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NOMINATIONS OF HON. CAROL WALLER POPE, ROBERT A. SALERNO AND DARLENE M. SOLTYS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

NOMINATIONS OF HON. CAROL WALLER POPE TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY, ROBERT A. SALERNO AND DARLENE M. SOLTYS TO BE ASSOCIATE JUDGES, D.C. SUPERIOR COURT

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NOMINATIONS OF HON. CAROL WALLER POPE, ROBERT A. SALERNO AND DARLENE M. SOLTYS

THURSDAY, DECEMBER 3, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room 342, Dirksen Senate Office Building, Hon. James Lankford, presiding.

Present: Senators Lankford, Portman, Ernst, Sasse, and Carper.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. I am going to go ahead and begin our hearing today. Good morning to you. And then we will have others that will join us in due time.

Today, we are going to consider the nominations of Mr. Robert Salerno and Ms. Darlene Soltys for the position of Associate Judge in the Superior Court for the District of Columbia, as well as the nomination of Ms. Carol Waller Pope for the position of Chair of the Federal Labor Relations Authority (FLRA).

The Committee takes these nominations very seriously. We are pleased to have strong nominees before us.

Mr. Salerno is a native of New Jersey, received a Bachelor of Arts degree from Brown University and a law degree from the University of Virginia School of Law. After graduation, Mr. Salerno practiced law with several D.C. area law firms, honing skills in civil litigation and white collar criminal defense. This year, he became Special Counsel of Schulte Roth and Zabel.

Ms. Soltys is a native of Washington State, the other Washington. She received a Bachelor of Arts degree from the University of Maryland (UMD) and a law degree from Georgetown University. After graduation, Ms. Soltys clerked for the Honorable Gregory Mize on the Superior Court for the District of Columbia. Following her clerkship, she embarked on a 23-year career in prosecution, working for the D.C. Attorney General (AG), the Maryland State Attorney, and the U.S. Attorney's Office.

In addition to these impressive resumes, Mr. Salerno and Ms. Soltys possess the necessary skills and judgment to serve the District of Columbia. The Committee staff reached out to a variety of these nominees' colleagues and affiliates, who actually spoke very highly of them.

Ms. Pope is a native of Pittsburgh. She received her Bachelor of Arts degree from Simmons College and a law degree from Northeastern University School of Law. After law school, she worked at

Boston University and the Department of Labor (DOL) before joining the Federal Labor Relations Authority in 1980.

The Committee staff also had the opportunity to be able to interview Mr. Salerno, Ms. Soltys, and Ms. Pope on an array of issues ranging from notable cases to their community service and pro bono work. They have thoughtfully and competently answered each question to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated. I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

And with that, I recognize the Ranking Member of the full Committee, Senator Carper, for any opening statement he would like to make.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Mr. Chairman, good morning.

Senator LANKFORD. Good morning.

Senator CARPER. This man has been with us for about a year and he is already chairing the full Committee. That is pretty good.

Eleanor, nice to see you. Welcome. Congresswoman, nice to see you.

Ms. Pope, Mr. Salerno, Ms. Soltys, we are honored to have you here and welcome you, your family, and your friends.

I think before I make any opening remarks, a lot of us are thinking about—when I was in the Navy, I was stationed in California and did not live in San Bernadino, but traveled through there from time to time, and I continue to follow the developments there as the law enforcement folks conduct their investigations. We feel and pray for the folks whose lives have been taken, whose lives are in jeopardy, and the families that are mourning their loss. It is a tough time for them, a tough time for our country. We are keeping them in our prayers.

I again want to thank you for coming. I want to thank you for your willingness to serve. For 8 years of my life, I was privileged to be Governor of Delaware, and one of the jobs of Governors is to actually nominate people to serve on the bench. And, frankly, when I ran for office for Governor in 1992, I had 35 joint appearances with my Republican opponent, a good guy, and in those 35 joint appearances and debates, nobody ever asked what criteria I would use to nominate people to serve as State judges, Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, Magistrate Courts, all of those, and no one ever asked. It turned out it was one of the most important parts of my job.

