Circuit, 1996
United States District Court for the Western District of Arkansas, 1989
United States District Court for the Eastern District of Arkansas, 1989
Arkansas Supreme Court, 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.

Arkansas Alumni Society (1999 – present)
Blessings Golf Club (2004 – present)
Bridgeport Property Owners Association (1999 – 2004)
Clear Creek Property Owners Association (2004 – present)
Crystal Bridges Museum (2011 – present)
Fayetteville Public Education Foundation (2004 – present)
Fort Smith Marshall's Museum (2012)
Friends of the Fayetteville Public Library Roberta Fulbright Society (2005 – present)
Friends of the Walton Arts Center (2004 – present)
Holcomb Elementary School PTA (2007 – present)
Northwest Arkansas Community Foundation (2005 – 2009)
Pinnacle Golf Club (2003 – 2004)
Razorback Foundation (1992 – present)
The New School Foundation (2003 – 2007)
United Way Pillars Society (2004 – present)
Walton College Alumni Foundation (2000 – 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 above currently or previously discriminated against anyone on the basis of race, sex, religion, or national origin, either with regard to membership requirements or with respect to 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.

School Board v. Arline: Will AIDS Fit the Mold? 41 Ark.L.Rev. 639 (1988). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

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

None.

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

As a member of the Arkansas Supreme Court Committee on Model Jury Instructions – Civil since 2011, I participate in the process by which revisions are made to the Arkansas Model Jury Instructions. A new edition is published annually by West Publishing Corporation, and is also available on the Arkansas Judiciary website: http://government.westlaw.com/linkedslice/default.asp?SP=armji-1000). Minutes of the Committee meetings have been supplied.

Washington County Bar Association Meeting (January 8, 2007). Meeting minutes supplied.

Joint Letter to the Arkansas Bar Association supporting the election of Judge Paul Danielson, candidate for Arkansas Supreme Court (March 2006). Copy supplied.

Letter to Senator Jim Holt regarding House Bill 1038 (February 7, 2003). Copy supplied.

On January 28, 2003, I spoke to the Judiciary Committee of the Arkansas House of Representatives regarding House Bill 1038. I have no notes, transcript, or recording, but the substance of my testimony would have been substantially similar to the points made in my January 27, 2003 email to Representative Lamoureux, which is provided.

Email to Representative Mike Lamoureux regarding House Bill 1038 (January 27, 2003). 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.

My CLE presentations are itemized below. Except as indicated, I have not been able to locate written materials associated with these presentations. My search included a review of all existing paper and computer files in my office, as well as internet searches. I also contacted sponsors of these CLE presentations, who in some instances were able to provide the program brochure, but not any speaking materials. I cannot recall any other CLE presentations or any other speeches or talks which would be responsive to this item.

January 17, 2012: Moderator, "Alternative Sentencing & Diversion Programs in Arkansas," W.B. Putman American Inn of Court, Fayetteville, Arkansas. Handout supplied.

October 20, 2009: Welcome and Introductory Remarks, "Eat, Greet & Compete," Alumni Fundraising Event, Sam M. Walton College of Business, Fayetteville, Arkansas. I have no notes, transcript, or recording. The address of the Sam M. Walton College of Business is 220 North Ozark Avenue, Fayetteville, AR 72701.

June 25, 2009: Speaker, "Obtaining and Preparing Medical Experts for Depositions and Trial," Arkansas Trial Lawyers Association, *Best of CLE* Presentation, Springdale, Arkansas. Written remarks supplied.

March 10, 2006: Speaker, "Obtaining and Preparing Medical Experts for Depositions and Trial," Arkansas Trial Lawyers Association, Medical Malpractice Seminar, Fayetteville, Arkansas. Written remarks supplied.

February 13, 2001: Panelist, Overview of Amendment 80 to the Arkansas Constitution, which revised the Judicial Article in the Arkansas Constitution, W.B. Putman American Inn of Court, Fayetteville, Arkansas. I have no notes, transcript or recording. The address for the W.B. Putman American Inn of Court is Susan Schell – Inn Secretary, University of Arkansas School of Law, 191 Waterman Hall, Fayetteville, AR 72701.

March 26, 1999: Panelist, Trial Demonstration Seminar, Arkansas Trial Lawyers Association, Springdale, Arkansas. I have no notes, transcript or recording. The address for the Arkansas Trial Lawyers Association is 1400 West Markham, Suite 307, Little Rock, AR 72201.

February 2 – 4, 1999: Volunteer Judge, Intramural Client Counseling Competition, University of Arkansas, School of Law, Fayetteville, Arkansas. I have no notes, transcript or recording. The address for the University of Arkansas, School of Law is 1045 West Maple Street, Fayetteville, AR 72701.

January 18, 1999: Panelist, Ethical Considerations in Malpractice Litigation, W.B. Putman American Inn of Court, Fayetteville, Arkansas. I have no notes,

transcript or recording. The address for the W.B. Putman American Inn of Court is Susan Schell – Inn Secretary, University of Arkansas School of Law, 191 Waterman Hall, Fayetteville, AR 72701.

February 16, 1998: Panelist, Ethical Issues in Contacting Former Employees of Opposing Corporate Party, W.B. Putman American Inn of Court, Fayetteville, Arkansas. I have no notes, transcript or recording. The address for the W.B. Putman American Inn of Court is Susan Schell – Inn Secretary, University of Arkansas School of Law, 191 Waterman Hall, Fayetteville, AR 72701.

September 13, 1996: Speaker, "Subrogation Law in Arkansas," Arkansas Bar Association, Seminar on Personal Injury Law, Fayetteville, Arkansas. I have no notes, transcript or recording. The address for the Arkansas Bar Association is 2224 Cottondale Lane, Little Rock, AR 72202.

November 17, 1994: Speaker, "Workers' Compensation in 1994: A Respondent's Perspective," Arkansas Trial Lawyers Association, Administrative Law Seminar, Fayetteville, Arkansas. I have no notes, transcript or recording. The address for the Arkansas Trial Lawyers Association is 1400 West Markham, Suite 307, Little Rock, AR 72201.

April 29, 1992: Speaker, Arkansas Hot Check Laws, Northwest Arkansas Multi-Housing Association, Annual Meeting, Fayetteville, Arkansas. I have no notes, transcript or recording. The address for the Northwest Arkansas Multi-Housing Association is Post Office Box 293, Lowell, AR 72745.

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.

Alex Daniels, *Obama Fills Judge Spot with Fayetteville Lawyer*, Arkansas Democrat-Gazette, June 8, 2013. Copy supplied.

Michelle Bradford, *Wal-Mart, Coughlin Hit $6.7 Million Deal*, Arkansas Democrat-Gazette, August 22, 2008. Copy supplied.

Robin Mero, *Wal-Mart to Give Coughlin $6.75 Million*, Morning News, August 21, 2008. Copy supplied.

Robert J. Smith, *Landowner Holds Fate of Tilting Trees*, Arkansas Democrat-Gazette, April 11, 2008. Copy supplied.

Michelle Bradford, *Coughlin Repeats His Claim to Benefits*, Arkansas Democrat-Gazette, November 16, 2007. Copy supplied.

Amy Cotham, *The Quintessential Dream Home*, CitiScapes, March 2006. Copy supplied.

Worth Sparkman, *Local Lawyers Mull Malpractice Melee*, Arkansas Business Journal, January 17, 2005. Copy supplied.

Doug Smith, *Doctor Singled Out by Bush Faces Malpractice Suit*, Arkansas Times, February 20, 2004. Copy supplied.

Kristen Everett, *Bill Aims to Clarify Status of State-Licensed Bingo*, Arkansas Democrat-Gazette, March 3, 1997. Copy supplied.

Dominique Lacasse, *$11M Suit Against Newbridge Dropped*, Ottawa Citizen, May 5, 1990. Copy supplied.

Dominique Lacasse, *U.S. Customer Sues Newbridge, Claims Product Failed to Work*, April 6, 1990. Copy supplied.

Ottawa Electronic Firm Sued by U.S. Bank, Toronto Star, April 6, 1990. Copy supplied.

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

I have not served as a judge.

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

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___% [total 100%]

civil proceedings: ___%
criminal proceedings: ___% [total 100%]

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

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

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

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

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

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

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

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

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

I have not served as a judge.

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

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

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

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

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

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

I have not been elected or appointed to any public office. I have not been a candidate for any elective or appointed office.

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

I have not been a member or held office in a political party, nor have I served on an election committee. I have been listed as a "co-host" (or other similar designation) for campaign fundraising events. Such events that I can recall were on behalf of the following candidates: Mike Beebe for Governor (2006); Bill Halter for Lieutenant Governor (2006); Dustin McDaniel for Attorney General (2006); Mark Pryor for U.S. Senate (2002, 2008); Marilyn Edwards for Arkansas House of Representatives (2002); Marilyn Edwards for Washington County Judge (2008); Mary Ann Gunn for Circuit Judge (1996); Mike Mashburn for Circuit Judge (2000); Courtney Henry for Arkansas Court of Appeals (2008); Courtney Henry for Arkansas Supreme Court (2010); Paul Danielson for Arkansas Supreme Court (2006); Jim Hannah for Arkansas Supreme Court (2008); and Niki Cung for Arkansas Court of Appeals (2012). It may be that I have served on other host committees, but after a diligent search of my records I cannot recall or determine any other such campaigns.

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

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

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

I have not served as a law clerk to any judge.

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

I have never practiced alone.

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

1989 – present
Taylor Law Partners, LLP
(f/k/a Mashburn & Taylor)
303 East Millsap Road
Fayetteville, Arkansas 72703
Partner (1993 – present)
Associate (1989 – 1993)

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

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

I have been employed in private practice with Taylor Law Partners, LLP since I graduated from law school in 1989. The firm has a broad general trial practice, including all types of civil litigation, domestic relations, and criminal defense. With some exceptions in the early years, the nature of my practice has focused on civil litigation.

From 1989 to 1993, a large portion of my practice was defending workers' compensation claims. I also represented individuals in personal injury matters, social security disability, domestic relations matters, criminal defense, wills and probate, and property law cases.

From 1993 to 2000, my practice areas narrowed when I became a partner of the firm in 1993. I stopped taking domestic relations and criminal cases, and I began working on corporate transactional matters and commercial litigation. Towards the end of this period I started phasing out my workers' compensation practice and focused more on complex personal injury cases (medical malpractice, product liability, wrongful death, catastrophic injuries) and commercial litigation.

From 2000 to the present time, my focus has been on complex civil litigation, with a heavy emphasis on commercial cases and medical malpractice.

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

The scope of my firm's practice is somewhat unique in that we have a long history of representing both plaintiffs and defendants in civil litigation, as well as providing legal services related to criminal defense, domestic relations, and representing plaintiffs in personal injury matters. Consequently, my practice, beginning as an associate, was a hybrid of these practices.

From 1989 to 1993, my workers' compensation clients consisted primarily of corporate employers, which I represented either directly in their self-insured capacity, through third party administrators, or in some instances through their insurance companies. In the other areas of my practice – personal injury, social security disability, domestic relations, and criminal defense – my clients were individuals, most of whom had very modest earnings.

From 1993 to 2000, I continued to represent corporate employers in the defense of workers' compensation cases. Likewise, I continued to represent personal injury clients, whose only means of affording an attorney was through the use of contingent fee arrangements. I also began representing corporate clients and individuals in commercial cases.

From 2000 to the present, I deemphasized and phased out my workers' compensation practice. My corporate clients in commercial cases have primarily consisted of small to medium sized companies, individuals, and entrepreneurs but also have included some large companies. In the areas of medical malpractice, product liability, discrimination, and the False Claims Act, my clients consist of ordinary individuals.

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 would describe my practice as consisting of over 95% litigation. I have appeared in court frequently. The percentages listed below reflect the distribution of my civil practice over the last 10 to 15 years. If I included workers' compensation and social security disability cases from the early years of my practice, then, by volume, the percentages would be skewed to reflect a significant percentage of proceedings before administrative agencies.

i. Indicate the percentage of your practice in:
   1. federal courts: 30%
   2. state courts of record: 70%

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.

In total, I have tried more than 80 cases to verdict, judgment, or final decision. This would include 28 jury trials taken to verdict, approximately 15 bench trials taken to judgment, and no less than 40 workers' compensation cases tried to a final decision. Of the jury trials, I was sole counsel in 11 cases, chief counsel in 12 cases, and associate counsel in five cases. I acted as sole counsel in all of the bench trials and workers' compensation cases. The percentages listed below do not include or reflect workers' compensation cases in the early part of my career.

i. What percentage of these trials were:
1. jury: 65%
2. non-jury: 35%

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) *Bank of America, N.A. v. JB Hanna, LLC, et al*, Case No. 2010-5220, in the United States District Court for the Western District of Arkansas, Hon. Brian S. Miller presiding. Jury trial conducted June 18 to 27, 2012. The case is presently pending on appeal to the United States Eighth Circuit Court of Appeals in Case Nos. 12-3239 and 12-3352.

I represented the defendant, JB Hanna, LLC, and related parties. This was a breach of contract case. Bank of America brought suit against my clients alleging multiple defaults and cross-defaults of three separate commercial loan transactions, and sought to recover more than $14 million. Bank of America had utilized an interest rate derivative – known as a "Swap" – to synthetically fix the interest rate on the loans. One of the loans involved complex refinancing and restructuring of debt totaling $11 million. The core dispute resulted from the erroneous use of mis-matched maturities as between the promissory note (five-year maturity) and the corresponding Swap (ten-year maturity). Five years into the term, Bank of America declared default of the promissory note, and cross-default as against the corresponding Swap agreement, as well as cross-defaults of the two other notes, corresponding Swap agreements, and all guaranty obligations.

I served as lead counsel. I conducted all of the written discovery, as well as being responsible for the motions practice and summary judgment briefing. I conducted almost all of the discovery depositions, including those of 22 fact witnesses and five expert witnesses. To prepare for jury trial, I reviewed and participated in the pre-trial jury panel analysis. At trial, which commenced on June 18, 2012, I gave the opening statement, cross-examined the Bank's witnesses, and put on the direct testimony of most of the defense witnesses. I also prepared the defendants' proposed jury instructions and argued the same at the instruction conference. Following a seven-day trial, the jury returned a complete defense verdict in favor of my clients. I drafted the responses to the Bank's multiple post-trial motions, all of which were denied. I drafted most of the appellees' response brief on the pending appeal.

Co-Counsel for Plaintiff, Bank of America:

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Theresa Davis
Michael Molinaro
Reed Smith LLP
10 South Wacker Drive, Suite 4000
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(312) 207-2777

Co-Counsel for Defendant, JB Hanna, LLC:

Jeff Mitchell
Taylor Law Partners, LLP
303 East Millsap Road
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Fayetteville, AR 72703
(479) 443-5222

(2) *Thomas v. St. John's Hospital, et al,* Case No. CIV-2007-154, in the Circuit Court of Carroll County, Arkansas, Hon. Gerald Crow presiding. Jury trial conducted July 25 to 29, 2011. An appeal is presently pending in the Arkansas Court of Appeals, Case No. CA-12-231.

I represented the plaintiff, Ms. Thomas, in this medical malpractice litigation against a hospital and surgeon. The allegations were that the surgeon and operating room staff left a six inch steel clamp retained within Ms. Thomas' abdomen following bowel repair surgery. Damages were sought in the sum of approximately $1 million.

I was lead counsel in the case. I drafted or supervised the drafting of the pleadings, written discovery, motions, and summary judgment briefs. I also took almost all of the depositions, including the depositions of all defense witnesses, defendant medical providers, and all four defense expert witnesses. I appeared and argued on behalf of Ms. Thomas at all of the pre-trial conferences, and I supervised the preparation and organization of the jury panel analysis. A jury trial began on July 25, 2011. I was responsible for our presentation to the jury, from conducting voir dire to drafting and arguing plaintiff's proposed jury instructions. I gave plaintiff's opening and closing statements. I put on the direct testimony of most of the plaintiff's witnesses, including plaintiff's expert witness, and cross-examined the defense witnesses. I also argued the directed verdict motions. On July 29, 2011, the jury returned a defense verdict. I drafted the post-trial motion and brief in support seeking a new trial, which was denied. I appealed the case and drafted the appellant's opening brief and reply brief. The appeal is presently pending in the Arkansas Court of Appeals, Case No. CA-12-231.

Co-Counsel for Plaintiff, Ms. Thomas:

William Burk
(Former Associate at Taylor Law Partners, LLP)
Corporate Counsel
Tyson Foods, Inc.
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(479) 290-1198

Counsel for Defendant, Nadav Sharon, MD:

Walter B. Cox
Cox, Cox & Estes, PLLC
P.O. Box 878
Fayetteville, AR 72702
(479) 251-7000

Counsel for Defendant, St. John's Hospital:

W. Dale Garrett
Bassett Law Firm LLP
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(479) 521-9996

(3) *Young, et al v. Smith, et al*, Case No. CV-2007-2372-4, in the Circuit Court of Washington County, Arkansas, Hon. Mary Ann Gunn presiding (now retired). Jury trial conducted August 23, 2010 to September 10, 2010.

I represented the plaintiff, Ms. Young, who brought this medical malpractice case on behalf of her minor twin daughters. Ms. Young's pregnancy was complicated by the development of an in utero anomaly known as twin-to-twin transfusion syndrome. The allegation was that Ms. Young's treating obstetricians were negligent in failing to timely diagnose and treat the complication. It was also alleged that the defendant hospital was negligent when it failed to properly and timely submit ultrasound images – which would have diagnosed the condition – to a radiologist for review. The complication resulted in the twins' premature birth at 26 weeks gestation, which in turn caused profound brain damage and cerebral palsy in one of the twins, and a less severe form of cerebral palsy in the lower extremities of the other twin. It was alleged that timely diagnosis and treatment of the complication would have prolonged gestation and that the twins would not have suffered permanent impairments. Damages were alleged in excess of $10 million.

I served as lead counsel. I was responsible for the pre-trial discovery, including written discovery, depositions, motions, and jury panel analysis. A jury trial commenced on August 23, 2010. I conducted the voir dire. I gave the opening statement. I put on the direct testimony of most of the plaintiff's witnesses, as well as the cross-examination of most of the defense witnesses. I drafted the plaintiff's proposed jury instructions and argued the same at the instruction conference. After a trial which lasted over three weeks, the jury returned a defense verdict. I subsequently appealed the trial court's summary judgment ruling with regard to the interpretation of the Arkansas John Doe Statute. Even though the mootness doctrine would have prevented a re-trial on the merits, I sought to challenge what I believed to be erroneous legal precedent. The appeal was denied. *Young v. Smith*, 2012 Ark. App. 494.

Co-Counsel for Plaintiff, Ms. Young:

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P.O. Box 8310
Fayetteville, AR 72703
(479) 443-5222

William Burk
(Former Associate at Taylor Law Partners, LLP)
Corporate Counsel
Tyson Foods, Inc.
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Springdale, AR 72762
(479) 290-1198

Counsel for Defendant, Washington Regional Medical Center:

Kelly Carithers
Davis, Wright, Clark, Butt & Carithers, PLC
P.O. Box 1688
Fayetteville, AR 72702
(479) 521-7600

Counsel for Defendants, Dr. Smith and Dr. Pickhardt:

Phil Malcom
Malcom Law Firm
2226 Cottondale Lane, Suite 100
Little Rock, AR 72202-2060
(501) 319-7669

(4) *Green, et al. v. Alpharma, Inc., et al*, Case No. CV-2003-2150-2, in the Circuit Court of Washington County, Arkansas, Hon. Kim Smith presiding. Jury trial conducted September 3 to 25, 2006. The judgment was appealed to the Arkansas Supreme Court. *Green v. Alpharma*, 373 Ark. 378 (2008).

This was a mass tort case. I represented the defendant pharmaceutical company, Alpharma, Inc. The plaintiffs alleged that a synthetic arsenic, Roxarsone, manufactured by Alpharma, was blended into the poultry feed utilized by major poultry producers, which plaintiffs alleged would eventually be absorbed into the environment and ingested by the plaintiffs. The plaintiffs alleged that the arsenic ingested by the plaintiffs caused a "cancer cluster" in the community. The plaintiffs consisted of approximately 30 separate families, each with one or more family members being afflicted with some type of cancer allegedly caused by the defendants. Approximately ten separate cases were filed, each

with multiple plaintiffs and/or plaintiff families. Five of the major poultry producers in the region were also named as defendants. All of the cases were consolidated for purposes of discovery, but severed for trial purposes. The Green family's case was scheduled to be tried first. Shortly prior to trial, all of the poultry company defendants were dismissed on summary judgment. The Green family's case was taken to trial with Alpharma as the sole defendant. The case was incredibly complex due to the sheer number of parties, different types and nature of cancer claims, the scientific evidence, extensive discovery, a multitude of expert witnesses, summary judgment issues, *Daubert* motions, and extensive motion in limine practice.

Lead counsel for Alpharma was Shook Hardy & Bacon from Kansas City, Missouri. I was associated as local counsel and participated in discovery, motion practice, and trial. The jury trial began on September 3, 2006. I cross-examined the lead plaintiff and his local treating physician. I also put on the direct testimony of the defense expert witnesses in the fields of oncology and arsenic toxicology. After a three-week trial, the jury returned a complete defense verdict. The plaintiff appealed. The judgment on the jury's verdict as to Alpharma was affirmed.

Co-Counsel for the Plaintiff, Green Family:

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Fayetteville, AR 72701-4203
(479) 439-4160

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Hunter W. Lundy
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501 Broad Street
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(337) 513-0292

Co-Counsel for Defendant, Alpharma, Inc.:

Robert T. Adams
John Johnston
Steve Soden
Shook, Hardy & Bacon L.L.P.
2555 Grand Boulevard

Kansas City, MO 64108
(816) 474-6550

(5) *Capper v. McBee, et al.*, Case No. CV-2003-72-6, in the Circuit Court of Washington County, Arkansas, Hon. Mark Lindsay presiding. Jury trial conducted on May 24 to 28, 2004.

I represented the plaintiffs who brought this action on behalf of their minor son. This was a medical malpractice case wherein it was alleged that their son had suffered fetal distress and hypoxia in the birthing process, which resulted in profound brain injury and severe cerebral palsy.

I acted as sole counsel from the beginning to the end of this litigation. The pre-trial discovery was very complex, involving very technical written discovery and including multiple fact and expert witnesses. I also represented my clients in a lengthy mediation process. On the day before trial, the two defendant doctors paid significant settlement monies and were dismissed as parties. On May 24, 2004, the case proceeded to trial against the defendant hospital. I conducted the voir dire of the jury panel. I was responsible for the opening and closing statements. I put on the direct testimony of the plaintiff's witnesses, including the testimony of the settling defendant doctors who were called as hostile witnesses. I also put on the expert testimony of the plaintiff's treating physicians, as well as the testimony of the plaintiff's five expert witnesses. I cross-examined the defense witnesses, including the defense expert witnesses. After five days of trial, the jury returned a defense verdict in favor of the hospital.

Counsel for Defendant, Washington Regional Medical Center:

Kelly Carithers
Davis, Wright, Clark, Butt & Carithers, PLC
P.O. Box 1688
Fayetteville, AR 72702
(479) 521-7600

Counsel for Defendant, Dr. Gorman:

Charles R. Ledbetter
Ledbetter, Cogbill, Arnold & Harrison, LLP
P.O. Box 185
Fort Smith, AR 72902-0185
(479) 782-7294

Counsel for Defendant, Dr. McBee:

Walter B. Cox
Cox, Cox & Estes, PLLC
P.O. Box 878

Fayetteville, AR 72702
(479) 251-7000

(6) *OK Foods, Inc. v. EPCO Carbon Dioxide Products, Inc.*, Case No. CV-2001-463, in the Circuit Court of Sebastian County, Arkansas, Hon. Mark Hewett presiding. Jury trial conducted June 21 to 24, 2002.

I represented the defendant, EPCO, in this matter which involved mutual breach of contract allegations. The plaintiff contended that EPCO had breached a contract to supply its requirements for carbon dioxide. EPCO contended that due to market conditions certain aspects of its performance were excused. EPCO counter-sued for breach of contract to recover remaining monies owed on account.

I served as lead counsel. I handled all of the pretrial discovery, the motion for summary judgment, motions in limine, and all pretrial hearings. The matter went to a jury trial beginning on June 21, 2002. I gave the opening statement. I cross-examined most of the plaintiff's witnesses, and put on a majority of the defense witnesses on direct examination. I argued the motions for directed verdict. I prepared and argued the proposed jury instructions. I gave the closing argument. On June 24, 2002, the jury returned a defense verdict in favor of EPCO on the plaintiff's complaint. EPCO was awarded judgment for the entire amount of its counterclaim, plus attorney fees.

Co-Counsel for Plaintiff, OK Foods:

Walton Maurras
Matt Horan
Smith, Maurras, Redd & Horan, PLC
P.O. Box 10205
Fort Smith, AR 72917
(479) 782-1001

Co-Counsel for Defendant, EPCO Carbon Dioxide Products, Inc.

W.H. Taylor
Taylor Law Partners, LLP
303 East Millsap Road
P.O. Box 8310
Fayetteville, AR 72703
(479) 443-5222

(7) *Salley v. U.S. Department of Veterans Affairs*, Case No. 5:99-CV-05136-JLH, in the United States District Court for the Western District of Arkansas, Hon. Jimm L. Hendren presiding. Jury trial conducted May 25 to 28, 2000.

I represented the plaintiff, Mr. Salley, in this employment discrimination case which was brought pursuant to Title VII of the Civil Rights Act of 1964. Mr. Salley was employed

as a maintenance worker at the Veterans Hospital in Fayetteville, Arkansas. Mr. Salley, an African-American, alleged that certain employee discipline – and his ultimate termination – was racially motivated and the result of a hostile work environment. The United States denied these allegations.

I served as lead counsel for Mr. Salley. I was responsible for the pleadings, written discovery, and the majority of the depositions. I also drafted and responded to all pretrial motions and other line items as required by the Court's pretrial scheduling order. I assisted in the review of the jury panel analysis. The matter went to trial on May 25, 2000. I gave the opening and closing statements. I put on a majority of the plaintiff's witnesses on direct exam and cross-examined most of the defense witnesses. I argued all of the motions made during trial. I prepared the plaintiff's proposed jury instructions. On May 28, 2000, the jury returned its verdict finding that the Veterans Hospital had discriminated against Mr. Salley on account of his race, and awarded him compensatory damages. I drafted a post-trial petition for attorney fees as authorized by Title VII, which were subsequently awarded by the Court.

Co-Counsel for Plaintiff, Mr. Salley:

Scott E. Smith
Taylor Law Partners, LLP
303 East Millsap Road
P.O. Box 8310
Fayetteville, AR 72703
(479) 443-5222

Counsel for Defendant, The United States:

Deborah J. Groom
Assistant United States Attorney
Western District of Arkansas
P. O. Box 1524
Fort Smith, AR 72902
(479) 783-5125

(8) *National Merchandising, et al v. Leisure Time Products, et al*, Case No. 5:99-CV-05005-JLH, in the United States District Court for the Western District of Arkansas, Hon. Jimm L. Hendren presiding. Jury trial conducted December 6 to 10, 1999.

I represented the plaintiffs, National Merchandising and Mr. Royer, in this matter which involved breach of contract. Mr. Royer contended that he and his company had contracted with the defendant, Leisure Time Products, as an independent wholesale seller of its wooden playground sets. Mr. Royer contended that the defendant breached its sales representation agreement when it terminated his affiliation with the company and failed to pay him commissions on sales which resulted from his efforts. The defendant denied these allegations.

I served as lead counsel. I handled the pre-trial discovery, including depositions, motions in limine, pre-trial hearings, and jury panel analysis. The matter went to a jury trial beginning on December 6, 1999. I conducted the voir dire of the jury panel. I gave the opening statement. I put on the direct testimony of most of the plaintiffs' witnesses and cross-examined most of the defense witnesses. I argued the motions made during the trial. I prepared the plaintiffs' proposed jury instructions and argued on behalf of the plaintiffs at the Court's instruction conference. I gave the plaintiffs' closing argument. On December 10, 1999, the jury returned a verdict in the plaintiffs' favor and awarded compensatory contract damages. I filed a post-trial motion for an award of statutory attorney fees in accordance with Arkansas law, which were subsequently awarded by the Court.

Co-Counsel for Plaintiffs, National Merchandising and Ron Royer:

Rick E. Woods
Taylor Law Partners, LLP
303 East Millsap Road
P.O. Box 8310
Fayetteville, AR 72703
(479) 443-5222

Counsel for Defendants, Leisure Time Products:

John Elrod
Vicki Bronson
Conner & Winters
4375 North Vantage Drive, Suite 405
Fayetteville, AR 72703
(479) 582-5711

(9) *Hill v. Panettiere, et al*, Case No. 5:98-CV-05050-JLH, in the United States District Court for the Western District of Arkansas, Hon. Jimm L. Hendren presiding. Jury trial conducted March 1 to 4, 1999.

I represented the plaintiff in this medical malpractice case brought in federal court pursuant to diversity jurisdiction. The defendant oncologist, Dr. Panettiere, diagnosed Mr. Hill with liver cancer. For a period of over two years, Dr. Panettiere treated Mr. Hill with weekly IV chemotherapy treatments. The treatments made Mr. Hill very ill. After two years of these weekly treatments, Mr. Hill obtained a second opinion, which revealed that Mr. Hill did not have liver cancer, nor had he ever had liver cancer. Dr. Panettiere denied these allegations.

I acted as lead counsel in representing Mr. Hill. I was responsible for the pre-trial discovery and jury panel analysis. The matter went to a jury trial beginning on March 1, 1999. I conducted the voir dire examination of the jury panel. I put on the testimony of

the plaintiff's treating physicians, as well as the testimony of the plaintiff's medical experts. I cross-examined the defendant and the defense experts. I argued all of the motions made during trial. I gave the closing argument. On March 4, 1999, the jury returned a verdict in favor of Mr. Hill and awarded compensatory damages.

Co-Counsel for Plaintiff, Mr. Hill:

Sean Keith
Keith, Miller, Butler, Schneider & Pawlik
1106 West Poplar Street
Rogers, AR 72756
(479) 621-0006

Counsel for Defendant, Dr. Panettiere:

Walter B. Cox
Cox, Cox & Estes, PLLC
P.O. Box 878
Fayetteville, AR 72702
(479) 251-7000

(10) *Cargill, Inc. v. Storms Agri Enterprises, Inc.*, Case No. CV-91-652, in the Circuit Court of Washington County, Arkansas, Hon. Kim Smith presiding. This case was actually tried to a jury twice. The first trial resulted in a directed verdict in favor of the defendant. The trial court's ruling was reversed on appeal, *Cargill v. Storms Agri Enterprises*, 46 Ark. App. 237 (1994). On remand, the case went to a second jury trial on June 26 to 28, 1995.

I represented the plaintiff, Cargill, Inc. This was a commercial sales case brought pursuant to the Uniform Commercial Code. Cargill was a seller of cottonseed, a byproduct of the cotton-ginning process. Defendant was a dairy farmer which used cottonseed as an additive to its cattle feed. Cargill alleged that the defendant had agreed to purchase 17 truckloads of cottonseed at a fixed price for future delivery. After accepting delivery of a portion of those loads, the price of cottonseed on the spot market decreased, and the defendant repudiated its agreement to purchase the remaining loads.

I acted as sole counsel on behalf of Cargill at the first trial, on appeal, and during the second trial on remand. The case went to a jury trial a second time on June 26, 1995. I conducted the voir dire examination of the jury panel. I gave the opening statement. I put on all of the plaintiff's witnesses on direct examination. I cross-examined all of the defendant's witnesses. I argued the motions made to the Court during the trial. I gave the closing argument. On June 28, 1995, the jury returned a verdict in favor of Cargill for the full amount of its contract damages. After the trial I filed a motion for attorney fees pursuant to Arkansas statutory law, which were ultimately awarded by the Court.

Counsel for Defendant, Mr. Storms:

John C. Everett
Everett, Wales & Comstock
P.O. Box 8370
Fayetteville, AR 72703
(479) 443-0292

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

As a young lawyer I had the very good fortune of being thrust into an active workers' compensation practice. My senior partner entrusted me to work up and try many of these cases in my first year out of law school. I eventually took over his workers' compensation docket. Litigation before the Arkansas Workers' Compensation Commission is not complex, but it is a great forum in which to develop one's skill. Each case typically involves the drafting of pleadings, motions, written discovery, taking depositions, and the drafting of trial briefs. Hearings before an Administrative Law Judge involve the examination and cross-examination of witnesses and the introduction of documents and records in accordance with the Rules of Evidence. In my first ten years out of law school, I estimate that I litigated more than 150 such claims. I conservatively estimate that I took more than 40 of those cases to trial.

I have also accrued significant experience in alternative dispute resolution. I would conservatively estimate that I have taken the lead in representing my clients in more than 25 mediations. I have also tried two cases in arbitration proceedings to a final decision.

Since 2011, I have served as a Member of the Arkansas Supreme Court Committee on Model Jury Instructions – Civil. The committee is tasked with the responsibility to review and analyze recently released appellate court decisions, new and revised statutes, and other legal authority to create or revise the model jury instructions, and the comments to the instructions, to accurately reflect the current state of Arkansas law. The committee meets once a month at the Arkansas Supreme Court in Little Rock. The work of the committee involves a significant time commitment, including substantial research and drafting assignments. I have found the return to this academic aspect of the law to be a richly rewarding experience.

I have not performed lobbying activities on behalf on any client or organization.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

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

    If I were to be confirmed, I would receive a portion of my accrued fees billed but not yet paid or liquidated. I have a 401(k) plan through my firm as well. I also anticipate receiving passive income from a family owned limited liability company of which I am part owner. The company holds family investments, such as a family farm which is presently leased as pasture land. Any future distribution is unknown and not guaranteed as the assets are intended to be held long term.

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 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 evaluate actual and potential conflicts of interest in accordance with the Code of Conduct for United States Judges, and in particular Canon 3, which pertains to conflicts of interest. I would also determine and apply all other applicable policies and procedures of the United States Courts.

If confirmed, I would recuse from any matters and/or cases that I handled or supervised as an attorney at Taylor Law Partners, LLP. For an appropriate period of time, I would recuse from all cases in which members of my firm appear as an attorney of record. For an appropriate period of time, I would likewise recuse from any new cases in which one of my current clients may appear as a party. I would look to any and all applicable rules, customs, and practices of the United States Courts, the Eighth Circuit, and the Western District of Arkansas, to determine the appropriate duration of such conflicts.

In addition, I would recuse myself in certain circumstances based on my personal relationships. My wife is an officer and director of the Bank of Fayetteville in Fayetteville, Arkansas. If confirmed, I would recuse myself from all matters in which the Bank of Fayetteville is a party. My father-in-law is *of counsel* to Hardin, Jesson & Terry, PLC, in Fort Smith, Arkansas, and my nephew is a transactional lawyer with Friday, Eldredge & Clark in Rogers, Arkansas. If confirmed, I would follow 28 U.S.C. § 455, the Code of Conduct for United States Judges, including Canon 3 of the Code, and all applicable policies and procedures of the United States Courts, and recuse as appropriate.

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

If confirmed, I would evaluate actual, potential, and perceived conflicts of interest in accordance with the Code of Conduct for United States Judges, and in particular Canon 3. I would also determine and apply all other applicable policies and procedures of the United States Courts, such as 28 U.S.C. § 455. I would also look to any and all applicable rules, customs, and practices within the Eighth Circuit generally, and the Western District of Arkansas, specifically. I will diligently keep apprised of my financial and personal interests and will address conflicts, potential conflicts, and the appearance of conflicts, 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.

I have served as a volunteer lawyer for Ozark Legal Services and Arkansas Legal Aid since I was first licensed as an attorney. In the early years of my practice I took indigent referrals of domestic relations cases. I also dealt with some property issues and simple will and/or probate matters on a pro bono basis. More recently I have been asked to

assist indigent referrals with various issues where it was necessary to establish guardianship of a minor, a sibling, or a disabled person.

I have also served as counsel to the Junior League of Northwest Arkansas. The mission of the Junior League is promoting voluntarism, developing the potential of women and improving communities through the effective action and leadership of trained volunteers. Its purpose is exclusively educational and charitable. Its goal is to serve the needs of the community. In 2002, I volunteered my services to incorporate this local chapter as a nonprofit 501(c)(3) corporation. Since then I have advised the League with regard to various contract matters, advised it with respect to potential liability associated with fundraising events, and counseled it when confronted with actual liability occurrences.

I have also represented indigent clients on a pro bono basis who sought my services as a private attorney, but were unable to afford my fees. This has ranged from one time initial consultations for advice and direction, to the preparation of simple wills for the elderly, to long term representation in guardianship cases. One example is a family of four siblings ranging in age from 13 to 20. Due to family circumstances, the oldest sibling has effectively been the primary care provider of her younger sisters. I have represented this family in a fairly complex guardianship matter for the last ten years.

I have also donated considerable time to the improvement of the law by my service on the Arkansas Supreme Court on Model Jury Instructions – Civil.

26. **Selection Process**:

    a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

    There is no selection commission in Arkansas for vacancies on the federal bench. In November 2012, I sent Senators Mark Pryor and John Boozman letters expressing my interest in being considered for this position, along with my resume. On or about December 12, 2012, Senator Boozman called to discuss the consideration process. On January 23, 2013, I had a phone interview with Senator Pryor. On March 6, 2013, Senator Pryor called to inform me that he was recommending me and three other candidates to the President. I have been in contact with officials from the Office of Legal Policy at the Department of Justice since March 14, 2013. On March 21, 2013, I met separately with Senators Boozman and Pryor in Washington, D.C. On April 17, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice

in Washington, D.C. On June 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. 1/2013

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
Brooks, Timothy L.	U. S. District Court, Western District of Arkansas	06/07/2013
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**
District Court Judge	☑ Nomination Date 06/07/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 06/03/2013
7. Chambers or Office Address		
P.O. Box 8310 303 E. Millsap Road Fayetteville, AR 72703		

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	Taylor Law Partners, LLP
2.	Managing Member	TLB & MBB Family Investments, LLC
3.	Managing Member	Sanity, LLC
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 Brooks, Timothy L.	Date of Report 06/07/2013

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	Taylor Law Partners, LLP	$73,148.00
2. 2012	Taylor Law Partners, LLP	$250,472.00
3. 2011	Taylor Law Partners, LLP	$185,447.00
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. 2013	Bank of Fayetteville, salary
2. 2013	Bank of Fayetteville, board fees
3. 2012	Bank of Fayetteville, salary
4. 2012	Bank of Fayetteville, board 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 Brooks, Timothy L.	Date of Report 06/07/2013

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.	Signature Bank	Business related line of credit	None
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Brooks, Timothy L.	Date of Report 06/07/2013

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. Alliance Bernstein Growth & Income Fund A	A	Dividend	J	T	Exempt				
2. Bank of Fayetteville Common Stock	D	Dividend	L	T					
3. Baron Small Cap Retail Fund	A	Dividend	J	T					
4. BlackRock Small Cap Growth Equity Fund A	A	Dividend	K	T					
5. Davis New York Venture Fund A	A	Dividend	K	T					
6. Federated Capital Appreciation Fund A	A	Dividend	K	T					
7. Federated Kaufmann Fund A	A	Dividend	J	T					
8. Janis Forty Class Fund S	A	Dividend	K	T					
9. MFS Core Equity Fund A	A	Dividend	L	T					
10. Nationwide S & P 500 Index Svc	A	Dividend	K	T					
11. Oppenheimer Value Fund	A	Dividend	K	T					
12. TLB & MBB Family Investments LLC		None	K	W					
13. Sanity, LLC		None	K	W					
14. Taylor Law Partners, LLP		None	K	U					
15. Bank of Fayetteville Deposit Accounts	A	Interest	J	T					
16. Bank of Fayetteville Vested Stock Options		None	O	T					
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
Brooks, Timothy L.	06/07/2013

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Brooks, Timothy L.	Date of Report 06/07/2013

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/ **Timothy L. Brooks**

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	721	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		289	012	Notes payable to relatives			
Unlisted securities – see schedule		781	647	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	1	158	483
Real estate owned – see schedule	1	693	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		107	500				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities	1	158	483
				Net Worth	1	727	397
Total Assets	2	885	880	Total liabilities and net worth	2	885	880
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		200	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AllianceBernstein Growth & Income fund	$ 14,364
Bank of Fayetteville stock	78,755
Baron Small Cap Retail Fund	8,991
BlackRock Small Cap Growth Equity Fund	25,566
Davis New York Venture Fund	12,314
Federated Capital Appreciation Fund	35,212
Federated Kaufmann Fund	8,724
Janis Forty Class Fund	9,173
MFS Core Equity Fund	48,224
Nationwide S&P 500 Index Fund	24,659
Oppenheimer Value Fund	23,030
Total Listed Securities	$ 289,012

Unlisted Securities	
Bank of Fayetteville vested stock options	$ 692,750
TLB & MBB Family Investments, LLC	40,000
Sanity, LLC	20,000
Taylor Law Partners, LLP	28,897
Total Unlisted Securities	$ 781,647

Real Estate Owned	
Personal residence	$ 1,650,000
Timeshare	43,000
Total Real Estate Owned	$ 1,693,000

Real Estate Mortgages Payable	
Personal residence – primary mortgage	$ 859,697
Personal residence – secondary mortgage	298,786
Total Real Estate Mortgages Payable	$ 1,158,483

AFFIDAVIT

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

June 7, 2013
(DATE)

(NAME)

Sheri Craig
(NOTARY)

SHERI CRAIG
No. 12379719
NOTARY PUBLIC
EXPIRES 11-03-2020
BENTON COUNTY · ARKANSAS

Senator WHITEHOUSE. Thank you very much, Mr. Brooks.

Judge Freeman, welcome to the Senate Judiciary Committee. You are recognized for any statement and recognitions you would care to make.

STATEMENT OF HON. BETH LABSON FREEMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Judge FREEMAN. Yes, thank you very much. First I would like to thank you, Mr. Chairman, and Ranking Member Grassley for holding this hearing. I am very grateful for the opportunity to appear before you and to answer your questions.

I would also like to thank you personally for acknowledging the 9/11 catastrophe and especially those on Flight 93. My family lost a cousin that day as well, and your honoring his memory is particularly meaningful today. Thank you.

I would like to thank Senator Feinstein for her kind and gracious words this morning. I am very grateful to her.

I would like to thank the President for his nomination and the confidence that he has placed in me up to this point, and I hope through this process I can live up to that confidence.

I do have friends and family here with me today. I am so grateful for that. I will only start by saying I wish my father could be here. He passed away a year ago. My father was a mechanic for United Airlines at Reagan National Airport long before it was called that, starting in the 1940s and working here. I was actually born in Washington, DC, moving to California as a teenager. And he would not—it would be unimaginable to him that a child of his was sitting before you today, and I know he would have great pride in this moment if he were here.