So, I learned quickly to figure out what to look for in men and women that I might nominate, and I decided that one of the things I wanted to make sure that we did, that we had a judiciary—just like I wanted to build an administration that was diverse, a cabinet that was diverse, a leadership team that was diverse, I wanted to have a judiciary that was diverse and looked like my State in terms of gender, race, and so forth, and it would also have in just two or three people. We had a Judicial Nominating Committee just

kind of like the commission that you all have that brings at least two of the three of you here to us today.

I just want to say—and I interviewed them all. I interviewed everyone that came to me nominated by our commission. And, I want to say the qualities in the education, job experience of our two judicial nominees stacks up well with, I think, any group of nominees submitted to me as Governor by our Judicial Nominating Commission—people who are bright, people who know the law, people that have unquestionable integrity. What did Alan Simpson used to say? Former Senator Alan Simpson used to say about integrity, if you have it, nothing else matters. If you do not have it, nothing else matters.

And, the folks that we have talked to who know you, who know of your work, know of your background, know, really, of your character, have said just wonderful things. I would be delighted—I know they say stuff like this about our Chairman, but I would be delighted to know if people said those kinds of things about me. Maybe some day, they will.

But, I think the folks in Washington, DC, are lucky that you are willing to serve on the bench and pleased that we finally moved through the Senate with help from our Chairman and others. We had people who had been nominated 2 years ago, waited 2 years to get people confirmed. That is awful and we have to do a whole lot better than that. My hope is that we will do a lot better than that with these two nominations before us today.

I want to say to Ms. Pope, thank you for your willingness to continue to serve, and my hope is, I think we have another person with whom you serve on the Authority, a Republican whose term is coming up, I think maybe later this year, maybe early next—and there might be an opportunity for us to hopefully reconfirm you to serve and maybe the other person, your other colleague, as well. That would be, I think, a good outcome. So, hopefully, we can do that expeditiously.

I want to thank the Chairman of the Committee for the way he approaches his work, and he is a golden rule guy. He treats people the way he wants to be treated and we are lucky to have him here and we are lucky to have you all here. Thank you for joining us today.

And, I have a statement for the record,[1] Mr. Chairman.

Senator LANKFORD. Thank you, Senator Carper, very much.

I would like to recognize the Delegate from Washington, DC, Eleanor Holmes Norton, who I had the privilege to be able to serve with in the House of Representatives. We even served on Committees together. So, pleased that you are here. This is obviously a very important issue to you and your responsibilities, as well, and we would like to be able to receive any opening statement you would like to make.

[1] The prepared statement of Senator Carper appears in the Appendix on page 24.

TESTIMONY OF THE HONORABLE ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you very much, Senator Lankford. It is a pleasure to appear before you as Chairman of this Committee, and my good friend and Ranking Member, Senator Carper.

I realize that brevity is the coin of the realm. I will have very little to say. I will let these nominees speak for themselves.

As for Carol Waller Pope, this is the fourth time I have been before you for her. That says everything about, I think, her distinguished record. She is being renominated to Chair the Federal Labor Relations Authority. She is the first civil servant to serve both as a Member and as the Chair of the Authority and we are very proud of her.

We have two nominees to serve on our trial court, the Superior Court. You have summarized well, Mr. Chairman, their distinguished qualifications. Both have extensive litigation experience, which is very important for our Superior, our trial court.

If I may, in closing, say to you, or bring to your urgent attention, what the Superior Court has asked me to indicate to you. First, we in the District of Columbia very much appreciate that last month, the Senate confirmed William Nooter and Steven Wellner to the Superior Court. These were the first local D.C. judges confirmed since May 2013. And I bring to the attention of the Committee that they are beginning to write articles in the District of Columbia about the slowness of trials in the District of Columbia because of pending nominations, perhaps other reasons, as well.

I urge this Committee to move Todd Kim, who was nominated in February 2014 for the D.C. Court of Appeals and is awaiting a hearing, and Julie Becker, who was first nominated in April 2015 for the Superior Court and is also awaiting a hearing.

We hate to burden you with these local courts, but they are Article I courts, which is why we have to be here at all. There may be other candidates coming up in turn. I understand the busy schedule of the Senate and very much appreciate the time and effort you have taken with these nominees.

Thank you very much.

Senator LANKFORD. No, thank you very much.

It is the custom of the Committee to swear in all witnesses that appear before us, so if you do not mind, I would like to ask you to stand and raise your right hand.

Do you swear the testimony that you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. POPE. I do.

Mr. SALERNO. I do.

Ms. SOLTYS. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect the witnesses have all answered in the affirmative.

I would like to take a moment of personal privilege before we actually move to opening statements here. Do you all have family members or friends that are here that you would like to introduce? And if you would like to do that, when you make an opening statement, would you please introduce them and then step into your

statement, because there are a few folks that are behind you that probably are well deserving of some recognition in this process, as well.

So, I would like to recognize Ms. Pope. You have been through this before. You will be the one with all the experience here at the table, so you can go first. If you have any individuals to recognize, and then receive your opening statement, we would be glad to do that.

TESTIMONY OF THE HONORABLE CAROL WALLER POPE,[1] NOMINATED TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY

Ms. POPE. Good morning. I want to thank you, Senator Lankford and Senator Carper, for conducting this hearing. I also thank the Committee staff for their work and meaningful assistance.

I also want to thank Congresswoman Norton for being here today. As she said, she has been here on all three prior occasions that I have been before this Committee. I admire her illustrious career, and as a D.C. resident, appreciate her 25 years of service as our Representative in Congress.

It is my honor and privilege to be here today as President Obama's nominee to serve for a fourth term as Member, and if confirmed, to again serve as Chairman of the FLRA. I thank President Obama for the confidence and trust he has placed in me to serve in this leadership capacity at the FLRA.

I also want to thank and introduce my family for their unwavering support and trusted guidance. With me here today are Lynda White and Fred Grigsby, Jr., who are here representing those of my family members who could not be here, along with many members of my extended family who are in attendance.

I would be remiss if I did not acknowledge the collegiality and support of my fellow Presidential leadership at the FLRA, Member Patrick Pizzella, who Senator Carper referenced will also be appearing before you, his nomination is pending renomination; Member Ernest DuBester; General Counsel Julie Clark; and Federal Service Impasses Panel Chairman Mary Jacksteit; and Panel Member and former FLRA Chairman Donald Wasserman. I want to acknowledge and give thanks to Member DuBester and Member Wasserman who are here today in attendance representing our colleagues.

I am here today standing on the shoulders of my parents, my father, a Pittsburgh steelworker, my mother, a domestic worker, both of whom embodied the principle of hard work. They worked hard to ensure that their four daughters had a foundation of love and education as well as their shared commitment to public service and to helping others.

I have devoted my entire professional career to public service, first at the U.S. Department of Labor, and for 21 years as a career employee at the FLRA. If confirmed, I will be the longest serving Member, a Presidential appointee, at the FLRA, and I have the distinct honor of having been nominated by three Presidents, President Clinton, President Bush, and President Obama, and it is my

[1] The prepared statement of Ms. Waller Pope appears in the Appendix on page 26.

honor to have been confirmed on three prior occasions by this august body, the U.S. Senate.

The FLRA encompasses in one small agency the investigator, prosecutor, adjudicator, and interest arbitrator for labor-management disputes involving 1.2 million Federal employees. Since its creation as part of the Civil Service Reform Act, the FLRA has been committed to providing leadership and establishing policies and guidance related to Federal sector labor-management relations. For over 36 years, the FLRA has promoted labor-management relations for an effective and efficient government. Simply stated, the FLRA must meet the needs of the Federal workforce with high-quality legal decisions and alternative dispute resolution services to ensure that workplace disputes do not unduly impede the performance of Federal agencies in their missions to serve the American people.