I am delighted to have family and friends with me. First and foremost, my husband, Bill Freeman, is here. Bill and I met in law school. We got married two weeks after I took the bar exam, and this summer we celebrated our 34th wedding anniversary.

Senator WHITEHOUSE. Another successful example of lawyers marrying lawyers.

[Laughter.]

Judge FREEMAN. Absolutely. Absolutely. And our two children I do not believe are idiots, as Spencer Tracy suggested in a movie many years ago. Our daughter, Laura Freeman, works in the fashion industry in New York City, and with Fashion Week, she was unable to get away. And our son, Scott, works in the economics field in Los Angeles and also was unable to be here. He claimed to get up early this morning on California time and be plugged into this hearing, and I hope he is listening to this at this moment. If not, there will be words.

[Laughter.]

Judge FREEMAN. I am also delighted that my brother-in-law, David Freeman, is here. David is a practicing attorney in New York City. And my brother, Dr. Victor Labson, is here, who is the Director of International Programs at the United States Geological Survey here in Reston, Virginia.

My brother's two children—my niece, Eva Labson, and my nephew, Daniel Labson—are both here today. What they do not know

is they will become my children after this hearing, and my children will become my brother's based on their attendance today.

And, finally, I would like to thank high school friends of mine who are here with me today. They do live here in Washington, DC, but these friendships are long and dear to me, and I am grateful to them and would like to introduce Tom Rosenstiel; his wife, Rima Sirota; and Mike McCurry. I am very grateful for their love and support as well.

Mr. Chairman, thank you for the opportunity to be here. It is a great honor for me.

[The biographical information of Judge Freeman follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Beth Labson Freeman
   Formerly Beth Ann Labson

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

   United States District Court for the Northern District of California

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

   Office: San Mateo County Superior Court
   400 County Center, Department Three
   Redwood City, California 94063

   Residence: Hillsborough, California

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

   1953; Washington, D.C.

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

   1976 – 1979, Harvard Law School; J.D., 1979.

   1973 – 1976, University of California, Berkeley; B.A., 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.

   2001 – present
   San Mateo County Superior Court

400 County Center, Department Three
Redwood City, California 94063
Superior Court Judge (2001 – present)
Presiding Judge (2011 – 2012)

1983 – 2001
San Mateo County Counsel's Office
400 County Center
Redwood City, California 94063
Deputy County Counsel

1981 – 1983
Lasky, Haas, Cohler and Munter
(This law firm dissolved in 2003)
505 Sansome Street
San Francisco, California 94111
Associate Attorney

1979 – 1981
Fried, Frank, Harris, Shriver and Jacobson
801 17th Street, NW
Washington, D.C. 20008
Associate Attorney

Summer 1978
Bredhoff and Kaiser
805 15th Street, NW, Suite 1000
Washington, D.C. 20005
Summer Associate

Summer 1977
Legal Aid Society of San Mateo County
330 Twin Dolphin Drive, Suite 123
Redwood City, California 94065
Law Clerk

Summer 1976
State Senator Arlen Gregorio (former)
State Capitol, 1315 Tenth Street
Sacramento, California 95814
Legislative Assistant

Other Affiliations (uncompensated)

2012 – present
Arnold Labson Trust

(From my private residence)
Trustee

1982 – present
Junior Statesmen Foundation
800 South Claremont Street, Suite 202
San Mateo, California 94402
Secretary (1985 – 1987, 2013 – present)
Director (1982 – present)
President (1987 – 1991)

2002 – present
Association of Business Trial Lawyers, Northern California Chapter
P.O. Box 696
Pleasanton, California 94566
Member, Board of Governors

2011 – 2012
Community Corrections Partnership
400 County Center
Redwood City, California 94063
Executive Committee

2000 – 2002
Union of Reform Judaism, Western Central Region
633 Third Avenue
New York, New York 10017
Member, Regional Board of Directors

1997 – 2001
Peninsula Temple Beth El
1700 Alameda de las Pulgas
San Mateo, California 94402
Trustee (1997 – 2001)
President of Congregation (1998 – 2000)

1992 – 1996
Harvard Club of San Francisco
369 Third Street, Number B Pmb 306
San Rafael, California 94901
Director

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

I have not served in the military. I am not required to register for selective service.

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

County of San Mateo 30-Year Public Employee Service Award (2013)

San Mateo County Trial Lawyers Association, Judge of the Year (2007)

Peninsula Temple Beth El, Congregant of the Year (2007)

Junior Statesmen Foundation, Distinguished Leadership Award (1994)

County of San Mateo 10-Year Public Service Award (1993)

University of California, Phi Beta Kappa (1976)

University of California, Berkeley, B.A., Distinction in General Scholarship (1976)

University of California, Berkeley, Honorary Society, Order of the Golden Bear (1975)

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 (1979 – approximately 1986)

Association of Business Trial Lawyers (2002 – present)
Board of Governors
Annual Conference Organizing Committee (2007, 2010)

California Council of School Attorneys (1983 – 2000)

California County Counsel's Association (1983 – 2001)
Juvenile Dependency Law Section (1986 – 2001)

California Judges Association (2001 – present)
Legislative Committee (2004 – 2007)

California Judicial Council Task Force on Trial Court Fiscal Accountability (2013 – present)

California Judicial Council Trial Court Budget Working Group (2011 – present)
Trial Court Funding Methodology Committee (2012 – present)

Court Reporter Funding Committee (2012)
Criminal Justice Realignment Committee (2011)

California Judicial Council Trial Court Presiding Judges Advisory Committee
(2011 – 2012)
Executive Committee (2011 – 2012)
Legislative Committee (2011 – 2012)

California State Bar (1981 – 2001)
(Under California Law, judges do not retain membership in the State Bar.)

California Women Lawyers (1988 – 1992)

Civil Law Institute Workgroup, Center for Judicial Education and Research (2011)

District of Columbia Bar Association (1979 – present)
(Inactive judicial status commencing 2001)

National Association of Women Judges (2001 – present)
Western Region Conference Committee (2013)

San Mateo County Bar Association (1983 – present)

10. **Bar and Court Admission**:

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

California, 1981 (inactive)

District of Columbia, 1979 (inactive)

There have been no lapses in membership. Pursuant to California law, however, a person serving as a judge of a court of record is not considered to be a member of the bar while in office.

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

California Supreme Court and all courts in California, 1981
District of Columbia Court of Appeals, 1979
United States District Court, Northern District of California, 1981
United States District Court, Eastern District of California, 1981
United States Court of Appeals for the Ninth Circuit, 1981

United States District Court for the District of Columbia, 1980
United States Court of Appeals for the District of Columbia, 1980
United States Court of Claims, 1980

There have been no lapses in membership.

11. **Memberships**:

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

Community Corrections Partnership (2011 – 2012)
    Executive Committee
County of San Mateo Criminal Justice Workgroup (2011 – 2012)
Harvard Club of San Francisco (1992 – 1996)
    Director (1992 – 1996)
    Schools Committee (1992 – 1996)
Junior Statesmen Foundation (1982 – present)
    Director (1982 – present)
    Secretary (1985 – 1987, 2013 – present)
    Chair of Board Development Committee (2010 – 2012)
    President (1987 – 1991)
League of Women Voters (1983 – present)
My Place Battered Women's Shelter (1980)
Pacific Athletic Club (1992 – 1998)
Peninsula Golf and Country Club (1998 – present)
Peninsula Jewish Community Center (1987 – 1992)
Peninsula Temple Beth El (1988 – present)
    Strategic Planning Committee (2011 – 2012)
    Co-Chair Budget Committee (2001 – 2011)
    Trustee (1997 – 2001)
    President of Congregation (1998 – 2000)
    President of Religious School Board (1997 – 1998)
San Mateo County Mock Trial (2001 – present)
    Volunteer Judge
Sinai Memorial Chapel (1989 – present)
Stanford University Law School Mock Trial, Volunteer Judge (2008)
University of California, Berkeley Alumni 25th Reunion Committee (2000 – 2001)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization

that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Peninsula Golf and Country Club formerly restricted membership to men. It revoked that restriction in 1990, seven 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 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.

Presiding Judge's Message, Here-Say Newsletter, published by the San Mateo County Bar Association. I wrote a regular bi-monthly column, January 2011 to December 2012. Copies supplied.

Open Letter to the Community Regarding Court Budget Plan, November 30, 2012. Copy supplied.

Cost of Proof Sanctions: The New Attorneys' Fees, Association of Business Trial Lawyers, Northern California Report, Fall 2008. Copy supplied.

Rabbi Search Committee Update, Kolenu Newsletter, December 2006. Copy supplied.

Rabbi Search Committee Update, Kolenu Newsletter, November 2006. Copy supplied.

Letter to Peninsula Temple Beth El Community, October 2006. Copy supplied.

Increasing the Likelihood of Success on Summary Judgment Motions, Association of Business Trial Lawyers, Northern California Report, Summer 2006. Copy supplied.

President's Message, Kolenu Newsletter. In my capacity as President of my synagogue from August 1998 to July 2000, I wrote a column in the monthly Kolenu Newsletter for the Peninsula Temple Beth El approximately 12 times

during my two-year term. Copies 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.

Work Load Allocation and Funding Methodology Report for Trial Courts presented to the California Judicial Council, April 26, 2013. I served as a member of the committee that developed the recommendation for allocating state revenue to the trial courts based upon work-load and case filings. Copy supplied.

San Mateo County Public Safety Realignment Local Implementation Plan. I was a member of the advisory committee that prepared this report. Copy supplied.

Junior Statesmen of America Annual Report, Developing the Next Generation of American Leaders, 2012. I am a member of the Board of Directors for this organization. Copy supplied.

Junior Statesmen of America Annual Report, Be the People, 2010. I am a member of the Board of Directors of this organization. Copy supplied.

San Mateo County Task Force on Violence Against Women Phase II Report, 1994 to 1995. I participated in editing this report. The report identified the steps that all law enforcement agencies, public health and mental health agencies had taken over the prior two years to develop and implement protocols to increase public safety, health and welfare of victims of domestic violence. I have been unable to locate a copy of this report.

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.

December 13, 2012: Public Comment to California Judicial Council regarding proposed California Rule of Court 4.220, Pilot Program Authorizing Remote Video Proceedings in Traffic Infraction Cases. Copy supplied.

December 12, 2012: Letter from California's Presiding Judges regarding comment on a draft ethics opinion. Copy supplied.

September 25, 2012: Testimony before San Mateo County Board of Supervisors regarding building a new jail. Video recording supplied.

September 18, 2012: Memorandum to San Mateo County Justice Partners regarding impending budget cuts. Copy supplied.

August 1, 2012: Open Letter to Members of the Public and Family Law Community regarding consolidation of court services due to budget cuts. Copy supplied.

July 3, 2012: Letter to California Chief Justice urging support for Judicial Council adoption of reorganization plan for the Administrative Office of the Courts. Copy supplied.

June 8, 2012: Letter to the Chief Justice of California and Judicial Council urging approval of a report regarding restructuring of the Administrative Office of the Courts. Copy supplied.

May 29, 2012: Letters to local state legislators regarding the court's position on the effect of proposed state budget cuts to the courts. Copies supplied.

May 17, 2012: Testimony before the State Assembly Budget Subcommittee on the Judicial Branch and Law Enforcement. Notes supplied.

March 20, 2012: Letter of Support for the San Mateo County Bar Association nomination for the 2012 American Bar Association Harrison Weed Award. Copy supplied.

March 13, 2012: Letter to California Chief Justice from group of Presiding Judges and Court Executive Officers regarding abandonment of California Case Management System. Copy supplied.

August 2011 to March 2012: Executive Committee meeting minutes and agendas for San Mateo County Community Corrections Partnership, regarding criminal justice realignment. Copies supplied.

October 6, 2011: Public Comment to California Judicial Council regarding proposed California Rule of Court 4.540, Criminal Justice Realignment. Copy supplied.

October 4, 2011: Testimony before San Mateo County Board of Supervisors regarding building a new jail. Video recording supplied.

September 13, 2011: Testimony before San Mateo County Board of Supervisors regarding building a new jail. Minutes supplied.

August 15, 2011: Letters to local state legislators regarding the impact of budget cuts on the trial courts. Copies supplied.

June 10, 2011: Letters to California's United States Senators urging co-sponsorship of H.R. 1416, the Crime Victim Restitution and Court Fee Intercept Act. Copies supplied.

March and April 2011: Letters to state legislators and California Chief Justice regarding passage of Assembly Bill 1208, which would modify the governance structure of the California Judicial Council. Copies supplied.

March 1, 2011: Public Comment to California Judicial Council on proposed revision to California Rule of Court 2.1113 regarding provision of copies of out of state authorities to motion judges. Copy supplied.

Approximately 1995: Testimony before the State Senate Committee on Governmental Affairs. The testimony related to urging an amendment to the State Public Contracts Code to provide to community college districts exemption from public bidding requirements when leasing portions of unused facilities for short-term leases. 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.

Throughout my professional life, it has been my practice to speak primarily without notes or prepared remarks. Thus, I do not have any materials to supply for the majority of the speeches identified below. Where I did make and retain notes, I have provided copies.

June 4, 2013: Santa Clara County Bar Association Women Lawyers Section program, "From Having it All to Leaning In: Career Advancement, Work-Life Balance, and the Realities of Being a Woman Lawyer in the 21st Century," Palo Alto, California. I participated as a panelist and discussion leader discussing what it means to be a professional woman in today's society. I have no notes, transcript, or recording. The address of the Santa Clara County Bar Association is 31 North Second Street, San Jose, California 95113.

May 10, 2013: San Mateo Police Department, Leadership San Mateo-Foster City-Hillsborough-Burlingame, Law Enforcement and the Courts Day, Redwood City, California. I spoke about the work of the Superior Court to a group of civic leaders and answered questions about the court. I have no notes, transcript or

recording. The address of the San Mateo Police Department is 200 Franklin Parkway, San Mateo, California 94403.

May 7, 2013: San Mateo County Public Employee Public Service Awards, Redwood City, California. I was presented with an award for 30 years of public service employment in San Mateo County. I made thank you remarks. I have no notes, transcript or recording. The address of the County of San Mateo is 400 County Center, Redwood City, California.

April 25, 2013: United States Department of State, United States Embassy, Stip, Macedonia. I conducted a round table discussion at the American Corner with Macedonian students interested in learning about the American legal system. I have no notes, transcript or recording. The address of the United States Embassy is ul. Samoilova 21, 1000 Skopje, Republic of Macedonia.

April 25, 2013: United States Department of State, United States Embassy, Stip, Macedonia. I lead a question and answer session with Macedonian law students on elimination of bias in judicial decision-making at the Stip Law Faculty. I have no notes, transcript or recording. The address of the United States Embassy is ul. Samoilova 21, 1000 Skopje, Republic of Macedonia.

April 23 – 24, 2013: United States Department of State, United States Embassy, Skopje, Macedonia, Judge-to-Judge Partnership: The Role of the Judge in the Adversarial System, Skopje, Macedonia. I presented on a panel of United States judges before Macedonian judges at a conference introducing Macedonian judges to techniques for transitioning to their newly adopted adversarial justice system. I have no notes, transcript or recording. The address of the United States Embassy is ul. Samoilova 21, 1000 Skopje, Republic of Macedonia.

February 2013: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

December 18, 2012: San Mateo County Bar Association Diversity Event honoring Justice Goodwin Liu, Redwood City, California. I made remarks welcoming the speaker and guests. I have no notes, transcript, or recording. The address for the San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

November 1, 2012: Trial Lawyers Association of San Mateo County Judge of the Year Dinner, San Mateo, California. I made welcoming remarks and conducted the ceremonial swearing in of the board of directors. I performed the same function at the November 2011, 2010 and 2009 dinners. I have no notes,

transcript, or recording. The address of the San Mateo County Trial Lawyers Association is P.O. Box 752, San Carlos, California 94070.

September 25, 2012: San Mateo County Bar Association, Barristers Annual Lunch, Redwood City, California. I made a speech entitled "Making Access to Justice a Priority for Every Lawyer." I have no notes, transcript, or recording. The address of the San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

September 24, 2012: San Mateo County Superior Court, Presentation to county police chiefs, district attorney, local and state legislators, county bar association leaders and private defender panel leaders regarding anticipated budget cuts to the court and implications for access to justice in San Mateo County, Redwood City, California. Powerpoint supplied.

September 6, 2012: San Mateo County Bar Association Brown Bag Lunch, "Making a Reputation in a Close Knit Community, Questions and Answers with the Presiding Judge," Redwood City, California. My remarks included pointers for attorneys to develop and retain a good reputation. I have no notes, transcript, or recording, but press coverage is supplied. The address of the San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

September 2012: Hastings College of Law, Welcome event for Sheila Purcell, director of the Hastings Law School Center for Negotiation and Dispute Resolution, San Francisco, California. I made introductory remarks about Ms. Purcell's professional accomplishments. I have no notes, transcript, or recording. The address of Hastings College of Law is 200 McAllister Street, San Francisco, California 94102.

June 1, 2012: California Women Lawyers, "So You Want to Be a Judge," San Francisco, California. I was a breakout session leader. I answered questions asked by participants on how to apply for a judgeship. I have no notes, transcript, or recording. The address of California Women Lawyers is 925 L Street, Sacramento, California 95814.

June 2012: San Mateo Superior Court, "The Case of the Missing Homework," Redwood City, California. I teach a mock trial in my courtroom for fourth graders from local elementary schools. The students conduct a jury trial under my supervision. Approximately 150 children come through my courtroom every year, including 2009, 2010, 2011 and 2012. I have no notes, transcript, or recording. The address of the San Mateo County Superior Court is 400 County Center, Redwood City, California 94063.

May 3, 2012: San Mateo County Mock Trial, Annual Law Day Lunch, Burlingame, California. I introduced the high school mock trial competition winners and presented the county awards. I have no notes, transcript, or

recording. The address of the San Mateo County Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

April 4, 2012: Menlo School history class lesson taught regarding how trials are conducted, Atherton, California. I have no notes, transcript, or recording. The address of Menlo School is 50 Valparaiso Avenue, Atherton, California 94027.

April 2012: Legal Aid Society of San Mateo County "And Justice for All" Luncheon, East Palo Alto, California. I made welcome remarks and introduced the judges in attendance. I also made welcome remarks at the April 2011 event. I have no notes, transcript, or recording. The address of Legal Aid Society of San Mateo County is 330 Twin Dolphin Drive, Suite 123, Redwood City, California 94065.

March 15, 2012: San Mateo Superior Court, Meet and Greet for newly admitted lawyers, Redwood City, California. The court sponsors a tour of the courthouse for new attorneys and at the end of the program I made remarks welcoming the group and led a panel of supervising judges who spoke about the various departments of the court. I have participated in this event every year since 2009. I have no notes, transcript, or recording. The address of the San Mateo County Superior Court is 400 County Center, Redwood City, California 94063.

February 9, 2012: San Mateo County Bar Association Installation of Officers, Redwood City, California. I made remarks welcoming the lawyers, swore in the board members and presented an award to Sheila Purcell. Remarks supplied.

February 2012: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

January 20, 2012: San Mateo County Bar Association, Funky Credit Day, Burlingame, California. The Bar Association sponsored a continuing legal education day with sessions on selected law topics. I participated in a panel to discuss new developments at the court from the perspective of the Presiding Judge. I have no notes, transcript, or recording. The address of the San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

January 2012: Menlo School high school students spent an hour in my courtroom on their visit to the court and county agencies, Redwood City, California. We talked about issues of concern to them in a question and answer session. I have no notes, transcript, or recording. I have hosted these sessions every year since 2004. The address of Menlo School is 50 Valparaiso Avenue, Atherton, California 94027.

December 8, 2011: San Mateo County Community College District Ceremonial Oath to newly elected trustees, San Mateo, California. I also performed this activity in 2001. I have no notes, transcript or recording. The address of San Mateo County Community College District is 3401 CSM Drive, San Mateo, California 94402.

November 21, 2011: Consumer Attorneys of California Annual Conference, San Francisco, California. I was on a panel discussing legal ethics. Notes supplied.

November 4, 2011: San Mateo Police Department, Leadership San Mateo-Burlingame-Foster City-Hillsborough, Redwood City, California. On its annual law enforcement and courts day I spoke to this group of civic leaders about the role of the court in the county with particular emphasis on the Juvenile and Family courts. I have participated in this annual event almost every year since 1996. I have no notes, transcript, or recording. The address of San Mateo Police Department is 200 Franklin Parkway, San Mateo, California 94403.

September 27, 2011: San Mateo County Bar Association, Barristers Annual Lunch, Redwood City, California. I was a speaker at this event. My speech was "Be Exceptional." I discussed the importance of finding a passion in the profession of law and pursuing it. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City 94063.

September 20, 2011: San Mateo County Bar Association, Diversity Event, Redwood City, California. I made remarks welcoming the Chief Justice and introducing the judges in attendance. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City 94063.

July 12, 2011: San Mateo County Trial Lawyers, Monthly Meeting, San Mateo, California. I was invited to give an update on the court. I have no notes, transcript, or recording. The address of San Mateo County Trial Lawyers Association is P.O. Box 752, San Carlos, California 94070.

June 24, 2011: San Mateo County Bar Association, "So You Want to Be a Judge," Burlingame, California. I led a panel of judges discussing each judge's path to the bench and then we answered questions. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

May 6, 2011: San Mateo County Mock Trial, Annual Law Day Lunch, Burlingame, California. I introduced the high school mock trial competition winners and presented the county awards. I have no notes, transcript, or

recording. The address of the San Mateo County Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

April 13, 2011: Administrative Office of the Courts, "Situational Leadership" (webcast), San Francisco, California. I participated in a panel discussion that was videotaped by the California Judicial Branch for web-based education for judges and court administrators, San Francisco, California. I discussed different styles of leadership. I have no notes, transcript, and have been unable to obtain a copy of the recording. The address of the Administrative Office of the Courts, Education Division is 455 Golden Gate Avenue, San Francisco, California 94102.

April 12, 2011: Kiwanis Club of San Mateo, San Mateo, California. I spoke about the functions of the court system. I have no notes, transcript, or recording. The address of Kiwanis Club of San Mateo is 63 Bovet Road, Suite 425, San Mateo, California 94402.

March 31, 2011: San Francisco Defense Association, monthly lunch, San Francisco, California. I was on a panel with another judge speaking about procedures in my county court. The session was primarily a question and answer session. I have no notes, transcript, or recording. The address of San Francisco Defense Association is Cholakian and Associates, 400 Oyster Point Boulevard, Suite 415, South San Francisco, California 94080.

February 2011: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

January 21, 2011: San Mateo County Bar Association Funky Credit Day, Burlingame, California. The Bar Association sponsored a continuing legal education day with sessions on selected law topics. I participated in a panel to discuss new developments at the court from the perspective of the Presiding Judge. I have no notes, transcript, or recording. The address of the San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

January 16, 2011: Judicial Council of California, administration of oath to Bay Area Justice Corps volunteers, San Francisco, California. I made remarks to a group of college students on the theme "Be Exceptional." I have no notes, transcript, or recording. The address of the Administrative Office of the Courts is 455 Golden Gate Avenue, San Francisco, California 94102.

January 13, 2011: San Mateo County District Attorney's Office, Retirement Event for Jim Fox, District Attorney for 28 years, San Carlos, California. I have

no notes, transcript, or recording. The address of the San Mateo District Attorney's Office is 400 County Center, Redwood City, California 94063.

January 12, 2011: San Mateo County Bar Association Officer Installation Dinner, San Mateo, California. I welcomed the guests, introduced the judges and swore in the officers. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

January 7, 2011: San Mateo County Bar Association, Barristers Brown Bag Lunch, Redwood City, California. I participated in a question and answer session with young attorneys related to practice pointers in San Mateo County Superior Court. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

January 2011: San Mateo County Bar Association, Section Meetings with the Presiding Judge, Redwood City, California. I met with each of the sections of the County Bar Association to discuss the court's status in the budgetary crisis. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

December 2010: Town of Hillsborough Ceremonial Administration of Oath of Office to newly elected council members, Hillsborough, California. I have no notes, transcript, or recording. I also performed this task in 2001, 2004 and 2006. The recording or minutes may be obtained from the Town of Hillsborough, 1600 Floribunda Avenue, Hillsborough, California 94010.

October 15, 2010: National Association of Women Judges Annual Conference, San Francisco, California. I was a moderator for the "Law's Migration" panel. I have no notes, transcript, or recording. The address of National Association of Women Judges is 1341 Connecticut Avenue, NW, Suite 4.2, Washington, D.C. 20036.

September 28, 2010: San Mateo County Department of Child Support Services, 14th Annual Child Support Training Conference, Burlingame, California. I welcomed the participants to the event hosted by my county. I thanked the participants for the great work they do helping children live a better life through their efforts to assist custodial parents collect child support. I have no notes, transcript, or recording. The address of San Mateo County Department of Child Support Services is 555 County Center, Redwood City, California 94063.

June 18, 2010: San Mateo County Superior Court, Ceremonial Swearing in of Judge V. Raymond Swope, Redwood City, California. I administered the oath and made introductory remarks. Notes supplied.

April 30, 2010: San Mateo County Mock Trial, Annual Law Day Lunch, Burlingame, California. I introduced the high school mock trial competition

winners and presented the county awards. I have no notes, transcript, or recording. The address of the San Mateo County Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

February 2010: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

January 29, 2010: San Mateo County Bar Association, Funky Credit Day, Burlingame, California. I served on a panel on elimination of bias in the legal profession. Notes supplied.

January 2010: San Mateo County Bar Association, Section Meetings with the Presiding Judge, Redwood City, California. I met with each of the sections of the County Bar Association to discuss the court's status in the budgetary crisis. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

September 23, 2009: Women Lawyers Section of the San Mateo County Bar Association, Work-Life Balance, Belmont, California. I was on a panel discussing work-life balance. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

February 3, 2009: Association of Business Trial Lawyers, Dinner Program, San Francisco, California. I was a panelist on the topic "Blunders, Pitfalls and Mistakes – Cautionary Tales From the Bench." I have no notes, transcript or recording. The address of the Association of Business Trial Lawyers – Northern California chapter is P.O. Box 696, Pleasanton, California 94566.

February 2009: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

January 2009: San Mateo County Bar Association, Section Meetings with the Presiding Judge, Redwood City, California. I met with each of the sections of the County Bar Association to discuss the court's status in the budgetary crisis. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

November 2008: Stanford Law School Mock Trial, Stanford, California. I presided over a mock trial conducted by law students. I have no notes, transcript, or recording. The address of Stanford Law School is 559 Nathan Abbott Way, Stanford, California 94305.

February 2008: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403

November 17, 2007: Santa Clara County Women Lawyers Section and California Women Lawyers, "So You Want to Be A Judge," San Jose, California. I led a breakout session where lawyers asked me questions about how I became a judge. I have no notes, transcript, or recording. The address of Santa Clara County Bar Association is 31 North Second Street, San Jose, California 95113.

November 6, 2007: San Mateo County Trial Lawyers Association Judge of the Year Dinner, San Mateo, California. I was the recipient of the award in 2007. I made a speech thanking everyone for the honor. I have no notes, transcript, or recording. The address of San Mateo County Trial Lawyers Association is P.O. Box 752, San Carlos, California 94070.

April 2007: California Judicial Council Civil Law Institute, "How To Manage That Case," Sonoma, California. This one-hour lecture explored judicial strategies for handling complex civil litigation. I have no notes, transcript, or recording. The address of Judicial Council of California, Education Division is 455 Golden Gate Avenue, San Francisco, California 94102.

February 2007: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

May 2006: DPK Consulting, High Judicial and Prosecutorial Council of Bosnia and Herzegovina Training and Study Tour, San Francisco, California. I was a presenter on "Judicial Conduct Under the California Canons of Judicial Ethics." I have no notes, transcript, or recording. The address of the event sponsor, DPK Consulting, is 605 Market Street, San Francisco, California 94105.

February 2006: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes,

transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

October 2005: Association of Business Trial Lawyers Annual Seminar, Tucson, Arizona. I was a panel member for the "Building to the Close" panel. As a panelist, I spoke about effective trial techniques from a judge's perspective. I have no notes, transcript, or recording. The address of Association of Business Trial Lawyers-Northern California is P.O. Box 696, Pleasanton, California 94566.

May 12, 2005: California Judicial Council, Redwood City, California. Members of the Judicial Council and Administrative Office of the Courts met with our Superior Court judges to discuss issues confronting the trial courts. I have no notes, transcript or recording. The address of the Judicial Council is 455 Golden Gate Avenue, San Francisco, California 94102.

Approximately May 2005: San Mateo County Superior Court, Court in the Schools Day at Menlo Atherton High School, Menlo Park, California. I led a session on introduction to the judicial system, which was taught through a role-play exercise with high school students. I have no notes, transcript, or recording. The address of the San Mateo County Superior Court is 400 County Center, Redwood City, California 94063.

February 2005: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over the final round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

January 28, 2005: San Mateo County Bar Association, Funky Credit Day, Burlingame, California. I was on a panel on Legal Ethics. The topic was elimination of bias. I have no notes, transcript, or recording. The address of San Mateo County Bar Association is 333 Bradford Street, Redwood City, California 94063.

October 2004: Association of Business Trial Lawyers Annual Seminar, Maui, Hawaii. I moderated a panel on effective jury techniques in business litigation. I have no notes, transcript, or recording. The address of Association of Business Trial Lawyers-Northern California is P.O. Box 696, Pleasanton, California 94566.

February 2004: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over a round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

May 2, 2003: American Bar Association, Section of Family Law Spring Conference, Las Vegas, Nevada. I participated in a panel discussion entitled "Expanding Liability of Spousal Fiduciary Duties." I have no notes, transcript, or recording. The address of American Bar Association Family Law Section is 321 North Clark Street, Chicago, Illinois 60654.

April 2003: County of San Mateo, Keynote Speaker, County of San Mateo Child Abuse Awareness Conference, Redwood City, California. I delivered a speech entitled "Family Love is Feeling Safe." Copy supplied.

February 2003: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over a round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

January 11, 2003: Center for Psychiatry and the Law, Stanford University School of Medicine, Stanford, California. I spoke on "What the Court Seeks in Child Assessments." I spoke about a judge's perspective on the persuasiveness of psychiatric evidence in child custody evaluations. I have no notes, transcript, or recording. The address of Stanford University School of Medicine is 291 Campus Drive, Room LK3C02, Stanford, California 94305.

February 2002: San Mateo County High School Mock Trial, High School Mock Trial Finals Judge, Redwood City, California. I presided over a round of the San Mateo County High School Mock Trial Competition. I have no notes, transcript, or recording. The address of the San Mateo County High School Mock Trial is Hillsdale High School, 3115 Del Monte Street, San Mateo, California 94403.

July 2001: Junior Statesmen Foundation Summer School, Stanford, California. I was a discussion leader to a class of high school students regarding students' constitutional rights in high school. This one-hour presentation was made every year from about 1995 to 2001. I have no notes, transcript, or recording. The address of Junior Statesmen Foundation is 800 S. Claremont Street, Suite 202, San Mateo, California 94402.

Approximately May 2001: Local Chapter of the League of Women Voters, The Role of the Family Court in the Community, Burlingame, California. I have no notes, transcript, or recording. The address of League of Women Voters for Central San Mateo County is 444 Peninsula Avenue, Suite 1, San Mateo, California 94401.

March 16, 2001: San Mateo County Superior Court, My own ceremonial administration of oath of office, Redwood City, California. I spoke to my guests about how grateful I was to be appointed to the bench. Transcript supplied.

1998 – 2000: During these two years I was president of the congregation at Peninsula Temple Beth El, San Mateo, California. I regularly greeted the congregation at worship services, introduced speakers and made other welcoming remarks. At Rosh Hashanah services each year I gave a president's speech related to encouraging members to donate to the temple. I also presented a state of the temple address each year at the annual meeting. I have no notes, transcript, or recording. The address of Peninsula Temple Beth El is 1700 Alameda de las Pulgas, San Mateo, California 94402.

October 8, 1999: San Mateo Police Department, Leadership San Mateo-Foster City-Hillsborough-Burlingame, Law Enforcement and the Courts Day, San Mateo, California. I spoke about the Family Court and Juvenile Dependency Court to a group of civic leaders and answered questions about the court. I have no notes, transcript or recording. The address of the San Mateo Police Department is 200 Franklin Parkway, San Mateo, California 94403.

March 22, 1999: San Mateo County Leadership Group regarding teacher discipline and disciplinary actions, Burlingame, California. This event was co-sponsored by San Francisco State University. I have no notes, transcript, or recording. I have supplied a copy of the thank you letter I received which summarizes my talk.

April 4, 1992: California Association of Regional Occupational Centers Spring Conference, Redwood City, California. I spoke about issues in education law. I have no notes, transcript, or recording. The address of Regional Occupational Program, San Mateo County Office of Education is 101 Twin Dolphin Drive, Redwood City, California 94065.

1972: I was a candidate for State Assembly and gave speeches virtually every day for eight months throughout San Mateo County. I have no notes, transcript, or recording and cannot recall the dates or groups I spoke to. I spoke to community groups about the issues of the day and my candidacy.

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.

Michelle Durand, *Temporary Probation Chief Takes Office Helm*, San Mateo Daily Journal, December 25, 2012. Copy supplied.

Staff writer, *Judges: Budget Cuts Could Close Courtrooms*, The Almanac Online, November 14, 2012. Copy supplied.

Michelle Durand, *Court Cuts Continue Crimping Services*, San Mateo Daily Journal, November 5, 2012. Copy supplied.

Staff writer, *Severe State Cuts Threaten Access to Justice, Closure of Courtrooms and Branch Reductions if Unprecedented State Court Cuts Continue*, Pacifica Tribune, October 2, 2012. Copy supplied.

Cynthia Foster, *Silence on the Line*, Legal Pad, September 28, 2012. Copy supplied.

Staff Writer, *Superior Court System Warns of Cuts*, Half Moon Bay Review, September 27, 2012. Copy supplied.

Michelle Durand, *Budget Passed Amid Jail Furor*, San Mateo Daily Journal, September 26, 2012. Copy supplied.

Staff writer, *Judges: Budget Cuts Could Close Courtrooms*, Almanac Online, September 25, 2012. Copy supplied.

Staff writer, *Courtrooms May Be Shut By State Cuts*, San Mateo Daily Journal, September 25, 2012. Copy supplied.

John Fitton, *Severe State Cuts Threaten Access to Justice*, San Mateo County Superior Court press release, September 24, 2012. Copy supplied.

Staff writer, *Court Elects New Top Judges*, San Mateo Daily Journal, September 22, 2012. Copy supplied.

John Fitton, *San Mateo Superior Court Bench Elects Presiding Judge and Assistant Presiding Judge*, San Mateo Superior Court press release, September 19, 2012. Copy supplied.

Joshua Melvin, *Attorney: Judge Going Too Far to Settle San Bruno Fire Case*, San Mateo County Times September 7, 2012. Copy supplied.

Eric Berkowitz, *Desperate Hours*, California Lawyer Magazine, August 2012. Copy supplied.

Maria Dinzeo, *Judges Spar on California Court Bureaucracy Reform*, Courthouse News Service, June 19, 2012. Copy supplied.

Susan Cohn, *Before the Court*, San Mateo Daily Journal, June 8, 2012. Copy supplied.

Howard Mintz, *Dark Days for California Courts*, San Jose Mercury News, May 17, 2012. Copy supplied.

Michelle Durand, *Court Cuts Create "Justice Delayed,"* San Mateo Daily Journal, April 2, 2012. Copy supplied.

Howard Mintz, *Showdown Over California Courts Coming to a Head*, San Jose Mercury News, January 29, 2012. Copy supplied.

Melissa Culrose, *Budget Cuts Hit Hard at San Mateo County Courthouse*, KCBS News Online, October 27, 2011. Copy supplied.

Bonnie Eslinger, *Your Day in Court in San Mateo County May Not Come for a Long Time Due to State Budget Cuts*, Palo Alto Daily News, October 26, 2011. Copy supplied.

Niko Kyriakou, *Prison Overhaul is San Mateo County's Opportunity*, San Francisco Examiner, October 1, 2011. Copy supplied.

The Game Show 180, "Realignment," Peninsula TV, October 2011. This local cable TV program was broadcast in San Mateo County, California. The video is available at https://vimeo.com/30575062.

Bill Silverfarb, *County Closer to Picking Jail Option*, San Mateo Daily Journal, September 29, 2011. Copy supplied.

Niko Kyriakou, *San Mateo County Jails Packed with Inmates Awaiting Trial*, San Francisco Examiner, July 20, 2011. Copy supplied.

Bob Egelko, *S.F. Courts Warn of Budget Disaster, Huge Delays*, San Francisco Chronicle, July 19, 2011. Copy supplied.

Maria Dinzeo, *Chief Justice Says No Sacred Cows in Applying Pain of $350 Million Cut*, Courthouse News Service, July 15, 2011. Copy supplied.

Maria Dinzeo, *Budget Group OK's Cuts to California Courts*, Courthouse News Service, July 14, 2011. Copy supplied.

Ari Burack, *Dire Situation Exists for San Francisco Superior Court*, San Francisco Examiner, June 29, 2011. Copy supplied.

Howard Mintz, *War of the Robes Erupts Over Future of State Court System*, San Jose Mercury News, May 8, 2011. Copy supplied.

Maria Dinzeo, *San Mateo Also Falls Behind AB 1208*, Courthouse News Service, April 20, 2011. Copy supplied.

John Fitton, *San Mateo Superior Court Bench Elects Presiding Judge and Assistant Presiding Judge*, San Mateo Superior Court press release, November 12, 2010. Copy supplied.

John Roemer, *Former Civil Lawyer is Calming Presence in Redwood City Court*, San Francisco Daily Journal, July 29, 2009. Copy supplied.

Dennis Pfaff, *Family Law Jurist Lets People Know She is Listening*, San Francisco Daily Journal, March 11, 2002. Copy supplied.

Amy Yarborough, *San Mateo Temple Gets New Look*, San Mateo County Times, January 17, 2002. Copy supplied.

Dwana Bain, *Freeman Earns Superior Job*, The Independent, January 10, 2001. Copy supplied.

Matthew B. Stannard, *Governor Names Two New Judges to Superior Court*, San Francisco Chronicle, January 4, 2001. Copy supplied.

Laura Linden, *Davis Appoints Two County Court Judges*, San Mateo County Times, January 4, 2001. Copy supplied.

Shannon Lafferty, *Davis Fills 2 Judge Seats in San Mateo*, The Recorder, January 4, 2001. Copy supplied.

Christine Deisol, *Smaller Classes Put Squeeze on Parents*, San Francisco Examiner, February 9, 1997. Copy supplied.

Janet Rae Dupree, *Social Workers Slated for Talks; Families Allege Abuse in Ravenswood District*, San Jose Mercury News, May 13, 1994. Copy supplied.

Margaret Rankin, *Future Pols Zero in on Hill*, The Washington Times, July 27, 1990. Copy supplied.

Joyce Passetti, *She's Only Just Begun Her Career in Politics*, San Mateo Times, November 1972. Copy supplied.

Ro Logrippo, *Beth Labson's Campaign to Buck Tradition*, San Mateo Times, August 22, 1972. Copy supplied.

Staff writer, *Young "Political Pro" Urges Involvement*, San Francisco Examiner, June 1972. 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.

Since February 2001, I have been a Superior Court Judge for the Superior Court of California, County of San Mateo (the "San Mateo County Superior Court"). I was appointed to that position by then-Governor Gray Davis on December 31, 2000, and I took my oath of office on February 2, 2001. I have been elected to successive six-year terms since then without opposition in 2002 and 2008.

The Superior Court in California is a court of general jurisdiction. From 2001 to 2002, I was assigned to the Family Court. I served as the Supervising Judge of the Family Court in 2002. In 2003 I served as a general trial judge, presiding over civil and criminal trials. I also served as the Civil Grand Jury Advisor in 2003. From January to July 2004 I was assigned to a pre-trial department, hearing criminal law motions, arraignments and preliminary hearings in misdemeanor and felony cases. From July to December 2004 and January to June 2007, I served as the civil law and motion judge, hearing all pre-trial civil motions for the court.

In 2008, I was elected by my colleagues to serve as Assistant Presiding Judge, and I served as Assistant Presiding Judge from 2009 to 2010. During that time, I also served as Supervising Family Law Judge and supervisor of subordinate judicial officers. I also served as a general trial judge from 2010 to 2011. In 2010 I was elected by my colleagues to serve as Presiding Judge of the Court and I served as Presiding Judge throughout 2011 and 2012. In 2013, I was assigned to a general trial department, presiding over civil and criminal trials.

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

   During my 12 years on the bench I have presided over approximately 150 jury trials and over a thousand bench trials.

   i. Of these, approximately what percent were:

jury trials:	15%
bench trials:	85%
civil proceedings:	40%
criminal proceedings:	60%

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

   As a state court trial judge, I have not written any published opinions. I have not served on any appellate panel. All of the written decisions I have authored are in the form of statements of decision in bench trials and written orders on civil case motions. The orders and decisions, which are filed in the individual trial court file, are not identifiable by citation other than the case file number. The case files are maintained by the court clerk's office.

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

1. *Epiphany, Inc. v. Sigma Dynamics,* San Mateo County Superior Court Case No. 439133 (2005). Statement of Decision and Order Re: Attorney's Fees supplied.

The *Epiphany* case was a misappropriation of trade secrets case involving artificial intelligence software. The plaintiff charged that Sigma hired Epiphany employees who used Epiphany's confidential trade secret information to assist Sigma in developing a competitive product. After a 20-day bench trial, I awarded judgment for the plaintiff, including a permanent injunction and attorneys' fees based on my finding of willful and malicious misappropriation. After judgment was entered, the parties settled the dispute and dismissed the case.

Counsel for Plaintiff:
George A. Riley
Darin W. Snyder
O'Melveny and Meyers
Two Embarcadero Center, 28th Floor
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415-984-8700

Counsel for Defendants:
Paul J. Andre
Kramer, Levin, Naftalis and Frankel
990 Marsh Road
Menlo Park, California 94025
650-752-1710

2. *Hamren v. Countrywide Financial Corporation*, San Mateo County Superior Court, Case No. 445484 (2007). Order Denying Class Certification supplied.

The *Hamren* case involved claims under California's Unfair Competition Law regarding alleged unfair disclosure practices by the lender under the Federal Truth in Lending Act. Plaintiffs claimed that Countrywide failed to disclose all fees and charges associated with the re-financing of their homes. Plaintiffs sought class certification under the Unfair Competition Law. The primary issue was whether, under voter-approved Proposition 64, the proposed class could demonstrate standing to maintain the action. I denied class certification, finding no standing. While the case was pending appeal, Countrywide declared bankruptcy and the case settled.

Counsel for Plaintiffs:
Bruce L. Simon
Pearson, Simon, Sotor, Warshaw and Penny, LLP
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415-433-9000

Counsel for Defendant:
William Sheehan
David Permut
Thomas Heffron
Goodwin and Procter, LLP
901 New York Avenue, NW
Washington, D.C. 20001
202-346-4000

Michael Steiner
Severson and Werson, PC
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San Francisco, California 94111
415-398-3344

3. *McBay v. City of Menlo Park*, San Mateo County Superior Court Case No. 424128 (2005).

Mr. McBay alleged claims for excessive force by three Menlo Park police officers under state and federal civil rights laws. Mr. McBay was housesitting for a friend. When a neighbor saw a strange man enter the house, she called the police, not knowing Mr. McBay had the owner's permission to be in the home. When Mr. McBay failed to open the door for the police, they entered the home, tackled him and threw him to the ground, causing injury. This seven-day jury trial resulted in a plaintiff's verdict against one police officer.

Counsel for Plaintiff:
Mark Martel
Law Offices of Mark Martel
425 Sherman Avenue
Palo Alto, California 94306
650-470-2650

Counsel for Defendants:
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Dan Siegel
Jorgenson, Siegel, McClure and Flegel
1100 Alma Street, Suite 210

Menlo Park, California 94025
650-324-9300

4. *In Re iPod Litigation*, San Mateo County Superior Court, State-Wide Coordination Proceeding, Case No. JCCP4355 (2004)

In this nation-wide class action, the plaintiffs alleged that Apple, Inc.'s advertising claims regarding the battery life of the first generation iPod were false. I was appointed by the Chief Justice of the California Supreme Court to serve as coordination motion judge and coordination trial judge. I certified a settlement class and thereafter the case settled.

Counsel for Plaintiffs:
Eric H. Gibbs
Elizabeth Pritzker
Gerard Gibbs, LLP
601 California Street, Suite 1400
San Francisco, California 94108
415-981-4800

Steven N. Williams
Cotchett, Pitre and McCarthy
840 Malcolm Road
Burlingame, California 94010
650-697-6000

Counsel for Defendant:
James Bennett
Andrew D. Malbach
Penelope Preovolos
Morrison and Foerster, LLP
425 Market Street
San Francisco, California 94105
415-268-7187

5. *Citizens for Responsible Open Space v. San Mateo County LAFCO and Mid-Peninsula Open Space District*, San Mateo County Superior Court Case No. 442954 (2006). Statement of Decision supplied. Affirmed on Appeal, reported decision at (2008) 159 Cal. App. 4th 717.

This case involved a citizens group seeking to invalidate the annexation of 144,000 acres of coastal land stretching from the City of Pacifica to Santa Cruz County into the Open Space District. The citizens group attempted to gather sufficient signatures to force the matter to the ballot. The local governing agency determined that the citizens group failed to obtain the requisite number of valid signatures and approved the Open Space District's annexation action. I heard the

case as a bench trial on a Writ of Mandate. I ruled that the annexation was valid. This finding was upheld on appeal although I was reversed on another issue regarding the manner in which protesters must identify their addresses on protest petitions. That portion of the ruling did not affect the outcome of the case.

Counsel for Petitioners:
Mark C. Watson
Law Offices of Mark C. Watson
1633 Bayshore Highway, Suite 341
Burlingame, California 94010
650-692-4001

Ronald A. Zumbrun (Appellate Counsel)
The Zumbrun Law Firm
47 Robert Court E
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Counsel for Respondents:
County Counsel's Office
John Beiers, County Counsel
400 County Center
Redwood City, California 94063
650-363-4775

Carol L. Woodward
Law Offices of Carol L. Woodward
406 Arlington Road
Redwood City, California 94062
650-369-8587

Ellison Folk
Shute, Mihaly and Weinberger, LLP
396 Hayes Street
San Francisco, California 94102
415-552-7272

6. *Blough v. Menlo College*, San Mateo Superior Court Case No. 465027 (2009).

In this employment discrimination case, a college professor claimed disability discrimination when her employment was terminated after returning to work after cancer treatment. The college had claimed she was fired due to her failure to maintain adequate attendance to teach her classes properly after being cleared by her physician to return to work. The college claimed the professor had mental health problems that made her unsuited to teach. The jury returned a verdict in favor of the plaintiff awarding general damages, reinstatement and punitive

damages. On post-trial motions I granted a Judgment Notwithstanding the Verdict, vacating the punitive damages award. While the appeal was pending, the parties returned to me, requesting that I assist them with settlement negotiations. The case settled, and the appeal was dismissed.

Counsel for Plaintiff:
Noah D. Lebowitz
Duckworth, Peters Lebowitz and Oliver
100 Bush Street, Suite 1800
San Francisco, California 94104
415-433-0333

Counsel for Defendant:
Michael Vartain
Vartain Law Group
601 Montgomery Street, Suite 540
San Francisco, California 94111
415-391-1155

7. *People v. Rojas,* San Mateo County Superior Court Case No. SC060886 (2006)

In this felony child abuse case, the defendant worked as an in-home nanny caring for a toddler and an infant. Ms. Rojas was found to have inflicted a head injury to a two-and-one-half-month old child. Ms. Rojas was convicted by a jury of felony child abuse under California Penal Code section 273a(a). I sentenced the defendant to four years in prison. No appeal was taken.

Counsel for the People:
James Wade, Deputy District Attorney
Office of the District Attorney
400 County Center
Redwood City, California 94063
650-363-4636

Counsel for Defendant:
K. Randolph Moore
Moore Law Firm, PC
332 North Second Street
San Jose, California 95112
408-298-2000

8. *People v. Carter*, San Mateo County Superior Court Case No. SC065364 (2008). Court of Appeal, Affirmed by First Appellate District, Case No. A122212. Unpublished opinion.

This case involved charges of rape and other counts of sexual assault. The defendant had suffered four prior felony convictions, including two other rape convictions. At trial the evidence showed that Mr. Carter raped his former girlfriend. It was also proved that he had been convicted of raping two other women he had dated. The jury convicted Mr. Carter, and I sentenced him to 80 years to life under California's One Strike rape law and Three Strikes law. The Court of Appeal affirmed the conviction and sentence.

Counsel for the People:
Melissa McKowen, Deputy District Attorney
Office of the District Attorney San Mateo County
400 County Center
Redwood City, California 94063
650-363-4636

Counsel for Defendant:
John K. May
Law Office of John K. May
421 Grand Avenue, Suite A
South San Francisco, California 94080
650-827-9992

9. *People v. Ayres*, San Mateo County Superior Court Case No. SC064366 (2009)

This case involves multiple counts of alleged child sexual abuse against a prominent child psychiatrist, Dr. Ayres. Nine men alleged that they were sexually molested by Dr. Ayres during therapy sessions when they were children. The initial trial resulted in a deadlocked jury, requiring me to declare a mistrial. During jury selection at the re-trial, the defendant pled no contest and was found guilty on all counts alleged against him on May 16, 2013. Portions of the case are still pending.

Counsel for the People:
Melissa McKowan, Deputy District Attorney
Office of the District Attorney
400 County Center
Redwood City, California 94063
650-363-4636

Counsel for the Defendant:
Doron Weinberg
Weinberg and Wilder
523 Octavia Street
San Francisco, California 94102
415-431-3472

Jonathan D. McDougall
1640 Laurel Street
San Carlos, California 94070
650-594-4200

10. *People v. Thomas*, San Mateo County Superior Court Case No. SC064461, SC067103 (2010). Affirmed by Court of Appeal, First Appellate District, Case No. A131157. Unpublished opinion.

This case involved over 40 felony counts of child sexual molestation where Mr. Thomas sexually abused his adopted son and two other boys he had taken into his home from a drug-addicted mother and a dysfunctional family. Mr. Thomas was convicted on 39 counts of felony child sexual abuse under California Penal Code section 288(a). I sentenced Mr. Thomas to 60 years to life plus 48 years. The case was affirmed on appeal.

Counsel for the People:
Aaron Fitzgerald, Deputy District Attorney
Office of the District Attorney
400 County Center
Redwood City, California 94063
650-363-4636

Counsel for Defendant:
Richard Keyes
Law Office of Richard Keyes
620 Jefferson Avenue
Redwood City, California 94063
650-366-6789

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. *Contreras v. Godines,* San Mateo Superior Court Case No. 104252 (2009). Statement of Decision supplied.

Counsel for Petitioner:
Marianne Rossi
Law Offices of Marianne Rossi
702 Marshall Street, Suite 500
Redwood City, California 94063
650-364-7034

Counsel for Respondent:
Tulin Acikalin
Bay Area Legal Aid
539 Middlefield Road
Redwood City, California 94063
650-358-0745

2. *Hamren v. Countrywide Financial Corporation*, San Mateo County Superior Court Case No. 445484 (2007). Order Denying Class Certification supplied in response to Question 13c.

Counsel for Plaintiff:
Bruce L. Simon
Pearson, Simon, Sotor, Warshaw and Penny, LLP
44 Montgomery Street, Suite 1200
San Francisco, California 94104
415-433-9000

William Sheehan
David Permut
Thomas Heffron
Goodwin and Procter, LLP
901 New York Avenue, NW
Washington, D.C. 20001
202-346-4000

Michael Steiner
Severson and Werson, PC
One Embarcadero Center, Suite 2600
San Francisco, California 94111
415-398-3344

3. *Roberts v. Roberts,* San Mateo County Superior Court Case No. 448158 (2007). Statement of Decision supplied.

Counsel for Plaintiff:
Laurence F. Padway
Law Offices of Laurence F. Padway
1516 Oak Street, Suite 109
Alameda, California 94501
510-814-0680

Counsel for Defendant:
Kathleen O'Reilly
O'Reilly Law Office
1550 The Alameda, Suite 300

San Jose, California 95126
408-279-5040

4. *Epiphany, Inc. v. Sigma Dynamics*, San Mateo County Superior Case No. 439133. Order Re: Attorney's Fees supplied in response to Question 13c.

Counsel for Plaintiff:
George A. Riley
Darin W. Snyder
O'Melveny and Meyers
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
415-984-8700

Counsel for Defendant:
Paul J. Andre
Kramer, Levin, Naftalis and Frankel
990 Marsh Road
Menlo Park, California 94025
650-752-1710

5. *Citizens For Responsible Open Space v. San Mateo County LAFCO*, San Mateo County Superior Case No. 442954. Statement of Decision supplied in response to Question 13c.

Counsel for Petitioner:
Mark C. Watson
Law Offices of Mark C. Watson
1633 Bayshore Highway, Suite 341
Burlingame, California 94010
650-692-4001

Counsel for Respondents:
John C. Beiers, County Counsel
San Mateo County Counsel's Office
400 County Center
Redwood City, California 94063
650-363-4775

Carol L. Woodward
Law Offices of Carol L. Woodward
406 Arlington Road
Redwood City, California 94062
650-369-8587

Ellison Folk
Shute, Mihaly and Weinberger, LLP
396 Hayes Street
San Francisco, California 94102
415-552-7272

6. *Sevilla v. Anderson Chevrolet and AutoNation, USA, Corporation,* San Mateo Superior Court Case No. 41554. Order Granting Class Certification supplied.

Counsel for Plaintiff:
Bryan Kemnitzer
Kemnitzer, Barron and Krieg
445 Bush Street, Sixth Floor
San Francisco, California 94108
415-632-1900

Counsel for Defendants:
Laura K. Crista
Crista and Jackson
1901 Avenue of the Stars
Los Angeles, California 90067
310-282-8040.

7. *Epiphany, Inc. v. Sigma Dynamics*, San Mateo County Superior Case No. 439133. Statement of Decision supplied in response to Question 13c.

Counsel for Plaintiff:
George A. Riley
Darin W. Snyder
O'Melveny and Meyers
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
415-984-8700

Counsel for Defendants:
Paul J. Andre
Kramer, Levin, Naftalis and Frankel
990 Marsh Road
Menlo Park, California 94025
650-752-1710

8. *Alden v. Alden,* San Mateo County Superior Court Case No. 062144. Statement of Decision supplied.

Counsel for Plaintiff:
Max Gutierrez

Rollin B. Chippey, II
Morgan, Lewis and Bockius
One Market Street, Spear Street Tower
San Francisco, California 94105
415-442-1200

Counsel for Defendant:
Kenneth Katzoff
Katztoff and Riggs
1500 Park Avenue, Suite 300
Emeryville, California 94608
510-597-1990

9. *Fay v. Jabbar*, San Mateo County Superior Court Case No. 052572. Statement of Decision supplied.

Counsel for Plaintiff:
Stephen Montalvo
Law Office of Stephen Montalvo
550 Price Avenue, Suite B
Redwood City, California 94063
650-839-0900

Counsel for Defendant
Paul F. Vorsatz
Law Office of Paul F. Vorsatz
345 Lorton Avenue, Suite 200
Burlingame, California 94010
650-685-6500

10. *Barbieri v. Barbieri*, San Mateo County Superior Court Case No. 059658. Statement of Decision supplied.

Counsel for Plaintiff:
Paul F. Vorsatz
Law Office of Paul F. Vorsatz
345 Lorton Avenue, Suite 200
Burlingame, California 94010
650-685-6500

Timothy C. Wright
Law Office of Timothy C. Wright
750 Menlo Avenue, Suite 250
Menlo Park, California 94025
650-614-0160

Counsel for Defendant:
Elaine R. Fraser
Harris and Fraser
1220 Howard Avenue, Suite 250
Burlingame, California 94010
560-401-8080

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

Certiorari has not been requested in any case I decided.

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

People v. Adams, San Mateo County Superior Court Case No. SC069895. Court of Appeal, First Appellate District, Case No. A129713 (2012). Appellate opinion supplied.

The defendant was convicted by a jury of felony identity theft, grand theft, commercial burglary and access card fraud. I sentenced Mr. Adams to six years in prison on the identity theft charge with a concurrent sentence of 16 months for the commercial burglary charge and I stayed imposition of sentence on the remaining counts pursuant Penal Code section 654. I sentenced him to an additional year based on statutory enhancements related to prior convictions. The Court of Appeal affirmed the judgment but modified the sentence, finding that because the commercial burglary charge was the same act as the identity theft charge, that portion of the sentence must be stayed.

Page Mill Management, LLC v. City of East Palo Alto Rent Stabilization Board, San Mateo Superior Court Case Nos. 469315, 474682. Decisions supplied. Court of Appeal, First Appellate District, Case No. A125659 (2010) and A121631 (2009). Appellate opinions supplied.

In these cases, a landlord that owned numerous housing units in the city challenged the rent control board's decision prohibiting the landlord from implementing its announced annual rent increases. I issued a writ of mandate and injunction upon a finding that the rent control board had violated state law when it prohibited the rent increases. Although the Court of Appeal affirmed my judgment on all substantive issues of law, it reversed as to the scope of the injunction I issued, finding the injunction was over-broad. The Court of Appeal vacated that portion of the injunction and affirmed the remainder of my rulings.

In a related decision, I had ruled that under the Rent Control Ordinance the

prevailing party was entitled to an award of attorneys' fees. The Court of Appeal reversed my decision, interpreting the ordinance differently than I had. The sole issue was statutory construction of the ordinance.

People v. Rodriguez, San Mateo County Superior Court Case No. SC59880. Court of Appeal, First Appellate District, Case No. A116691 (2009). Appellate opinions supplied.

The defendant was convicted of multiple counts of felony domestic violence. I sentenced the defendant to ten years and four months in prison. At trial I had ruled that several prior acts of domestic violence were admissible to support other evidence of guilt in this case under California Evidence Code section 1109. I also ruled that subsequent acts of domestic violence were admissible. The Court of Appeal affirmed my ruling admitting into evidence subsequent acts of domestic violence and affirmed my judgment. The Court of Appeal criticized my decision that violation of a domestic violence restraining order was *per se* an act of domestic violence that would be admissible under Evidence Code section 1109. The Court of Appeal determined that any error was harmless and affirmed the judgment.

Citizens For Responsible Open Space v. San Mateo County LAFCO, et al., San Mateo County Superior Court Case No. 442954. Statement of Decision supplied in response to Question 13c. Court of Appeal, First Appellate District, (2008) 159 Cal. App. 4th 717.

In this land use case, Mid Peninsula Open Space District annexed 144,000 acres of land into the Open Space District. It had committed not to use the power of eminent domain to acquire any of the annexed land. The annexation decision was approved by the local agency formation district (LAFCO). That action prompted a citizens group to mount a protest drive to place the issue on the ballot. When that failed, the citizens group filed a Petition for Writ of Mandate seeking to overturn the agency action. Among other issues, I determined that the protesters did not gather a sufficient number of verified citizen protests to force a general election on the annexation issue. I denied the Writ of Mandate and ruled that the annexation procedure was valid. The Court reversed only the portion of my ruling regarding the manner in which citizens may record their addresses on a protest. The Court of Appeal determined that the residence address, as it appears on the voter registration roll, not a post office box number is statutorily required. That issue did not affect the outcome of the case, and the Court of Appeal ultimately affirmed my judgment.

Bonner v. City of Menlo Park, San Mateo County Superior Court Case No. 452721, Court of Appeal, First Appellate District A118031 (2008). Decision supplied.

This case involved an automobile personal injury accident. The plaintiff was a

pedestrian who was hit by a motorist (not a city employee) while in a crosswalk. The City of Menlo Park was sued for maintaining a dangerous condition of public property. The plaintiff alleged that the intersection was improperly designed thus causing her to be hit by a motorist who was not required to stop at the crosswalk. I granted summary judgment for the City, finding that there was no evidence to support the plaintiff's claim that the location of the traffic light was a substantial factor in causing her accident. The Court of Appeal reversed, finding that there were triable issues of fact compelling a trial.

City of San Jose v. County of Santa Clara, San Mateo County Superior Court Case No. 442629. Decisions supplied. Court of Appeal, First Appellate District, Case No. A109132, 2006 Cal. App. Unpub. LEXIS 145 (Jan. 9, 2006).

This action involved a claim by the City of San Jose that the County of Santa Clara was impermissibly developing County land for a theater complex in violation of prior agreements between the governmental entities. The County filed a special motion to strike the complaint under the California Anti-SLAPP law (strategic lawsuits against public participation). I granted the motion as to the injunction cause of action, finding that the challenged action by the County was protected speech, and denied the motion as to the declaratory relief claim. The City of San Jose appealed my ruling dismissing the claim for injunctive relief. The Court of Appeal reversed, holding that the actions alleged in the injunctive relief cause of action did not constitute protected speech under the statute. No appeal was filed as to the remainder of my ruling.

People v. Brothers, San Mateo County Superior Court Case No. SC-054458. Court of Appeal, First Appellate District A104887, 2005 Cal. App. Unpub. LEXIS 311.

In this felony domestic violence case the defendant was convicted of multiple felony charges, and I sentenced him under California's Three Strikes Law. The Court of Appeal affirmed the conviction on the felony counts and reversed on one misdemeanor count of violation of a restraining order, finding that the defendant did not enter a personal waiver of rights and ruling that his attorney's waiver was insufficient. The effect of the partial reversal was to strike a portion of the sentence that had been stayed pending completion of the prison term on the felony convictions.

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

As a state trial court judge, none of my decisions is published. Over the years, I have filed thousands of written decisions, some of which are formal signed orders, and many of which are recorded in the clerk's record. The percentage of written decisions varies with the case type. When I served as civil law and motion judge,

100% of my decisions were written and recorded in the clerk's record. During my two years as a family law judge all of my cases were bench trials and approximately 20% of my cases resulted in formal written decisions, the remainder of which were recorded in the clerk's record. Of the many civil cases I have presided over at trial, approximately 10% have resulted in formal written decisions. Of the criminal law cases I have presided over, none has resulted in a formal written opinion. All of the opinions are filed and stored chronologically in the original case file. Those files are located at the San Mateo Superior Court Clerk's Office, 400 County Center, Redwood City, California, 94063 and in rented warehouse space nearby.

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

People v. Ortega, San Mateo County Superior Court Case No. SC 07132. Unpublished Court of Appeal decision, No. A131244 (2013). Copy supplied.

People v. Thomas, San Mateo County Superior Court Case No. SC 064461. Unpublished Court of Appeal decision, No. A131157 (2012). Copy supplied.

Citizens for Responsible Open Space v. San Mateo County LAFCO and Mid-Peninsula Open Space District, San Mateo County Superior Court Case No. Civ 442954. Statement of Decision supplied in response to Question 13c.

People v. Stewart, San Mateo County Superior Court Case No. SC 054522. Unpublished Court of Appeal decision, A104983 (2005). Copy supplied.

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

I have not sat by designation on a federal court of appeals.

14. <u>Recusal:</u> 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 regularly assessed my obligation to recuse myself in two situations. First, under the California Canons of Judicial Ethics, a judge is deemed to have a financial interest in a case if she owns more than a $1500 interest in a party. Thus, I maintain a current list of my stock holdings in publicly traded companies so that I can review the list of holdings and immediately identify the need to recuse myself when necessary. Second, my husband is a partner in an international law firm. I do not hear any case in which his firm represents a party. Over the past 12 years I estimate that I have *sua sponte* recused myself in fewer than ten cases.

All the cases in which I have recused myself were pending before me when I served as a civil law and motion judge. In those cases, I had no direct involvement with the parties or legal issues. My contact with the case file was limited to the identification of the conflict. Under such circumstances, I have not maintained a list of those cases. To the best of my recollection, I have only been required to recuse myself due to financial interests once or twice in over 12 years . Because our court does not maintain a list of recusals, I have no means of determining the case names.

Under California Code of Civil Procedure section 170.6, each party in a case may assert one peremptory challenge against a judge, for no reason given. Generally such challenges are submitted to the Presiding Judge and granted if timely. The disqualified judge is usually not informed of the action. Our court does not maintain a list of such challenges, and I have no records of those cases in my files.

In *U.S. Bank National Association v. Mikels*, Case No. 203244, a self-represented litigant filed a challenge under California Code of Civil Procedure section 170.1, asserting that I had a conflict of interest in his case because I owned stock in another financial institution (not even the bank that was a party to his case). I denied the charge in a written answer. I did not own any stock in U.S. Bank, the plaintiff in that action, and in fact, I had previously sold all stock I held in banks because I had become concerned that the foreclosure crisis could bring suits before me involving those banks. Under California law, the Mikels challenge was referred to a judge in a neighboring county, and that judge determined that there was no conflict of interest.

15. <u>Public Office, Political Activities and Affiliations</u>:

a. List chronologically any public offices you have held, other than judicial offices,

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

I have held no public office other than my judicial office.

I was a candidate for State Assembly in 1972. I won the primary, but I was unsuccessful in the general election.

I have had no 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.

1972 – 1974: I was a member, *ex officio* by reason of being the Democratic Nominee for State Assembly, on the San Mateo County Democratic Central Committee and served one year as vice chair. Uncompensated.

1972 – 1974: I was an *ex officio* member of the California Democratic Party Executive Committee. Uncompensated.

1972: Delegate to Democratic National Convention and member of Platform Committee. I was elected in a local caucus. Uncompensated.

1974: Arlen Gregorio for State Senate Campaign. I was a volunteer finance coordinator. Uncompensated.

1975: Fred Lyon for County Supervisor Campaign. I was a precinct coordinator. Uncompensated.

1980: Kennedy for President Campaign. I volunteered to assist in the preparation of issues statements by providing research and written materials for a lawyer at my law firm who, in turn, provided the materials to the campaign. I had no title and no actual position with the campaign. My efforts were uncompensated and lasted for a period of approximately three months.

1982: Louise Renne for Congress Campaign. I was a phone bank volunteer. Uncompensated.

1997: Measure A School Bonds Campaign. I was a phone bank volunteer. Uncompensated.

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.

1979 – 1981:
Fried, Frank, Harris, Shriver and Jacobson
801 17th Street, NW
Washington, D.C. 20008
Associate Attorney

1981 – 1983:
Lasky, Haas, Cohler and Munter
(This law firm dissolved in 2003)
505 Sansome Street
San Francisco, California 94111
Associate Attorney

1983 – 2001:
San Mateo County District Attorney's Office/County Counsel's Office
400 County Center
Redwood City, California 94063
Deputy District Attorney/Deputy County 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.

From 1979 to 1981, I was an associate attorney at Fried, Frank, Harris, Shriver and Jacobson. My work included trial and appellate litigation and advisory services. I represented clients' interests at the Department of the Interior. I assisted with briefing of several cases pending before the United States Supreme Court and other appellate cases throughout the United States. I also participated in several *pro bono* matters, including a *pro bono* housing clinic sponsored by the District of Columbia Bar Association and a Federal court trial in Richmond, Virginia.

From 1981 to 1983, my law practice with Lasky, Haas, Cohler and Munter involved antitrust litigation and commercial litigation. My work was focused on pre-trial discovery and motions practice.

From 1983 to 2001, as a deputy county counsel my law practice was exclusively devoted to the representation of local public agencies including trial and appellate litigation and advisory services. I specialized in education and public agency law. I supervised the child dependency unit of the office and tried hundreds of cases in Superior Court. I also tried employment and civil rights cases in federal court and handled general civil litigation for public agencies in state court. I served as general counsel to a number of public school districts and community colleges.

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

While an associate attorney at Fried Frank Harris Shriver and Jacobson my clients were American Indian tribal governments, including the Oglala Sioux, Cheyenne Arapaho Tribe, Sioux Nation of Indians, Seminole Tribe and the Association of American Indian Affairs, Inc. I provided advisory services, federal agency representation (at the Department of the Interior and Bureau of Indian Affairs) and appellate and Supreme Court litigation.

While an associate attorney at Lasky, Haas, Cohler and Munter my clients included the Oakland Raiders, an independent car parts manufacturer in a price fixing case against Mercedes Benz, and several local news reporters sued for defamation by an individual who had been interviewed by the reporters.

As a Deputy County Counsel my clients included San Mateo County Community College District, Burlingame School District, San Mateo-Foster City School District, San Mateo County Board of Supervisors, Sheriff Don Horsley, San Mateo County Probation Department, and San Mateo County Child Protective Services. I advised local elected school

board members, school superintendents, the Sheriff, the Chief Probation Officer and other local officials.

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

During my law practice I appeared in court frequently. My practice from 1979 to 1986 was initially in federal court and later primarily in state court. In the last 15 years of my practice lasting from 1986 to 2001, I appeared in court on a weekly basis, primarily in court trials. I conducted approximately 15 jury trials and more than 200 bench trials, as well as engaging in a regular appellate practice.

i. Indicate the percentage of your practice in:
   1. federal courts: 10%
   2. state courts of record: 75%
   3. other courts: 0%
   4. administrative agencies: 15%

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.

During my 22-year law practice I tried to verdict over 200 cases in courts of record and 30 cases before administrative law judges and arbitrators. I was sole or lead counsel in all cases litigated after 1983 and prior to that time I was associate counsel.

i. What percentage of these trials were:
   1. jury: 10%
   2. non-jury: 90%

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

While an associate attorney at Fried Frank, I assisted in briefing several cases pending before the Unites States Supreme Court, including:

United State of America v. Sioux Nation of Indians, 448 U.S. 371 (1980) (respondent's brief). Copy available at 1980 WL 340029.

Andrus v. Glover Construction Company, 446 U.S. 608 (1980) (amicus brief of the Association of American Indian Affairs, Inc.). Copy available at 1980 WL 339548.

Havens Realty v. Coleman, 455 U.S. 363 (1982) (brief opposing petition for certiorari). Copy available at 1981 U.S. S. Ct. Briefs LEXIS 729.

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. *Sequoia Union High School District v. Citizens for Lawful and Effective Attendance Policies,* U.S. District Court, Northern District of California, Case No. C97-02903MMC (1999). Judge Maxine M. Chesney.

This was a civil rights case challenging the legality of the school district's student attendance policy. The case was initially settled by a consent decree in 1989, but was later reinstated by a contempt proceeding filed against the school district due to its decision to change the court-approved attendance policy. I served as lead counsel for defendant school district. I joined the case in 1999, after the contempt finding. I participated in the final phase of the litigation that involved community mediation and a successful resolution of the case, which led to an order vacating the contempt finding and lifting the consent decree.

Co-Counsel:
Hon. Miguel Marquez (formerly Deputy County Counsel)
Sixth District Court of Appeal
333 West Santa Clara Street, Suite 106
San Jose, California 95113
408-277-1004

Plaintiff's Counsel:
William S. Koski, Esq.
Youth and Education Law Center
559 Nathan Abbott Way
Stanford, California 94305
650-724-3718

2. *Suman v. City of San Bruno, San Bruno City School District,* San Mateo Superior Court Case No. 403807 (1998). Court of Appeal No. A084140 (1999). Judge John G. Schwartz, San Mateo County Superior Court. Justices Stein, P.J., Swager and Marchiano, Court of Appeal, First Appellate District.

This was a land use case where a citizen challenged the City's grant of a use permit for a golf range on a closed school site owned by my client, the San Bruno School District. The legal issue presented was whether plaintiff had filed the action within the limitations period. The Superior Court sustained my demurrer and the Court of Appeal affirmed the judgment. I was co-lead counsel in the trial court and lead counsel on appeal. My representation was in 1998 and 1999.

Co-Counsel:
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Ross, Hackett, Dowling
600 El Camino Real
P.O. Box 279
San Bruno, California 94066
650-588-0367

Jonathan P. Lowell, City Attorney
Office of the City Attorney
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P.O. Box 520
Pleasanton, California 94566
925-931-5015

Plaintiff's Counsel:
Edward W. Suman
Law Office of Edward W. Suman
881 Sneath Lane
San Bruno, California 94066
650-583-3200

3. *Ethan A. v. County of San Mateo, et al,* San Mateo Superior Court No. 394221 Judge Rosemary Pfeiffer, Law and Motion Judge. (1995 – 1997)

This was a tort case where plaintiff, an eight-year old boy, alleged that he was sexually molested in foster care by a nine-year old child. Plaintiff alleged that the County was

liable for placing him in a foster care home with an older child who had a history of sexually acting out. I represented Defendant County of San Mateo from 1995 to 1997. I was able to obtain summary judgment for one of the social workers and the remainder of the case settled in mediation. I served as sole lead counsel for defendant San Mateo County and the individually named social workers.

Defendant Foster Mother's Counsel:
John Simonson
Hayes, Scott, Bonino, Ellingson and McLay, LLP
203 Redwood Shores Parkway
Redwood City, California 94065
650-637-9100

Plaintiff's Counsel:
John E. Boessenecker
Law Office of John E. Boessenecker
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San Francisco, California 94104
415-392-3374

4. *Citizens for Unification v. San Mateo Foster City School District,* San Mateo Superior Court Case No. 388194 (1995); Judge Aram Serverian (Temporary Restraining Order Hearing only).

I represented the school district in a case challenging the District staff's use of school equipment (telephones, copiers, supplies, etc.) during a political campaign regarding changing District boundaries. The temporary restraining order issued against the District and the preliminary injunction was denied as moot after the case settled for a nominal amount. I was sole counsel for the District in 1995.

Plaintiff's Counsel:
John E. Boessenecker
Law Office of John E. Boessenecker
220 Montgomery Street, Suite 1500
San Francisco, California 94104
415-392-3374

5. *Frost v. Fox*, U.S. District Court (N.D. Cal). Case No. C94-621FMS (1994) United States Court of Appeals, 9th Circuit, Case No. 94-165551 (1995); Judge Fern M. Smith, United States District Court, Northern District of California Court of Appeals Judges Browning, Sneed and T.G. Nelson.

This was a civil rights case in which the plaintiff alleged that the district attorney and trial and appellate prosecutors had fraudulently convicted him of embezzlement. I represented the District Attorney in the trial court and Court of Appeals as sole counsel from 1994 to

1995. The District Court granted my Rule 12(b)(6) motion to dismiss the action and the Ninth Circuit affirmed the judgment on appeal.

Co-Counsel:
Jerry E. Nastari (for co-defendant)
Corey, Lusaich, Pliska
700 El Camino Real
Millbrae, California 94030
650-871-5666

Plaintiff was self-represented.

6. *San Mateo County Community College District v. Anderson,* San Mateo Superior Court Case No. 38040 (1993 – 1994). Judge Harlan K. Veal (On Petition for Writ of Mandate). Honorable Joseph Grodin, Arbitrator.

This case involved the termination of a tenured faculty member at a community college who was charged with dishonesty and evident unfitness for service for taking money from students under false pretenses. I represented the community college as sole counsel from 1993 to 1994. The case was tried before an arbitrator. The arbitrator found that the professor was unfit and dishonest but reduced the penalty to a one-month suspension and one year probation. The arbitrator's decision was upheld on a petition for writ of mandate.

Respondent's Counsel:
Robert J. Bezemek
Law Offices of Robert J. Bezemek
1611 Telegraph Avenue, Suite 936
Oakland, California 94612
510-763-5690

7. *Forter v. County of San Mateo,* San Mateo Superior Court Case No. 332087 (1993). Judge Alan Bolhoffer (Settlement).

This was a wrongful adoption case brought by adoptive parents and the child they adopted charging that the County adoption agency failed to disclose psychological records of the then four-year old child prior to the adoption placement. I served as sole counsel for defendant County of San Mateo from 1993 to 1995. The case settled on the eve of trial.

Plaintiff's Counsel:
Richard Alexander
The Alexander Law Group
111 West St. John Street, Suite 700
San Jose, California 95713
408-289-1776

8. *Foster City v. San Mateo Foster City School District,* San Mateo Superior Court Case No. 315932 (1992). Judge Robert E. Carey (Pre-trial motions); Judge Alan J. Bolhoffer (Settlement); Judge V. Gene McDonald (Settlement); Judge Thomas M. Jenkins (mediation).

In this action, my client, the school district, was sued by the City of Foster City for failure to disclose an encumbrance on real property exchanged by the school district for city property. The case involved the former owner of the property, Foster, who held a reversionary interest in the school property and the title company that failed to identify the reversionary interest in a preliminary title report. I was co-counsel for the school district from 1990 to 1992. The case settled with the school district repurchasing the school property from the city and building a new school on that property so as to defeat the reversion clause. The title company settled with the school district by making a significant monetary payment to my client.

Co-Counsel:
Thomas S. Clifton
Clifton and Wood
425 Market Street, Suite 2200
San Francisco, California 94105
415-955-2736

Plaintiff's Counsel:
Kenneth Dickerson (For Plaintiff Foster City)
Deceased

Katherine S. Clark (Counsel for Foster City)
Law Offices of Katherine S. Clark
919 The Alameda
San Jose, California 95126
408-350-752

Cross-Defendant Foster's Counsel:
David J. Byers
Byers/Richardson
259 West Third Avenue
San Mateo, California 94402
650-759-3375

Cross-Defendant Ticor Title's Counsel
Cary L. Dictor
Deceased

9. *In Re Concepcion and Sonia R.* San Mateo Superior Court No. 56353 and 56354 (1994). Court of Appeal, First Appellate District, Case No. A068341 (Unpublished Opinion, 1996). Commissioner Patricia Bresee. Appellate Justices: Kline, P.J., Smith and Phelan.

This juvenile dependency case involved the issue of a non-custodial father's right to custody of his children where, although he had not abused his children, he had not established a "parent-child" relationship with them. I served as sole counsel for the Department of Social Services at trial and on appeal from 1995 to 1996. The trial court ruled in favor of my client and terminated the biological father's parental rights. The judgment was affirmed on appeal.

Respondent's Counsel:
Craig R. Morey (For defendant at trial)
Law Office of Craig R. Morey
1777 Borel Place, Suite 510
San Mateo, California 94402
650-574-5557

P. Cecilia Storr (For defendant on appeal)
Varni, Fraser, Hartwell and Rodgers
650 A Street
Hayward, California 94541
510-886-5000

10. *Rayna R. v. Superior Court,* San Mateo Superior Court Case No. 52788, Court of Appeal, First Appellate District, 20 Cal. App. 4th 1398 (1993). Commissioner Patricia Bresee (Trial Judge); Appellate Justices: Merrill, Acting P.J. Chin and Werdegar.

This juvenile dependency trial and appeal involved a determination of whether the parents had adequately addressed the problems that led to the initial removal of their children from their custody. On appeal, the case was limited to procedural issues regarding the then-new writ procedure under state law. From 1992 to 1993 I was sole counsel for the Department of Social Services at trial and on appeal. The trial court ruled in favor of my client's position to terminate parental rights. The Court of Appeal affirmed the order on a writ of mandate.

Respondent's Counsel:
Robert E. Daye
Law Office of Robert E. Daye
849 Menlo Avenue
Menlo Park, California 94025
650-321-4641

Craig R. Morey
Law Office of Craig R. Morey

1777 Borel Place, Suite 510
San Mateo, California 94402
650-574-5557

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

Over the past three years I have served on the California Judicial Council Trial Court Budget Working Group, which is the primary advisory committee for the Judicial Branch that evaluates the budgetary needs of the courts and recommends to the Judicial Council the allocation of state revenue to each of the 58 trial courts, the six appellate divisions and the Supreme Court.

From 2011 to 2012 I served as the elected Presiding Judge of the San Mateo County Superior Court. In that role I set policy for and managed the county court system, served as spokesperson for the court, and supervised 33 judicial officers.

Since 2004 I have regularly taught California judges a variety of courses on civil law, family law, trials and evidence and case management through the California Judicial Council's Center for Judicial Education and Research (CJER).

From 1983 to 2001, I served as general counsel to public school districts and community colleges. I advised elected school board members, school superintendents, college chancellors and presidents in matters related to development of magnet schools, teacher layoffs during dire budgetary times, labor disputes, labor contract negotiations, school closures, school construction, student discipline, discrimination claims, and school bond measures.

I did not perform any lobbying activities or register 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.

"New Judges Orientation." Judicial Council of California, Center for Judicial Education and Research. I have taught this class annually since 2007. This course is a five-day class for newly elected and appointed judges in California teaching ethics, fairness, trials and evidence. I have taught trial practice and evidence. I have been unable to locate a syllabus.

"Advanced Civil Law," Judicial Council of California, Center for Judicial Education and Research. I taught this class yearly from 2010 through 2012. This three-day course is team-taught for judges with civil law experience who are returning to a civil law trial assignment. I taught civil procedure, substantive law regarding common motions such as summary judgment and anti-SLAPP motions, post-trial motions and preemption. 2012 syllabus supplied.

"How to Manage That Case," California Judicial Council's Civil Law Institute. I taught this course in 2007. The course explored judicial strategies for handling complex civil litigation. I have no notes, transcript, or recording. I no longer have the syllabus.

"Spousal Fiduciary Duties," Family Law Bar Association in San Mateo County. I was the principal instructor at a five-day course in 2003. The course explored the changing duties between spouses both during and after marriage under California law. I have no notes, transcript or recording. I no longer have the syllabus. The organization was an informal volunteer study group of family law attorneys who are no longer sponsoring conferences.

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 deferred income or future benefits other than my public pension benefits from the County of San Mateo and the Judicial Branch of California.

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.

The only potential conflicts of interest I may have would be regarding cases in which my husband William S. Freeman's law firm is involved and cases where I own stock of significant value in a company that is a party to the matter. Additionally, I would recuse myself in any case involving the Junior Statesmen Foundation. Generally speaking, I do not have any business activities or other financial interests that would cause a conflict of interest to arise.

I would address such potential conflicts of interest by complying with the Code of Conduct for United States Judges and other relevant statutes, ethical canons and rules. I would recuse myself in cases in which my husband's law firm represents a party and where my stock holdings are significant enough to require recusal. If I observe a conflict with particular holdings over time, I would sell those stocks to eliminate any conflict 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 would refer to 28 U.S.C. sec. 144 and 455a, the Code of Conduct for United States Judges, and Advisory Opinions of the Committee on Codes of Conduct, and would disclose any pertinent information to the litigants or recuse myself from deciding a case, as appropriate. I will review my initial caseload immediately to determine the presence of conflicts, and thereafter review cases as they are assigned to me.

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.

Since taking judicial office in 2001, I have been restricted in the activities in which I could be involved. I have devoted time to teaching judges, judging high school mock trial finals for our county on an annual basis and bringing elementary school children to my courtroom regularly to participate in a mock trial that I designed for third and fourth

graders called "The Case of the Missing Homework."

From 1983 to 2000, I was restricted by the requirements of my public sector job from certain types of *pro bono* activities. I was precluded from representing any parties in litigation. I did provide *pro bono* legal advice to the Junior Statesmen Foundation ("JSA") on employment and student conduct issues. As a board member, I would regularly give advice on matters. During the JSA summer school program, I would assist in crisis situations involving student conduct.

From 1980 to 1981, I represented indigent people on housing matters, including unlawful detainer actions and habitability issues, through the *pro bono* program at Fried Frank Harris Shriver and Jacobson in Washington, D.C. I was co-counsel at a jury trial in U.S. District Court in Richmond, Virginia in which our client, a non-profit housing organization, obtained a favorable verdict on the issue of discriminatory real estate practices in the rental market involving "steering" African American renters to low income parts of town. The case was ultimately heard by the United States Supreme Court and affirmed in *Havens Realty v. Coleman* 455 U.S. 363 (1982).