With respect to mission performance, the FLRA had a great year in 2015. I am proud to say that mission performance is No. 1 for us, as was eliminating our case backlog. We know that protracted legal disputes are in no one's interest. They create problems in the workplace and certainly morale problems for the FLRA. So, we have worked hard and accomplished eliminating the backlog on the Member side of the house, which was due to a lack of a quorum of Members for over 10 months in 2013.

Alternative dispute resolution (ADR), activities throughout the agency are very important. Over 80 percent of the FLRA's cases are resolved voluntarily by the parties with our servicers and facilitation through alternative dispute resolution. ADR is deeply embedded in the mission of the FLRA. We make it work. Offering it and making it work are two different things. During my tenure as Chairman, we formally integrated mediation and ADR into all aspects of case processing, in every component.

In real terms, as just one example of our ADR efforts, the parties amicably resolved a dispute in 2 days of mediation, a dispute involving 44 contract provisions that would have taken a lot of resources of the FLRA if we had to render a legal decision on the negotiability of those 44 provisions.

I proudly note on behalf of the FLRA that when I began my tenure as Chairman in 2009, employee morale at the FLRA was at an all-time low. In fact, the FLRA was ranked last among small agencies in the Partnership for Public Service's Best Places to Work in the Federal Government rankings. Our mission performance, which in my view goes hand-in-hand with employee morale and engagement, was also well below our annual performance targets.

I am happy to note today that in fiscal year (FY) 2015, the FLRA captured the rank of No. 2 on three important indexes in the Office of Personnel Management's (OPM) Federal Employee Viewpoint Survey (FEVS): employee engagement, global satisfaction, and inclusivity of the work environment. We also achieved an all-time high employee response rate of 84 percent.

Equally important to our mission success is that 99 percent of the FLRA's respondents, our employees, reported that they are willing to put in the extra effort to get the job done. Ninety-four percent believed that the agency is successful at accomplishing its

mission. And 94 percent know how their work relates to the agency's goals and priorities.

This year, the FLRA expects to improve upon its No. 5 ranking in 2014. Obviously, No. 5 reflects an impressive and unprecedented improvement of over 300 percent since I became Chairman. This sustained progress from nearly 7 years ago reflects the commitment of all of the agency leadership, and of all levels of management, to operate with transparency and accountability, and to truly engage our employees. It reflects the hard work and dedication and commitment of all of our employees.

If I am confirmed, I will continue to work hard every day with my FLRA colleagues throughout the country, some of whom—many of whom—are at this hearing today, and I appreciate their being here and countless others who are following the live stream of this proceeding. I pledge to them to build on a culture of excellence, this record of success in our mission performance, and employee engagement for effective and efficient government.

Mr. Chairman, I thank you for this opportunity to be here today and I would be pleased to respond to any questions.

Senator LANKFORD. Thank you.

Mr. Salerno, could you introduce any family or guests that you may have here, and we will be proud to receive your opening statement, as well.

TESTIMONY OF ROBERT A. SALERNO,[1] NOMINATED TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. SALERNO. Thank you, Mr. Chairman and Members of the Committee. I am honored to appear before you today as a nominee for Associate Judge of the Superior Court of the District of Columbia.

I would like to thank the District of Columbia Judicial Nomination Commission, including its Chair, District Judge Emmet Sullivan, who is here today, for recommending me to the White House, President Obama for nominating me, and Congresswoman Eleanor Holmes Norton for introducing me to the Committee.

I would not be here today without the support and encouragement of family, friends, and colleagues. Family members who are with me today are my wife, Juanita, my son, Evan, and Michael and Robert Guberman.

Senator CARPER. I think we see your wife over your right shoulder. Where is your son? Would you raise your hand?

Senator LANKFORD. Right there.

Senator CARPER. OK, thanks. Thanks so much. The young guy.

Mr. SALERNO. Yes. My daughter, Alex, is finishing up her fall semester at Skidmore College in New York, but she and other family members, including my sisters and nieces, are watching on the Committee's streaming video.

My parents are no longer with us, but they would have been proud today if they were, especially my father, who always encouraged me to go to law school.