26. <u>Selection Process</u>:

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 my application to Senator Feinstein's judicial selection committee on November 16, 2012. On December 17, 2012, I was interviewed by the section of the selection committee charged with vetting candidates for the Northern District of California. On January 23, 2013, I was interviewed by the chair of the overall selection committee. On March 13, 2013, I received a call from Senator Feinstein's office informing me that I was being recommended to the President. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 30, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 20, 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
Freeman, Beth L.	U.S. District Court, Northern District of California	06/20/2013
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 Status	☑ Nomination Date 06/20/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/28/2013
7. Chambers or Office Address		
Superior Court of San Mateo County, Department 3 400 County Center Redwood City, CA 94063		

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.	Judge	Superior Court for San Mateo County, California
2.	Executor	Estate No. 1
3.	Co-Trustee	Trust No. 1
4.	Trustee	Trust No. 2
5.	Director	Junior Statesmen Foundation
6.	Member, Board of Governors	Association of Business Trial Lawyers

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	1983	San Mateo County Employees Retirement Association - Pension
2.	2001	Judicial Retirement System II, California - Judicial Pension
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 15	Name of Person Reporting Freeman, Beth L.	Date of Report 06/20/2013

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	Superior Court of California - Salary	$187,621.00
2. 2012	Superior Court of California - Salary	$187,621.00
3. 2013	Superior Court of California - Salary	$75,520.00
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. 2011	Self-Employed: Attorney
2. 2012	Self-Employed: Attorney
3. 2013	Self-Employed: Attorney
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 15	Name of Person Reporting Freeman, Beth L.	Date of Report 06/20/2013

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 15

Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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. Trust #1					Exempt				
2. - Brokerage Account #1									
3. -- Schwab U.S. Treasury Money Fund Account	E	Int./Div.	P1	T					
4. -- Abbott Labs Common Stock	A	Dividend	K	T					
5. -- Abbvie Inc. Common Stock		None	K	T					
6. -- American International Group Common Stock		None	K	T					
7. -- Amgen Inc. Common Stock	A	Dividend	J	T					
8. -- Apple Inc. Common Stock	B	Dividend	M	T					
9. -- AT&T Inc. Common Stock	A	Dividend	J	T					
10. -- Berkshire Hathaway Common Stock		None	J	T					
11. -- Chipotle Mexican Grill Common Stock		None	J	T					
12. -- Coca-Cola Company Common Stock	A	Dividend	L	T					
13. -- Colgate-Palmolive Co. Common Stock	A	Dividend	K	T					
14. -- Comcast Corp. Stock	A	Dividend	L	T					
15. -- CVS Caremark Corp. Common Stock	A	Dividend	M	T					
16. -- DirecTV Common Stock		None	J	T					
17. -- Google Inc. Common Stock		None	K	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 15	Name of Person Reporting Freeman, Beth L.	Date of Report 06/20/2013

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. -- IBM Corp. Common Stock	A	Dividend	K	T					
19. -- Intuitive Surgical Common Stock		None	L	T					
20. -- Marathon Oil Corp. Common Stock	A	Dividend	J	T					
21. -- Marathon Pete Corp. Common Stock	A	Dividend	K	T					
22. -- MasterCard Inc. Common Stock	A	Dividend	K	T					
23. -- McDonalds Corp. Common Stock	A	Dividend	K	T					
24. -- Microsoft Corp. Common Stock	D	Dividend	M	T					
25. -- nVidia Corp. Common Stock	A	Dividend	K	T					
26. -- Oracle Corp. Common Stock	A	Dividend	J	T					
27. -- Pepsico Inc. Common Stock	C	Dividend	M	T					
28. -- Procter & Gamble Corp. Common Stock	C	Dividend	L	T					
29. -- Rite Aid Corp. Common Stock		None	J	T					
30. -- Spectrum Brands Holdings Common Stock		None	J	T					
31. -- Target Corp. Common Stock	A	Dividend	J	T					
32. -- Texas Instruments Inc. Common Stock	A	Dividend	J	T					
33. -- TJX Companies Inc. Common Stock		None	K	T					
34. -- Verisign Inc. Common Stock		None	K	T					

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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. -- Visa Inc. Common Stock	A	Dividend	L	T					
36. -- Vodafone Group Common Stock	A	Dividend	K	T					
37. -- Walgreen Co. Common Stock	A	Dividend	K	T					
38. -- Wal-Mart Stores Inc. Common Stock	A	Dividend	K	T					
39. -- Absolute Opportunities Fund		None	J	T					
40. -- American Century Intermediate-Term Tax-Free Bond Fund	A	Dividend	K	T					
41. --Arbitrage Fund Class R		None	J	T					
42. -- DFA Short Term Municipal Bond Fund	A	Dividend	K	T					
43. -- DFA U.S Core Equity 2 Portfolio Fund	A	Dividend	K	T					
44. -- Dreyfus Intermediate Municipal Bond Fund	A	Dividend	J	T					
45. -- Dreyfus Short-Intermediate Municipal Bond Fund	A	Dividend	K	T					
46. -- iShares MSCI Pacific Ex-Japan Index Fund	A	Dividend	K	T					
47. -- Market Vectors Gold Miners ETF	B	Dividend	K	T					
48. -- PowerShares DB Commodity Index Tracking Fund		None	K	T					
49. -- Schwab 1000 Index Fund	A	Dividend	J	T					
50. -- Schwab Total Stock Market Index Fund	A	Dividend	J	T					
51. -- SPDR S&P 500 ETF	C	Dividend	M	T					

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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. -- Vanguard California Intermediate-Term Tax Exempt Fund	A	Dividend	K	T					
53. -- Vanguard Dividend Appreciation ETF	A	Dividend	K	T					
54. -- Vanguard FTSE All World ex-US ETF		None	K	T					
55. -- Vanguard Growth Index Fund	A	Dividend	K	T					
56. --Vanguard Limited Term Tax Exempt Investor Share	A	Dividend	K	T					
57. -- Vanguard MSCI EAFE ETF	A	Dividend	L	T					
58. -- Vanguard MSCI Emerging Markets ETF	A	Dividend	K	T					
59. -- Vanguard Short-Term Tax Exempt Fund	A	Dividend	J	T					
60. -- Vanguard Total Stock Market ETF	C	Dividend	N	T					
61. -- State of California Bonds	C	Dividend	L	T					
62. -- Synaptics Inc. Common Stock		None							
63. -- Volterra Semiconductor Common Stock		None							
64. -- Fuel Cell Energy Common Stock		None							
65. -- JP Morgan Chase Common Stock	A	Dividend							
66. -- PLX Technologies Common Stock		None							
67. --Teva Pharmaceuticals Inc. Common Stock	A	Dividend							
68. - Brokerage Account #2									

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

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Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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)
69. -- Schwab ADV Cash Reserve Premium Account	A	Int./Div.	M	T					
70. -- Comcast Corp. Common Stock	A	Dividend	J	T					
71. -- Market Vector Junior Gold Miners ETF	A	Dividend	K	T					
72. -- SPDR S&P 500 ETF	A	Dividend	K	T					
73. - Brokerage Account #3									
74. -- FIA Card Services N.A. Money Market Account	A	Int./Div.	J	T					
75. -- State of California Bonds	D	Dividend	M	T					
76. -- Piedmont California Unified School District Bonds	B	Dividend	K	T					
77. -- Hemet California Unified School District Bonds	D	Dividend	M	T					
78. --Castro Valley California Unified School District Bonds	B	Dividend	K	T					
79. Trust #2									
80. - US Bank Account	A	Interest	L	T					
81. - US Treasury Securities	B	Int./Div.							
82. - Washington Mutual Investors Fund A	A	Int./Div.							
83. - Brokerage Account #4									
84. -- Morgan Stanley Private Bank NA Money Market Fuind	A	Int./Div.							
85. -- Consolidated Edson Inc. Common Stock	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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)
86. -- Dominion Resources Inc (New) Common Stock	C	Dividend							
87. -- FirstEnergy Corp. Common Stock	A	Dividend							
88. -- Northeast Utilities Common Stock	A	Dividend							
89. -- Southern Co. Common Stock	B	Dividend							
90. -- Morgan Stanley US Securities Mutual Fund	A	Dividend							
91. -- Legg Mason Clearbridge Equities Mutual Fund	A	Dividend							
92. - Brokerage Account #5									
93. -- Merrill Lynch Bank Deposit Program	A	Int./Div.							
94. -- State of California Bonds	E	Int./Div.							
95. -- Piedmont California Unified School District Bonds	B	Int./Div.							
96. -- Hemet California Unified School District Bonds	D	Dividend							
97. Estate #1									
98. - Sterlling Bank & Trust Account and CD	A	Int./Div.							
99. - US Bank CD	A	Int./Div.							
100. - Wells Fargo IRA	A	Int./Div.							
101. Trust #3									
102. - Brokerage Account #6									

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

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Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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)
103. -- Schwab U.S. Treasury Money Fund	D	Int./Div.	N	T					
104. -- Apple Inc. Common Stock	A	Dividend	L	T					
105. -- Coca-Cola Company Common Stock	A	Dividend	K	T					
106. -- Comcast Corp. Common Stock	A	Dividend	J	T					
107. -- CVS Caremark Corp. Common Stock	A	Dividend	K	T					
108. -- Marathon Oil Corp. Common Stock	A	Dividend	J	T					
109. -- Marathon Pete Corp. Common Stock	A	Dividend	J	T					
110. -- McDonald's Corp. Common Stock	A	Dividend	J	T					
111. -- Microsoft Corp. Common Stock	B	Dividend	K	T					
112. -- Pepsico Inc. Common Stock	A	Dividend	K	T					
113. -- Procter & Gamble Common Stock	A	Dividend	K	T					
114. -- Visa Inc. Common Stock	A	Dividend	K	T					
115. -- Wal-Mart Stores Inc. Common Stock	A	Dividend	J	T					
116. -- iShares MSCI Pacific Ex-Japan Index Fund	A	Dividend	J	T					
117. -- SPDR S&P 500 ETF	A	Dividend	K	T					
118. -- Vanguard Dividend Appreciation ETF	A	Dividend	K	T					
119. -- Vanguard FTSE All-World Ex-US ETF	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

Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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)
120. -- Fuelcell Energy Inc. Common Stock		None							
121. -- Charles Schwab Corp. Common Stock		None							
122. -- Teva Pharmaceuticals Inds Ltd. ADRF Sponsored AD	A	Dividend							
123. Trust #4									
124. - Brokerage Account #7									
125. -- Schwab US Treasury Money Fund Account	A	Int./Div.	M	T					
126. -- Apple Inc. Common Stock	A	Dividend	J	T					
127. -- Berkshire Hathaway Common Stock		None	J	T					
128. -- Microsoft Corp. Common Stock	A	Dividend	K	T					
129. -- Procter & Gamble Common Stock	A	Dividend	J	T					
130. -- Absolute Strategies Fund		None	K	T					
131. -- Arbitrage Fund Class Institutional		None	J	T					
132. -- DirecTV Common Stock		None							
133. -- Bank of America Corp. Common Stock	A	Dividend							
134. IRA #1									
135. - Schwab U.S. Treasury Money Fund Account	A	Int./Div.	L	T					
136. - Vanguard REIT ETF	A	Dividend	K	T					

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

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Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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 "(XX)" 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)
137. - State of California Municipal Bonds	A	Interest	K	T					
138. IRA #2									
139. - Schwab U.S. Treasury Money Fund Account	E	Distribution	M	T					
140. - Abbott Laboratories Common Stock	A	Dividend	J	T					
141. - Abbvie Inc. Common Stock		None	J	T					
142. - CVS Caremark Corp. Common Stock	A	Dividend	J	T					
143. IRA #3									
144. - Schwab U.S. Treasury Money Fund Account	A	Interest	N	T					
145. - Abbott Laboratories Common Stock	A	Distribution	K	T					
146. - Abbvie Inc. Common Stock		None	K	T					
147. - Bristol Myers Squibb Company Common Stock		None	K	T					
148. - Comcast Corporation Common Stock	A	Dividend	K	T					
149. - CVS Caremark Corp. Common Stock	A	Dividend	K	T					
150. - iShares Barclays TIPS Bond Fund		None	K	T					
151. - Schwab US Broad Market ETF	A	Dividend	K	T					
152. - Vanguard Inflation-Protected Securities Fund	A	Dividend	L	T					
153. - State of California Bonds	B	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	

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Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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)
154. GC&H Investments Partnership		None	K	W					
155. GC&H Investments, LLC Partnership	E	Distribution	M	W					
156. Jones Day Capital Account		None	M	U					
157. Jones Day 2015 Fund		None	M	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $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
Freeman, Beth L.	06/20/2013

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

Name of Person Reporting	Date of Report
Freeman, Beth L.	06/20/2013

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/ **Beth L. Freeman**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	2	971	196	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	328	579	Notes payable to relatives			
Unlisted securities – see schedule		584	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		890	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence	3	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:							
San Mateo County Pension Plan		229	434				
California Judges' System II Pension Plan		573	884				
Peninsula Golf & Country Club		54	000	Total liabilities			0
				Net Worth	12	781	093
Total Assets	12	781	093	Total liabilities and net worth	12	781	093
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	
Abbott Laboratories stock	$ 52,864
Abbvie Inc. stock	63,616
American International Group stock	22,345
Amgen Inc. stock	7,202
Apple Inc. stock	235,928
AT&T Inc. stock	3,675
Berkshire Hathaway stock	22,166
Bristol Myers Squibb Company stock	18,960
Chipotle Mexican Grill stock	6,629
Coca-Cola Company stock	92,928
Colgate-Palmolive Company stock	36,702
Comcast Corporation stock	136,272
CVS Caremark Corp. stock	224,960
DirecTV stock	12,748
Google Inc. stock	21,883
IBM Corp. stock	20,572
Intuitive Surgical stock	87,769
Marathon Oil Corp. stock	21,090
Marathon Pete Corp. stock	24,618
MasterCard Inc. stock	28,573
McDonalds Corp. stock	38,010
Microsoft Corp. stock	239,883
nVidia stock	22,973
Oracle Corp. stock	6,810
Pepsico Incorporated stock	156,902
Procter & Gamble stock	122,820
Rite Aid Corp. stock	2,910
Spectrum Brands Holdings stock	5,886
Target Corporation stock	13,944
Texas Instruments Inc. stock	5,111
TJX Companies Inc. stock	15,255
Verisign Inc. stock	27,824
Visa Inc. stock	90,225
Vodafone Group stock	17,766
Walgreen Company stock	20,308
Wal-Mart Stores Inc. stock	23,193
Absolute Opportunities Fund	14,483
Absolute Strategies Fund	30,716
American Century Intermediate-Term Tax-Free Bond Fund	16,268
Arbitrage Fund Class Institutional	11,576
Arbitrage Fund Class R	1,319

DFA Short Term Municipal Bond Fund	24,810
DFA U.S. Core Equity 1 Portfolio	20,487
DFA U.S. Core Equity 2 Portfolio	3,855
Dreyfus Intermediate Municipal Bond Fund	15,512
Dreyfus Short-Intermediate Municipal Bond Fund	15,455
FPA Crescent Fund	26,405
iShares Barclays TIPS Bond Fund	23,640
iShares MSCI Pacific Ex-Japan Index Fund	38,088
Market Vectors Gold Miners ETF	46,750
Market Vectors Junior Gold Miners ETF	17,824
PowerShares DB Commodity Index Tracking Fund	15,660
Schwab 1000 Index Fund	7,242
Schwab US Broad Market ETF	23,970
Schwab Total Stock Market Index Fund	14,924
SPDR S&P 500 ETF	743,886
Vanguard California Intermediate-Term Tax Exempt Fund	44,147
Vanguard Dividend Appreciation ETF	48,111
Vanguard FTSE All World ex-US ETF	33,334
Vanguard Growth Index Fund	23,992
Vanguard Inflation-Protected Securities Fund	45,616
Vanguard Limited-Term Tax Exempt Investor Share	26,222
Vanguard MSCI EAFE ETF	64,651
Vanguard MSCI Emerging Markets ETF	17,134
Vanguard REIT ETF	22,389
Vanguard Short-Term Tax Exempt Fund	13,513
Vanguard Total Stock Market ETF	408,432
Castro Valley California School District bond	21,154
Hemet California School District bond	107,296
Piedmont California School District bond	15,765
State of California municipal bond	372,633
Total Listed Securities	$4,328,579

Unlisted Securities	
GC&H Investments Partnership	$ 44,000
GC&H Investments, LLC Partnership	176,000
Jones Day capital account	240,000
Jones Day 2015 Fund	124,000
Total Unlisted Securities	$ 584,000

AFFIDAVIT

I, Beth Labson Freeman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 21, 2013
(DATE)

Beth Freeman
(NAME)

RONALD W. MARBLESTONE
Commission # 1942264
Notary Public - California
San Mateo County
My Comm. Expires Jul 23, 2015

Ronald W. Marblestone
(NOTARY) 6/21/13

Senator WHITEHOUSE. Thank you, Judge Freeman. It is our honor to have you here.

And, finally, Mr. Delgado Hernandez, welcome, and you are recognized for any statement and recognitions you would care to make.

STATEMENT OF HON. PEDRO A. DELGADO HERNANDEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF PUERTO RICO

Judge DELGADO. Thank you, Mr. Chairman. I would like to thank the Committee for conducting this hearing here today, Congressman Pierluisi for his kind words and for recommending me to the President, President Obama for having nominated me to the federal bench in the United States District Court for the District of Puerto Rico. I have been humbled, Mr. Chairman, and continue to be deeply humbled by this extraordinary honor.

I would also like to thank my family and friends for their continuing support in this process. My brother, Steven, is here. If he may stand up and be recognized, that would be great.

It is a privilege, Mr. Chairman, to be here, and I will be delighted to respond to any questions the Committee may have.

[The biographical information of Judge Delgado follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Pedro Alberto Delgado Hernández

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

   United States District Judge for the District of Puerto Rico

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: O'Neill & Borges LLC
   American International Plaza
   250 Muñoz Rivera Avenue, Suite 800
   San Juan, Puerto Rico 00918

   Residence: Toa Baja, Puerto Rico

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

   1956; San Juan, Puerto Rico

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

   1979 – 1983, University of Puerto Rico School of Law; J.D. (*magna cum laude*), 1983

   1974 – 1979, University of Puerto Rico; B.S., 1979

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

   1996 – present
   O'Neill & Borges LLC

American International Plaza
250 Muñoz Rivera Avenue, Suite 800
San Juan, Puerto Rico 00918
Capital Partner

1995 – 1996
Circuit Court of Appeals of Puerto Rico
675 César González Street
San Juan, Puerto Rico 00917
Judge

1993 – 1995
Department of Justice of Puerto Rico
601 Olimpo & Axtmayer Street
Stop 11
San Juan, Puerto Rico 00902
Solicitor General

1986 – 1993
O'Neill & Borges
Chase Manhattan Bank Building
254 Muñoz Rivera Avenue, Tenth Floor
San Juan, Puerto Rico 00918
Non-Capital Partner (1990 – 1993)
Associate Attorney (1986 – 1990)

1984 – 1986
United States District Court for the District of Puerto Rico
United States Court of Appeals for the First Circuit
José V. Toledo U.S. Courthouse
300 Recinto Sur, Fourth Floor
San Juan, Puerto Rico 00901
Law Clerk to the Honorable Juan R. Torruella

October 1983 – August 1984
Institute of Judicial Studies
(Predecessor to Judicial Academy of Puerto Rico)
Courts Administration Office of Puerto Rico
677 César González Street
San Juan, Puerto Rico 00917
Law Clerk

September 1982 – May 1983
Research Assistant to Professor Herminio M. Brau
University of Puerto Rico Law School
San Juan, Puerto Rico 00931

May 1979 – May 1985
United States Army Reserve
Reserve Duty, 301st Military Police Company, Puerto Rico (August 1979 – May 1985)
Active Duty for basic and advanced individual training, Ft. McClellan, Alabama (May 1979 – August 1979)

Other Affiliations (uncompensated)

January 1994 – March 1994
Ballet Concierto de Puerto Rico
316 De Diego Avenue
Santurce, Puerto Rico 00907
President of the Board

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 upon turning 18 and served in the military in the following capacities:

   May 1979 – May 1985
   United States Army Reserve
   Honorable Discharge: Specialist (E-4)

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.

   University of Puerto Rico School of Law, *magna cum laude* (1983)

   University of Puerto Rico School of Law, Manuel Resumil Aragunde Award (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.

   American Bar Association (2010 – present)

   Federal Bar Association (2008 – present)

   Ethical Investigation Committee, United States District Court for the District of Puerto Rico (2002 – 2003)

   Puerto Rico Bar Association (1984 – 2010)

10. **Bar and Court Admission**:

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

Puerto Rico, 1983

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 Puerto Rico, 1983
United States Court of Appeals for the First Circuit, 1986
United States District Court for the District of Puerto Rico, 1986

There have been no lapses in membership.

11. **Memberships**:

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

Association of Labor Relations Practitioners (2011 – present)

Ballet Concierto de Puerto Rico (January 1994 – March 1994)
President of the Board

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, or 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.

Documentation: A Sword and a Shield, Personnel Law Update, Council on Education in Management, San Juan, Puerto Rico, March 1997. Copy supplied.

Reducciones de Personal y Cierres de Operaciones (Corporate Shutdowns and Reductions in Force), Seminario Laboral, Puerto Rico Chamber of Commerce, San Juan, Puerto Rico, April 1991. Copy supplied.

Bono de Navidad En El Sector Privado (Private-Sector Christmas Bonus in Puerto Rico), Derecho Laboral, Boletín Informativo de la Comisión de Derecho Laboral del Colegio de Abogados de Puerto Rico, Vol. 4 (Sept. 1989 – Oct. 1990). Copy supplied.

Derechos En Cierres De Planta, Despidos y Cesantías Económicas (Shutdowns, Layoffs and Economic - Related Dismissals), Boletín Informativo de la Comisión de Derecho Laboral del Colegio de Abogados de Puerto Rico, Vol. 3 (1988 – 1989). Copy supplied.

COBRA (Medical Plan Continuation Coverage), Boletín Informativo de la Comisión de Derecho Laboral del Colegio de Abogados de Puerto Rico, Vol. 2 (1987 – 1988). Copy supplied.

Cuando No Se Puede Tomar Más de Uno: La Opción del Conductor a la Prueba de Embriaguez (Sobriety Tests), Boletín Judicial, Vol. 6, N.2 (1984). Copy supplied.

La Regla 95.1 De Procedimiento Criminal: Uso y Desuso (Rule 95.1 of Puerto Rico Rules of Criminal Procedure), Boletín Judicial, Vol. 5, N.4 (1983). Copy supplied.

Reflexiones Sobre Los Efectos Jurídicos De La Adopción Por Nnuestro Tribunal Supremo De La Doctrina Civilista De La Causalidad Adecuada Para Imponer Responsabilidad Extracontractual (Test adopted in Puerto Rico to assess causality in context of extracontractual liability), with Professor Herminio M. Brau, Revista del Colegio de Abogados de Puerto Rico, Vol. 44, No. 2 (1983). 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.

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.

February and March 2012: Speaker on personnel contracting and just cause for employment termination in light of recent decisions of the Puerto Rico Supreme Court, Client Briefing, O'Neill & Borges, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of O'Neill & Borges is American International Plaza, 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918.

February and March 2011: Speaker on statutory leaves of absence and developments in employment-related torts, Client Briefing, O'Neill & Borges, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of O'Neill & Borges is American International Plaza, 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918.

February 2010: Speaker on developments on workplace harassment, Client Briefing, O'Neill & Borges, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of O'Neill & Borges is American International Plaza, 250 Muñoz Rivera Avenue, Suite 800, San Juan, Puerto Rico 00918.

October 2007: Panelist, Hispanic National Bar Association Convention, Litigation Panel, San Juan, Puerto Rico. Opening remarks supplied.

February 1999: Panel Moderator, Labor Law Conference, Inter-American University School of Law, San Juan, Puerto Rico. Opening remarks supplied.

May 1998: Speaker on employer rights under the Family and Medical Leave Act, Personnel Law Update, Council on Education in Management, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of the Council on Education in Management is 350 North Wiget Lane, Suite 100, Walnut Creek, CA 94598.

April 1991: Speaker on Corporate Shutdowns and Layoffs, Seminar, Puerto Rico Chamber of Commerce, San Juan, Puerto Rico. I spoke from notes based on paper distributed in the seminar. Paper previously supplied in response to Question 12a.

March 1990: Speaker on Federal Minimum Wage in Puerto Rico, Seminar, Puerto Rico Chamber of Commerce, San Juan, Puerto Rico. I have no notes, transcript or recording. The address of the Puerto Rico Chamber of Commerce is 100 Tetuan Street, San Juan PR 00901.

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.

Buena Acogida Togada a Designación de Gelpi, EL NUEVO DÍA, April 26, 2006. 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 served as a judge on the Puerto Rico Circuit Court of Appeals from 1995 to 1996 after being appointed by the Governor of Puerto Rico and confirmed by Puerto Rico's Senate. The Circuit Court of Appeals, currently known as the Court of Appeals, is the intermediate court of appeals in Puerto Rico. It has statutory jurisdiction over judgments and orders issued by the Court of First Instance of Puerto Rico in civil and criminal cases, and over orders issued by administrative agencies in the Commonwealth. The Court has 39 judges organized in three-judge panels. The Puerto Rico Supreme Court reviews the decisions of the Court of Appeals.

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

As a judge in the Court of Appeals, I did not preside over cases to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___%
civil proceedings:	___%
criminal proceedings:	___%

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

I wrote the opinion in the following 56 published decisions:

(1) *Primerica Life Insurance Company v. García et al.*, No. KLAN 95-00719 & KLCE 95-00959, 1996 PR App. LEXIS 1016 (P.R. Cir. May 30, 1996).

(2) *Pueblo de Puerto Rico en interés del menor J.L.Q.R.*, No. KLCE 96-00281 96 DTA 818 (P.R. Cir. May 30, 1996).

(3) *Mercado Del Valle, et al. v. Panthers Military Society et al.*, No. KLAN 95-00801, 1996 PR App. LEXIS 796 (P.R. Cir. April 30, 1996).

(4) *López Velardo v. García, et al.*, No. KLAN 95-00917, 1996 PR App. LEXIS 1195 (P.R. Cir. April 30, 1996).

(5) *Nieves Méndez, et al. v. Mercado Rivera et al., No. KLAN 95-00777*, 1996 PR Ap. LEXIS 1196 (P.R. Cir. April 30, 1996).

(6) *Padilla Lugo v. Carlo Maya*, No. KLCE 96-00334, 1996 PR App. LEXIS 1204 (P.R. Cir. April 30, 1996).

(7) *Pérez Hidalgo, et al. v. Rovira, et al.*, No. KLAN 95-00990, 1996 PR App. LEXIS 1213 (P.R. Cir. April 30, 1996).

(8) *Sociedad Legal de Gananciales et al.* v. *Municipio de Aguada, et al.*, No. KLAN 95-00861, 1996 PR App. LEXIS 942 (P.R. Cir. March 29, 1996).

(9) *Vázquez Rivera v. American Express Travel Related Services Co., Inc., Amex Assurance Company*, No. KLCE 96-00132, 1996 PR App. LEXIS 962 (P.R. Cir. March 29, 1996).

(10) *Vázquez Rivera, et al. v. Giles et al.*, No. KLAN-96-00064, 96 DTA 633 (P.R. Cir. February 29, 1996).

(11) *La Cruz Azul de P.R., Inc. v. Polanco Martínez et al.*, KLAN 95-00040, 1996 PR App. LEXIS 1623 (P.R. Cir. February 22, 1996).

(12) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Pepsi Cola Puerto Rico Bottling Co.*, No. KLAN 96-00040, 1996 PR App. LEXIS 1625 (P.R. Cir. February 22, 1996).

(13) *Pueblo de Puerto Rico v. Santiago Rodríguez*, No. KLCE 95-00993, 1996 PR App. LEXIS 1626 (P.R. Cir. February 22, 1996).

(14) *Pueblo de Puerto Rico v. Vargas González*, No. KLCE-96-00145, 96 DTA 577 (P.R. Cir. February 21, 1996).

(15) *Pueblo de Puerto Rico v. Rivera Hernández*, No. KLCE 96-00086, 1996 PR App. LEXIS 1297 (P.R. Cir. January 31, 1996).

(16) *Baco Rodríguez et al. v. Bumble-Bee International, Inc.*, No. KLAN 95-01411, 1996 PR App. LEXIS 1298 (P.R. Cir. January 31, 1996).

(17) *Pueblo de Puerto Rico v. Carlo Padilla*, No. KLCE 96-00049, 1996 PR App. LEXIS 1312 (P.R. Cir. January 31, 1996).

(18) *Sociedad de Gananciales v. Sociedad de Gananciales*, No. KLAN 95-00711, 1996 PR App. LEXIS 1313 (P.R. Cir. January 31, 1996).

(19) *Vélez Montalvo v. Ocasio Sepúlveda et al.*, No. KLAN 95-00723, 1996 PR App. LEXIS 1322 (P.R. Cir. January 31, 1996).

(20) *Estancias de Yauco, S.E. v. Clamil Construction et al.*, No. KLCE 96-00065, 1996 PR App. LEXIS 1323 (P.R. Cir. January 31, 1996).

(21) *Pueblo de Puerto Rico v. Carlo Padilla et al.*, No. KLCE 96-00069, 1996 PR App. LEXIS 1325 (P.R. Cir. January 31, 1996).

(22) *Núñez Acevedo v. McGAW de Puerto Rico, Inc.*, No. KLCE-95-01071, 96 DTA 556 (P.R. Cir. January 30, 1996).

(23) *Ayala, Et al v. Estado Libre Asociado de PR, et al.*, No. KLCE 95-01023, 1996 PR App. LEXIS 1253 (P.R. Cir. January 25, 1996).

(24) *Tirado Colón et al. v. Reina de Los Ángeles, Inc. et al.*, No. KLCE 95-00264, 1996 PR App. LEXIS 1432 (P.R. Cir. January 11, 1996).

(25) *Acevedo Rodríguez v. Bonilla Avilés*, 95 DTA 1190, 95 DTA 1190 (P.R. Cir. December 15, 1995).

(26) *Pueblo de Puerto Rico v. Crespo Cardona*, No. KLAN-95-01372, 95 DTA 1002 (P.R. Cir. December 14, 1995).

(27) *Vélez Valle v. Rodríguez*, No. KLCE-95-00520, 95 DTA 1165 (P.R. Cir. November 28, 1995).

(28) *Vázquez Bonilla v. Valentín Vazquez et al.*, No. KLCE-95-00533, 95 DTA 951 (P.R. Cir. November 28, 1995).

(29) *Pueblo de Puerto Rico v. Rivera Rivera et al.*, No. KLCE-95-00632, 95 DTA 1153 (P.R. Cir. November 17, 1995).

(30) *Ferrer Pabón v. Departamento de Hacienda*, No. KLCE95-00604, 1995 PR App. LEXIS 946 (P.R. Cir. November 7, 1995).

(31) *Díaz Vicente v. Hospital General Menonita, Inc. y Otros*, No. KLCE 95-00401, 95 DTA 846 (P.R. Cir. October 31, 1995).

(32) *Peña Rondón et al. v. Seguros Triple S Inc. et al.*, No. KLAN-95-00290, 95 DTA 305 (P.R. Cir. September 30, 1995).

(33) *Espinosa Cabrera v. Mass Services Corporation H/N/C Farmacias El Amal*, No. KLAN- 95-00382, 95 DTA 304 (P.R. Cir. September 30, 1995).

(34) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Banco Popular de Puerto Rico*, No. KLAN 96-00222, 95 DTA 303 (P.R. Cir. September 30, 1995).

(35) *Román Román v. Manzano et al.*, No. KLCE-95-00598, 95 DTA 958 (P.R. Cir. September 25, 1995).

(36) *Figueroa Rodríguez et al. v. Flores et al.*, No. KLAN 95-00162, 1995 PR App. LEXIS 16 (P.R. Cir. August 31, 1995).

(37) *Nieves Nieves et al. v. Sanabria et al.*, No. KLCE 95-00263, 1995 PR App. LEXIS 721 (P.R. Cir. August 31, 1995).

(38) *Administración de Reglamentos y Permisos v. Meléndez et al.*, No. KLCE 95-00170, 1995 PR App. LEXIS 724 (P.R. Cir. August 31, 1995).

(39) *Sánchez Sánchez et al., v. Irizarry Pérez et al.*, No. KLAN95-00141, 1995 PR App. LEXIS 752 (P.R. Cir. August 31, 1995).

(40) *Solís, et al. v. Corporación Azucarera de Puerto Rico*, No. KLCE95-00340, 1995 PR App. LEXIS 709 (P.R. Cir. August 30, 1995).

(41) *Fondo del Seguro del Estado v. Edcar Industries, Inc.*, No. KLCE 95-00277, 1995 PR App. LEXIS 626 (P.R. Cir. August 18, 1995).

(42) *Felipez Montes v. Díaz et al.*, No. KLAN 95-00165, 1995 PR App. LEXIS 627 (P.R. Cir. August 18, 1995).

(43) *Bernal Ayala v. Searle & Co. y Fondo del Seguro del Estado,* No. KLAN 95-00296, 1995 PR App. LEXIS 629 (P.R. Cir. August 18, 1995).

(44) *Banco Santander de Puerto Rico v. Fajardo Farms Corporation*, No. KLAN 95-00177, 1995 PR App. LEXIS 628 (P.R. Cir. August 18, 1995).

(45) *Gerena Mendoza v. Velázquez Contreras*, No. KLAN 95-00146, 1995 PR App. LEXIS 690 (P.R. Cir. May 26, 1995).

(46) *Santander National Bank (Sustituido por Olimpic Mortgage Bankers Corp.) v. Pérez & Pérez Auto Parts, Inc. et al.*, No. KLAN 95-00168, 1995 PR App. LEXIS 267 (P.R. Cir. May 26, 1995).

(47) *Quiros Torres v. Depto. de Educación Pública et al.*, No. KLAN 95-00169, 1995 PR App. LEXIS 268 (P.R. Cir. May 26, 1995).

(48) *Gerena Mendoza v. Velázquez Contrera*, No. KLAN 95-00146, 1995 PR App. LEXIS 269 (P.R. Cir. May 26, 1995).

(49) *Ávila Velázquez v. Municipio de San Juan et al.*, No. KLAN 95-00166, 1995 PR App. LEXIS 270 (P.R. Cir. May 26, 1995).

(50) *Rosario De León v. Rodríguez Ramírez*, No. KLAN 95-00167, 1995 PR App. LEXIS 275 (P.R. Cir. May 26, 1995).

(51) *Tronçoso et al. v. Blanco et al.*, No. KLAN 95-00164, 1995 PR App. LEXIS 276 (P.R. Cir. May 26, 1995).

(52) *Cooperativa de Ahorro y Crédito Guayama o Cooperativa de Ahorro y Crédito Maunabo v. Torres et al.*, No. KLCE 95-00174, 1995 PR App. LEXIS 277 (P.R. Cir. May 26, 1995).

(53) *Nieves v. Poncebank Corp.*, No. KLCE 95-00200, 1995 PR App. LEXIS 279 (P.R. Cir. May 26, 1995).

(54) Blanco De La Torre et al. v. Campo et al., No. KLCE 95-00125, 1995 PR App. LEXIS 279 (P.R. Cir. April 28, 1995).

(55) *Rodríguez h/n/oc Super Service, et al. v. Harper-Wyman Company, et al.*, No. KLCE 95-00113, 1995 PR App. LEXIS 121 (P.R. Cir. April 28, 1995).

(56) *M & A Financial Corp. v. Hernández Lizardi et al.*, No. KLCE 95-00180, 1995 PR App. LEXIS 126 (P.R. Cir. April 28, 1995).

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).

When I left the Circuit Court of Appeals of Puerto Rico in 1996, I did not take my files with me. Unfortunately, the information relating to the attorneys assigned to the case from this time period exists only in the hard copy files. These closed case files have been moved to an offsite warehouse facility.

(1) *Pueblo de Puerto Rico en interés del menor J.L.Q.R.*, No. KLCE 96-00281, 96 DTA 818 (P.R. Cir. May 30, 1996).

The issue in this case was whether the trial court erred in amending the indictment over the prosecution's objection, to charge a juvenile with a crime carrying a lesser sentence. After a judicial finding of probable cause, the defendant had been charged with possession with intent to distribute a controlled substance. On the day of the trial, the judge amended the indictment *sua sponte*, after which the defendant pled guilty to the lesser crime and was sentenced accordingly. The prosecution objected it was entitled to present evidence of the crime originally charged.

In a unanimous opinion I authored, the court of appeals held that the trial court may not deprive the prosecutor of the prerogative of presenting evidence of the crime charged in the indictment by reducing the crime without hearing the evidence in support of the charge.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(2) *Velardo v. Garcia et al.*, No. KLAN 95-00917, 1996 PR App. LEXIS 796 (P.R. Cir. Apr. 30, 1996).

The issue in this case was whether the owner of a leased property had the right to reclaim the property for commercial development based on his asserted intent to so develop under the Puerto Rico Reasonable Leases Act. The owner filed an eviction action against the lessee to recover possession of the property to open a restaurant. The trial court rejected the owner's claim because even though he had expressed the intent to open a restaurant, he had no experience in the restaurant industry, and had not sought advice on the matter.

In a unanimous opinion I authored, the appeals court held that there was no basis to reject the lessor's claim of intent to open a restaurant in the property. First, the lessee admitted in the answer to the complaint and during the trial that the owner intended to open a restaurant. Second, the Puerto Rico Supreme Court had never imposed upon owners the obligation to obtain specialized advice as a condition precedent to reclaim property for commercial development but had rather recognized eviction actions under analogous circumstances.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(3) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Pepsi Cola Puerto Rico Bottling Co.*, No. KLAN 96-00040, 1996 PR App. LEXIS 1625 (P.R. Cir. February 22, 1996).

The issue in the case was whether the defendant employer was entitled to relief from a default judgment in a case seeking payment of discharge indemnity under the Puerto Rico Unjust Discharge Act. Plaintiff sued the employer pursuant to a special statute governing the judicial transmittal of labor and employment claims. The trial court entered a default judgment against the defendant employer, after which the employer unsuccessfully moved for relief from judgment.

In a unanimous opinion I authored, the appeals court held that the statute pursuant to which the complaint had been filed requires motions for relief from judgment to be filed under oath, which the employer had not done. Therefore, relief from judgment had been properly denied for failure to comply with this statutory requirement.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(4) *Núñez Acevedo v. McGAW de Puerto Rico, Inc.*, No. KLCE-95-01071, 96 DTA 556 (P.R. Cir. January 30, 1996).

The issue in the case was whether a debtor in bankruptcy had the obligation to list a particular claim in schedules filed with the Bankruptcy Court, and could pursue in state court a claim for payment of services rendered. Plaintiff sued the defendant to collect amounts allegedly due for unpaid services and for related damages. Defendant sought dismissal claiming that (1) plaintiff had committed fraud because he had filed for bankruptcy and failed to list the claim against the defendant in the schedules submitted to the Bankruptcy Court, and (2) plaintiff lacked standing to bring the action because it corresponded to the bankruptcy trustee. The trial court denied the motion to dismiss.

In a unanimous opinion I authored, the appeals court held that even though then existing provisions of the Bankruptcy Code required plaintiff to list claims for

services rendered prior to the bankruptcy filing, the claims at issue in the case were based on services rendered after the filing. Likewise, notwithstanding the fact that the trustee represented the estate, the claims at issue originated after the bankruptcy filing and hence, were not part of the estate. Accordingly, the motion to dismiss had been properly denied.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(5) *Pueblo de Puerto Rico v. Rivera Rivera*, No. KLCE-95-00632, 95 DTA 1153 (P. R. Cir. November 17, 1995).

The issue in this case was whether to uphold the trial court's order that the prosecutor must provide the defendant with a copy of a sworn statement prior to the hearing to be held to determine if probable cause existed to accuse defendant of the crimes for which he had been arrested.

In the majority opinion I authored, the appeals court held the Rules of Criminal Procedure regulate discovery, providing in relevant part that defendants are entitled to examine sworn statements of witnesses the prosecution uses at the preliminary hearing. In this case, however, the prosecution did not intend to use the declarant as a witness during that hearing. Therefore, the defendant was not entitled to examine the sworn statement at that stage of the process.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report in Court of Appeals. Since the Supreme Court reviewed the case, the names of the attorneys was included in the Supreme Court's decision, as follows: for petitioner Rivera Rivera, Zinia Acevedo (Legal Aid Society of Puerto Rico); for the government (Pueblo de Puerto Rico), Carlos Lugo Fiol, Jacqueline Novas, Ricardo Alegría Pons, and Angel Rivera. No additional contact information appears in the published decision.

(6) *Espinosa Cabrera v. Mass Services Corporation H/N/C Farmacias El Amal*, No. KLAN- 95-00382, 95 DTA 304 (P. R. Cir. September 30, 1995).

The issue in the case was whether a sale of assets qualified as a transfer of an ongoing business under the Puerto Rico Unjust Discharge Act. Plaintiff was discharged during a probationary period but alleged entitlement to the statutory indemnity under the Unjust Discharge Act because she came to be an employee of the defendant when the company for which she was working was sold to the defendant. The trial court agreed with plaintiff.

In a unanimous opinion I authored, the appeals court reversed. The court held that the statute prohibits the assets purchaser from conditioning employment of the seller's employees upon successful completion of a probationary period only

when it has purchased an ongoing business, and no such purchase existed in the case. The purchaser had acquired the assets of plaintiff's former employer but had immediately liquidated the business rather than manage it as an ongoing concern. Consequently, there was no ongoing business precluding the purchaser from conditioning plaintiff's employment at a different facility upon successful completion of a probationary period.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(7) *Solís et al. v. Corporación Azucarera de Puerto Rico*, No. KLCE95-00340, 1995 PR App. LEXIS 709 (P. R. Cir. August 30, 1995).

The issue in the case was whether a genuine issue of material fact precluded summary judgment dismissing plaintiffs' overtime claims. Puerto Rico law requires payment of overtime to non-exempt executive, administrative, and professional employees. Eight plaintiffs filed a complaint seeking overtime pay. Defendant filed a motion for summary judgment requesting dismissal, alleging plaintiffs were exempt executive employees. The trial court denied the motion for summary judgment.

In a unanimous opinion I authored, the appeals court held that based on the regulatory factors used to define an executive employee, the evidence submitted in support of the motion for summary judgment was insufficient to conclude plaintiffs were exempt executive employees as a matter of law. Therefore, the motion for summary judgment had been correctly denied.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(8) *Cooperativa de Ahorro y Crédito Guayama o Cooperativa de Ahorro y Crédito Maunabo v. Torres et al.*, No. KLCE 95-00174, 1995 PR App. LEXIS 279 (P. R. Cir. May 26, 1995).

The issue in the case was whether a joint debtor should have been excluded from an adverse judgment issued in a collection action. A credit union sued the respondent and another person to collect a loan in arrears. The trial court entered judgment against the defendants, both of whom had signed a promissory note, but subsequently amended the judgment to exclude the respondent because the creditor had not attempted to renegotiate the debt with her, and allegedly she had not been notified of the trial date.

In a unanimous opinion I authored, the appeals court held that respondent was not entitled to be excluded from the adverse judgment. First, the record showed she was notified of the trial date. Second, since the Puerto Rico Civil Code entitles creditors to collect from any or all of the joint debtors, she was a proper party in

the case. Third, the Civil Code similarly provides a creditor need not accept a lesser payment than the parties have agreed on, such that the respondent could not compel the creditor to agree to a restructuring of the debt through a payment plan.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(9) *Nieves v. Poncebank Corp.*, No. KLCE 95-00200, 1995 PR App. LEXIS 279 (P. R. Cir. May 26, 1995).

The issue in the case was whether a default judgment should have been entered against the defendant employer. Plaintiff sued defendant alleging employment discrimination, retaliation, and unjust discharge. In lieu of filing an answer, the defendant moved for dismissal or summary judgment based on *res judicata* because plaintiff had unsuccessfully filed similar claims in the past. Plaintiff countered the trial court should have ordered entry of a default judgment against defendant because the case had been filed under the special statute for the judicial transmittal of labor and employment claims, and the statute requires a default to be entered if the defendant does not answer within a number of days after being served. The trial court denied plaintiff's motion.

In an opinion I authored, the appeals court unanimously held that default was not proper based on Puerto Rico Supreme Court precedent. Consequently, the trial court correctly denied plaintiff's request for a default judgment.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(10) *M & A Financial Corp. v. Hernández Lizardi et al.*, No. KLCE 95-00180, 1995 PR App. LEXIS 126 (P. R. Cir. April 28, 1995).

The issue in the case was whether a preferential creditor is an indispensable party in a collection action initiated by a subordinated creditor. Petitioners were sued for failure to satisfy a personal loan. Judgment was entered, a lien was recorded on their property, the title was transferred, and an order of eviction issued. Petitioners claimed the judgment was void because the property was subject to a first mortgage, and the mortgagee had not been made a party in the case despite being in their view an indispensable party. The trial court rejected the claim.

In an opinion I authored, the appeals court unanimously held that based on the concept of "indispensable party" incorporated in the Puerto Rico Rules of Civil Procedure, and in light of rights the Commonwealth's Mortgage Act accords to preferential creditors, the holder of a first mortgage is not an indispensable party in a personal or real action brought by a subordinated creditor against the debtor. The preferential credit is not altered by any such action because it is protected

against potentially conflicting claims that may be brought by the subordinated creditors.

Counsel: Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

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. For the cases where you don't have contact information – is this information available on the docket?

The name and contact information for the attorneys who played a significant role in the case is not available from published opinion reports. When I left the Circuit Court of Appeals of Puerto Rico in 1996, I did not take my files with me. Unfortunately, the information relating to the attorneys assigned to the case from this time period exists only in the hard copy files. These closed case files have been moved to an offsite warehouse facility.

(1) *Pueblo de Puerto Rico en interés del menor J.L.Q.R.*, No. KLCE 96-00281, 96 DTA 818 (P.R. Cir. May 30, 1996).

(2) *López Velardo v. García, et al.*, No. KLAN 95-00917, 1996 PR App. LEXIS 796 (P.R. Cir. Apr. 30, 1996).

(3) *Secretario del Trabajo y Recursos Humanos de Puerto Rico v. Pepsi Cola Puerto Rico Bottling Co.*, No. KLAN 96-00040, 1996 PR App. LEXIS 1625 (P.R. Cir. February 22, 1996).

(4) Núñez Acevedo v. McGAW de Puerto Rico, Inc., No. KLCE-95-01071, 96 DTA 556 (P.R. Cir. January 30, 1996).

(5) *Pueblo de Puerto Rico v. Rivera Rivera*, No. KLCE-95-00632, 95 DTA 1153 (P.R. Cir. November 17, 1995). Name and contact information for the attorneys who played a significant role in the case not available from published opinion report in Court of Appeals. Since the Supreme Court reviewed the case, the names of the attorneys were included in the Supreme Court's decision, as follows: for petitioner Rivera Rivera, Zinia Acevedo (Legal Aid Society of Puerto Rico); for the government (El Pueblo de Puerto Rico), Carlos Lugo Fiol, Jacqueline Novas, Ricardo Alegría Pons, and Angel Rivera. No additional contact information appears in the published decision.

(6) *Espinosa Cabrera v. Mass Services Corporation H/N/C Farmacias El Amal*, No. KLAN- 95-00382, 95 DTA 304 (P.R. Cir. September 30, 1995). Name and contact information for the attorneys who played a significant role in the case not available from published opinion report.

(7) *Solís et al. v. Corporación Azucarera de Puerto Rico*, No. KLCE95-00340, 1995 PR App. LEXIS 709 (P.R. Cir. August 30, 1995).

(8) *Cooperativa de Ahorro y Crédito Guayama o Cooperativa de Ahorro y Crédito Maunabo v. Torres et al.*, No. KLCE 95-00174, 1995 PR App. LEXIS 279 (P.R. Cir. May 26, 1995).

(9) *Nieves v. Poncebank Corp.*, No. KLCE 95-00200, 1995 PR App. LEXIS 279 (P.R. Cir. May 26, 1995).

(10) *M & A Financial Corp. v. Hernández Lizardi et al.*, No. KLCE 95-00180, 1995 PR App. LEXIS 126 (P.R. Cir. April 28, 1995).

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

None.

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

Banco Santander de Puerto Rico v. Fajardo Farms Corporation, No. KLAN 95-00177, 1995 PR App. LEXIS 628 (P.R. Cir. Aug. 18, 1995); *rev'd*, 141 D.P.R. 237 (P.R. 1996).

In a unanimous opinion, the court of appeals concluded that a motion for additional findings of fact did not toll the statutory period within which to seek review of the trial court's denial of a request for relief from judgment, because as enacted, the motion for additional findings refers to requests on facts to be included in a judgment rather than in an order denying relief from judgment. The Supreme Court reversed, finding the motion for additional findings of fact tolls the period to seek review of denial of a motion for relief from judgment if relief is grounded on the trial court's lack of personal jurisdiction.

La Sociedad Legal de Gananciales compuesta por Pablo Salas Mangual, et al. v. *Municipio de Aguada, et al.*, No. KLAN 95-00861 1996 PR App. LEXIS 942 (Mar. 29, 1996), *rev'd*, 144 D.P.R. 114 (P.R. 1997).

In a unanimous opinion, the court of appeals concluded that a paved trail constituted an easement (servitude) of passage or right of way by sign on a property because the trial judge had properly inspected the area in question and confirmed the trail had been constructed prior to appellants' acquisition of the property and was used by the public at large. Further, appellant's purchase title did not negate or qualify the right of way. The Supreme Court reversed, holding

no right of way had been established by sign because the paved trail ran through three parcels of land, and the record did not evidence the trail had been constituted by a single owner prior to transferring the corresponding titles.

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

I estimate that 5% of my decisions were unpublished opinions. Unpublished decisions are maintained in the corresponding court files. In closed cases, the files are kept in official offsite storage at a warehouse with the Office of Court Administration of Puerto Rico.

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

None.

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

None.

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

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

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

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

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

The issue of recusal did not arise in any matter in which I was involved. Rule 63.1 of the Puerto Rico Rules of Civil Procedure sets forth the grounds upon

which a judge should disqualify himself or herself from a proceeding, and establishes the procedure by which recusal is perfected. Recusal may be entered sua sponte or by motion. A recusal motion must be sworn, stating the facts upon which it is grounded. If the judge decides recusal is not appropriate, the motion is referred to another judge to adjudicate the recusal request. Grounds for recusal include instances where the judge's impartiality might reasonably be questioned, such as when a judge may have a personal bias or prejudice concerning a party or a party's attorney, personal interest in the outcome of the case, and family relationship with any of the parties or their attorneys.

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.

Solicitor General of Puerto Rico (1993 – 1995). I was appointed by the Governor of Puerto Rico (Hon. Pedro Rosselló-González), and confirmed by Puerto Rico's Senate. 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.

2007 – 2008: Campaigns of Pedro Pierluisi for Resident Commissioner (Puerto Rico's non-voting member of Congress), and of Luis Fortuño for Governor of Puerto Rico. I was a volunteer providing assistance on compliance and legal issues throughout the campaign.

2012: Reelection Campaigns of Pedro Pierluisi for Resident Commissioner, and of Luis Fortuño for Governor of Puerto Rico. I was a volunteer providing assistance on compliance and legal issues throughout the campaign.

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

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

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

From 1983 to 1984, I served as a law clerk in the Institute of Judicial Studies of the Courts Administration Office of Puerto Rico. The Institute of Judicial Studies is the predecessor of the Judicial Academy of Puerto Rico. It provided assistance to trial judges with legal research and with writing of draft orders and judgments.

From September 1984 to November 1984, I served as a law clerk to the Honorable Juan R. Torruella, Chief Judge of the United States District Court for the District of Puerto Rico. From November 1984 to August 1986, I continued to clerk for the Honorable Juan R. Torruella after he was appointed as a Circuit Judge of the United States Court of Appeals for the First Circuit.

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

I have never practiced law alone.

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

1986 – 1993
O'Neill & Borges
Chase Manhattan Bank Building,
Tenth Floor
254 Muñoz Rivera Avenue
San Juan, Puerto Rico 00918
Associate Attorney (1986 – 1990)
Non-Capital Partner (1990 – 1993)

1993 – 1995
Department of Justice of Puerto Rico
601 Olimpo & Axtmayer Street
Stop 11
San Juan, Puerto Rico 00902
Solicitor General

1995 – 1996
Circuit Court of Appeals of Puerto Rico
Current Address:
675 César González Street.
San Juan, Puerto Rico 00919
Judge

1996 – present
O'Neill & Borges

American International Plaza
250 Muñoz Rivera Avenue, Suite 800
San Juan, Puerto Rico 00918
Capital Partner (1996 – present)

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

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

After completing my clerkship, I began private practice in 1986 at O'Neill & Borges. As an associate, and then as a partner beginning in 1990, I worked on a mix of trial court and appellate matters before federal and state courts, the diversity and complexity of which have increased over the years. Initially, these matters involved issues such as wrongful discharge, and corporate reorganizations and shutdowns.

In 1993, I was appointed Solicitor General of Puerto Rico. As Solicitor General, I was responsible for investigating ethical complaints against practicing attorneys and for representing the Government of Puerto Rico on appellate matters before the Commonwealth's Supreme Court and the United States Court of Appeals for the First Circuit. I represented the government on a broad variety of civil and criminal issues, including the constitutionality of amendments to the Constitution of Puerto Rico, the statutory arrest authority of municipal police officers, and tort liability.

In 1995, I was appointed as a judge in the Circuit Court of Appeals of Puerto Rico, currently known as Court of Appeals. The Court serves as the intermediate court of appeals in the Commonwealth, with jurisdiction over civil and criminal cases originating in the Court of First Instance, and over orders issued by administrative agencies pursuant to the Puerto Rico Uniform Administrative Procedure Act. Its decisions are reviewed by the Puerto Rico Supreme Court.

In 1996, I returned to private practice as a partner in O'Neill & Borges. Upon return to the firm, I expanded the scope of my practice to include litigation related to employment, commercial, and administrative matters in federal and Puerto Rico Courts. In June 1998, the State Elections Commission of Puerto Rico retained me while in O'Neill & Borges to

provide legal services to the Commission. I did so until June 2006.

As outside counsel to the Commission, I advised and represented the agency before federal and state courts in cases involving different aspects of the electoral law, such as the legality of political-party registration requirements; validity of permanent ineligibility for public office; deadlines to comply with candidacy qualification requirements; right of political parties to disqualify certified candidates from the ballot; status option representation in status plebiscites; and the Government's right to speech financed with public funds during electoral campaigns.

From December 1998 until November 1999, I was Assistant Managing Partner of O'Neill & Borges, and from December 1999 until November 2002, I was the Managing Partner of the firm.

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

I have provided legal services to companies in the airline, banking, construction, product-distribution, food-processing, insurance, manufacturing, pharmaceutical, restaurant, and telecommunication industries, and to government entities such as the Puerto Rico State Elections Commission, the Commonwealth's Hotel Development Corporation, and the Corporation of the State Insurance Fund, which administers the state's worker's compensation system. Initially, I devoted most of my time to labor and employment law and litigation. Upon returning to private practice after serving as Solicitor General and judge in the Commonwealth's Circuit Court of Appeals, I expanded my practice to include employment law, commercial, and administrative 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.

Approximately 90% of my practice has been in litigation. Over the course of my career, I have appeared in court frequently to attend court conferences, oral arguments, and evidentiary hearings.

i. Indicate the percentage of your practice in:

1. federal courts: 50 %
2. state courts of record: 45 %
3. other courts: 0 %
4. administrative agencies: 5%

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 25 cases to verdict, judgment or final decision (one of the cases was tried before a jury): 16 as sole counsel, eight as chief counsel, and one as associate counsel.

i. What percentage of these trials were:
1. jury: 4%
2. non-jury: 96 %

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 law 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. Specifically describe the trials and holdings. Also, consider substituting some older cases with more recent ones.

(1) *Rosselló-González v. Calderón-Serra et al.*, 398 F. 3d 1 (1st Cir. 2005).

This case involved the exercise of federal jurisdiction in a state electoral dispute related to one of the candidates for governor and a number of voters who had voted for him in the general election. I represented the co-defendant State

Elections Commission as chief counsel at trial, and assisted Professor Richard Pildes of New York University on appeal.

Plaintiffs challenged the legality of certain ballots cast in the election that resulted in the plaintiff's losing the election by approximately 3,800 votes out of more than two million votes cast. The ballots in question contained a mark under the insignia of one political party and marks next to another political party's candidates for governor and resident commissioner. The State Elections Commission decided the ballots contained valid votes for both the marked candidates and the marked party.

Plaintiffs initiated the action in the U.S. District Court for the District of Puerto Rico asserting various federal constitutional claims. A parallel action was initiated against the Commission and the Electoral Commissioners in state court by voters who alleged to have voted in the way being challenged in federal court. One of the defendants removed the case to the United States District Court, which exercised jurisdiction holding three weeks of extensive evidentiary hearings.

The First Circuit reversed and ordered dismissal, holding plaintiffs had not shown voter disenfranchisement necessary to rebut the presumption of federal non-intervention in state election disputes or a viable claim under *Bush v. Gore*, 531 U.S. 98 (2000).

United States District Court:	Judge Daniel R. Domínguez
United States Court of Appeals:	Judge Juan R. Torruella Judge Norman H. Stahl Judge Jeffrey R. Howard
Opposing Counsel:	James F. Hibey William R. Sherman Howrey LLP 1299 Pennsylvania Avenue, NW Washington, D.C. 20004 (202) 783-0800
	Luis Berríos Amadeo Cancio, Nadal, Rivera & Díaz 403 Muñoz Rivera Avenue San Juan, P.R. 00917 (787) 767-9625
	Andrés López Law Offices of Andrés López 207 Del Parque Street Third Floor

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Counsel for Codefendant
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Cooper & Kirk, PLLC
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Washington, DC 2005
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Sila M. Calderón:

Rafael Escalera Rodríguez
Reichard & Escalera
MCS Plaza
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San Juan, P.R. 00918
(787) 758-8888

Counsel for Codefendant Incoming
Transition Committee:

Luis Sánchez-Betances
Sánchez- Betances & Sifre
(currently Secretary of Justice
for Puerto Rico)
33 Bolivia Street, 5th Floor
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(787) 756-7880

Co-counsel for State Elections
Commission:

Ramón Walker Merino
255 Recinto Sur Street
San Juan, P.R.
(787) 275-2068

Co-counsel for State Elections
Commission:

Eileen García Wirshing
(currently law clerk to the Hon. Aida
Delgado-Colón, Chief Judge of the
United States District Court for the
District of Puerto Rico)
Clemente Ruiz Nazario U.S.
Courthouse

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San Juan, P.R. 00918
(787) 772 3195

(2) *Casiano Montañez, et al. v. Corporation of the State Insurance Fund et al.*, 852 F. Supp. 2d 177 (D.P.R. 2012), 703 F. 3d 124 (1st Cir. 2013).

At issue was the exercise of federal jurisdiction pending parallel state proceedings involving a potentially dispositive issue of state law. I was chief counsel for the public official defendants before the district court, and on appeal.

Plaintiffs are former and current employees of the Corporation of the State Insurance Fund of Puerto Rico who were either demoted or discharged in 2010 following an audit finding their appointments void. They challenged the defendants' decisions as discriminatory because of their political affiliation in violation of the First Amendment, and as a violation of due process of law.

Initially defendants sought dismissal arguing the allegations were insufficient to sustain a cause of action and subsequently filed a supplemental motion to dismiss requesting the Court's abstention pending resolution of parallel state proceedings involving the same underlying issues as the case in the United States District Court. The Court dismissed the complaint without prejudice, based on abstention principles. On appeal, the First Circuit held the lawsuit should be stayed pending resolution of a parallel case pending before the Puerto Rico Supreme Court involving a potentially dispositive issue of state law. Accordingly, the District Court stayed federal court proceedings while the state court proceedings are being exhausted. I am not involved in the state court litigation, which is currently ongoing.

United States District Court:	Judge Daniel R. Domínguez
United States Court of Appeals:	Judge Jeffrey Howard Judge Sandra Lynch Judge Bruce Selya
Opposing Counsel:	Celina Romany Celina Romany Law Offices PMB 291 #1353 Road 19 Guaynabo, P.R. 00966 (787) 754-9304

(3) *Figueroa v. Caribbean Restaurants et al.*, DKDP 2005 0301 (704) (Puerto Rico Superior Court).

The case involved the legality of personnel transfers, and the scope of the

employer's discretion to impose disciplinary measures. I was defendants' chief counsel.

Plaintiff claimed to have suffered damages when her employer and two corporate officials refused to discipline a manager who had allegedly falsified plaintiff's signature, and when plaintiff complained the employer retaliated by transferring plaintiff to another site. During trial, defendants presented testimony and documentary evidence to rebut plaintiff's allegations and to demonstrate the factual basis for the challenged decisions. The court weighed the parties' submissions, and found for defendants in 2007.

Puerto Rico Superior Court:	Judge Janet Cortés Vázquez
Opposing Counsel:	Iván Torres Rivera 216 Las Marías Avenue Urb. Hyde Park San Juan, P.R. 00927 (787) 763-0853

(4) *Riofrio, Anda et al. v. Purina*, 772 F. Supp. 46 (D.P. R), *aff'd* 959 F. 2d 1149 (1st Cir. 1991).

The case involved contract damages, timeliness, federal pre-emption, and the District Court's discretion to manage its docket through initial scheduling orders. I represented the defendants (collectively "Ralston") as chief counsel at trial and on appeal.

After Ralston terminated Mr. Riofrio, he and his wife brought suit in the United States District Court for the District of Puerto Rico, asserting (1) breach of contract regarding salary and relocation expenses in case of termination; (2) wrongful discharge; (3) mental pain and suffering resulting from a search and escort; (4) right to accrued vacation pay; and (5) entitlement to pension liquidation. After discovery, Ralston successfully moved for summary judgment on the mental suffering claim based on timeliness, and on the pension liquidation claim based on pre-emption under the federal Employee Retirement Income Security Act ("ERISA").

The surviving claims were tried to a jury. At the conclusion of the evidence, Ralston moved for a directed verdict on the contract claims and on the vacation pay claim. The district court granted the defendant's motion with respect to the vacation pay, and the jury found for plaintiffs on the breach of contract claim. Ralston moved for judgment notwithstanding verdict as to the relocation expenses claim on the grounds it was pre-empted by ERISA, and in the alternative, that plaintiffs had failed to present any evidence of damages resulting from breach of contract. The court ruled ERISA was not controlling, but granted the motion

finding plaintiffs had failed to prove they had suffered any damages resulting from the breach of the relocation agreement.

Plaintiffs appealed the summary judgment ruling based on timeliness, and the judgment notwithstanding the verdict. The First Circuit affirmed.

United States District Court:	Judge Héctor M. Laffitte (Ret.)
United States Court of Appeals:	Judge Bruce M. Selya Judge Hugh Bownes Judge Bailey Aldrich
Opposing Counsel:	Harry Anduze Montaño 1454 Fernández Juncos Avenue San Juan, P.R. 00921 (787) 723-7171
	Guillermo Ramos Luiña Edificio VIG Tower Suite 1500 1225 Ponce de León Avenue San Juan, P.R. 00907 (787) 620-0527

(5) *García v. American Airlines*, 816 F. Supp. 72 (D.P.R.), *aff'd* 12 F. 3d 308 (1st Cir. 1993).

The case involved the extraterritorial applicability of Puerto Rico labor and employment law. I represented American Airlines as chief counsel before the district court, and on appeal.

Plaintiff was a flight attendant injured during a flight from Puerto Rico to New Jersey while trying to move a beverage cart which had become wedged in the aisle of the aircraft's cabin due to an allegedly defective wheel. Plaintiff received occupational disability payments and medical treatment and benefits through Travelers Insurance Company in Florida, and thereafter initiated the action in the United States District Court for the District of Puerto Rico under Puerto Rico's general tort statute seeking payment for mental anguish and suffering, physical damages, loss seniority and special benefits.

The District Court entered summary judgment for American Airlines, ruling that Puerto Rico would give effect to the exclusive remedy provision contained in the Florida workers' compensation statute. The First Circuit affirmed dismissal.

United States District Court:	Judge Héctor M. Laffitte (Ret.)
United States Court of Appeals:	Judge Juan R. Torruella

Judge Frank M. Coffin
Judge Michael Boudin

Opposing Counsel: Juan Rafael González-Muñoz
González Muñoz Law Offices
Edficio Polo Norte
261 Tetuán Street
San Juan, P.R. 00901
(787) 766-5052

(6) *Landrau v. Caribbean Restaurants*, 14 F. Supp. 2d 185 (D.P.R. 1998).

This case involved sexual harassment and application of the affirmative defense the Supreme Court recognized in *Faragher* v. *City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries* v. *Ellerth*, 524 U.S. 742 (1998). I represented Caribbean Restaurants as chief counsel.

Plaintiff claimed to have been sexually harassed and constructively discharged. After discovery, Caribbean Restaurants moved for summary judgment. The court entered summary judgment and dismissed the complaint, concluding plaintiff had not been sexually harassed. Moreover, finding plaintiff had suffered no tangible employment action, it applied the *Faragher/Ellerth* affirmative defense.

United States District Court: Judge Héctor M. Laffitte (Ret.)

Opposing Counsel: Luis Mellado
Mercantil Plaza, Office No. 812
No. 2 Ponce de León Avenue
San Juan, P.R. 00918
(787) 767-2543

(7) *Olguin et al. v. State Elections Board et al.*, Civil No. 1998-2297 (JP 1998) (United States District Court for the District of Puerto Rico).

The case involved the constitutionality of excluding voters from the official voter registry for not having voted in the previous general election, and whether a deadline established to vote in an upcoming plebiscite was set too far in advance of the special election to allow citizens to register, in violation of the First Amendment and Fourteenth Amendment. I represented the Puerto Rico State Elections Board as chief counsel.

Plaintiffs did not vote in the general election held in Puerto Rico in 1996, and as a result were automatically excluded from the voter registry. In 1998, the Puerto Rico Legislature passed a law providing for the holding of a political status plebiscite in December 1998. It set November 3, 1998, as the voter registration deadline. Plaintiffs failed to meet this deadline, and since they had been excluded

from the voter registry, were not eligible to vote in the plebiscite. As a result, they initiated the action challenging the automatic voter exclusion provision, and the deadline established to register.

After a bench trial, in 1998 the court rejected plaintiffs' claims. It analyzed the evidence related to the challenged requirements, concluded the requirements were reasonable, and dismissed the complaint.

United States District Court:	Judge Jaime Pieras Jr. (Now deceased)
Opposing Counsel:	Pedro Varela Esquire Bld., Office No. 402 #2 Vela Street & Ponce de León Avenue San Juan, P.R. 00918 (787) 751-3931
Counsel for codefendant Commonwealth of Puerto Rico:	Gustavo A. Gelpí, former Solicitor General of Puerto Rico (confirmed as Judge in the United States District Court for the District of Puerto Rico in 2006) José V. Toledo U.S. Courthouse Room 126 300 Recinto Sur San Juan, P.R. 00901 (787) 772-3102
Co-counsel:	Ramón L. Walker Merino Recinto Sur #255 San Juan, P.R. 00901 (787) 275-2068

(8) *Castro v. The Procter & Gamble Commercial Co.*, 565 F. Supp. 2d 343 (D.P.R. 2008).

The case involved different aspects of the Americans with Disabilities Act and the Family and Medical Leave Act. I represented Procter & Gamble Commercial Company ("Procter") as chief counsel.

Plaintiff claimed Procter discriminated against and harassed her because of a protected disability, failed to accommodate the disability, and wrongfully retaliated against her for engaging in protected conduct.

The Court entered summary judgment on behalf of Procter. Analyzing the record, it concluded plaintiff was not a qualified individual with a disability, had not established the negative performance evaluations she received were discriminatory, and had not been retaliated against.

United States District Court:	Judge Juan Pérez Giménez
Opposing Counsel:	Enrique Mendoza Méndez Mendoza Law Offices Edificio Centro de Seguros Suite 312 701 Ponce de León Avenue San Juan, P.R. 00907 (787) 722-5540

(9) *Rovira et al. v. Exxon Standard Oil et al.*, DPE 2002 0910 (2004)(Puerto Rico Superior Court), 2004 WL 3250899 (Puerto Rico Court of Appeals).

At issue was the starting point of the limitations period to claim extracontractual damages in Puerto Rico. I represented the defendants before the trial court, and on appeal.

Mr. Rovira was employed with the Exxon Standard Oil organization. He went on a leave of absence and did not report back to work. He initiated the action in the Bayamón Part of the Puerto Rico Court of First Instance, claiming to have been harassed and discriminated against because of his age.

After discovery, defendants filed a motion for summary judgment based on timeliness. The trial court denied the motion, reasoning the discrimination and harassment claims were time barred. However, it denied summary judgment as to plaintiff's claim for damages.

The defendants filed a certiorari petition with the Court of Appeals asking the appellate court to review the summary judgment denial. In 2004, the Court of Appeals did so, finding the record showed plaintiff had been aware of the damages he claimed more than a year before he filed the complaint. Accordingly, it held the claim barred by the one-year limitations period set for damage actions by the Puerto Rico Civil Code.

Puerto Rico Superior Court:	Judge Concepción Pilar Igartúa Pontón
Puerto Rico Court of Appeals:	Judge Guillermo Arbona Lago Judge Héctor Urgell Cuevas Judge Ivonne Feliciano Acevedo

Opposing Counsel: Jeremiah Ocasio Silva
Rh-1 Acacia Street
Rosaleda #2
Levittown, P.R. 00949
(787) 784 2518

(10) *Martínez v. Caribbean Restaurants*, JPE 2007 0272 (Puerto Rico Superior Court), *aff'd* 2010 PR App. LEXIS 1956 (Puerto Rico Court of Appeals).

At issue was whether plaintiff had been constructively discharged. I represented Caribbean Restaurants before the trial court, and on appeal.

Plaintiff resigned from his employment with Caribbean Restaurants, and filed the action in the Ponce Part of the Puerto Rico Court of First Instance alleging to have been constructively discharged without just cause and entitlement to payment of unjust-discharge indemnity under the Puerto Rico Unjust Discharge Act.

After a bench trial in 2010, the Court ruled for Caribbean Restaurants, finding plaintiff did not prove to have been forced to resign, and hence, to have been discharged. The Appeals Court of Puerto Rico affirmed the trial court.

Puerto Rico Superior Court: Judge Ismael Álvarez Burgos

Puerto Rico Court of Appeals: Judge Carlos López Feliciano
Judge Juan Hernández Serrano
Judge Olga Birriel Cardona

Opposing Counsel: Miguel Arroyo Díaz
Condominio Alcázar 211
Boulevard Avenue & Miguel Pou
Ponce, P.R. 00731
(787) 843-8671

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.)

Approximately 90% of my practice has been devoted to litigation. Around 10% of my time involves counseling organizations on a variety of issues covered by federal and Puerto Rico law in areas such as employment matters, election regulations, and administrative procedure. In this role, I provide advice on different aspects of personnel

administration, contracting, business reorganizations, electoral compliance, and processes to be followed in administrative agencies.

Over the course of my career, I have also participated in significant litigation that did not progress to trial due to settlement or dispositive motions. One example is *María del Carmen Pérez Rodríguez v. Caribbean Restaurants*, KDP 2010 1305 (804), where the Court dismissed through summary judgment in 2011, a damages action brought by a former managerial employee who was kidnapped during a car-jacking after the restaurant she was assigned to had closed for the day. The Court dismissed the complaint pursuant to statutory immunity against damages actions granted to employers who have provided workers' compensation coverage to their employees.

Likewise, in *Roberto Reyes* v. *Corporation of the State Insurance Fund of Puerto Rico et al., 2012 WL 4863714 (D. P.R.)* the Court dismissed through summary judgment a political discrimination action filed by the former director of the hiring/contract department of the Corporation of the State Insurance Fund of Puerto Rico, who claimed to have been discharged because of his political affiliation and without due process of law in violation of the First, Fifth, and Fourteenth Amendments to the Constitution of the United States, the tort provisions of the Puerto Rico Civil Code, the Commonwealth's anti-discrimination statute, and the Constitution of Puerto Rico. The Court rejected plaintiff's claims, granted defendant's motion for summary judgment, and dismissed the complaint.

On a related matter, the United States District Court for the District of Puerto Rico appointed me to a committee chaired by U.S. District Judge Jay García-Gregory, to investigate and submit a preliminary report respecting allegations of professional misconduct involving a stateside attorney admitted to practice in the District of Puerto Rico: Miscellaneous No. 02 0070 (JAG). The committee interviewed witnesses, examined documents, and prepared and submitted a report with recommendations.

I have not performed lobbying activities or registered as a lobbyist.

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

    I have not taught any 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.

If confirmed, O'Neill & Borges would liquidate my capital account with the firm. Similarly, the O'Neill & Borges Retirement Plan would liquidate my pension account. I have not made arrangements to be compensated in the future from any other source.

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, 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 expect to recuse myself from all matters in which a lawyer associated with O'Neill & Borges appears, and from any case in which due to a current or past professional or personal relationship with a party, witness, or attorney, my impartiality might reasonably be questioned.

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

       I would handle all matters involving actual or potential conflicts of interest in accordance with the Code of Conduct for United States Judges and any other relevant canons or statutes. I also would seek 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.

Beginning in 1987 until around 1993, I assisted the Labor Commission of the Puerto Rico Bar Association, and was a commission member from 1988 until 1993. I provided *pro bono* assistance to the inquiring public, mostly individuals with questions on labor and employment topics, to help them to understand the legal issues they faced. Since approximately 1988 I have assisted Ballet Concierto de Puerto Rico, a non-profit organization, with pro bono advice on different legal issues, such as those related to articles of incorporation, lease agreements, employment contracts, workers' compensation, and statutory leaves of absence.

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 October 2011, Congressman Pedro Pierluisi asked me if I would be interested in serving as a judge on the United States District Court for the District of Puerto Rico. In February 2012, I met with a staff member for Congressman Pierluisi in his office in San Juan, Puerto Rico to discuss my interest. In March 2013, the staff member informed me that Congressman Pierluisi had recommended me to the White House. Since March 21, 2013, I have been in contact with the Office of Legal Policy at the Department of Justice. On May 1, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 26, 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
Delgado , Pedro A.	U.S. District Court, Puerto Rico	07/01/2013
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 06/26/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 06/26/2013
7. Chambers or Office Address		
250 Muñoz Rivera Avenue, Suite 800, San Juan, PR 00918		

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.	Capital Partner	O'Neill & Borges LLC
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Delgado , Pedro A.	Date of Report 07/01/2013

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. 2011	O'Neill & Borges	$321,616.00
2. 2012	O'Neill & Borges	$321,847.00
3. 2013	O'Neill & Borges	$212,771.00
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2012	Interamerican University - teaching - salary
2. 2012	Self-employed lecturer
3. 2012	Writer - book royalties
4. 2012	Puerto Rico Retirement Income
5. 2013	Interamerican University - teaching - salary
6. 2013	Self - employed lecturer
7. 2013	Writer - book royalties
8. 2013	Puerto Rico Retirement Income

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.				

Name of Person Reporting	Date of Report
Delgado , Pedro A.	07/01/2013

4.

5.

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Delgado , Pedro A.	Date of Report 07/01/2013

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 5 of 7

Name of Person Reporting	Date of Report
Delgado , Pedro A.	07/01/2013

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. Banco Santander - Cash Accounts	A	Interest	K	T					
2. Banco Popular - Cash Accounts	C	Interest	M	T					
3. Oriental Bank - Cash Accounts	C	Interest	N	T					
4. O'Neill & Borges - Capital Account		None	N	T					
5. Vanguard Target Retirement Fund 2020		None	O	T					
6. Credit Union Shares (Cooperativa Manuel Zeno Gandía)		None	J	U					
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	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
Delgado , Pedro A.	07/01/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Delgado , Pedro A.	Date of Report 07/01/2013

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/ Pedro A. Delgado

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		516	614	Notes payable to banks-secured (autos)		60	583
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		798	587	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	850
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		245	553
Real estate owned – personal residence		335	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		70	000	Education loan		1	700
Cash value-life insurance							
Other assets itemize:							
O'Neill & Borges capital account		255	000				
IRA (cash)		10	075				
				Total liabilities		312	686
				Net Worth	1	672	590
Total Assets	1	985	276	Total liabilities and net worth	1	985	276
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts		247	000	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	
Vanguard Target Retirement Fund 2020	$ 797,346
Cooperativa Manuel Zeno Gandia shares	1,241
Total Listed Securities	$ 798,587

AFFIDAVIT

I, Pedro A. Delgado Hernández, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6-27-2013
(DATE)

(NAME)

(NOTARY)

YADHIRA RODRIGUEZ QUIÑONES
ABOGADA~NOTARIO

9408665

9397
05/23/2013
$5.00
$5 Sello Asistencia Legal
50259-2013-0523-55038173

Senator WHITEHOUSE. Thank you very much. Well, you are all very welcome here, and I salute you for being willing to put yourself through the wringer of the nomination and confirmation process. I know it is not easy. It is arduous and exhausting and intrusive. But most of it is over at this point. And do not worry if there is not a great deal of attendance here. That is usually actually a good sign.

[Laughter.]

Senator WHITEHOUSE. You worry when the seats are filled with questioning Senators. That does not augur well for the nomination. So I hope that yours will go forward smoothly.

I gave you a bit of a preview of coming attractions since you were in the room during my questioning of Judge Wilkins. But I have the same questions for each of you.

I have now mentioned twice, but I will review just again, what I think are the sort of core principles of judicial conduct that I hope you can agree should also guide your actions, and that involves, first of all, an earnest respect for the role that Congress has as the duly elected representatives of the people of this great country. It includes an obligation to decide cases scrupulously based on the law and the facts without prejudgment of any case and with an honest ear for every party that comes before you. It includes respect for the precedent that should guide your decisions. And it includes the restraint to limit yourself in your decision to the issues that are properly before your court.

Are each of you comfortable with those principles as ones that properly should guide your actions as a United States district court judge?

Mr. BROOKS. Absolutely.

Mr. DONATO. Absolutely.

Judge DELGADO. Absolutely.

Judge FREEMAN. Yes.

Senator WHITEHOUSE. The record will reflect four "absolutelys"—or three "absolutelys" and a "yes." All positive.

And then one of the special roles of a district judge is to manage and oversee not only judge trials but also jury trials and to help jurors feel welcome and understand their role in the process that they have been subjected to. My experience in talking to juries after trials and in talking to grand juries that we have convened as a U.S. Attorney and as an Attorney General is that American citizens take their role as jurors or grand jurors very seriously, and that whatever burdens it may put on their time and on their responsibilities and their personal lives, they ordinarily feel that they have contributed something in a very important way by serving. Sometimes, particularly in criminal cases and for grand juries, the subject matter that they are obliged to consider is pretty horrific, considering the subjects of their daily lives. But, nevertheless, even in the face of some of the more horrific cases, my sense has always been that jurors are glad of that experience.

So I would like to ask each of you to comment a little bit on how you see the importance of jurors and how important it is to reflect that important aspect of citizenship, and also, I will not go on again at length, but the fact that a jury is not just there to be a fact-finding appendage to a court. It also has a very important role

in the larger balance of powers and among the checks and balances that protect this republic that the founders established all those centuries ago.

Mr. Donato, let me turn to you first.

Mr. DONATO. Well, thank you, Mr. Chairman. I have two comments that come to mind.

The first is, in 23 years of practice, the single most impressive thing that I have encountered is the service and dedication of the jurors that I have had the privilege of practicing before. Now, make no mistake, they did not always see the case my way. But I will say each and every time we had the opportunity to try a case and talk with the jurors afterwards, it was the most impressive level of dedication from a group of people who, prior to their appearance in the jury box, generally had absolutely no experience with the legal system whatsoever, were asked to address in the cases I was trying very complicated antitrust and federal class action issues, rose to the challenge, often over weeks and weeks of trial time, which was a tremendous inconvenience for their professional and personal lives, and still at the end of it took that job as seriously as you could ever want someone to take it and felt very good about the experience.

So I agree wholeheartedly with sentiments that you expressed earlier that it is not just an exercise in trying fact. It is, in my view, a badge of citizenship for an American, a great privilege, and something that our legal system absolutely depends on.

The second thought is I hear and embrace your concerns about potential erosion of the jury system. In private practice, where I am today, I often hear—not often, but I do periodically hear—lawyers occasionally in intellectual property cases, for example, and other more specialized cases expressing frustration with juries. My view is they do not get it. I think the jury system is absolutely essential for our federal judiciary, for our State judiciary, for that matter, and I think we ought to do everything we can to protect it.

Senator WHITEHOUSE. Mr. Brooks.

Mr. BROOKS. Thank you, Senator. I think that our Seventh Amendment right to a trial by jury is one of the bedrock principles of our judicial system and certainly a component that separates ours from all other judicial systems across the world and perhaps the hallmark of what makes our system the best, in my opinion.

To your point about the significance of the jury and one's civic responsibility, I was trying a case many years ago when I had a trial court judge who was welcoming the jury and trying to impress upon them the significance of what they were there to do. And she said that there are two times when our State or our country can call you in to service: one is at a time of war when you can be drafted to go and serve your country, perhaps overseas; and a second time is whenever you get summoned for jury service. And she tried to impress upon them that, in terms of civic responsibility, both were very, very important. And certainly that jury, as has been my experience in all of my trials, that civic responsibility is one that juries somehow just the chemistry that comes together, they take it very, very seriously, and it is remarkable every time that it happens.

Senator WHITEHOUSE. Thank you, Mr. Brooks.

Judge Freeman.

Judge FREEMAN. Yes, thank you, Mr. Chairman. I have had the good fortune, as Senator Feinstein commented, and the privilege of presiding over approximately 150 jury trials in my time on the State court bench. I think I have told each and every one of those juries—and I believe it wholeheartedly—that they are the backbone of our system of justice. And the pride that they should take in the service they render is sometimes unimaginable to them until they have completed the task. But from where I have been able to sit as a judge, I know that when 12 people come to the jury and deliberate, having heard a case with no bias and no agenda, that justice is served. And I look forward to continuing, if I am fortunate enough to be confirmed for this seat, to presiding over jury trials for the remainder of my career.

Thank you.

Senator WHITEHOUSE. Mr. Delgado Hernandez.

Judge DELGADO HERNANDEZ. Mr. Chairman, I join my colleagues in expressing support for the institution of the jury, as you have so eloquently described it. I might add that federal judges in the District of Puerto Rico impress upon jurors the importance of what they are doing or what they are about to do, not just in terms of jurors, citizens, being part of the specific decision-making process before them, but their participation as a reflection of the system of government under the Constitution. And if I am confirmed by the Senate, Mr. Chairman, I intend to do exactly the same thing.

Senator WHITEHOUSE. So honor them and treat them well.

Thank you all for being here. The hearing record will remain open for one more week in order that any additional material that is relevant to it may be submitted. I believe that Chairman Grassley and others may have additional written questions for the nominees, and I urge you to respond promptly and thoroughly to those questions, because your nomination does not go forward until the questions are answered. And I wish you all smooth and uneventful passage through the remainder of the confirmation process, and I join my colleagues in congratulating you on the signal honor and recognition that having been nominated by the President of the United States to this position already reflects.

With that, we will be adjourned.

[Whereupon, at 11:30 a.m., the Committee was adjourned.]

Opening Statement Nominations Hearing: Judge Wilkins (9/11/13)

I look forward to asking Judge Wilkins a few questions, but before I do so I want to say something regarding the court to which Judge Wilkins has been nominated and the controversy surrounding nominations to that court.

The Constitution sets forth a specific process for confirming federal judges. The President is entitled to make nominations, but unless they are nominated to fill vacancies "that may happen during the recess of the Senate," those nominees must receive the advice and consent of the Senate.

The D.C. Circuit is arguably the most important and politically controversial federal court of appeals. Its history and its location, among other things, have resulted in it taking on a unique role reviewing sensitive executive actions and fundamental questions of constitutional structure. We need look no further than the D.C. Circuit's recent invalidation of the President's unconstitutional recess appointments to see what is at stake in the decisions of this court.

Presidents of both parties thus have not hesitated to advance nominees to the D.C. Circuit. But the Senate has taken a decidedly cautious and deliberative course of action when considering those nominees. For example, in 2006, Democratic members of this Committee signed a letter arguing that a nominee to the D.C. Circuit "should under no circumstances be considered – much less confirmed – before we first address the very need for that judgeship." And despite bipartisan support and unquestioned credentials, Senate Democrats have repeatedly blocked consideration of qualified nominees to this court, including Miguel Estrada and Peter Keisler.

It is against this backdrop that we consider the President's nomination of three additional judges to the D.C. Circuit. These nominations came only months after we confirmed Sri Srinivasan to the D.C. Circuit. The nominations ignore data demonstrating that the D.C. Circuit is the least busy federal court of appeals and that the case against confirming additional judges to this court is stronger than it was in 2006 when Democrats blocked Mr. Keisler's nomination.

I do not believe that anyone who is familiar with the D.C. Circuit's current work load —who has looked at the relevant data or talked with those at the court—can credibly say that the court is overworked or in need of an additional judge, let alone two or three additional judges. It is in this context that we consider the nomination of Judge Wilkins today.

Senator Chuck Grassley
Questions for the Record

Robert Leon Wilkins
Nominee, United States Circuit Judge for the D.C. Circuit

1. At your hearing, I asked for your response to certain assertions regarding Constitutional Law. I realize that these are not your assertions, but I want to know if you agree or disagree with each statement and then explain to me why or why not.

    a. "Reproductive rights should be doubly constitutionally protected by the overlapping liberty and equality guarantees."

    b. "Reproductive rights really are fundamentally about sex equality."

    c. "Promulgation of stereotypes in sex education should be treated as unconstitutional."

2. What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?

3. There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]

    a. How would you respond if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?

    b. Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?

    c. How would you respond if an individual or company in this circumstance raised a Free Exercise claim?

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

[2] *Id.*, Para. 90.

4. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

5. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

6. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

7. Do you believe that the death penalty is an acceptable form of punishment?

8. Do you believe there is a right to privacy in the U.S. Constitution?

    a. Where is it located?

    b. From what does it derive?

    c. What is your understanding, in general terms, of the contours of that right?

9. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

    a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

    b. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

10. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

11. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

12. What would be your definition of an "activist judge"?

13. In September 2012 you handed down a decision in the case ISDA v. CFTC. As with many decisions of judges, there was criticism of your decision. One of the criticisms was that your decision was "logically incoherent." The basis for that allegation was that in one part of the decision you wrote that "Section 6a is *ambiguous* as to the precise question at issue: whether the CFTC is required to find that position limits are necessary and appropriate prior to imposing them." Later in the opinion you stated, "The precise question, therefore, is whether the language of Section 6a(a)(1) clearly and *unambiguously* requires the Commission to make a finding of necessity prior to imposition position limits."

    a. Please explain your approach to statutory construction.
    b. Do you believe your decision in this case was internally inconsistent as alleged by the commentary described above? Please explain.

14. What is the most important attribute of a judge, and do you possess it?

15. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

16. 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?

17. In general, Supreme Court precedents are binding on all lower federal courts. 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?