[1] The prepared statement of Mr. Salerno appears in the Appendix on page 70.

And I also want to acknowledge the colleagues and friends who have come here today to show their support.

I am excited by the opportunity to serve on the Superior Court. I would bring to the position more than two decades of experience as a litigator in the District of Columbia, recent quasi-judicial experience, and a deep commitment to the city.

I have been a resident of the District of Columbia for 25 years and raised two children here. During that time, I have had a very varied and rewarding career in private practice. I have litigated civil and criminal matters in Federal and State courts across the country, handling everything from high-stakes commercial litigation, to alleged criminal conduct by individual clients, to pro bono matters on behalf of our most vulnerable residents. I have been fortunate to work on sophisticated matters with extremely talented colleagues.

At the same time, I have always had a strong interest in public service. Prior to becoming a lawyer, I was a Peace Corps volunteer in Ecuador, which is where I met my wife, Juanita. I also volunteered to serve as a Hearing Committee Chair for the Board of Professional Responsibility, and in that capacity, I conducted evidentiary hearings on formal charges of professional misconduct by members of the District of Columbia Bar.

But, I am now at a point in my life where I am ready and able to focus one hundred percent of my energy on public service. It would be a privilege for me to do so as an Associate Judge on the Superior Court. Judges have a unique ability to make a difference in the community on a daily basis, and for many of our citizens, judges are the personification of the judicial system. I can think of no greater honor for a lawyer than to be entrusted with the responsibility that comes along with being a judge. My broad and diverse experience in private practice, together with my experience as a Hearing Committee Chair, make me confident that I would be a good judge and that I would enjoy serving in that role.

If confirmed, I would work hard every day to achieve fair outcomes in accordance with the law for all persons who come to the District of Columbia Superior Court seeking justice and due process and to do so as efficiently as possible.

Thank you for considering my nomination, and I look forward to answering your questions.

Senator LANKFORD. Thank you.

Ms. Soltys, glad you are here. We would be glad to be able to receive the introduction of any family members or friends that are here and then your opening statement.

TESTIMONY OF DARLENE M. SOLTYS,[1] NOMINATED TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. SOLTYS. Thank you, Mr. Chairman. Mr. Chairman and Members of the Committee, thank you for an opportunity to appear before you as a nominee for the position as an Associate Judge in the District of Columbia's Superior Court.

[1] The prepared statement of Ms. Soltys appears in the Appendix on page 92.

I thank the Judicial Nomination Commission and its Chairman, the Honorable Emmet G. Sullivan, for recommending me to the White House, and, of course, to the President for nominating me. Also, thank you to Congresswoman Norton for her kind words in introducing me today.

I am honored by the presence of those who are here today to support me, including my law enforcement partners from the Federal Bureau of Investigations (FBI) and the Metropolitan Police Department and my colleagues from the United States Attorney's Office, including U.S. Attorney for the District of Columbia Channing Phillips and the Principal Assistant United States Attorney, Jim Dinan, who for many years was my chief supervisor.

I would also like to acknowledge and thank my parents, who I expect to be here today, Al and Emily Soltys. I am who I am because of them.

I am also grateful for the love and the support of my spouse, Pilar Suescum, and our two daughters, Gabriela and Lilian, who are seven and nine, who are home in bed sick.

I was raised in Anne Arundel County, Maryland. My father's 32 years at the National Security Agency (NSA) taught me the value of hard work and the importance of public service.

I came to Washington, DC, in 1987 to attend law school at Georgetown University. Since then, I have lived on Capitol Hill. Serving the community and the public interest is one of the most satisfying aspects of my profession.

My legal career began as a judicial law clerk to the Honorable Gregory E. Mize of the Superior Court, who I am honored to report is here today at this hearing. Thereafter, I have served as a prosecutor, handling diverse criminal offenses in Washington, DC, in both the Superior Court and the Federal District Court for the District of Columbia, where I have had the privilege of serving in front of Judge Emmet G. Sullivan.