18. 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?

19. 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?

20. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

21. What weight should a judge give legislative intent in statutory analysis?

22. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

23. 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.

24. 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?

25. 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?

26. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

27. Please describe with particularity the process by which these questions were answered.

28. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

James Donato
Nominee, U.S. District Judge for the Northern District of California

1. In 2006 the San Francisco Bar Association sent a letter to Senators Feinstein, Specter, Boxer, and Leahy opposing the nomination of Samuel Alito to the Supreme Court of the United States. You were an officer of the San Francisco Bar Association. Can you explain your personal objections to Justice Alito's nomination?

2. The San Francisco Bar Association particularly had an issue with Justice Alito's view of Congressional power under the commerce clause. In your view are there any limitations to Congressional power under the commerce clause?

3. There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]

    a. How would you approach this issue if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?

    b. Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?

    c. How would you respond if an individual or company in this circumstance raised a Free Exercise claim?

4. How will you use the Sentencing Guidelines to guide you in criminal cases?

5. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

[2] *Id.*, Para. 90.

favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

6. What is the most important attribute of a judge, and do you possess it?

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

8. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

15. If confirmed, how do you intend to manage your caseload?

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

17. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

18. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

19. Please describe with particularity the process by which these questions were answered.

20. Do these answers reflect your true and personal views?

Senator Lee

Questions for the Record Nominations Hearing (10:30 AM, Sept. 11, 2013)

James Donato

1. It is my understanding that while you were serving as a board member of the Bar Association of San Francisco, the Association sent a letter to Senators Feinstein, Boxer, Specter, and Leahy in opposition to the confirmation of Justice Alito to the Supreme Court of the United States.

    a. Did you oppose confirmation of Justice Alito to the U.S. Supreme Court and, if so, on what basis?
    b. Did you participate in the drafting of the letter?
    c. Did you agree with the contents of that letter?
    d. Did you express any opposition or support within the association with respect to the contents of that letter?

2. The Bar Association letter asserts that Justice Alito does not properly understand "the Court's role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power."

    a. What is your understanding of Justice Alito's understanding of "the Court's role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power"?
    b. What are your views on "the Court's role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power"?
    c. How do your views on these issues differ from those of Justice Alito?

Senator Chuck Grassley
Questions for the Record

Timothy L. Brooks
Nominee, U.S. District Judge for the Western District of Arkansas

1. According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.
    a. What experience do you have with criminal law?
    b. What steps have you taken to familiarize yourself with the area of criminal law?
    c. What steps do you plan to take to get up to speed, should you be confirmed?

2. You have spent your entire legal career as an advocate. How will you approach the transition from advocate to judge?

3. How will you use the Sentencing Guidelines to guide you in criminal cases?

4. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

5. What is the most important attribute of a judge, and do you possess it?

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

7. In general, Supreme Court precedents are binding on all lower federal courts, and 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?

8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

14. If confirmed, how do you intend to manage your caseload?

15. 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?

16. 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?

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Beth Labson Freeman
Nominee, U.S. District Judge for the Northern District of California

1. You have been a judge on a court of general jurisdiction. Federal District Courts are courts of more limited jurisdiction. How will you make this transition and what guidance will you follow with respect to federal jurisdiction?

2. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

3. At times, judges are faced with cases of first impression. What principles guide you, or what methods do you employ, in deciding cases of first impression?

4. How would you define the term judicial activism? What would indicate to you that a judge is an activist judge?

5. How will you use the Sentencing Guidelines to guide you in criminal cases?

6. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

7. What is the most important attribute of a judge, and do you possess it?

8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

9. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

10. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources

would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

13. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

14. 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?

15. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

16. If confirmed, how do you intend to manage your caseload?

17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

18. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

19. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

20. Please describe with particularity the process by which these questions were answered.

21. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Pedro A. Delgado Hernandez
Nominee, U.S. District Judge for the District of Puerto Rico

1. According to your questionnaire you resigned from the Puerto Rico Court of Appeals in 1996 after one year to return to private practice.
   a. Can you offer some insight as to why you reached that decision?
   b. Why do you want to be a United States District Judge?
   c. What are your plans and commitment to serving in this position, if confirmed?

2. Would you please describe your judicial philosophy? What judges or justices would you hope to emulate?

3. How will you use the Sentencing Guidelines to guide you in criminal cases?

4. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

5. What is the most important attribute of a judge, and do you possess it?

6. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

7. In general, Supreme Court precedents are binding on all lower federal courts, and 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?

8. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

14. If confirmed, how do you intend to manage your caseload?

15. 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?

16. You have spent most of 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?

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

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 ereated 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

Robert Leon Wilkins
Nominee, United States Circuit Judge for the D.C. Circuit

1. **At your hearing, I asked for your response to certain assertions regarding Constitutional Law. I realize that these are not your assertions, but I want to know if you agree or disagree with each statement and then explain to me why or why not.**

   a. **"Reproductive rights should be doubly constitutionally protected by the overlapping liberty and equality guarantees."**

   Response: My understanding is that this statement comes from a law review article authored by Professor Cornelia Pillard. *See* Cornelia T.L. Pillard, *Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work–Family Policy*, 56 Emory L.J. 941, 976 (2007). The entire sentence encompassing the quoted passage reads: "Paradoxically, while reproductive rights should be doubly constitutionally protected by the overlapping liberty and equality guarantees, that dual pedigree can instead leave reproductive rights more vulnerable." *Id.* at 942. During her Senate confirmation hearing testimony and in her "Questions for the Record," Professor Pillard cites to the joint opinion in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) as legal authority for the proposition that abortion rights are protected under the due process clause. Further, she indicated that she was unaware of any cases where the Supreme Court relied on the equal protection clause as a basis for recognizing abortion rights, which comports with my understanding of the law in this area. In any event, if I were faced with a case regarding reproductive rights, I would follow *Casey* and any other relevant precedents from the Supreme Court and the D.C. Circuit.

   b. **"Reproductive rights really are fundamentally about sex equality."**

   Response: My understanding is that this statement also comes from the article discussed above. The entire sentence encompassing the quoted passage reads: "The turn to equality, properly understood, has the potential to do more than provide an alternative defense of reproductive rights; it brings into the open a truth that millions have experienced, which is that reproductive rights really are fundamentally about sex equality." 56 Emory L.J. at 946. Professor Pillard did not explain this further in her testimony, but earlier passages in this paragraph from the article indicate that this passage is more of an academic argument than a

declaration of the current state of the law. As stated above, I would follow *Casey* and any other relevant precedents from the Supreme Court and the D.C. Circuit if I were faced with a case involving reproductive rights.

c. **"Promulgation of stereotypes in sex education should be treated as unconstitutional."**

Response: My understanding is that this statement also comes from the article discussed above. The entire sentence encompassing the quoted passage reads: "Promulgation of stereotypes in sex education should be treated as unconstitutional for the same reasons that equal protection rejects denial of opportunity based on stereotypes." 56 Emory L.J. at 988. Professor Pillard did not explain this further in her testimony, but the context of the article indicates that this passage is more of an academic argument than a declaration of the current state of the law. As stated above, I would follow *Casey* and any other relevant precedents from the Supreme Court and the D.C. Circuit if I were faced with a case involving reproductive rights.

2. **What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?**

Response: As far as I am aware, neither the Supreme Court nor the D.C. Circuit has decided this precise issue. Furthermore, there has been recent litigation in the D.C. Circuit and district courts relating to this issue, see *Wheaton Coll. v. Sebelius*, 703 F.3d 551 (D.C. Cir. 2012) (per curiam) and *Roman Catholic Archbishop of Wash. v. Sebelius*, 920 F.Supp.2d 8 (D.D.C. 2013). Thus, this issue may come before me as a judge on the District Court or as a judge on the Court of Appeals, if I am confirmed, and it would be inappropriate for me to comment further. *See* Code of Conduct for United States Judges, Canon 3(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court.").

3. **There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]**

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

[2] *Id.*, Para. 90.

a. **How would you respond if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?**

Response: The case you have asked me about deals with a challenge by a photography company to a determination by the New Mexico Human Rights Commission that the company violated New Mexico law. In particular, as is relevant to your questions about Elane Photography, the New Mexico Supreme Court analyzed the New Mexico Human Rights Act, NMSA 1978 §§ 28-1-1 to 13 (1969, as amended through 2007). That statute contains a similar prohibition to the D.C. Human Rights Act, which also makes it unlawful to discriminate on the basis of sexual orientation. *See* D.C. Code §§ 2-1401.11, 2-1402.21, 2-1402.31. Vendors across the country have refused to serve same-sex couples in various ways related to weddings and commitments ceremonies, and these actions have begun to result in lawsuits. *See, e.g.*, Annette Cary, *Arlene's Flowers in Richmond [Washington] sued by gay couple*, Tri-City Herald (Apr. 18, 2013), http://www.tri-cityherald.com/2013/04/18/2361691/arlenes-flowers-in-richland-sued.html. Thus, this issue may come before me as a judge on the District Court or as a judge on the Court of Appeals, if I am confirmed, and it would be inappropriate for me to comment further. *See* Code of Conduct for United States Judges, Canon 3(6) ("A judge should not make public comment on the merits of a matter pending or impending in any court.").

b. **Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?**

Response: Please see above.

c. **How would you respond if an individual or company in this circumstance raised a Free Exercise claim?**

Response: Please see above.

4. **What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?**

Response: Sometimes a 21st century law may implicate factual scenarios that are not explicitly addressed by the text of the Constitution or its original public meaning. For example, the Constitution provides that "Congress shall make no law . . . abridging the

freedom of speech," and there may be some difficulty in determining how the original public meaning of text drafted in the 18th century should apply to a constitutional challenge made today to a law regulating Twitter, Facebook or Wikileaks. The Supreme Court and the D.C. Circuit have used several tools, such as examining the intent of the framers, historical context, and the principles sought to be advanced by the text, to resolve modern controversies using text drafted primarily in the 18th and 19th centuries. I would follow that precedent.

5. **What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?**

   Response: The Supreme Court has held that the plain language of the text of the Constitution, as well as the original intent of the framers and the original public meaning of the text, is the starting point for constitutional interpretation. In addition, the Court has at times recognized that the Constitution can protect rights in a context not explicitly envisioned by the framers, such as by holding that the 14th Amendment prohibits gender discrimination and racial segregation, even though both of those practices were embraced by the framers of that amendment. I would follow those precedents.

6. **What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

   Response: It is my understanding is that the Supreme Court has addressed this interplay in *Locke v. Davey*, 540 U.S. 712 (2004) and *Cutter v. Wilkinson*, 544 U.S. 709 (2005), among other cases. The Court has observed that while the prohibitions of the Free Exercise Clause and Establishment Clause may be "frequently in tension," there is nevertheless "room for play in the joints between them," and therefore "there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause." *Locke*, 540 U.S. at 718-719 (citations and internal quotation marks omitted). I would follow this and any other relevant precedent from the Supreme Court and the D. C. Circuit if faced with a case involving these issues.

7. **Do you believe that the death penalty is an acceptable form of punishment?**

   Response: The Supreme Court has held that the death penalty is constitutional in certain circumstances. I would abide by that precedent.

8. **Do you believe there is a right to privacy in the U.S. Constitution?**

Response: The Supreme Court has held that the Constitution protects individual rights to autonomy and privacy in certain contexts, and as with all Supreme Court precedent, I would follow it.

a. **Where is it located?**

Response: The Supreme Court has held that several provisions of the Constitution confer different types of privacy rights to the individual, including the First, Third and Fourth Amendments, as well as the Due Process Clause of the Fifth Amendment.

b. **From what does it derive?**

Response: Please see above.

c. **What is your understanding, in general terms, of the contours of that right?**

Response: The contours of each of the different types of privacy rights vary, and the precedent of the Supreme Court and the D.C. Circuit have explained that the analysis depends upon the specific constitutional provision at issue and the facts and circumstances of the case.

9. **In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.**

a. **Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?**

Response: I follow the precedent of the Supreme Court and the D.C. Circuit when interpreting the Constitution. Those precedent hold that courts should begin the exercise of interpreting the Constitution by reviewing the meaning of the actual text of the document.

b. **Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?**

Response: Please see above.

10. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: In *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court left open the question of the specific standard of scrutiny for assessing a Second Amendment challenge to a Federal or State gun law. However, the Court in *Heller* indicated that rational-basis review would not be an appropriate standard. 554 U.S. at 628 n.27. The D.C. Circuit has stated that "the level of scrutiny applicable under the Second Amendment surely depends on the nature of the conduct being regulated and the degree to which the challenged conduct burdens the right," such that "a regulation that imposes a substantial burden upon the core right of self-defense protected by the Second Amendment must have a strong justification, whereas a regulation that imposes a less substantial burden should be proportionately easier to justify." *Heller v. District of Columbia*, 670 F.3d 1244, 1257 (D.C. Cir. 2011) (citations and internal quotation marks omitted). Following those principles, the D.C. Circuit held that intermediate scrutiny applied to gun registration laws and to the prohibitions on certain semi-automatic rifles at issue in the case. *Id.* at 1257, 1261-1262. I would apply this and any other relevant precedent of the Supreme Court and the D.C. Circuit in a Second Amendment challenge against a Federal or State gun law.

11. In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: The composition of the record on appeal, and under what circumstances the record can be supplemented, is governed by Fed. R. App. P. 10. I would follow that rule and any applicable precedent of the Supreme Court and the D.C. Circuit to determine when, if ever, sources outside of the record and the briefs can be relied upon in reaching a decision in a case.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: The answer would seem to depend upon the context. It seems that if any such studies were relied upon by the Congress to draft a statute, or by the President to draft an Executive Order, by an agency to draft a rule, or by the parties to the dispute to support their contentions in the lower court, then it may be necessary or appropriate for the appellate court to review the studies relied

upon when deciding the case. If none of those circumstances were present, I would follow the precedent of the Supreme Court and the D.C. Circuit to determine when, if ever, reliance on any such studies is appropriate.

12. What would be your definition of an "activist judge"?

Response: I would define judicial activism as occurring when a judge fails to heed the limitations on the judicial role prescribed by the Constitution, statutes, and precedent, and instead bases his or her decision on his or her personal views to reach a desired outcome.

13. In September 2012 you handed down a decision in the case ISDA v. CFTC. As with many decisions of judges, there was criticism of your decision. One of the criticisms was that your decision was "logically incoherent." The basis for that allegation was that in one part of the decision you wrote that "Section 6a is *ambiguous* as to the precise question at issue: whether the CFTC is required to find that position limits are necessary and appropriate prior to imposing them." Later in the opinion you stated, "The precise question, therefore, is whether the language of Section 6a(a)(1) clearly and *unambiguously* requires the Commission to make a finding of necessity prior to imposition position limits."

a. Please explain your approach to statutory construction.

Response: When called upon to review an agency's interpretation of a statute, as in the *International Swaps* case, I apply the test announced by the Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Under this test, a judge must first determine "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. In making this initial determination, I employ "traditional tools of statutory construction" by looking to the statute's text, structure, purpose, and history, as well as the statute's relationship to other federal statutes, where appropriate. *See id.* at 843 n.9; *see also Cal. Dental Ass'n v. FTC*, 526 U.S. 756 (1999). If these sources indicate that Congress's intent is clear, then this ends the matter because both agencies and courts "must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-43. If the statute is ambiguous on the precise question at issue, though, then courts should defer to the agency's interpretation, so long as it "is based on a permissible construction of the statute." *Id.* at 843.

b. Do you believe your decision in this case was internally inconsistent as alleged by the commentary described above? Please explain.

Response: I disagree with the assertion that the *International Swaps* decision was "logically inconsistent." The two passages cited above pertain to different aspects of the statute at issue, and thus different steps of the statutory analysis. The overall question in the case, summarized in the first quoted passage, was whether the statute required the Commodity Futures Trading Commission "to find that position limits are necessary and appropriate prior to imposing them" on futures contracts, options contracts, and swap transactions. *ISDA v. U.S. CFTC*, 887 F. Supp. 2d 259, 267 (D.D.C. 2012). I concluded that the statute was ambiguous as to this overall question. In reaching that determination, though, one step of my analysis required that I look to the statute as a whole, including subparagraph (a)(1), 7 U.S.C. § 6a(a)(1). In so doing, I determined that subparagraph (a)(1) "unambiguously require[d] the Commission to make a finding of necessity prior to imposing position limits," *see ISDA*, 887 F. Supp. 2d at 269, as referenced in the second passage quoted above. Importantly, while I found the language of subparagraph (a)(1) to be clear and unambiguous, I nevertheless concluded, at a later step in my statutory analysis, that the extent to which Congress intended to incorporate the requirements of subparagraph (a)(1) into other portions of the statute—in particular, the new "position limits" provisions added by the Dodd-Frank Act—remained ambiguous and unclear. These two conclusions are not inconsistent.

14. What is the most important attribute of a judge, and do you possess it?

Response: I think that a commitment to impartially uphold the Constitution is the most important attribute of a judge, and I believe that I possess and have demonstrated that attribute during my tenure as a judge.

15. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: Collegiality is certainly an important element of being a judge on Circuit Court of Appeals. Because the judges work primarily in panels of three (unless the matter is being heard en banc), no individual judge can reach an outcome in a case without reaching agreement with one or more of the other judges on the panel. Thus, it is extremely important to approach the work of a Circuit judge with an open mind to the views of the other members of the court and to treat the other judges with civility and respect with a view toward reaching consensus if possible, and I would strive to do just that.

16. 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 respectful, impartial and fair. I believe that my record as a judge shows that I meet that standard.

17. In general, Supreme Court precedents are binding on all lower federal courts. 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.

18. 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 confronted with a case of first impression, I would first review the specific language of the statute, regulation or other text at issue, and then turn to related precedent from the Supreme Court and the D.C. Circuit to identify any legal principles or rules that might be relevant or analogous to the circumstances of this case. I would also consult treatises or other learned secondary sources for guidance. In general, I would seek to identify the relevant principles, standards and guidelines that have been developed to analyze the type of legal questions presented by this case and then apply them to these facts.

19. 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: As a member of an inferior court, I have a duty to follow all Supreme Court precedent, unless that precedent has been overturned by the Supreme Court. Similarly, I have a duty to follow D.C. Circuit precedent, even if I disagree with it. If I were confirmed to the D.C. Circuit and were to confront a decision that I believed was seriously in error because it conflicted with intervening Supreme Court precedent or had proven itself thoroughly unworkable, I could suggest that it should be overruled by the Court of Appeals sitting en banc.

20. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: While courts do have the power and authority to review the constitutionality of statutes passed by Congress, it is also very well settled that courts must exercise judicial

restraint in doing so. Thus, when reviewing statutes, courts must do so very carefully and must avoid constitutional issues if possible, and endeavor to interpret the statute in a manner that upholds its constitutionality if that can be done in a way that is faithful to the text of the statute and the intent of Congress. If the court cannot avoid the issue, it should only strike down a statute if it is clearly shown that Congress has exceeded its authority under the Constitution or acted contrary to a provision of the Constitution.

21. What weight should a judge give legislative intent in statutory analysis?

Response: Generally speaking, binding precedent requires a court to first attempt to ascertain the intent of the legislature by examining the actual text of the statute, as well as its structure. If the plain meaning of the text is clear, then that settles the issue because the best evidence of what the legislature intended comes from the words that it used in the statute. However, in those circumstances where the plain meaning of the text of the statute is ambiguous, the court can examine the legislative history to aid its construction of the statutory text.

22. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

Response: No. The outcome of a case should depend upon an impartial application of the law to the facts.

23. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: I would be guided by the precedent of the Supreme Court and the D.C. Circuit when ruling on any constitutional issue. My understanding is that those precedents generally have not relied upon foreign law, except in very limited circumstances, such as an occasional reference to English common law in discerning the scope of the Fourth Amendment, or to foreign law to confirm the Court's own interpretation of the Eighth Amendment prohibition against cruel and unusual punishment.

24. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I believe that my record as a judge for the past two and half years has shown that I am fair and that I make my rulings based solely on the law and the facts and without regard to my personal views, if any.

25. 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: D.C. Circuit precedent should only be overruled by the Court of Appeals sitting en banc, and generally only when that precedent is contrary to an intervening decision of the Supreme Court or has proven itself to be thoroughly unworkable in application.

26. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

27. Please describe with particularity the process by which these questions were answered.

Response: After receiving the questions from a representative from the Justice Department's Office of Legal Policy, I reviewed them, performed some research, prepared draft responses and sent those drafts back to the Justice Department. On September 22, 2013, I spoke to a representative from the Office of Legal Policy. I subsequently revised and finalized my responses and sent them to the Justice Department for submission to the Committee.

28. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of the Honorable Robert Leon Wilkins
Nominee, United States Circuit Judge for the D.C. Circuit

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy, and what I have tried to do since becoming a District Court Judge, is to be mindful of judicial restraint. In order to do that, I train my focus on the case in front of me, and keep it there, rather than reaching out and trying to address other issues. As part of this, it is also very important to me not to enter a case with any preconceived notions, nor allow such notions to impact my decision making. Instead, I believe that it is my job to let the facts and the law point to the correct outcome, wherever that path leads. I have not studied the Justices sufficiently to know which of them may share this same philosophy exactly.

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 follow the precedent of the Supreme Court and the D.C. Circuit when interpreting the Constitution. Those precedent have interpreted various provisions of the Constitution using various originalist methods, such as by examining the original intent of the framers of the provision, see *Boumediene v. Bush*, 553 U.S. 723, 739–45 (2008), or by examining what courts and members of the public understood a particular provision to mean at or near the time of drafting, see *District of Columbia v. Heller*, 554 U.S. 570, 584 (2008), or by extrapolating governing principles from the original text, such as the "reasonable expectation of privacy" test used as an aid to interpret the scope of the Fourth amendment, see *United States v. Jones*, 132 S.Ct. 945, 949-50 (citing *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J. concurring)).

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 member of an inferior court, I have no authority to overrule Supreme Court precedent. With respect to D.C. Circuit precedent, it should only be overruled by the Court of Appeals sitting en banc, and generally only when that precedent is contrary to an intervening decision of the Supreme Court or has proven itself to be thoroughly unworkable in application.

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 in *Garcia* explained, in part by referencing several passages in the Federalist Papers just before the quote you specifically asked about, that the Framers of the Constitution designed a system by which the Federal government would protect the sovereign interests of the States. *Garcia* is binding precedent on all lower courts. For that reason, if I am fortunate enough to be confirmed to the United States Court of Appeals for the District of Columbia Circuit, I would follow *Garcia*, along with all Supreme Court 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 struck down legislation passed by Congress and signed by the President because it sought to regulate non-economic conduct, holding that the laws exceeded Congress's Commerce Clause power. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). Subsequent to *Morrison* and *Lopez*, Justice Scalia stated in a concurring opinion that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzalez v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring). Therefore, if a party before me ever challenges a statute with respect to Congress's authority under the Commerce Clause to regulate non-economic activity, I would undertake a searching review of the record and then carefully apply the relevant precedents.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Recently, the Supreme Court reiterated that "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). The Court has applied this principle in cases examining both executive orders, *see Youngstown*, 343 U.S. at 582-83, 585, and executive actions, *see Medellin*, 552 U.S. at 498, 524 (involving a presidential memorandum). If I am confirmed, I will adhere to the precedent established in these cases and any relevant cases handed down by the Supreme Court or the District of Columbia Circuit.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are . . . 'implicit in the concept of ordered liberty'" and "objectively, 'deeply rooted in this Nation's history and tradition.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted). I would follow that case and other relevant precedent, and, as instructed by the Court, would "exercise the utmost care" when examining this question. *See id.* at 720.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The U.S. Supreme Court has held that laws and classifications based on race, alienage, and national origin are subject to "strict scrutiny" under the Equal Protection Clause. Strict scrutiny also applies to state laws that impermissibly infringe upon fundamental personal liberties secured by the U.S. Constitution. In addition, though not subject to "strict scrutiny," the Supreme Court has ruled that classifications based on gender and illegitimacy are also subject to a heightened level of scrutiny, commonly described as "intermediate scrutiny." *See, e.g.*, *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (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: In 2003, the Supreme Court issued its decision in *Grutter v. Bollinger* and, as noted above, predicted that by 2028 (25 years later), "the use of racial preferences will no longer be necessary to further the interest" of promoting diversity in higher education. 539 U.S. 306, 343 (2003). It remains to be seen whether the Court's predictive judgment will hold true. If confirmed, though, I would faithfully apply the strict scrutiny test the Supreme Court recently reaffirmed in *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), which requires that racial classifications be "narrowly tailored to further compelling governmental interests." *Id.* at 2419.

Senator Chuck Grassley
Questions for the Record

James Donato
Nominee, U.S. District Judge for the Northern District of California

1. **In 2006 the San Francisco Bar Association sent a letter to Senators Feinstein, Specter, Boxer, and Leahy opposing the nomination of Samuel Alito to the Supreme Court of the United States. You were an officer of the San Francisco Bar Association. Can you explain your personal objections to Justice Alito's nomination?**

   Response: The referenced letter was submitted on behalf of the Bar Association of San Francisco in January 2006. I did not prepare the letter or undertake any research for it, and I did not take a personal position for or against the confirmation of Justice Alito.

2. **The San Francisco Bar Association particularly had an issue with Justice Alito's view of Congressional power under the commerce clause. In your view are there any limitations to Congressional power under the commerce clause?**

   Response: Several Supreme Court decisions have found limits on Congress's power to regulate non-economic activity under the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). These cases stand for the proposition that non-economic activity with only an attenuated effect on interstate commerce cannot be regulated pursuant to the Commerce Clause. If confirmed, I will follow Supreme Court precedent without regard to any views I might or might not have.

3. **There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]**

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

[2] *Id.*, Para. 90.

a. **How would you approach this issue if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?**

Response: The Freedom of Speech guarantee is one of the most important guarantees in the Constitution. If confirmed as a District Judge, I would approach this issue by following applicable Supreme Court and Ninth Circuit precedent, and applying it to the admissible evidence in the record. Since this issue might come before me if I am confirmed, I cannot comment further on it.

b. **Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?**

Response: The Supreme Court has issued decisions on compelled speech. These decisions include *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006), *Wooley v. Maynard*, 430 U.S. 705 (1977), and other cases. If confirmed, I would follow this and other applicable precedent, without regard to any personal thoughts or views I might or might not have.

c. **How would you respond if an individual or company in this circumstance raised a Free Exercise claim?**

Response: The Free Exercise guarantee is also a critically important guarantee in the Constitution. If confirmed, I would respond by identifying applicable Supreme Court and Ninth Circuit precedent, and applying it to the admissible evidence in the record. No other factors would affect my determination of the issue. Since this issue might come before me if I am confirmed, I cannot comment further on it.

4. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

Response: The Sentencing Guidelines are an important tool to achieve uniformity in criminal sentences. If confirmed, I would treat the Sentencing Guidelines with substantial deference in determining appropriate sentences.

5. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No.

6. **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 commitment to upholding the impartial rule of law in all cases. I possess that attribute.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: In my view, appropriate judicial temperament consists of decisiveness, transparency in decision-making, impartiality, civility to litigants and counsel, the ability to listen carefully, a calm demeanor, and an unwavering commitment to the rule of law. I meet these standards.

8. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a matter of first impression involving a statute, I would turn first and foremost to the language of the statute. If the text is clear, my inquiry would be at an end. If for some reason the statutory text did not lead to a clear answer, I would look to the structure and context of the provision, and turn to precedents of the Supreme Court and the Ninth Circuit interpreting similar provisions.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: As a District Judge, I would be bound to follow all Supreme Court and Ninth Circuit precedent and would apply it, regardless of whether I thought it was correctly decided or not.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A district court should avoid reaching constitutional questions whenever possible. If that cannot be avoided, a district court must presume that a statute passed by

Congress is constitutional and should be declared unconstitutional only if it clearly conflicts with the Constitution as interpreted by the Supreme Court and relevant circuit courts, or if Congress clearly acted beyond its constitutional authority.

12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: If confirmed, my duty as a District Judge would be to decide every case solely on the basis of the plain text of the law, applicable precedent and the admissible evidence in the record. I will fulfill that duty without regard to any ideology or motivations that I might or might not have.

13. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: The rule of law and equal justice under law are the bedrock principles of our legal system. I have been committed to upholding those principles throughout my legal career, starting with my service as judicial law clerk to the Hon. Procter R. Hug, Jr., United States Circuit Judge. I can assure the Committee and future litigants that I will decide every case and issue presented to me on the basis of the facts and applicable law, and without regard to any personal views that I may or may not have.

14. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No.

15. If confirmed, how do you intend to manage your caseload?

Response: I have been advised that the Northern District of California has a substantial case load and that the seat I would take, if I am fortunate enough to be confirmed, has been deemed a judicial emergency vacancy. If confirmed, I will manage my caseload by maintaining reasonable and efficient schedules in all matters, deciding motions and other issues promptly, making appropriate use of Magistrate Judges, and encouraging dispute resolution through mediation and other services.

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Judges play a critical role in ensuring fair and prompt resolution of disputes. If confirmed, I would implement the measures discussed in Question 15 above to manage my docket, and use the procedures provided for in the Federal Rules of Civil Procedure

and Criminal Procedure to manage cases.

17. **You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I will resolve legal issues based on applicable Constitutional and statutory provisions, along with precedent from the Supreme Court and the Ninth Circuit. I will resolve factual disputes on the basis of admissible evidence in the record. With respect to challenges in the transition, I have been fortunate in my 23 years of civil practice to have worked on a broad array of federal claims and issues, including class actions and multi-district cases, in every phase of litigation from the complaint to judgment, verdict or settlement. While I will need to familiarize myself with areas of the law where I have had less experience, such as criminal law, I will prepare through diligent and dedicated work, and will have substantial resources to assist me in achieving a smooth transition.

18. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.**

    Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: No.

19. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions from the Department of Justice and prepared my responses. I discussed my responses with a representative of the Department of Justice, and I authorized the Department of Justice to submit my responses to the Committee.

20. Do these answers reflect your true and personal views?

Response: Yes.

Senator Lee

Questions for the Record Nominations Hearing (10:30 AM, Sept. 11, 2013)

James Donato

1. **It is my understanding that while you were serving as a board member of the Bar Association of San Francisco, the Association sent a letter to Senators Feinstein, Boxer, Specter, and Leahy in opposition to the confirmation of Justice Alito to the Supreme Court of the United States.**

    a. **Did you oppose confirmation of Justice Alito to the U.S. Supreme Court and, if so, on what basis?**

    Response: The referenced letter was submitted on behalf of the Bar Association of San Francisco in January 2006. I did not prepare the letter and did not take a personal position for or against the confirmation of Justice Alito.

    b. **Did you participate in the drafting of the letter?**

    Response: No.

    c. **Did you agree with the contents of that letter?**

    Response: I did not prepare the letter or undertake any research or analysis of the issues discussed in it, and consequently have no views on the contents of the letter.

    d. **Did you express any opposition or support within the association with respect to the contents of that letter?**

    Response: The letter reports that 23 directors voted to approve it, two voted against it, one abstained and two did not vote. I do not recall specifically how I voted, but it is likely I voted to send the letter out of deference to the committee that researched and prepared it.

2. **The Bar Association letter asserts that Justice Alito does not properly understand "the Court's role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress,**

the Court, and the Executive, federal-state relations, and limits on governmental power."

a. **What is your understanding of Justice Alito's understanding of "the Court's role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power"?**

   Response: I did not prepare the letter or undertake any research or analysis of Justice Alito's opinions on those issues, nor have I studied Justice Alito's record on the Supreme Court. Although I do not have a substantive understanding of Justice Alito's views on these issues, if confirmed, I will follow any binding Supreme Court precedent reflecting Justice Alito's views on these or any other issues.

b. **What are your views on "the Court's role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power"?**

   Response: The United States Supreme Court has addressed these issues. For example, the Supreme Court has established that Congress's authority under the Commerce Clause is broad but not unlimited. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court has also recognized that the President's powers to issue executive orders or take executive actions are circumscribed by the Constitution and acts of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). With respect to federal-state relations, the Supreme Court has held that "the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States." *New York v. United States*, 505 U.S. 144, 157 (1992). The Supreme Court has applied this important constitutional limitation to hold that the authority to determine qualifications for state-court judges and other state government officials is, among other powers, "a power reserved to the States under the Tenth Amendment and guaranteed them by that provision of the Constitution under which the United States 'guarantee[s] to every State in this Union a Republican Form of Government.'" *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991). If I am confirmed as a District Judge, I will faithfully follow Supreme Court and Ninth Circuit precedent on these issues.

c. How do your views on these issues differ from those of Justice Alito?

Response: I have not undertaken any research or analysis of Justice Alito's views on these issues. If I am fortunate enough to be confirmed as a District Judge, I will follow Supreme Court precedent on these and all other issues, without regard to any personal views I may or may not have.

Questions for the Record
Senator Ted Cruz

James Donato
Nominee, U.S. District Judge for the Northern District of California

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 a judge should be decisive, transparent in decision-making, impartial, civil and respectful to litigants and counsel, a good listener, should maintain a calm demeanor, and have an unwavering commitment to the rule of law and to following Supreme Court precedent. I have not undertaken a substantive study of the Justices of the Warren, Burger or Rehnquist Courts, but I believe all of the Justices in those Courts were committed to similar principles and I therefore cannot identify a particular Justice most analogous with my views.

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 Judge, I will follow Supreme Court precedent where the Court used originalism to interpret the Constitution. For example, the Supreme Court recently held that the public understanding of a legal text in the time after enactment is a "critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008). I will follow this and all other Supreme Court precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a District Judge, I would follow precedent and be powerless to overrule it.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed as a District Judge, I would be bound to follow *Garcia* and all other precedent from the Supreme Court.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Recent Supreme Court decisions have found limits on Congress's power to regulate non-economic activity under the Commerce Clause. *See, e.g., United States v. Morrison*, 529

U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). These cases stand for the proposition that the Commerce Clause does not empower Congress to regulate non-economic activity with only an attenuated effect on interstate commerce. However, in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring). If confirmed, I will follow precedent on the Commerce Clause decided by the Supreme Court.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court held in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), that the President's powers to issue executive orders or take executive actions are circumscribed by the Constitution and acts of Congress. *See also Medellin v. Texas*, 552 U.S. 491, 524 (2008) (President's authority to act "'must stem either from an act of Congress or from the Constitution itself.'") (citation omitted). If confirmed, I will follow Supreme Court precedent on this issue.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has found certain rights to be "fundamental" for purposes of the substantive due process doctrine when they 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, I will follow Supreme Court precedent on these issues, without regard to any personal beliefs I might or might not have.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause when evaluating "suspect" classifications such as race and national origins. It has also stated that heightened scrutiny should be applied when a classification burdens a right that the Court has deemed fundamental.

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: The Supreme Court has recently addressed racial preferences in public higher education in *Grutter* and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013). If confirmed, I would follow the Supreme Court's precedent on this issue without regard to any personal views or expectations.

Senator Chuck Grassley
Questions for the Record

Timothy L. Brooks
Nominee, U.S. District Judge for the Western District of Arkansas

1. **According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.**

   a. **What experience do you have with criminal law?**

      Response: I handled criminal cases in the early part of my career. Although I subsequently focused my practice on civil cases, my firm routinely handles all manner of complex criminal litigation in federal and state courts, and I have had exposure to criminal law and procedure through my partners' cases over the years.

   b. **What steps have you taken to familiarize yourself with the area of criminal law?**

      Response: I have been studying the federal criminal code, the Federal Rules of Criminal Procedure, and the sentencing guidelines. I have been observing change of pleas and sentencing hearings, and recently attended a complete criminal trial in federal court.

   c. **What steps do you plan to take to get up to speed, should you be confirmed?**

      Response: I have enrolled in a CLE seminar for advanced training in the sentencing guidelines, and I plan to continue studying criminal law and procedure until I have mastered this area of law.

2. **You have spent your entire legal career as an advocate. How will you approach the transition from advocate to judge?**

   Response: As a private attorney I advocate on behalf of my client's interests and objectives – whether that be as a plaintiff or as a defendant. If confirmed as a judge, however, I will first and foremost recognize and understand the primary distinction of my new role. A judge is a neutral arbiter – charged with the solemn responsibility to steadfastly apply the rule of law to the facts and issues before the court. I would approach each case with an open mind – understanding the points of view and arguments of each side.

3. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

   Response: The underlying purposes for which the Guidelines were originally enacted are as true and appropriate today as ever. Although no longer considered mandatory, if confirmed I will use and follow the Sentencing Guidelines as the foundation and central guidepost for all sentencing decisions.

4. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   Response: No. The desire and ability to understand each litigant's point of view is an important judicial attribute, however, a judge should never allow sympathy, passion, or prejudice to engender favor for one party over another.

5. **What is the most important attribute of a judge, and do you possess it?**

   Response: A respectful attitude is an important common thread woven through the hallmark qualities of every good judge. A judge should have respect for precedent and the rule of law; respect for the role of Congress as the voice of the people in the enactment of statutory law; respect for the administration of justice by always being fair and impartial; respect for all who come before the court – including the parties, lawyers, witnesses, jurors, and court staff; and respect for the responsibilities of the court by working hard, and being diligent, thorough, and decisive. I understand the importance of a respectful attitude and believe I possess this attribute.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: Good judicial temperament involves the ability to be open-minded, objective, fair, and impartial. Most importantly, a judge's attitude and demeanor should evidence respect and civility throughout all aspects of the court's work. I would meet this standard if confirmed as a judge.

7. **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.

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 and presented with a case involving statutory interpretation, I would look first to the text of the statute. If the text was ambiguous I would look to legislative history to illuminate the meaning and purpose of the text. I would look to analogous or related precedent of the Supreme Court and the Eighth Circuit Court of Appeals. I would also be guided by any applicable and well-reasoned persuasive authority from other circuits and/or district courts which may have already addressed the same issue.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: I would steadfastly apply any applicable precedent of the Supreme Court and the Eighth Circuit Court of Appeals, even if I personally believed those decisions to be errant.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: Statutes passed by Congress are presumed to be constitutional. A court should avoid ruling on constitutionality if there is a non-constitutional basis on which to resolve the issue. Only where Congress has clearly exceeded its authority should a court consider invalidating the statute on constitutional grounds.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

    Response: A judge's decisions should never – under any circumstance – be premised on or motivated by political ideology. I give you my unqualified assurances that, if confirmed, my decisions will be grounded in the text and precedent, and I will make decisions based solely on the faithful application of the rule of law to the facts and issues at hand.

12. **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: Fairness and impartiality are bedrock judicial principles. If confirmed, I will disregard any personal views I may have. I will apply the applicable rule of law to the facts and issues before the court in a fair, open-minded, objective, and impartial fashion.

13. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

    Response: No. I am unaware of any circumstances where it would be appropriate for a judge to rely upon foreign law, or the views of the "world community," to determine the meaning of the Constitution.

14. **If confirmed, how do you intend to manage your caseload?**

    Response: The Western District of Arkansas has a longstanding reputation of running one of the most efficient dockets in the country. I would strive to maintain and advance the court's reputation. If confirmed, I would use my experience as a trial attorney – and my understanding of which types of cases are likely to require more of the court's time than others – to fine tune the court's scheduling policies and procedures. I would actively participate in pre-trial conferences and the entry of case specific scheduling orders. I would

closely monitor my docket, promptly conduct hearings as necessary, and issue rulings on pending motions in a timely fashion. I would make good use of the magistrate judges in my district, and I would make use of all available technology to improve the efficiencies of the court.

15. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

    Response: Yes, judges should be actively involved in controlling the pace and conduct of litigation. If confirmed, I will actively participate in pre-trial conferences and the entry of case specific scheduling orders. I would closely monitor my docket, promptly conduct hearings as necessary, and issue rulings on pending motions in a timely fashion. I would make good use of the magistrate judges in my district, and I would make use of all available technology to improve the efficiencies of the court.

16. **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 apply the applicable law to the facts and issues before the court in a fair and impartial manner. I will faithfully adhere to precedent of the Supreme Court and the Eighth Circuit Court of Appeals. In cases of statutory interpretation, I will look to the text of the statute, and if ambiguous to legislative history. Where there is no controlling precedent, I will search for well-reasoned persuasive authority from other circuits and district courts. Leaving behind private practice, and the ensuing isolation from the collegiality of my partners, friends, and colleagues in the bar, will be the most difficult part of the transition. I also recognize that I don't yet know what I don't know about being a judge. Yet, I am very excited about the opportunity to open a new chapter in my career – where I can use my experience and skills in public service.

17. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.**

       Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the**

White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: I am not aware of any such endorsements.

18. Please describe with particularity the process by which these questions were answered.

Response: These questions were emailed to me by the Department of Justice on the afternoon of September 18th. I began drafting my responses that same evening. On September 19th I edited my responses and emailed them to the Department of Justice. On September 20th I discussed my responses with a representative of the Department of Justice and authorized submission of my responses to the United States Senate.

19. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Timothy L. Brooks
Nominee, U.S. District Judge for the Western District of Arkansas

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: As a private practitioner for the last 24 years – representing plaintiffs and defendants in a wide variety of legal matters – I have not developed a judicial philosophy. Nor have I read Supreme Court decisions with the aim of reconciling the philosophies of particular jurists, although I do have great respect for the Justices on each of these Courts. I can explain the judicial principles I would uphold if confirmed as a district court judge. I would steadfastly apply the rule of law to the facts and issues at hand. I would be open-minded, fair, and impartial. I would faithfully respect precedent, and limit rulings to the issues necessary for disposition. I understand and would demonstrate great respect for the role of Congress in the enactment of laws on behalf of the American people.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I have not studied the different methodologies used to interpret the text of the Constitution. I do know that the Supreme Court discussed and applied originalism in finding an individual private right to possess weapons under the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I would faithfully adhere to precedent and the appropriate methodologies for constitutional interpretation as determined by the Supreme Court and the Eighth Circuit Court of Appeals.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a judge, I would not overrule controlling precedent.

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 stated quote is a holding of the Supreme Court, and as such would be binding precedent if I were to be confirmed as a judge.

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 stated: "Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *United States v. Morrison*, 529 U.S. 598, 610 (2000) (quoting *United States v. Lopez*, 514 U.S. 549, 560 (1995)). In those cases, the Court invalidated congressional action by emphasizing non-economic relationships. In a more recent concurring opinion, Justice Scalia observed that "Congress may regulate even non-economic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring). If confirmed and confronted with this question as a district court judge, I would apply Commerce Clause precedent of the Supreme Court and the Eighth Circuit Court of Appeals to the particular facts and circumstances at hand, and limit my ruling to the issues necessary for decision.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: I generally understand that the President's power to issue executive orders "...must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 585 (1952). This constraint is judicially enforceable within the context of a justiciable case or controversy.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that a right is "fundamental" for purposes of substantive due process analysis when it is "objectively deeply rooted in the Nation's history and tradition, ... and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks and citations omitted). If confirmed, I would apply this and all other applicable Supreme Court precedent if confronted with this question.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause to a narrow set of individual classifications, such as gender, race, religion, and ethnicity. The Court has also applied heightened scrutiny to non-suspect classifications when legislation impinges on a fundamental right. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: In *Grutter*, the Supreme Court determined that the Equal Protection Clause did not prohibit the University of Michigan's narrowly tailored use of a "race-conscious" admissions policy – as contrasted to a pure race quota system. It was ten years ago that Justice O'Conner opined that in 25 years the use of racial preferences would no longer be necessary. *Grutter*, 539 U.S. at 343 (2003). More recently, the Supreme Court considered the University of Texas' admissions policy – which had been modeled after the Court's holding in *Grutter* – and emphasized that the strict scrutiny standard of review must be applied when a court reviews admissions policies using racial categories or classifications. *Fisher v. University of Tex*as, 133 S.Ct. 2411, 2421 (2013) (remanded for further proceedings). Thus, if confirmed and confronted with this question, I would apply controlling precedent to the particular facts and circumstances at hand, and limit my ruling to the issues necessary for decision.

Response of Beth Labson Freeman
Nominee to be United States District Judge for the Northern District of California
To the Written Questions of Senator Chuck Grassley

1. **You have been a judge on a court of general jurisdiction. Federal District Courts are courts of more limited jurisdiction. How will you make this transition and what guidance will you follow with respect to federal jurisdiction?**

   Response: If confirmed to serve as a federal court judge, I will be guided by the Constitution, federal statutes and Supreme Court precedent in my effort to identify the bounds of federal court jurisdiction. The Constitution "authorizes Congress... to determine the scope of federal courts' jurisdiction within constitutional limits." *Hertz Corp. v. Friend,* 559 U.S. 77, 84 (2010). Recognizing that it is the duty of the federal court to determine whether it has personal and subject matter jurisdiction in a particular case, I believe that I can transition to this role by adopting a practice of reviewing federal jurisdiction in each case at an early stage of the proceedings to ensure that the case is properly before the court.

2. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and what sources of information you look for guidance.**

   Response: As a state trial court judge I have presided over hundreds of bench trials. I listen to all of the evidence admitted at trial and determine what the facts are. I review the claims made by the parties in order to identify the issues that I must decide. I review the law as presented by the parties in their arguments to the court and I do my own additional legal research. I look to state statutes and decisional law from the California Supreme Court and Courts of Appeal. When a constitutional issue arises, I review the state and federal constitutions and precedent from the U.S. Supreme Court. Once I determine the applicable law, I apply that law to the facts as I have found them in order to render a decision.

3. **At times judges are faced with cases of first impression. What principles guide you, or what methods do you employ, in deciding cases of first impression?**

   Response: During my tenure as a state trial court judge, when deciding cases of first impression regarding interpretation of a statute, I have been guided by the following principles: First, I am guided by the text of the statute. I interpret the provision according to its plain meaning. Second, if I find ambiguity, I attempt to resolve that ambiguity by consideration of the statute as a whole, applying well-established principles of statutory construction. Finally, I look to analogous precedent from higher courts.

4. **How would you define the term judicial activism? What would indicate to you that a judge is an activist judge?**

   Response: I would define "judicial activism" as substitution of personal beliefs for the rule of law and binding precedent. Judicial activism would be indicated by a judge's failure to appreciate the proper role of the judiciary in our Constitutional system.

5. **How will you use the Sentencing Guidelines to guide you in criminal matters?**

   Response: If confirmed, I will give substantial deference to the Sentencing Guidelines. In my view, the Sentencing Guidelines enhance fairness and consistency in sentencing across the nation and are a significant factor in reducing bias in sentencing.

6. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justices to tilt in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   Response: No.

7. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe adherence to the rule of law and precedent is the most important attribute of a judge. Respect for litigants, fairness, and an open-minded review of the evidence presented in each case is also fundamental. A judge should always set aside personal views and fairly and impartially apply the law to the facts presented in the case. I believe that I possess these attributes and that I have diligently applied them throughout my 12 years as a state trial court judge.

8. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: In my view, judges must possess appropriate judicial temperament in order to insure the fair administration of justice. Parties and witnesses must feel that they are able to present evidence and legal arguments to a judge who is open-minded, willing to listen and able to thoughtfully consider all evidence and arguments in reaching a fair and correct judicial decision. The appropriate temperament of a judge includes courtesy, patience, hard work, fairness and decisiveness. I believe that I possess these attributes and, if confirmed, I will work hard to maintain this high standard of proper judicial temperament.

9. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

10. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

    Response: If confirmed as a district court judge and faced with a case of first impression involving the interpretation of a statute, I would be guided by the text of that statute or provision and would interpret the statute according to its plain meaning. If additional sources were required to interpret an ambiguous portion of the statute, I would look at the statute as a whole and apply well-established principles of statutory construction to resolve the ambiguities. I would also look at analogous precedent from higher courts.

11. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

    Response: I would follow the Supreme Court or Court of Appeals without regard to my personal opinion.

12. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: A federal court should always begin its analysis of a federal statute with the presumption that federal statutes are constitutional. Courts should also seek to resolve cases without reaching a constitutional question when possible. In cases where the court is required to rule directly on the constitutionality of a federal statute, the court should declare a statute unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000).

13. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

    Response: Political ideology and motivation have no place in judicial decision-making. If confirmed, my decisions will always be based on application of the law and Supreme

Court precedent. Based on my 12-year tenure on the state trial bench, where I have always applied the law without regard to other motivations, I can assure you that, if confirmed, I will continue to uphold the law and make certain that my decisions are grounded in precedent and the text of the law.

14. 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 confirmed, I would always set aside my personal views and be fair to all litigants who appear before me. Over the past 12 years that I have served as a state court trial judge I have worked diligently to set aside any personal views I might have, to be fair and to demonstrate to litigants that I am open-minded to their arguments and committed to applying the law to their case. I believe that I have been successful in this regard over the past 12 years and would continue to do so if confirmed as a district court judge.

15. In your view, is it ever proper for judges to rely on foreign law, or views of the "world community," in determining the meaning of the Constitution? Please explain.

Response: No.

16. If confirmed, how do you intend to manage your caseload?

Response: It is my understanding that the workload of the Northern District of California is quite heavy. If confirmed, I would actively manage my caseload. I would require the parties to develop efficient and appropriate timelines for their cases so that resolution of the dispute could be accomplished in a reasonable period of time. I would require litigants to adhere to that schedule. I would schedule significant motions and hearings and decide those matters promptly. I would encourage and facilitate mediation and settlement where appropriate and set firm trial dates to encourage the efficient resolution of cases.

17. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. Our justice system depends on the fair, prompt and efficient resolution of matters brought before the court. If confirmed, I would actively manage my docket. I would work with the parties to develop appropriate case schedules. I would encourage settlement where possible and insure an appropriate trial date where necessary. I would

decide motions promptly so that the parties can be assured that they will obtain judicial rulings necessary to the fair resolution of their case.

18. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and what sources of information you look for guidance.**

    Response: As a state trial court judge I have presided over hundreds of bench trials. I listen to all of the evidence admitted at trial and determine what the facts are. I review the claims made by the parties in order to identify the issues that I must decide. I review the law as presented by the parties in their arguments to the court and I do my own additional legal research. I look to state statutes and decisional law from the California Supreme Court and Courts of Appeal. When a constitutional issue arises, I review the state and federal constitutions and precedent from the U.S. Supreme Court. Once I determine the applicable law, I apply that law to the facts as I have found them in order to render a decision.

19. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

       Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

       Response: No.

20. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on September 18, 2013. After reviewing the questions I prepared my responses that day and the following day. On September 22, 2013, I discussed my responses with a representative of the Department of Justice and I authorized the Department of Justice to transmit my responses to the Committee.

21. Do your answers reflect your true and personal views?

Response: Yes.

Response of Beth Labson Freeman
Nominee to be United States District Judge for the Northern District of California
To the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours?

Response: My judicial philosophy, over the past 12 years that I have served as a state trial court judge, has been grounded in my commitment to the impartial adherence to the rule of law and binding precedent. I treat all litigants with fairness and respect. This means that I exercise judicial restraint in all matters by deciding only those issues in controversy and applying applicable precedent. I have not studied the judicial philosophies of the Justices of the Supreme Court and thus, I am unable to identify a Justice whose judicial philosophy is analogous to my own.

Do you believe that originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original meaning, or some other form)?

Response: If I am confirmed to be a district court judge and I am faced with a Constitutional question, my obligation would be to determine whether there is binding precedent from the Supreme Court or the Court of Appeals for my circuit and to apply that precedent. One example of a binding precedent 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 are going through the confirmation process, under what circumstances would you overrule that precedent as a judge?

Response: If I am confirmed as a district court judge, I will be bound by controlling precedent and I would have no authority to overrule it.

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 Auth.* is binding precedent. If confirmed as a district court judge, I would be bound by and would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*

Do you believe that Congress' Commerce Clause power, in conjunction with the Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court, in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce and persons or things in interstate commerce, and (3) activities that substantially affect interstate commerce. In *United States v. Lopez, supra,* and *United States v. Morrison,* 529 U.S. 598 (2000) the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activities. If confirmed as a district court judge and presented with a challenge to the constitutionality of a statute on the grounds that it impermissibly extended to non-economic activity, I would research the issue thoroughly and apply controlling precedent in making my ruling.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has recognized that a President's authority to issue executive orders or executive actions must "stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 585 (1952). If I were to be confirmed and confronted with such an issue, I would review all applicable precedent from the Supreme Court and apply it to the case before me.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has recognized certain rights as "fundamental" for purposes of the substantive due process doctrine when they 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 I were to be confirmed as a district court judge, I would look to Supreme Court precedent to determine if the right in question had been deemed to be fundamental. If the Supreme Court had not addressed the issue, I would look to the Ninth Circuit Court of Appeals and I would apply binding precedent.

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. Additionally, heightened scrutiny should be

applied when a classification burdens a right the Court has identified as "fundamental," such as the right to vote, *e.g., City of Cleburne v. Cleburne Living Center, Inc.,* 473 U.S. 432, 440 (1985); *Mass. Bd. of Retirement v. Murgia,* 427 U.S. 307, 312 (1976).

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 be bound by *Grutter* and all other Supreme Court precedents on the issue of racial preferences in public higher education, including *Fisher v. Univ. of Texas at Austin,* 133 S. Ct. 2411 (2013), regardless of any personal views I might have.

Senator Chuck Grassley
Questions for the Record

Pedro A. Delgado Hernandez
Nominee, U.S. District Judge for the District of Puerto Rico

1. **According to your questionnaire you resigned from the Puerto Rico Court of Appeals in 1996 after one year to return to private practice.**

   a. **Can you offer some insight as to why you reached that decision?**

      Response: My first wife and I divorced by mutual agreement in 1996, and I needed a higher income to pay for child support and related expenses. My two daughters were 15 years old at the time. Consequently, even though I enjoyed my job in the Circuit Court of Appeals of Puerto Rico, I decided to resign from the Court and return to private practice at O'Neill & Borges, where I have worked for the past 17 years.

   b. **Why do you want to be a United States District Judge?**

      Response: I graduated from law school in 1983, and was admitted to practice law the same year. Throughout my career, I have had the opportunity to represent private parties and public entities before different judges in state and federal court, to clerk in the state and federal court systems, and to serve as a judge in Puerto Rico. The experience has provided me with the foundation to appreciate and confirm the importance of the United States District Court in applying the law to the facts in the cases brought before it. As a United States District Judge I would be able to serve the public in this position of trust, with the benefit of the experience and lessons learned in my years of practice.

   c. **What are your plans and commitment to serving in this position, if confirmed?**

      Response: If confirmed, I am fully committed to serving in this position and plan to devote myself to the task with discipline and hard work.

2. **Would you please describe your judicial philosophy? What judges or justices would you hope to emulate?**

   Response: My judicial philosophy is to apply the law to the facts of the case in a fair, impartial, and diligent manner, limiting myself to the issues that are properly presented, while treating litigants, witnesses, jurors, staff, and the public, with dignity, courtesy, and respect. I would hope to emulate Judge Juan Torruella, whom I had the privilege to clerk for

in the United States District Court for the District of Puerto Rico, and in the United States Court of Appeals for the First Circuit. Judge Torruella is a source of inspiration, embodying the characteristics I have referred to in describing my judicial philosophy.

3. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

   Response: If confirmed, I intend to give the Sentencing Guidelines significant deference. A lot of work and effort went into creating the Guidelines. They contain a framework of relevant factors to be applied to promote uniformity and consistency in sentencing.

4. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   Response: If by empathy it is meant the need to fully understand the facts and the parties' legal positions, empathy has a role in adjudication. However, the judge should never place his thumb on the scales of justice to tilt it in favor of the proverbial little guy.

5. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is integrity. I possess this attribute.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should be patient, tolerant, open-minded, and decisive yet flexible to ensure the fair, impartial, and diligent application of the law to the facts of the case. The most important element of temperament is patience. I meet that standard.

7. **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.

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: When confronting a case of first impression, I would initially review the plain language of the statute. If the language were unambiguous, I would apply it. Should statutory language be ambiguous, I would rely on principles of statutory construction used by precedents of the Supreme Court and the United States Court of Appeals for the First Circuit, which reviews the decisions of the United States District Court for the District of Puerto Rico.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: I am committed to following the precedents of higher courts and giving them full force and effect, even if I personally disagree with such precedents.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: Congressional enactments are presumed constitutional. A federal court may only declare a statute enacted by Congress unconstitutional when Congress has exceeded its constitutional authority or when the statute violates an express prohibition of the Constitution.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

    Response: If confirmed, I am fully committed to apply the law to the facts of the case, respecting the text of the law and precedent rather than any underlying political ideology or motivation. As a judge in the Circuit Court of Appeals of Puerto Rico I had and was guided by the same commitment, and served accordingly.

12. **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: Earlier in my career I faced the same challenge when I was appointed as a Judge in the Circuit Court of Appeals of Puerto Rico. As a judge I put my personal views aside, and was fair to all who appeared before me. If confirmed by the Senate I would similarly put my personal views, if any, aside and will be fair to all who appear before me.

13. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

    Response: In my view, it is not proper for judges to rely on foreign law or on the views of the world community in determining the meaning of the Constitution.

14. If confirmed, how do you intend to manage your caseload?

Response: Docket management is a critical task for a District Court judge. If confirmed, I intend to use a case management protocol to determine how each case filed could most efficiently and effectively proceed to resolution, including the amount of time it may appropriately and realistically take to be litigated, and manage the case accordingly through the different stages of the litigation.

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges have a role in controlling the pace and conduct of litigation. If confirmed, I intend to control the docket through a case management protocol, thoroughly reviewing case files to identify complex cases requiring special attention, setting and maintaining reasonable deadlines, discouraging unnecessary extensions of time, conducting status conferences to keep abreast of case progress, promptly ruling on motions and issues, and encouraging litigants to highlight and streamline the issues in the dispute and to discuss and engage in settlement negotiations.

16. You have spent most of 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 would examine the pleadings and written submissions, and review and study applicable law and precedent. The most difficult part of the transition will be to transcend the litigator's mindset to become an advocate for the rule of law proper, so as to apply it to the facts of the case. A successful transition requires commitment and self-discipline. I accomplished that transition as a judge in the Circuit Court of Appeals of Puerto Rico.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.**

Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

18. Please describe with particularity the process by which these questions were answered.

Response: On September 18, 2013 I received the questions by email from a representative of the Department of Justice and started to work on the responses, which I sent to the Department of Justice on September 19, 2013. After receiving comments, I made revisions and authorized the submission of my responses to the Committee on September 23, 2013.

19. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Pedro A. Delgado Hernandez
Nominee, U.S. District Judge for the District of Puerto Rico

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to apply the law to the facts of the case in a fair, impartial, and diligent manner, limiting myself to the issues that are properly presented, while treating litigants, witnesses, staff, jurors, and the public, with dignity, courtesy, and respect. I have not undertaken Supreme Court scholarship which would allow me to responsibly identify and discuss Supreme Court Justices' 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: The Supreme Court has examined original intent and original public meaning of the Constitution. See *United States v. Heller*, 554 U.S. 570 (2008). If confirmed, I will follow Supreme Court and applicable circuit precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, it will not be my role to overrule precedent.

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 excerpt from *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985) remains binding precedent, which I would apply if confirmed.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In resolving questions under the Commerce Clause and the Necessary and Proper Clause, I would rely on authoritative precedent. In this regard, the Supreme Court has recognized that Congress has authority to regulate: (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. See *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *United States v. Morrison*, 529 U.S. 598, 608-609 (2000). See also *Gonzales v. Raich*,

545 U.S. 1, 19 (2005) (upholding application of federal controlled substances law to prohibit home-grown cultivation and home-use of marijuana "because production of the commodity meant for home consumption, be it wheat or marijuana has a substantial effect on supply and demand in the national market for that commodity"), *id.* at 37-38 (Scalia, J., concurring in judgment) (noting that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce").

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has stated that "[t]he President's authority to act, as with the exercise of any government power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Jackson, J., concurring)). These limitations on the President's authority are judicially enforceable.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held 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, I would follow Supreme Court and applicable circuit precedent with respect to the identification of "fundamental" rights for purposes of substantive due process.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has ruled that "equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). See also *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985) (noting that strict scrutiny applies to classifications based on "race, alienage or national origin" or when "laws impinge on personal rights protected by the Constitution"; otherwise "heightened" review 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: If confirmed, I would apply the holding in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), and any other precedent in this area regardless of any expectation I might have.

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Robert L. Wilkins, to be United States Circuit Judge for the District of Columbia Circuit
Timothy L. Brooks, to be United States District Judge for the Western District of Arkansas
James Donato, to be United States District Judge for the Northern District of California
Beth Labson Freeman, to be United States District Judge for the Northern District of California
Pedro A. Delgado Hernandez, to be United States District Judge for the District of Puerto Rico

September 11, 2013

Mr. Chairman,

I join you in welcoming the nominees who are here today with their families and friends. It is milestone in each of nominees' careers, and a proud moment for their families.

Today, of course is also a somber anniversary in our Nation's history, as we remember the tragic events of 9/11 and the lives that were lost. It also reminds us of the importance of the rule of law and the liberty we enjoy.

Today's hearing is the 12th judicial nominations hearing this year during which we will have considered a total of 38 judicial nominees.

That is a pretty remarkable pace. It is especially quick when you compare this pace to the first year of President Bush's second term.

At this stage in President Bush's second term, the Committee had held only 3 hearings for 5 nominees.

In fact, for the entire year of 2005, the Judiciary Committee held only 7 hearings for a grand total of 18 judicial nominees. Again, we have already exceeded that number – 12 hearings and 38 judicial nominees.

Among the nominations on the agenda today is another nominee for the D.C. Circuit, Judge Wilkins, who currently serves on the United States District Court for the District of Columbia.

I look forward to hearing Judge Wilkins' testimony today.

But as I'm sure Judge Wilkins knows, and the other Members of the Committee on both sides understand, we have a disagreement on this Committee regarding the need to fill the vacant seats on the D.C. Circuit, including the seat to which Judge Wilkins has been nominated.

I've gone over the statistics on a number of previous occasions. I won't repeat all the points I've made previously.

But I would just say that, in terms of raw numbers, the D.C. Circuit has the lowest number of total appeals filed annually among all the circuit courts of appeals. In 2005, that number was 1,379. Last year, it was 1,193, a decrease of 13.5%.

If you look at the number of appeals filed per authorized judgeship, again, the D.C. Circuit is the lowest. In 2012, the D.C. Circuit had 108 total appeals filed per authorized judgeship. This is the lowest in the nation. By comparison, in 2012 the national average was 344, nearly 3 times higher.

In 2005, the total appeals filed per authorized judgeship was 115. In 2012, that number had fallen to 108. That number decreased, even though Congress transferred one judgeship to the 9th Circuit in 2008.

Stated differently, the total number of cases filed has fallen so much since 2005 that the number of filings *per judgeship* has decreased even though we have fewer authorized judgeships today than we did in 2005.

Perhaps the best numbers to examine are those that measure the workload per active judge.

The caseload has decreased so much since 2005, *that even with two fewer active judges, the filing levels per active judge are practically the same.*

In 2005, with 10 active judges, the court had 138 appeals filed per active judge. Today, with only 8 active judges, it has 149. This makes the D.C. Circuit caseload levels the lowest in the nation and less than half the national average.

We have recently confirmed judges to the 8th and 10th Circuits. It has been suggested that these Circuits have caseloads lighter than the D.C. Circuit.

As I've said in the past. This is simply not accurate.

The D.C. Circuit has fewer cases filed **and** fewer cases terminated than either the 8th or the 10th Circuits. Cases filed and cases terminated measure the amount of appeals coming into the court and being resolved by the court, respectively. That is how you determine how busy a court is. Now, some of my colleagues have been arguing that the 8th and 10th Circuits are similar to the D.C. Circuit, based on a comparison of "pending cases." But "cases pending" does NOT measure how many cases are being added and removed from the docket.

When looking at how many cases are added, or filed, per active judge, the D.C. Circuit is lowest with 149. It's nowhere near the 8th Circuit's 280 or the 10th Circuit's 217.

When looking at the number of cases being terminated by each court, the D.C. Circuit is once again the lowest at 149. Again, the 8th Circuit and 10th Circuit courts are much higher at 269 and 218, respectively.

So, in my view, the objective data of the caseloads reveals that the D.C. Circuit caseload is very low. And it raises serious doubts regarding whether we need additional active judges on that court.

But nonetheless, I look forward to hearing from each of the nominees today. Your appearance before the Committee today marks a significant accomplishment in your professional careers. Congratulations on your nomination.

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Judicial Nominations
September 11, 2013

Today the Judiciary Committee welcomes five exceptional judicial nominees, and I thank Senator Whitehouse for chairing this important hearing. The Committee will hear first from Judge Robert Wilkins, who is nominated to fill one of the three current vacancies on the D.C. Circuit.

Judge Wilkins has had a distinguished career. He has earned a unanimous rating of "well qualified" from the ABA Standing Committee on the Federal Judiciary to serve on the D.C. Circuit, its highest possible rating. In December 2010, he was confirmed by the Senate on a voice vote to be a judge on the United States District Court for the District of Columbia. As a district judge, he has presided over hundreds of civil and criminal cases. He has also issued significant decisions in many relevant areas of the law, including in the fields of administrative and constitutional law.

Prior to serving on the bench, Judge Wilkins had an exceptional career. Judge Wilkins was a partner for nearly ten years at Venable, where he litigated numerous cases at the trial court level and managed several matters before the various Federal Circuit Courts of Appeal. Judge Wilkins also spent more than ten years at the Public Defender Service for the District of Columbia, where he rose to become the Chief of Special Litigation. A graduate of Harvard Law School, Judge Wilkins has had an outstanding career to date, and I welcome him to the Committee this morning.

Yesterday, Senator Coons chaired a hearing before the Subcommittee on Bankruptcy and the Courts to consider the Coons-Leahy Federal Judgeship Act of 2013. At that hearing, Senate Republicans once again advanced the hypocritical argument that the D.C. Circuit does not need any more judges. My statement for that hearing makes clear how disingenuous that argument truly is.

The history shows that these arguments have nothing to do with caseload and everything to do with the political party of the president nominating. In 1984 Senate Republicans had no problem voting to create a twelfth seat on the D.C. Circuit, and then voting to confirm President Reagan's and President George H.W. Bush's nominees to that seat. When Bill Clinton, a Democratic president, nominated Merrick Garland to the twelfth seat, Senate Republicans suddenly had an epiphany that the twelfth seat was unnecessary and should not be filled.

Later, Senate Republicans continued to oppose the confirmation of Judge Garland even for his nomination to fill the eleventh seat. It is quite astonishing that Senate Republicans continue to recycle these arguments every time a Democratic President is in office. Now they say that only eight seats are needed and that President Obama should not be permitted to fill the ninth, tenth and eleventh seats because of so called "caseload concerns." This is a clear double standard.

The D.C. Circuit's lowest caseload levels in the past 20 years occurred in 2002 and 2003. In 2002, the Ranking Member, who had opposed President Clinton's nominee to the eleventh seat at a time when the caseload had been higher, said at a hearing that the D.C. Circuit needed "possibly 11 active judges." Of course, in 2002 it was a Republican president who was making nominations to that court, and so Senate Republicans abandoned their hollow caseload arguments to press for confirmation of multiple Bush nominees to the D.C. Circuit.

Following the confirmation of John Roberts, which was supported by every Senate Democrat, the D.C. Circuit's caseload, measured by pending appeals per active judge, was reduced to its lowest level in the past 20 years. The Senate then confirmed three more of President Bush's nominees to the D.C. Circuit: Janice Rogers Brown, Thomas Griffith and Brett Kavanaugh. These nominees filled the tenth, eleventh, and again the tenth seats, and not a single Senate Republican raised any concern about whether those judges were truly needed. But now that it is a Democratic president making nominations to those same seats, there are "caseload" concerns. They say one thing when President Clinton is in office, flip when the president is a Republican, and flop when the American people elect President Obama. Not content with merely opposing President Obama's nominees to the D.C. Circuit, some have introduced a bill to eliminate three of the D.C. Circuit's judgeships.

This effort to manipulate the size of an important court in order to achieve political goals is simply wrong. Just as President Roosevelt's court-packing scheme was rejected in 1937 by the Judiciary Committee and the Senate, the Senate should reject this attempt to politicize the D.C. Circuit. The filibuster threats against President Obama's well-qualified nominees are purely political, and they are unworthy of this chamber. Let us give Judge Wilkins the proper respect and consideration that he deserves, based on his outstanding credentials. I hope that we can also work together to consider the nominations of Patricia Millett and Nina Pillard, on the merits of each nominee.

Today, the Committee also welcomes Timothy Brooks, nominated to the Western District of Arkansas, James Donato and Beth Freeman, who are both nominated to judicial emergency vacancies in the Northern District of California, and Pedro Hernandez, who is nominated to a judicial emergency vacancy in the District of Puerto Rico. I look forward to continued bipartisan cooperation on the consideration of these district court nominees, and I hope that Judge Wilkins receives fair treatment as a nominee to the D.C. Circuit.

#####

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Judy Perry Martinez
New Orleans, LA

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AMERICAN BAR ASSOCIATION

Please respond to:
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2980 Fairview Park Drive
Falls Church, VA 22042
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Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

June 10, 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 Timothy Lloyd Brooks to the United States District Court for the Western District of Arkansas

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Timothy Lloyd Brooks who has been nominated for a position on the United States District Court for the Western District of Arkansas. As a result of our investigation, the Committee is of the opinion that for this position Mr. Timothy L. Brooks is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Brooks.

Sincerely,

Judy Perry Martinez
Chair

cc: Timothy L. Brooks, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 10, 2013.

RECEIVED SEP 19 2013

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

August 28, 2013

The Honorable Patrick Leahy
437 Russel Senate Building
Washington DC 20510

The Honorable Chuck Grassley
135 Hart Senate Office Building
Washington DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

The National Organization of Black Law Enforcement Executives (NOBLE) proudly supports President Obama's nomination of Judge Robert Leon Wilkins to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

NOBLE is a national organization of primarily African American law enforcement CEOs and command level officials established to ensure equity in the administration of justice in the provision of public service to all communities, and to serve as the conscience of law enforcement by being committed to justice by action.

Throughout his career Judge Wilkins has distinguished himself through his service to the community, dedication to the integrity of the justice system and impeccable judicial record. Prior to joining the bench, he was a partner at the law firm Venable LLP where he specialized in white-collar defense, intellectual property and complex civil litigation. He also worked for the Public Defender Service for the District of Columbia (PDS), a public defender office known as one of the best in the nation.

In 1993, Judge Wilkins filed a lawsuit, *Wilkins et al v. State of Maryland*, which revealed that the Maryland State Police directed its troopers, in writing, to target African American motorists for highway drug searches. The resulting landmark settlement required new policies, enhanced training, and systematic statewide compilation and publication of highway traffic stop and search data by race. Not only did these new requirements increase job safety for officers it also provided a way to memorialize the integrity with which many of the officers carried out their work.

NOBLE's guiding principles include respect, uncompromised integrity and courage of convictions; Judge Wilkins' contributions and commitment to his community encompass these

principles. For all these reasons, NOBLE wholeheartedly supports his nomination to the D.C. Circuit.

Sincerely,

Joseph C. Akers, Jr.
Interim Executive Director

Reply to: John E. Page
JPage@goldenstatefoods.com
(949) 252-2074

September 10, 2013

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Senate Dirksen
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
151 Senate Dirksen Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write to enthusiastically support the nomination of Judge Robert Leon Wilkins to the United States Court of Appeals for the District of Columbia Circuit.

As an ad hoc group of African American AmLaw 100 Managing Partners and Fortune 1000 General Counsel, we appreciate the need for candidates that are highly qualified and diverse. Judge Wilkins has lived an exemplary life. After graduating *cum laude* from the Rose-Hulman Institute of Technology in his native, Indiana, Judge Wilkins went on to earn his law degree from Harvard Law School in 1989. Thereafter, he dedicated over a dozen years of his exceptional legal talents exclusively to public service—first as a law clerk to the Honorable Earl B. Gilliam at the U.S. District Court for the Southern District of California, and then at the prestigious Public Defender Service for the District of Columbia.

Judge Wilkins joined Venable in 2002 and remained at the firm until his confirmation to the U.S. District Court in 2011. However, his move to private practice did nothing to dent his enthusiasm for public service. Instead, he carried forward the need to continue advocating for a bipartisan National Museum of African American History and Culture—the success of which we are only now witnessing on the National Mall—and efforts to help the less fortunate through the District of Columbia Access to Justice Foundation.

You will hear much in the coming days about Judge Wilkins serving as a plaintiff in *Wilkins, et al. v. State of Maryland*, a racial profiling case challenging the Maryland State Police's documented practice of racial profiling. We appreciate and applaud that Judge Wilkins, by then a Harvard-educated lawyer, put his reputation on the line to right those unconstitutional wrongs. Yet as business people who are expected to advise corporate clients on a 24 hour, 7 days a week basis, we are also impressed with Judge Wilkins's fidelity to the rule of law in his capacity as a jurist. We have surveyed his written opinions since assuming the bench and find them suffused with a robust fealty to text, precedent, and the rule of law. Moreover, we can say without fear of contradiction that, if confirmed to the U.S. Court of Appeals to the District of Columbia Circuit, we fully expect Judge Wilkins will continue to adhere to text, precedent, and the rule of law so long as he remains on the bench.

Sincerely,

Benjamin F. Wilson
Managing Principal, Beveridge & Diamond, P.C.

John E. Page
SVP, Chief Legal Officer, Golden State Foods Corp.
Immediate Past President, National Bar Association

Ricardo Anzaldua
Executive Vice President and General Counsel
MetLife, Inc.

James J. Bender
Senior Vice President and General Counsel
WPX Energy, Inc.

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Vice President, General Counsel & Secretary
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Harpo Studios

Michelle C. Ifill
Senior V.P., General Counsel & Corporate Secretary
Verizon Enterprise Solutions

Hannibal G. Williams II Kemerer
Associate
Patton Boggs LLP

Paul Lancaster Adams
Managing Partner
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Grace E. Speights
Managing Partner
Morgan, Lewis & Bockius LLP

Leslie T. Thornton
Vice President & General Counsel
WGL Holdings, Inc. & Washington Gas Light Company

Keith H. Williamson
Executive V.P., Secretary & General Counsel
Centene Corporation

Kwamina Williford
Partner
Holland & Knight LLP

Steven H. Wright
Executive Partner – Boston
Holland & Knight LLP

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[i] Please note that all organizational affiliations are listed for identification purposes only.

September 10, 2013

RECEIVED SEP 19 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
Unite States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
Unite States Senate
135 Senate Hart Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

As president of the Las Vegas Chapter of the National Bar Association ("LVNBA") and in conjunction with the National Bar Association and its other affiliate chapters across the country, I send this letter in support of the confirmation of Judge Robert L. Wilkins to the U.S. Court of Appeals for the District of Columbia.

Judge Wilkins is a respected jurist and celebrated litigator. He was nominated by President Obama to the U.S. District Court for the District of Columbia in May 2010 and was rated by the American Bar Association as Unanimously Well Qualified, its highest rating given to judicial nominees. Ultimately, Judge Wilkins was confirmed by unanimous consent and voice vote later that same year. Since that time, Judge Wilkins has earned the reputation as a conscientious and fair-minded jurist who dutifully follows the law, as observed by the Wall Street Journal editorial board. He was again rated Unanimously Well Qualified for his nomination to the U.S. Court of Appeals.

Judge Wilkins has spent a career demonstrating his commitment to integrity, excellence and service. He received his juris doctorate from Harvard Law School, where he served as the Executive Editor of the Harvard Civil Rights-Civil Liberties Law Review. Upon graduation, he clerked for the Honorable Earl B. Gilliam on the U.S. District Court for the Southern District of California. After his clerkship, Judge Wilkins worked for over a decade at the Public Defender Service for the District of Columbia—one of the most competitive public defender offices in the nation. First as a staff attorney, and later as the Special Litigation Chief, he was recognized by Legal Times as "the office's premier advocate." In 2002, Judge Wilkins joined the AmLaw 100 firm Venable LLP as a partner where he specialized in white-collar defense, intellectual property, and complex civil litigation.

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Judge Wilkins is a respected colleague, an admired scholar, and an inspiring leader. For all of these reasons and more we enthusiastically support his confirmation.

Sincerely,

Doreen Spears Hartwell
President
Las Vegas Chapter of the National Bar Assocation
P.O. Box 12136
Las Vegas, Nevada 89125

The Leadership Conference on Civil and Human Rights

1629 K Street, NW
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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

September 10, 2013

Support Judge Robert L. Wilkins' Nomination to the D.C. Circuit

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the confirmation of Judge Robert L. Wilkins to the U.S. Court of Appeals for the District of Columbia. As one of the nation's leading judges, Mr. Wilkins will bring a wealth of experience and impartiality to the court. Given his steadfast commitment to enforcing the rule of law and protecting the roles of courts, Congress, the executive branch, and states, Judge Wilkins will be an objective, thoughtful, and impartial voice on the court. We urge the Senate to vote "yes" on his confirmation.

There is no question Robert Wilkins is eminently qualified and will be a highly respected addition to the D.C. Circuit, as evidenced by the "Unanimously Well Qualified" ratings he received from the American Bar Association and from the U.S. Court of Appeals. On May 20, 2010 he was nominated by President Obama to the U.S. District Court for the District of Columbia and confirmed unanimously on December 22, 2010. Since his confirmation, he has earned a reputation as a conscientious and fair-minded jurist who dutifully follows the law, as observed by the Wall Street Journal Editorial Board. If confirmed to the D.C. Circuit, Judge Wilkins would be the first judge on the U.S. District Court for the District of Columbia to be elevated to that court in nearly 50 years. It is clear, on day one, Judge Wilkins will be prepared to handle the array of legal issues that the court addresses, having spent a good portion of his legal career in public service as a litigator working to protect the rights of individuals in marginalized communities.

Robert Wilkins earned his Juris Doctorate from Harvard Law School, where he served as the Executive Editor of the *Harvard Civil Rights-Civil Liberties Law Review*. After graduation, he clerked for the Honorable Earl B. Gilliam on the U.S. District Court for the Southern District of California. He then spent over a decade at the Public Defender Service (PDS) for the District of Columbia—one of the most competitive public defender offices in the nation – first as a staff attorney, and later as Special Litigation Chief, where he championed cases, ranging from exposing the appalling conditions in the D.C. Receiving Home for Children, to exposing the violation of various consent decree provisions by Oak Hill Youth Center due to overcrowding and inadequate medical care, housing conditions, food and education. During his time at PDS, he also served on the D.C. Truth-in-Sentencing Commission and the D.C. Advisory Commission on Sentencing, which laid the groundwork for the D.C. Sentencing Guidelines later adopted in 2004. In 2002, he became a partner at Venable LLP, where he specialized in white-collar defense, intellectual property, and complex civil litigation, and led the litigation team representing the post-bankruptcy management of Enron in a major Wall Street case.

Moreover, Judge Wilkins is an active and distinguished community leader. Prior to joining Venable in 2002, Judge Wilkins left his work at PDS to volunteer full-time to help establish

and create the National Museum of African American History and Culture. With a bipartisan group of U.S. Senators, Judge Wilkins drafted a bill to establish a blue ribbon, bipartisan Presidential Commission to write a plan for creating the museum, which passed the House by voice vote and the Senate by unanimous consent, and was signed by President Bush into law in 2001. In 2002, the Senate appointed Judge Wilkins to the Presidential Commission, which unanimously endorsed a plan that led to a bill that passed the House by a vote of 409-9 and unanimously in the Senate in 2003. Additionally, Judge Wilkins has been celebrated as a prominent figure in the legal community for his deep passion and commitment to upholding the civil rights and liberties of all Americans. He has received numerous accolades, including in 2007 being recognized by the Washingtonian Magazine as one of "Washington's Top Lawyers", and by the Legal Times in 2008 as one of the "90 Greatest Washington Lawyers of the Last 30 Years."

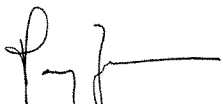
The Leadership Conference believes Robert Wilkins' record makes him an enormously qualified nominee with the intellectual hindsight to make objective decisions on a number of multifaceted and prominent cases that will surely come before the court. His nomination to the D.C. Circuit is not only important because of his impeccable credentials, but equally critical because of the role this court plays in the administration of justice in our country. The D.C. Circuit is responsible for deciding uniquely complex and nationally significant cases, with exclusive responsibility for hearing cases on environmental regulations, national security issues, and voting rights. It is also the court that most closely oversees federal agency action on issues including health care, consumer protection, workers' rights and workplace safety. Yet, the D.C. Circuit is operating with nearly one third of its congressionally mandated seats vacant. According to the Administrative Office of the U.S. Courts, "the caseload per active judge on the D.C. Circuit has risen more than 50 percent since 2005." Not only is it contrary to the interests of justice for the court to operate understaffed, it is clear that with fewer active judges on the D.C. Circuit than there were in 2005, the increased workload warrants filling each of the remaining vacant seats on the court.

The president has done his job by nominating an exceptional and renowned legal advocate to a vacancy on an important federal court. It is imperative that the Senate now does its job and makes a good-faith effort to provide prompt "advice and consent" by moving Judge Wilkins' nomination through the Senate Judiciary Committee and onto the Senate floor as efficiently as is possible. We hope you will support the nomination of Judge Robert L. Wilkins, and vote "yes" to confirm him.

Thank you for your cooperation. If you have any questions, please feel free to contact Nancy Zirkin, executive vice president at Zirkin@civilrights.org or (202) 466-2880, or Sakira Cook, senior policy associate at cook@civilrights.org or (202) 263-2894.

Sincerely,

Wade Henderson
President & CEO



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Executive Vice President

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Parliamentarian
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Alfreda V. Davis
Executive Director
Washington, DC

STATEMENT OF

THE NATIONAL BAR ASSOCIATION

Submitted to:

The Senate Committee on the Judiciary

For the Senate Committee on the Judiciary Hearing On Judicial Nominations

On

September 11, 2013

NATIONAL BAR ASSOCIATION, 1225 11th Street, N.W., Washington, DC 20001 - 4217 • Tel: 202-842-3900 • Fax: 202-289-6170
www.nationalbar.org

Introduction

The National Bar Association (NBA) is the nation's oldest and largest national network of African American attorneys and judges. It represents approximately 44,000 lawyers, judges, law professors and law students and has over 80 affiliate chapters throughout the United States and around the world.

The NBA was founded on the principles of advancing the science of jurisprudence, preserving the independence of the judiciary, and upholding the honor and integrity of the legal profession. For that reason, the integrity of the federal judiciary is of the utmost importance to our organization.

Nomination of Judge Robert Leon Wilkins

On June 4, 2013, the President nominated Judge Robert L. Wilkins to the U.S. Court of Appeals for the District of Columbia Circuit. In May of 2010, Judge Wilkins was nominated by President Obama to the U.S. District Court for the District of Columbia and confirmed by unanimous consent and voice vote that following December. Since that time, Judge Wilkins has earned the reputation, within both the local and national legal community, as a conscientious and fair-minded jurist who dutifully follows the law. [12]

Legal Career

Judge Wilkins' distinguished career and impeccable judicial record speak to his caliber as a candidate. Judge Wilkins received his juris doctorate from Harvard Law School, where he served as the Executive Editor of the *Harvard Civil Rights-Civil Liberties Law Review*. Upon graduation, he clerked for the Honorable Earl B. Gilliam on the U.S. District Court for the Southern District of California.

After his clerkship, Judge Wilkins worked at the Public Defender Service for the District of Columbia—one of the most competitive public defender offices in the nation for over a decade. Starting as a staff attorney and ultimately becoming the Special Litigation Chief, he was recognized by *Legal Times* as "the office's premier advocate." As Special Litigation Chief, he also served on the DC Truth-in-Sentencing Commission and the DC Advisory Commission on Sentencing, which laid the groundwork for the DC Sentencing Guidelines later adopted in 2004.

In 2002, Judge Wilkins joined the AmLaw 100 firm Venable LLP as a partner where he specialized in white-collar defense, intellectual property, and complex civil litigation. His clients included a number of Fortune 500 companies. Notably at Venable, Judge Wilkins led the litigation team representing the post-bankruptcy management of Enron in a major Wall Street case. *Washingtonian Magazine* named him one of "Washington's Top Lawyers," while *Legal Times* named him one of the "90 Greatest Washington Lawyers of the Last 30 Years."

On May 20, 2010, President Obama nominated Judge Wilkins to the U.S. District Court for the District of Columbia. Judge Wilkins was confirmed by unanimous consent and voice vote on December 22, 2010. The American Bar Association rated Judge Wilkins as Unanimously Well Qualified, its highest

[1] Washington Bar Association – Judge Wilkins Letter of Support
[2] National Bar Association National Affiliates – Judge Wilkins Letter of Support

rating given to judicial nominees, when he was nominated to the U.S. District Court. He was also rated Unanimously Well Qualified for his nomination to the U.S. Court of Appeals.

Commitment and Contributions to the Washington D.C. Community

If confirmed, Judge Wilkins would be the first judge on U.S. District Court for the District of Columbia to be elevated to the U.S. Court of Appeals for the District of Columbia Circuit in nearly 50 years. He would bring to the D.C. Circuit a much needed voice and perspective unique to the Washington D.C. legal community. [3]

Throughout his career Judge Wilkins has used his ability to garner support from a spectrum of leaders to effectuate change in his community. In 2000, Judge Wilkins left his job to work full-time to establish and create the National Museum of African American History and Culture. Together with Sen. Sam Brownback (R-KS), Sen. Max Cleland (D-GA), Rep. John Lewis (D-GA), and Rep. J.C. Watts (R-OK), Judge Wilkins drafted a bill to establish a blue ribbon, bi-partisan Presidential Commission to write a plan for creating the museum. The bill passed the House by voice vote and the Senate by unanimous consent and President Bush signed it into law in 2001. In 2002, the Senate appointed Judge Wilkins to the Presidential Commission, where he chaired the Site and Building Committee. The National Museum of African American History and Culture is scheduled to open in 2015, and will become the newest member of the Smithsonian Institution.