I have also served as a prosecutor in the Circuit Court for Prince George's County, Maryland, and this career path has exposed me to the myriad of issues plaguing our community and has impressed upon me the importance of the government's responsibility to ensure justice in our society. I have had the privilege to appear before many fine jurists who care deeply about the fair administration of justice and due process for all, and these inspiring role models are essential to the effective functioning of our legal system.

I would be honored to put my experience to work to ensure that the people of this city receive impartial and thoughtful consideration of their matters and that justice is served with fairness and respect for all.

Thank you for considering my nomination, and I look forward to answering any questions that you may have.

Senator LANKFORD. Thank you all.

I have three questions that are not fun, but they are mandatory questions that I am going to ask of each of you. I will say it out loud and then I will ask each of you to answer verbally for these, and then we will have questions from the dais after that.

The first question for all three of you, is there anything that you are aware of in your background that might present a conflict of

interest with the duties of the office to which you have been nominated? Ms. Pope.

Ms. POPE. No.

Senator LANKFORD. Mr. Salerno.

Mr. SALERNO. No.

Senator LANKFORD. Ms. Soltys.

Ms. SOLTYS. No.

Senator LANKFORD. OK. Second question. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Ms. Pope.

Ms. POPE. No, Senator Lankford.

Senator LANKFORD. Mr. Salerno.

Mr. SALERNO. No, Mr. Chairman.

Senator LANKFORD. Ms. Soltys.

Ms. SOLTYS. No.

Senator LANKFORD. Thank you. Third, do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. POPE. Yes.

Mr. SALERNO. Yes.

Ms. SOLTYS. Yes.

Senator LANKFORD. Thank you.

I defer to Senator Carper for his questions.

Senator CARPER. Thanks, Mr. Chairman.

Several of you have mentioned the name, I think it was Judge Emmet Sullivan, who is not only a judge, but also the Chairman, apparently, of the Nominating Commission who sent your names forward to the President and then on to us. I understand he is here today, and I would just ask him to raise his hand. Good. Judge Sullivan, nice to see you.

Senator LANKFORD. Maybe we should swear him in and bring him to the table, as well. [Laughter.]

Senator CARPER. That is not an easy job and thank you for taking it on.

I would like to start off, if I could, with a question of Ms. Pope. Every year, we receive, like the world gets it to take a look at it, but a report on morale, employee morale within the Federal Government. We are the authorizing Committee for the Department of Homeland Security (DHS) and have a special interest in the importance of the work that they do. We were reminded of it just again yesterday with the tragedy in San Bernadino. But, we are also concerned that the people who work there not just enjoy their work, but they feel fulfilled by their work.

One of the things that I found of interest was that the folks who work at the FLRA did not always have very good morale and it seems to have continued to improve over time, a time that sort of coincides with the time that you have been a Member of the Authority and most recently chairing it. What is going on? I have a friend of mine, Alan Blinder, who used to say, when asked about getting good results in something, he said, find out what works, do more of that. And, so, we would like to find out what is working

and maybe we can throughout the rest of our Federal Government do more of that. Go ahead.

Ms. POPE. Thank you for that question, Senator. I have said that employee engagement begins on the first day of an employee's work life, and in some instances, it goes downhill from there. We were certainly disappointed to be last in the survey results in 2009–2010. When I became Chairman in 2009, it was important for me to hear from employees and to respect their views and concerns, and I started on a listening tour within the offices of the FLRA.

I also went to the agencies. To the point of your question, the Nuclear Regulatory Commission (NRC) at the time was No. 1, and I went out there and talked to the Chairman and said, how do you do it? What do you do?

Senator CARPER. You know, ever since you had that conversation, they have been going down——

Ms. POPE. I have noticed that. [Laughter.]

Senator CARPER. And you guys are going up.

Ms. POPE. I also have to say for the record, he is no longer there.

Senator CARPER. They will be coming to you pretty soon. [Laughter.]

Ms. POPE. Leadership is important. I think one of the important factors is to establish some core values—transparency, accountability of leadership, communication, and I think those are values that should be embedded in an agency, regardless of the leadership. I have been fortunate to be a part of a leadership team that shares those values.