Wilkins, et al. v. State of Maryland

In 1993, after being searched when returning from his grandfather's funeral, Judge Wilkins filed a lawsuit, *Wilkins, et al. v. State of Maryland,* which revealed that the Maryland State Police had directed its troopers, in writing, to target African American motorists for highway drug searches. The resulting landmark settlement required new policies, enhanced training, and systematic statewide compilation and publication of highway traffic stop and search data by race. These new requirements not only increased job safety for law enforcement officers it also helped restore the public's faith in the officers by providing a mechanism for them to memorialize the integrity with which many officers carried out their work.[4]

The data revealed that black drivers were 3 or 4 times more likely than whites to be searched, even though contraband was found on white and black drivers at the same rate. This case influenced the nation, as law enforcement agencies in 46 states and the District of Columbia either currently collect or have recently collected similar data about stops and searches conducted on streets and highways.

Conclusion

Judge Wilkins is a respected jurist and celebrated litigator. We recognize the national importance of the U.S. Court of Appeals for the District of Columbia Circuit and the magnitude of Judge Wilkins' nomination to this court. For those reasons and more, the NBA enthusiastically support for the

[3] Washington Bar Association – Judge Robert Wilkins Letter of Support
[4] National Organization of Black Law Enforcement Executives – Letter of Support for Judge Wilkins

confirmation of Judge Wilkins to the DC

September 10, 2013

Senator Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Charles Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Judge Robert Wilkins to the United States Court of Appeals for the District of Columbia Circuit*

Dear Senators Leahy and Grassley:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in unqualified support of the nomination of Judge Robert Wilkins to the United States Court of Appeals for the District of Columbia Circuit.

We believe that Judge Wilkins, currently serving on the United States District Court for the District of Columbia, is extremely well-qualified to serve on this important court. Judge Wilkins graduated from the Rose Hulman Institute of Technology, *cum laude*, with a degree in chemical engineering, and received his law degree from Harvard Law School, where he served as the Executive Editor of the Harvard Civil Rights-Civil Liberties Law Review. After graduating from law school, Judge Wilkins clerked for the Honorable Earl B. Gilliam of the United States District Court for the Southern District of California. He subsequently joined D.C.'s Public Defender Service ("PDS"), first as a staff attorney, and later as head of the Special Litigation division. At PDS, he tried hundreds of cases before the Superior Court of the District of Columbia and also argued numerous cases before the D.C. Circuit. After working for over a decade as a public defender, he joined the law firm Venable LLP as a partner, where he specialized in white collar defense, intellectual property, and complex civil litigation.

We note that Judge Wilkins spent a significant portion of his career in public service, and that he devoted thousands of hours to pro bono work on civil rights, child custody, asylum, Social Security benefit denial, and other cases, while in private practice. In addition to his pro bono and public service, Judge Wilkins has contributed significant

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time and effort to community service throughout his career. For example, he was instrumental in establishing the National Museum of African American History and Culture, including by serving on the bipartisan Presidential Planning Commission, and spent years dedicated to this historic project. The museum will open in 2015.

Judge Wilkins' current position on the United States District Court for the District of Columbia is only the latest accomplishment in his impressive legal career. Based on his outstanding record, he was unanimously confirmed to the District Court by the Senate in 2010, and has served with distinction on that court ever since. Judge Wilkins received a unanimous "Well-Qualified" rating from the ABA Standing Committee on the Federal Judiciary, both for his nomination to the district court and for his current nomination to the D.C. Circuit.

Judge Robert Wilkins possesses outstanding qualifications, and is further distinguished by his significant public service and civic leadership. The Center offers its unqualified support for the nomination of Judge Wilkins to the United States Court of Appeals for the District of Columbia Circuit and urges you to support his nomination. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,

Nancy Duff Campbell
Co-President

Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee

THE WASHINGTON BAR ASSOCIATION

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September 18, 2013

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

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Senate Hart Office Building
Washington, DC 20510

Re: Nomination of Judge Robert Leon Wilkins to the
United States Court of Appeals for the District of Columbia

Dear Chairman Leahy and Ranking Member Grassley:

The Washington Bar Association supports the nomination of Judge Robert Leon Wilkins to the United States Court of Appeals for the District of Columbia. The Washington Bar Association is the oldest affiliate of the National Bar Association, the largest professional association of African American lawyers and judges in the United States. Our mandate is to serve the community and legal profession as we strive to achieve equal justice under the law. On behalf of the Washington Bar Association, I respectfully urge prompt consideration and confirmation of Judge Wilkins' nomination to the DC Circuit.

Prior to endorsing a nomination for judicial appointment, the Washington Bar Association Judicial Selection and Evaluation Committee reviews the individual's background and qualifications to determine his or her fitness for appointment. During this review process, the individual is fairly and objectively evaluated and assessed for judicial fitness based upon factors such as: judicial temperament, professional skills and abilities, adherence to ethical standards and the exercise of sound professional judgment, effective leadership and communication skills and community service. Only individuals who have successfully demonstrated fitness for judicial appointment under these criteria are selected and recommended for endorsement by the Washington Bar Association.

Based upon these criteria, the Washington Bar Association has determined that Judge Wilkins is uniquely qualified for appointment to the District of Columbia Circuit. Judge Wilkins is renowned for his commitment to excellence and the law. In 2010, President Obama nominated Judge Wilkins to the U.S. District Court for the District of Columbia. Judge Wilkins was confirmed by unanimous consent and voice vote on December 22, 2010. The American Bar Association rated Judge Wilkins as Unanimously Well Qualified, its highest rating given to judicial nominees, when he was nominated to the U.S. District Court.

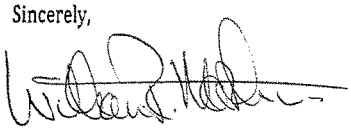
In 2010, the Senate confirmed Judge Wilkins by unanimous consent and voice vote to the United States District Court for the District of Columbia. The American Bar Association has again given Judge Wilkins its highest rating of Unanimously Well Qualified for his nomination to the DC Circuit.

In private practice at Venable, Judge Wilkins specialized in white-collar defense, intellectual property, and complex civil litigation. Notably, Judge Wilkins led the litigation team representing the post-bankruptcy management of Enron. While at Venable, Judge Wilkins was recognized by the Legal Times as one of the "90 Greatest Washington Lawyers of the Last 30 Years."

Prior to private practice, Judge Wilkins worked over a decade at the Public Defender Service for the District of Columbia—one of the most competitive public defender offices in the nation—first as a staff attorney, and later as the Special Litigation Chief. As Special Litigation Chief, his duties required him to testify numerous times on behalf of PDS and the Legal Times recognized him as "the office's premier advocate."As former prosecutors we recognize that the views Wilkins expressed as PDS' "premier advocate" were not his personal views, but rather on behalf of PDS. Furthermore, our experiences working with him and his record as a judge demonstrate that he is fair and impartial.

It is without qualification, therefore, that the Washington Bar Association supports the nomination of Judge Robert Leon Wilkins to the United States Court of Appeals for the District of Columbia Circuit.

Sincerely,



William (Billy) R. Martin
President

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September 27, 2013

Michael J. Madigan
(202) 339-8523
mmadigan@orrick.com

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

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
135 Senate Hart Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write in support of the nomination of Judge Robert L. Wilkins for the United States Court of Appeals for the District of Columbia Circuit. Having practiced law in Washington, DC for now over 40 years and having had the honor of serving on two different Judicial Nomination Commissions (appointed once by President George H. W. Bush and once by Hon. Eleanor Holmes Norton) I find Judge Wilkins to possess the qualifications and experience of the very best Judges on both local and Federal courts. I have come to know Judge Wilkins both professionally and personally and regard him to be a Jurist of the highest caliber. I respectfully urge his confirmation to the DC Circuit.

Judge Wilkins is eminently qualified. In private practice at the Venable Law Firm, he specialized in white-collar defense, intellectual property, and complex civil litigation. While at Venable, Judge Wilkins was recognized by the Legal Times as one of the "90 Greatest Washington Lawyers of the Last 30 Years." Prior to his time in private practice, Judge Wilkins worked for over a decade at the Public Defender Service for the District of Columbia. Having served as a Federal Prosecutor in DC myself, I can attest to the high quality of Public Defender Service – one of the best in the country.

Judge Wilkins' reputation as a fair-minded Jurist committed to the integrity of the bench is already well known both within and outside the legal community. In May 2010, Judge Wilkins was nominated by President Obama to the United States District Court for the District of Columbia. In December of that same year, the Senate confirmed Judge Wilkins by unanimous consent and voice vote. Since that time Judge Wilkins has served with distinction on our U.S. District Court. The American Bar Association has once again given Judge Wilkins its highest rating of "Unanimously

Well Qualified" for his nomination to the DC Circuit. Having served at the outset of my legal career as a Law Clerk to Hon. Edward A. Tamm on the DC Circuit, I look forward to Judge Wilkins joining this historic and prestigious Circuit.

I submit that Judge Robert L. Wilkins is a respected fair-minded Jurist and I wholeheartedly support his confirmation.

Sincerely,

Michael J. Madigan

cc: The Honorable Jeff Sessions
Committee on the Judiciary
United States Senate

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September 30, 2013

VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: **Women's Bar Association's Endorsement of Judge Robert L. Wilkins for Judge, U.S. Court of Appeals for the District of Columbia Circuit**

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Women's Bar Association of the District of Columbia (WBA), I am writing to express the WBA's support for the nomination of Judge Robert L. Wilkins to the U.S. Court of Appeals for the District of Columbia Circuit.

Our principal goal in endorsing judicial candidates is to ensure the appointment of qualified judges and, consistent with that goal, to increase the number of judges who support the mission of the WBA. We consider, in our recommendations, the candidate's background, level of experience, connection to the District of Columbia, record of public service, a demonstrated commitment to the equality of all litigants, and an attention to women's needs and concerns.

We evaluate each candidate for endorsement by reviewing his or her resume and other supporting documentation, and discussing the candidate's skills and character with references. We ask each person contacted specific questions regarding the candidate's qualifications, integrity, temperament, experience, and commitment to the concepts of equal opportunity and equal justice under law.

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
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Email: admin@wbadc.org Web: www.wbadc.org

Judge Wilkins is without question exceptionally well-qualified for the position to which he has been nominated, and we believe that he would be an outstanding addition to the U.S. Court of Appeals for the District of Columbia Circuit. A graduate of Rose-Hulman Institute of Technology, Judge Wilkins received his juris doctorate from Harvard Law School, where he served as the Executive Editor of the Harvard Civil Rights-Civil Liberties Law Review. After graduating, he clerked for Judge Earl B. Gilliam on the U.S. District Court for the Southern District of California. Immediately after his clerkship, Judge Wilkins worked for over a decade at the Public Defender Service for the District of Columbia—one of the most competitive and well respected public defender offices in the nation. At the Public Defender Service, he first served as a staff attorney, and later as the Special Litigation Chief. As Special Litigation Chief, he also served on the DC Truth-in-Sentencing Commission and the DC Advisory Commission on Sentencing, which laid the groundwork for the DC Sentencing Guidelines later adopted in 2004. In 2002, Judge Wilkins entered private practice at Venable LLP as a partner where he specialized in white-collar defense, intellectual property, and complex civil litigation. On May 20, 2010, President Obama nominated Judge Wilkins to the U.S. District Court for the District of Columbia. Judge Wilkins was confirmed by unanimous consent and voice vote by the Senate on December 22, 2010. He is the recipient of numerous awards, including: National Law Journal, "40 Under 40 Most Successful Young Litigators in America (2002)"; Washingtonian Magazine, "Washington's Top Lawyers" (2007); Legal Times, "90 Greatest Washington Lawyers of the Last 30 Years" (2008).

Beyond Judge Wilkins' many professional achievements, he has also demonstrated a strong commitment to community service. In 2000, Judge Wilkins left his job at the Public Defender Service for the District of Columbia to work full-time without salary to establish and create the National Museum of African American History and Culture. Together with Sen. Sam Brownback (R-KS), Sen. Max Cleland (D-GA), Rep. John Lewis (D-GA), and Rep. J.C. Watts (R-OK), Judge Wilkins drafted a bill to establish a blue ribbon, bi-partisan Presidential Commission to write a plan for creating the museum, which passed the House by voice vote and the Senate by unanimous consent. President George W. Bush signed it into law in 2001. In 2002, the Senate appointed Judge Wilkins to the Presidential Commission, where he chaired the Site and Building Committee; the National Museum of African American History and Culture is scheduled to open in 2015, and will become the newest member of the Smithsonian Institution.

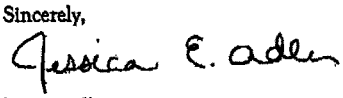
Judge Wilkins is extremely principled. In 1992, Maryland state troopers stopped and detained Judge Wilkins and three family members while returning from his grandfather's funeral in Chicago, subjecting their car to a search by a drug sniffing dog. 1993, Judge Wilkins filed a lawsuit, *Wilkins, et al. v. State of Maryland*, which revealed that the Maryland State Police had directed its troopers, in writing, to target African American motorists for highway drug searches. The resulting landmark settlement required new policies, enhanced training, and systematic statewide compilation and publication of highway traffic stop and search data by race in Maryland. This case influenced law enforcement practice in the nation, as law enforcement agencies in 46

states and the District of Columbia now either currently collect or have recently collected similar data about stops and searches conducted on streets and highways.

Given his record of achievement and breadth of experience, it is unsurprising that Judge Wilkins has received a unanimous rating of Well-Qualified from the ABA's Standing Committee on the Federal Judiciary, the highest rating available. Judge Wilkins has earned a reputation as a conscientious and fair-minded jurist who follows the rule of law, leading *The Wall Street Journal* editorial board to declare that "before Americans lose too much respect for the federal judiciary, they might consider Judge Robert Wilkins..."

For all of these reasons, the WBA is proud to support Judge Wilkins' nomination and encourages the Senate to take prompt action to confirm him to the U.S. Court of Appeals for the District of Columbia Circuit. He is one of the nation's most respected jurists, and his reputation for fair-mindedness, intellect, and judicious temperament make Judge Wilkins an exceptionally well-qualified nominee. If you have any questions regarding this letter of support, please contact me at 202-898-0055 or at jadler@jessicaadlerlaw.com.

Sincerely,



Jessica Adler
President

cc: Judge Robert L. Wilkins
Co-Chairs, WBA Judicial and Executive Endorsement Committee:
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Ms. Rachel Levinson Waldman
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WBA Board of Directors

Women's Bar Association of the District of Columbia
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Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbadc.org Web: www.wbadc.org

NATIONAL BAR ASSOCIATION

September 30, 2013

The Honorable Patrick Leahy
437 Russell Senate Building
Washington DC 20510

The Honorable Chuck Grassley
135 Hart Senate Office Building
Washington DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

The affiliate chapters of the National Bar Association represent the interests of legal communities across the country. In recognizing the national importance of the U.S. Court of Appeals for the District of Columbia Circuit and the magnitude of Judge Robert L. Wilkins' nomination to this court, we knew it essential to come together and express our shared support for the confirmation of Judge Wilkins to the DC Circuit.

Judge Wilkins is a respected jurist and celebrated litigator. He was nominated by President Obama to the U.S. District Court for the District of Columbia in May 2010 and was rated by the American Bar Association as Unanimously Well Qualified, its highest rating given to judicial nominees. Ultimately, Judge Wilkins was confirmed by unanimous consent and voice vote later that same year. Since that time, Judge Wilkins has earned the reputation as a conscientious and fair-minded jurist who dutifully follows the law, as observed by the Wall Street Journal editorial board. He was again rated Unanimously Well Qualified for his nomination to the U.S. Court of Appeals.

Judge Wilkins has spent a career demonstrating his commitment to integrity, excellence and service. He received his juris doctorate from Harvard Law School, where he served as the Executive Editor of the Harvard Civil Rights-Civil Liberties Law Review. Upon graduation, he clerked for the Honorable Earl B. Gilliam on the U.S. District Court for the Southern District of California. After his clerkship, Judge Wilkins worked for over a decade at the Public Defender Service for the District of Columbia—one of the most competitive public defender offices in the nation. In 2002, Judge Wilkins joined the AmLaw 100 firm Venable LLP as a partner where he specialized in white-collar defense, intellectual property, and complex civil litigation.

Judge Wilkins is a respected colleague, an admired scholar, and an inspiring leader. For all of these reasons and more we enthusiastically support his confirmation.

Sincerely,

Alabama Lawyers Association
Montgomery, Alabama

Arizona Black Bar
Phoenix, Arizona

Mound City Bar Association
St. Louis, Missouri

Jackson County Bar Association
Kansas City, Missouri

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Little Rock, Arkansas

California Association of Black Lawyers
Mill Valley, California

John M. Langston Bar Association
Los Angeles, California

Charles Houston Bar Association
Oakland, California

Earl B. Gilliam Bar Association
San Diego, California

Wiley W. Manuel Bar Association
Sacramento, California

Black Women Lawyers Association of Northern California
San Francisco, California

Black Women Lawyers Association of Los Angeles
Los Angeles, California

Richard T. Fields Bar Association
Rancho Cucamonga, California

Solano County Black Lawyers Association
Vallejo, California

Sam Cary Bar Association
Denver, Colorado

The George W. Crawford Black Bar Association
Hartford, Connecticut

Washington Bar Association
Washington, District of Columbia

Midlands Bar Association
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Las Vegas, Nevada

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Washington, District of Columbia

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Virgil Hawkins Florida Chapter
Apopka, Florida

Gate City Bar Association
Atlanta, Georgia

DeKalb Lawyers Association
Decatur, Georgia

Georgia Alliance of A.A. Attorneys
Atlanta, Georgia

Georgia Association of Black Women Attorneys
Atlanta, Georgia

Afro American Lawyers Association of Hawaii
Honolulu, Hawaii

Cook County Bar Association
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Akron, Ohio

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Oklahoma City Association of Black Lawyers
Oklahoma City, Oklahoma

Oregon Chapter
Portland, Oregon

The Barristers Association of Philadelphia
Philadelphia, Philadelphia

Homer S. Brown Law Association
Pittsburgh, PA

Philadelphia NBA Women Lawyers Division
Philadelphia, PA

Thurgood Marshall Law Society of RI
Providence, Rhode Island

South Carolina Black Lawyers Association
Columbia, South Carolina

Donald James Sampson Bar Association
Spartanburg, South Carolina

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Lafayette, Louisiana

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Shreveport, Louisiana

J. Franklyn Bourne Bar Association
Upper Marlboro, Maryland

Monumental City Bar Association
Baltimore, Maryland

The Everett J. Waring - Juanita Jackson Mitchell Law Society
Baltimore, Maryland

Alliance of Black Women Attorneys
Baltimore, Maryland

Massachusetts Black Lawyers Association
Boston, Massachusetts

Floyd Skinner Bar Association
Ann Arbor, Michigan

Vanzetti Hamilton Bar Association
Ann Arbor, Michigan

Davis-Dunnings Bar Association
Lansing, Michigan

Wolverine Bar Association
Detroit, Michigan

Mallory, VanDyne & Scott Bar Association
Flint, Michigan

D. Augustus Straker Bar Association
Troy, Michigan

Ben F. Jones Chapter
Memphis, Tennessee

Napier-Looby Chapter
Nashville, Tennessee

S. L. Hutchins bar Association
Chattanooga, Tennessee

W. H. Hastie Bar Association
Knoxville, Tennessee

Ballard-Taylor Bar Association
Jackson, Tennessee

Tennessee Alliance for Black Lawyers
Nashville, Tennessee

J. L. Turner Legal Association
Dallas, Texas

Austin Black Lawyers Association
Austin, Texas

Houston Lawyers Association
Houston, Texas

San Antonio Black Lawyers Association
San Antonio, Texas

L. Clifford Davis Legal Association
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Minnesota Association of Black Lawyers
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Milwaukee, Wisconsin

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September 27, 2013

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

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that District Judge Robert Wilkins be reported favorably out of Committee and confirmed promptly to the United States Court of Appeals for the District of Columbia Circuit.

Judge Wilkins is well known to this Committee. Only a few years ago, the Committee thoroughly vetted Wilkins's qualifications to be a federal judge when President Obama nominated him to the United States District Court for the District of Columbia. The Committee reported Wilkins to the full Senate without opposition, and he was subsequently confirmed, also without opposition. Nothing has changed in the interim to warrant a different outcome on his nomination now. To the contrary, Judge Wilkins has served ably and capably on the District Court bench, and we are confident he would do the same on the D.C. Circuit.

Judge Wilkins is exceptionally well-qualified to serve as a federal appellate judge. He is a graduate of Harvard Law School who went on to a distinguished career in public service as a Public Defender in the District of Columbia, followed by nearly a decade in private practice as a partner in the law firm of Venable LLP, handling complex litigation. Judge Wilkins has brought valuable professional diversity to the federal bench along with his excellent legal skills. And his approach to judging, as he described it in his testimony before this Committee on September 11, 2013, is straightforward and commendable:

> My philosophy generally has been over the last two and a half years has been to try to really focus on the case in front of me and nothing more, to be mindful of the importance of judicial restraint, decide the issue that needs to be decided, don't reach out and try to decide other issues, and of course, not to bring any pre-conceived notions to my decision-making, and let the facts and the law lead wherever they lead, and the case be decided on its merits and that's it.

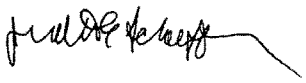
Perhaps it's because of the way I'm wired, and because of my background as a chemical engineering major undergrad, I like rules. And so, I try to look very closely at text, and adhere to the text, and adhere and try to find whatever the governing principle is that applies to the particular context or interpreting that text or deciding that issue, and find that and apply that rule or that text strictly.

At Judge Wilkins's confirmation hearing, Ranking Member Grassley noted the existence of what he called a "debate going on between the two political parties of whether or not we need the additional judges beyond the eight that are already there" on the D.C. Circuit. Senator Grassley correctly observed to Judge Wilkins that "this is a debate that's beyond you as an individual," and, indeed, none of the questioning of Judge Wilkins at his hearing indicated any concern with his qualifications to serve on the Court of Appeals. Judge Wilkins deserves to be, and should be, reported favorably out of the Committee with bipartisan support.

Judge Wilkins clearly has the qualifications, experience, intellect and temperament to serve with great distinction on the D.C. Circuit. We urge every Senator to support his confirmation.

Respectfully,

Douglas T. Kendall
President



Judith E. Schaeffer
Vice President

cc: All Members, Senate Judiciary Committee

The Leadership Conference on Civil and Human Rights

1629 K Street, NW
10th Floor
Washington, DC
20006

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www.civilrights.org

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American Civil Liberties Union
David Saperstein
Religious Action Center of Reform Judaism
Shanna Smith
National Fair Housing Alliance
Dennis Van Roekel
National Education Association
Randi Weingarten
American Federation of Teachers

Compliance/Enforcement Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

October 2, 2013

Vote "Yes" to Confirm Judge Robert L. Wilkins' Nomination to the D.C. Circuit

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, we write to express our strong support for the confirmation of Judge Robert L. Wilkins to the U.S. Court of Appeals for the District of Columbia. As one of the nation's leading judges, Mr. Wilkins will bring a wealth of experience and impartiality to the court. Given his steadfast commitment to enforcing the rule of law and protecting the roles of courts, Congress, the executive branch, and states, Judge Wilkins will be an objective, thoughtful, and impartial voice on the court. We urge the Senate to vote "yes" on his confirmation.

There is no question Robert Wilkins is eminently qualified and will be a highly respected addition to the D.C. Circuit, as evidenced by the "Unanimously Well Qualified" ratings he received from the American Bar Association and from the U.S. Court of Appeals. On May 20, 2010 he was nominated by President Obama to the U.S. District Court for the District of Columbia and confirmed unanimously on December 22, 2010. Since his confirmation, he has earned a reputation as a conscientious and fair-minded jurist who dutifully follows the law, as observed by the Wall Street Journal Editorial Board. If confirmed to the D.C. Circuit, Judge Wilkins would be the first judge on the U.S. District Court for the District of Columbia to be elevated to that court in nearly 50 years. It is clear, on day one, Judge Wilkins will be prepared to handle the array of legal issues that the court addresses, having spent a good portion of his legal career in public service as a litigator working to protect the rights of individuals in marginalized communities.

Robert Wilkins earned his Juris Doctorate from Harvard Law School, where he served as the Executive Editor of the *Harvard Civil Rights-Civil Liberties Law Review*. After graduation, he clerked for the Honorable Earl B. Gilliam on the U.S. District Court for the Southern District of California. He then spent over a decade at the Public Defender Service (PDS) for the District of Columbia—one of the most competitive public defender offices in the nation – first as a staff attorney, and later as Special Litigation Chief, where he championed cases, ranging from exposing the appalling conditions in the D.C. Receiving Home for Children, to exposing the violation of various consent decree provisions by Oak Hill Youth Center due to overcrowding and inadequate medical care, housing conditions, food and education. During his time at PDS, he also served on the D.C. Truth-in-Sentencing Commission and the D.C. Advisory Commission on Sentencing, which laid the groundwork for the D.C. Sentencing Guidelines later adopted in 2004. In 2002, he became a partner at Venable LLP, where he specialized in white-collar defense, intellectual property, and complex civil litigation, and led the litigation team representing the post-bankruptcy management of Enron in a major Wall Street case.

Moreover, Judge Wilkins is an active and distinguished community leader. Prior to joining Venable in 2002, Judge Wilkins left his work at PDS to volunteer full-time to help establish

and create the National Museum of African American History and Culture. With a bipartisan group of U.S. Senators, Judge Wilkins drafted a bill to establish a blue ribbon, bipartisan Presidential Commission to write a plan for creating the museum, which passed the House by voice vote and the Senate by unanimous consent, and was signed by President Bush into law in 2001. In 2002, the Senate appointed Judge Wilkins to the Presidential Commission, which unanimously endorsed a plan that led to a bill that passed the House by a vote of 409-9 and unanimously in the Senate in 2003. Additionally, Judge Wilkins has been celebrated as a prominent figure in the legal community for his deep passion and commitment to upholding the civil rights and liberties of all Americans. He has received numerous accolades, including in 2007 being recognized by the Washingtonian Magazine as one of "Washington's Top Lawyers", and by the Legal Times in 2008 as one of the "90 Greatest Washington Lawyers of the Last 30 Years."

The Leadership Conference believes Robert Wilkins' record makes him an enormously qualified nominee with the intellectual hindsight to make objective decisions on a number of multifaceted and prominent cases that will surely come before the court. His nomination to the D.C. Circuit is not only important because of his impeccable credentials, but equally critical because of the role this court plays in the administration of justice in our country. The D.C. Circuit is responsible for deciding uniquely complex and nationally significant cases, with exclusive responsibility for hearing cases on environmental regulations, national security issues, and voting rights. It is also the court that most closely oversees federal agency action on issues including health care, consumer protection, workers' rights and workplace safety. Yet, the D.C. Circuit is operating with nearly one third of its congressionally mandated seats vacant. According to the Administrative Office of the U.S. Courts, "the caseload per active judge on the D.C. Circuit has risen more than 50 percent since 2005." Not only is it contrary to the interests of justice for the court to operate understaffed, it is clear that with fewer active judges on the D.C. Circuit than there were in 2005, the increased workload warrants filling each of the remaining vacant seats on the court.

The president has done his job by nominating an exceptional and renowned legal advocate to a vacancy on an important federal court. The Senate Judiciary Committee should favorably report out Judge Robert L. Wilkins' nomination on to the Senate floor. We urge you to vote "yes" to confirm him.

Thank you for your cooperation. If you have any questions, please feel free to contact Nancy Zirkin, executive vice president at Zirkin@civilrights.org or (202) 466-2880, or Sakira Cook, senior policy associate at cook@civilrights.org or (202) 263-2894.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

All Three D.C. Circuit Court Nominees Should Get Yes-or-No Votes

July 31, 2013

United States Senate
Washington, DC 20510

Dear Senator:

The undersigned 97 organizations represent a diverse array of groups deeply committed to the proper functioning of the federal court system. We are writing to urge you to ensure the Senate holds yes-or-no votes on whether to confirm Patricia Millett, Nina Pillard, and Robert Wilkins, the president's three nominees to the U.S. Court of Appeals for the District of Columbia Circuit.

As you know, the D.C. Circuit has unique importance in American law. Many statutes require the D.C. Circuit to be the exclusive court to consider appeals of federal agency regulations and decisions affecting the entire country. Moreover, even when parties appealing agency decisions, congressional statutes, or presidential actions have a choice of venues, they often choose to have their cases heard by the D.C. Circuit, due to its expertise in complex administrative matters. And since the Supreme Court hears only a few dozen cases a year, the decisions of the D.C. Circuit are almost always the last word.

Late in the Bush Administration, Congress worked together in an overwhelmingly bipartisan manner and determined that the D.C. Circuit would function most efficiently with eleven active judges. Today, three of its eleven judgeships stand vacant. Consistent with the constitutional responsibility of all presidents to nominate judges to fill the judgeships that Congress has created and the precedent established by his predecessors, President Obama in June made nominations to fill each of these three vacancies.

Ms. Millett, Ms. Pillard, and Judge Wilkins are all extremely qualified nominees and worthy of full consideration by the U.S. Senate.

However, we are concerned that some may seek to block yes-or-no confirmation votes for one or more of the nominees based on unsupported claims that the D.C. Circuit's caseload does not warrant filling all 11 congressionally-mandated seats. In fact, the court has many more pending cases now than it did when the Senate confirmed George W. Bush nominees Janice Rogers Brown and Thomas Griffith to the 10th and 11th seats in 2005: According to the Administrative Office of United States Court, the D.C. Circuit had 1,456 pending cases as of March 31, 2013, as opposed to only 1,313 pending cases in May of 2005 when Brown and Griffith were confirmed.

Moreover, the court's caseload is even heavier than those numbers suggest. Because of its unique jurisdiction, the typical proceeding before the D.C. Circuit is far more complex than a typical

proceeding before any of the other circuit courts. As former D.C. Circuit Judge Pat Wald has written, the D.C. Circuit hears "the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, health-care reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record – all of which culminates in lengthy, technically intricate legal opinions."

We would be deeply concerned about efforts to obstruct votes to fill any of the three vacancies on the D.C. Circuit. Our courts deserve better. And so do the American people.

The rule of law requires that our nation's federal courts function properly. To do that, they must be fully staffed by qualified judges. The D.C. Circuit's unique importance and nationwide jurisdiction makes it critical to every American that it be allowed to operate with all 11 active judgeships filled.

Whether you support or oppose Millett, Pillard, and Wilkins, please allow the American people to see you and your Senate colleagues express that position in a yes-or-no confirmation vote for all three nominees.

Sincerely,

African American Ministers in Action
AFL-CIO
Alliance for Justice
Amalgamated Transit Union (ATU)
American Association for Justice
American Association of University Women
American Constitution Society
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
American Postal Workers Union (APWU)
Americans for Financial Reform
Asian Americans Advancing Justice – AAJC
Association of Flight Attendants (CWA)
Auto Workers, United (UAW)
Black Leadership Forum
Coalition of Women's Initiatives in Law
Common Cause
Communications Workers of America
Constitutional Accountability Center
CREDO Mobile
Department of Professional Employees - AFL-CIO

Earthjustice
Earth Rights International
Environmental Law and Policy Center
Feminist Majority
Generational Alliance
Hispanic National Bar Association (HNBA)
Human Rights Campaign
International Brotherhood of Boilermakers
International Federation of Professional and Technical Engineers (IFPTE)
Justice at Stake
Lambda Legal
Leadership Conference on Civil and Human Rights
Legal Momentum
MALDEF
Metal Trades Department (AFL-CIO)
Mine Workers of America (UMWA)
National Abortion Federation
NAACP
NAACP Legal Defense & Educational Fund, Inc.
National Association of Consumer Advocates
National Bar Association
National Coalition on Black Civic Participation
National Conference of Women's Bar Associations
National Congress of American Indians
National Council of Jewish Women
National Education Association
National Employment Lawyers Association (NELA)
National Fair Housing Alliance
National Legal Aid & Defender Association
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
People For the American Way
ProgressNow
Service Employees International Union
Sheet Metal Air Rail Transportation (SMART) Transportation Division
Sierra Club
Steelworkers, United (USW)
Union for Reform Judaism
USAction
YEO Action
Young People For Action

American Constitution Society New England Law Boston
Americans for Democratic Action Iowa
Arizona Advocacy Network
Asian Americans Advancing Justice – Chicago
California School Employees
Cleveland NAACP
Courts Matter to ME
I Believe Project (Mississippi)
Illinois Coalition for Constitutional Values
Interfaith Alliance of Iowa
Iowa Association for Justice
Iowa Citizen Action Network
Iowa Fair Courts Coalition
Jewish Alliance for Law & Social Action (Massachusetts)
Justice Not Politics (Iowa)
Louisiana Courts Matter
Maine Women's Lobby
National Association of Social Workers Maine Chapter
National Council of Jewish Women Louisiana State Policy Advocacy Network
National Council of Jewish Women Maine State Policy Advocacy Network
National Council of Jewish Women Minneapolis Section
National Council of Jewish Women Pennsylvania State Policy Advocacy Network
National Council of Jewish Women Missouri State Policy Advocacy Network
National Council of Jewish Women Texas State Policy Advocacy Network
Nebraskans for Civic Reform
Ohio Coalition for Constitutional Values
One Iowa
Pennsylvania Coalition for Constitutional Values
Planned Parenthood of the Heartland
Texans for a Fair Judiciary
Women's Bar Association of Illinois
Women's Bar Association of Massachusetts
Working Families Win (Iowa)

CHAIR
Judy Perry Martinez
New Orleans, LA

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Email: judy.martinez@ngc.com

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

June 4, 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 Robert Leon Wilkins to the United States Court of Appeals for the District of Columbia Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Robert Leon Wilkins who has been nominated for a position on the United States Court of Appeals for the District of Columbia Circuit. As a result of our investigation, the Committee is of the opinion that for this position Judge Robert Leon Wilkins is Unanimously Well Qualified.

A copy of this letter has been provided to Judge Robert Leon Wilkins.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Robert Leon Wilkins (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 4, 2013.

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Judy Perry Martinez
New Orleans, LA

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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

June 24, 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 James J. Donato to the United States District Court for the Northern District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of James Joseph Donato who has been nominated for a position on the United States District Court for the Northern District of California. As a result of our investigation, the Committee is of the opinion that for this position Mr. Donato is Substantial Majority Well Qualified; Minority Qualified.

A copy of this letter has been provided to Mr. Donato.

Sincerely,

Judy Perry Martinez
Chair

cc: James J. Donato, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 24, 2013.

RECEIVED JUL 09 2013

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PAUL M. DAVIS
ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA
AND THE
STATE OF WASHINGTON

June 21, 2013

Senator Patrick Leahy
Chairman, Judiciary Committee
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member, Judiciary Committee
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

In re: Nomination of Judge Beth Labson Freeman to the Northern District of California

Dear Senators Leahy and Grassley:

Soon the President's nomination of the Honorable Beth Labson Freeman, a judge of the San Mateo County [California] Superior Court, will come before you for confirmation. I most respectfully urge you to confirm the nomination.

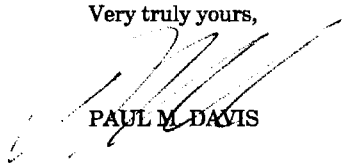
I am proudly a life-long Republican. While I have disagreed with many of the President's judicial nominations, this one should prove to be one of the best of his presidency.

I have tried cases before Judge Freeman and have interacted with her in Court on many occasions over the years. I cannot overstate her qualifications as a jurist. She is without any doubt an extraordinarily skilled and qualified jurist to sit as an Article III judge. Judge Freeman's knowledge of the law, her judicial temperament, her control of the courtroom, her ability to grasp and understand complicated and complex facts and law, her willingness to listen, and the way she treats counsel and the litigants is beyond what most lawyers and clients could ever expect of a judge.

Judge Freeman's confirmation to the United States District Court of the Northern District of California will be a significant asset to the United States District Court and a significant loss to the San Mateo County Superior Court.

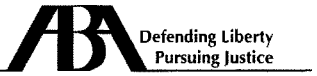
Thank you for taking the time to consider this very important nomination.

Very truly yours,



PAUL M. DAVIS

cc: Senator Dianne Feinstein



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New Orleans, LA

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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

June 24, 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 Beth Labson Freeman to the United States District Court for the Northern District of California

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Beth Labson Freeman who has been nominated for a position on the United States District Court for the Northern District of California. As a result of our investigation, the Committee is of the opinion that for this position Superior Court Judge Freeman is Unanimously Qualified.

A copy of this letter has been provided to Judge Freeman.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Beth L. Freeman (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 24, 2013.

RECEIVED AUG 2 9 2013

FEDERAL BAR ASSOCIATION
HON. RAYMOND L. ACOSTA
PUERTO RICO CHAPTER

Hon. Raymond L. Acosta
Puerto Rico Chapter

President
Oreste R. Ramos

President Elect
Andrés W. López

Vice President
Roberto A. Cámara Fuertes

National Delegate
Mariano A. Mier Romeu

Secretary
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Héctor Ramos Vega
María Ligia Gráldez
Natalia Morales Echevarría

Immediate Past President
Manuel A. Pietrantoni

1st Cir Vice President
Katherine González Valentín

August 19, 2013

Senator Patrick Leahy
President, Committee on the Judiciary
UNITED STATES SENATE
437 Russell Senate Bldg.
Washington DC 20510

Re: Nomination of Pedro A. Delgado-Hernández to U.S. District Judge

Dear Senator Leahy:

On June 26, 2013, President Obama nominated Pedro A. Delgado-Hernández to the position of U.S. District Judge for the District of Puerto Rico.

The Hon. Raymond L. Acosta Puerto Rico Chapter of the Federal Bar Association fully and wholeheartedly supports this nomination and endorses the candidate without reservations. Mr. Delgado-Hernández' broad experience in private practice and outstanding public service, coupled with his integrity and excellent professional reputation, makes him more than qualified in all respects to fill the position.

We have sent for the Committee's consideration a resolution issued by our Chapter expressing its endorsement and full support for the nominee, and respectfully request that it be included in the candidate's Senate Judiciary Committee evaluation file.

Respectfully,

Oreste R. Ramos

c: Members of the Committee on the Judiciary

208 Ponce de León Avenue • 19th Floor • San Juan, PR 00918
Tel. (787) 274-4937 • Fax (787) 274-1470

PEDRO R. PIERLUISI
PUERTO RICO

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1213 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-2615 FAX: (202) 225-2164

SAN JUAN OFFICE:
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ANTIGUO EDIFICIO DE MEDICINA TROPICAL
ALA DE ENFERMERÍA 2DO PISO
SAN JUAN, PUERTO RICO 00901
(787) 723-6333 FAX: (787) 729-7738

Congress of the United States
House of Representatives
Washington, DC 20515–5401

COMMITTEES:
ETHICS
JUDICIARY
NATURAL RESOURCES

September 5, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Ranking Member Grassley:

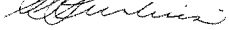
I write to respectfully convey to the Committee on the Judiciary my strong support for the President's nomination of Pedro A. Delgado Hernández to be United States District Judge for the District of Puerto Rico, a nomination that will be considered by the Committee at a hearing scheduled for September 11, 2013. I hope that the Committee will take my views into consideration as it evaluates this nominee.

I am pleased that the President, after careful consideration, has chosen to nominate Mr. Delgado Hernández to fill the current vacancy on the District Court of Puerto Rico. I believe that Mr. Delgado Hernández is highly qualified to serve as a federal district court judge, based on his extensive professional experience and sterling educational record. Mr. Delgado Hernández graduated *magna cum laude* from the University of Puerto Rico School of Law, where he was as an editor of the law review. Following graduation, Mr. Delgado Hernández served as a law clerk at both the federal district court and federal appeals court levels, as an attorney in private practice, as Solicitor General of Puerto Rico, and as an appellate judge in the Puerto Rico court system. This experience, taken collectively, has prepared him well for the important, lifetime-tenured position for which he has been nominated. I would note that the Puerto Rico Chapter of the Federal Bar Association has endorsed Mr. Delgado Hernández's appointment without reservation in a letter to the Committee dated August 19, 2013.

As the Committee is aware, a vacancy on the District Court of Puerto Rico has existed for more than one year. Accordingly, it is important for the Court and my constituents that this nomination be acted upon by the Senate as expeditiously as the calendar allows. I hope that the Committee will vote to recommend that the full Senate confirm Mr. Delgado Hernández.

Thank you for your attention to this matter.

Sincerely,



Pedro R. Pierluisi
Member of Congress

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RESOLUTION OF THE BOARD OF DIRECTORS ON THE PRESIDENTIAL NOMINEE FOR THE CURRENT JUDICIAL VACANCY IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

WHEREAS: On June 26, 2013, the President of the United States nominated Pedro A. Delgado-Hernández to fill a vacancy in the U.S. District Court for the District of Puerto Rico as an Article III District Court Judge;

WHEREAS: the nominee has received widespread support, and, in the view of the Chapter, is an exceptional, competent and qualified legal professional;

WHEREAS: the Board of Directors is convinced that the nominee will administer justice without respect to persons, and do equal right to the poor and to the rich, and will faithfully and impartially discharge and perform all the duties incumbent upon him under the Constitution and laws of the United States; and further that he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same;

WHEREAS: this Board is satisfied that the nominee possesses the exceptional professional skills, temperament, and other necessary qualifications required of a candidate to fill the current vacancy in this District; and

NOW THEREFORE, the Board of Directors of the Federal Bar Association, Hon. Raymond L. Acosta Puerto Rico Chapter, hereby resolves:

1. To express its unconditional satisfaction with the qualifications of Pedro A. Delgado-Hernández to fill the vacant Article III judgeship in the U.S. District Court for the District of Puerto Rico and the Chapter's unconditional endorsement to this important nomination.

2. That this Resolution be forwarded to the Committee on the Judiciary of the U.S. Senate.

In San Juan, Puerto Rico, this 19th day of August, 2013.

Secretary, Puerto Rico Chapter, FBA

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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

June 27, 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 Pedro A. Delgado Hernández to the United States District Court for the District of Puerto Rico

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Pedro A. Delgado Hernández who has been nominated for a position on the United States District Court for the District of Puerto Rico. As a result of our investigation, the Committee is of the opinion that for this position Mr. Delgado is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Delgado.

Sincerely,

Judy Perry Martinez
Chair

cc: Pedro A. Delgado Hernández (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (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 June 27, 2013.

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