So, one of the other things that we did, when we looked at the first survey and we zeroed in on the areas where we scored the lowest, we went behind the survey results and the questions and conducted our own internal surveys and asked to find out more. And then we asked employees to sit with us and develop initiatives to address some of the problems, and we do that every day, and that is the part of sustaining and improving employee engagement and satisfaction. It never ends.

I started with saying the first year I was going to revitalize, reengage, and reinvent the agency, and I also said it was the year of the employee. Well, after 6 years as Chairman, I realize every year is the year of the employee.

Senator CARPER. That is good. I like that.

I have another question of you, but before I do, I want to ask a quick question of Ms. Soltys. There is a young couple that just came into the hearing room and they took two seats right behind you, kind of over your left shoulder, and you sort of look like them. [Laughter.]

Do you know these people?

Ms. SOLTYS. I would be honored to introduce my parents, Al and Emily Soltys. I would like to just repeat the remarks that I made earlier, which is that I am who I am because of them and I am proud that they are here.

Senator CARPER. I think it is great that you came. People sometimes say to me, I am sure they say this to Senator Portman and Senator Lankford, what are we proudest of in our lives, and I always say my sons. We know you are proud. Thank you very much for raising this kid and presenting her to us today to serve.

Mrs. EMILY SOLTYS. I am sorry. We could not find a parking spot. [Laughter.]

Senator CARPER. Sometimes I cannot find parking spots, either, Ms. Soltys. It happens to all of us, but we are glad you found one and you made it in. Welcome.

Another question, if I could, for Ms. Pope. Chairman Pope—do people call you Chairman? What do they call you?

Ms. POPE. Yes. Chairman.

Senator CARPER. OK. When you look at backlog—you talked a little bit about this in your statement, but could you just come back and tell us again what did you and the Authority and the folks who work with you, for you, with you, do to achieve these results and what plans do you have going forward to continue to improve efficiencies and keep things on track? We face big backlogs in a lot of other areas. Veterans Affairs (VA) is certainly one of them. But, just talk about what some other agencies might learn from what you all have done.

Ms. POPE. We started with setting ambitious goals. We communicated to employees what our goals would be. We recognized that it would be a multi-year effort. When I became a Member in 2000 and Chairman in 2009, we had a backlog of over 300 cases, and it was a multi-year effort and we celebrated every step of achievement, and I think that was part of what kept us on target to move forward.

I was proud to say that we eliminated—a backlog for us is a case that is pending before the Authority members for over 180 days, and we again developed a backlog when we were without a quorum. There are three of us, and if there are fewer than two, we cannot issue decisions.

The other factor that we paid attention to is the recruitment, retention, and training of our staff. One of the factors that contributed to the backlog was that we had some 22 vacancies when I became Chairman and we aggressively looked to build a human resources staff. Part of what is important is the infrastructure of the agency, to give support to the attorneys, the case writers that do the work. I am remiss every time I speak when I do not acknowledge the importance of human resources (HR) and administrative services and our information technology (IT) department.

But we all came together as a team and we continue to do that. We continue to publish our goals in our weekly newsletter. On a monthly basis, we say what we have achieved, and then we celebrate success.

The other aspect of it is the reallocation of resources. For the first time ever, we have looked at—we have reemployed annuitants. We had an HR department to advise us to use every hiring flexibility possible to bring people on board quickly, to find qualified, diverse staff. And all of that contributed to our eliminating our backlog. Now that we have done that, we want to pay attention to technology developments, use resources for IT as well as to empower employees to reinvent our case process, where we can have time savings and cost savings in how we do the work. Those have all contributed to that.

Senator CARPER. Thank you for all of that.

I would say, I have one other question. I am not going to ask it. I will ask it for the record. I will mention what it is. I always want to treat, and my colleagues are the same way, we want to treat other people the way we would want to be treated, and we feel like there is an obligation with respect to judicial nominations. If we are going to be involved in the confirmation process—and we are, clearly—then we need to be responsible and to act, really, in a more timely way. And I am pleased that the Chairman feels that way. I feel it very strongly.

I am going to ask you for the record. Here is the question. To what extent does the fact that we have delayed, in some cases, the two people who were just confirmed last month for these judgeships, to what extent does it reduce the likelihood that somebody is going to be interested in putting their career on hold, being sort of, like, held out there for a year or two waiting for the opportunity to serve? To what extent does that reduce the interest in good people wanting to serve? That is the question I will ask you to answer for the record, but my gut tells me that cannot be very helpful. That cannot be very helpful, certainly not very fair.

Mr. Chairman, thank you for letting me go first. We have an unscheduled caucus meeting today. It starts in about 20 minutes, and I will be in and out after this. And I, just again, want to thank you all. Thank you for your courtesy, Mr. Chairman.

Ms. POPE. Thank you, Senator.

Senator LANKFORD. Thank you, and I hope that caucus meeting goes extremely well. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman, and thank you all for stepping up to serve. Trust in Government is not at a high water mark right now, and so able people willing to step forward with good character is really important to try to regain some of that trust.

Mrs. Soltys, you will be disappointed to know that your daughter will not have any jurisdiction over parking. [Laughter.]

I looked at what the Superior Court has responsibility for. I do not think it fits under her new responsibilities, but otherwise, it is a really important job.

Interestingly, we were talking about what the successes have been on workplace improvements under your leadership, Chairman Pope, and here is a letter of congratulations from Senator Danny Akaka, Chairman of the Subcommittee of Oversight of Government Management and the Federal Workforce, a Subcommittee I have served on, in September 2010, congratulating you for the dramatic improvement in the 2010 Best Places to Work rankings, so——

Ms. POPE. I framed a copy of that letter.

Senator PORTMAN. There you go.

Ms. POPE. I was very honored to receive it. [Laughter.]

Senator PORTMAN. This Committee has already weighed in, it sounds like.

I have a few questions, if I could, for the judges. To Judge Salerno, you have an extensive litigation career—both of you. As you said, Ms. Soltys, you have appeared before a lot of different judges and worked for judges. My question to you would be, what

do you think constitutes judicial temperament? I mean, what are the elements of judicial temperament that are most important for a trial judge, which is what you are hoping to be?

Mr. SALERNO. Shall I go first?

Senator PORTMAN. Go ahead, Judge Salerno.

Mr. SALERNO. The best characteristics of a judge include someone who treats all litigants with respect, is patient, thoughtful, deliberate, and a good listener, is always well prepared and hard working, and issues reasoned decisions.

I think disputes come to court and not everyone is going to be happy with the way disputes are resolved, but hopefully, all litigants in my courtroom would feel happy with the process, that they have been treated properly, that their issues have been dealt with in a respectful way, in a deliberate way, and even if they do not agree with the result, feel that they have had their day in court and had a fair shake. And, if I could achieve those things as a judge, I think I would be very satisfied.

Senator PORTMAN. Ms. Soltys.

Ms. SOLTYS. Thank you, Senator. Senator, I echo my colleague's answer to you. I have appeared before many judges and I have seen different types of judicial temperament. What I think is most important is that the person who is serving as a judge is impartial, is fair, is respectful toward all litigants in the courtroom, and who treats people the way that they want to be treated. A judge has to be prepared. And a judge also has to have a healthy dose of humility, because a judge should recognize that he or she may not know the facts of the case better than the parties that are in the courtroom.

And as has been my honor as an Assistant United States Attorney to represent the United States in court, what I love about my job and what excites me about that job, my current job, is the role that I play in ensuring that there is a fair and just criminal justice system, and that is the same thing that would excite me to serve as a Superior Court judge, that is, the role that I would play in ensuring that there is a fair and just legal system.

As Mr. Salerno said, what matters at the end of the day is not whether the litigants are pleased with the ruling, because half of them will not be, but rather that they left the courtroom recognizing that they had a fair hearing, that I was thoughtful, that I was deliberative, and that I made my ruling with impartiality.

Senator PORTMAN. Thank you. Very good answers, Mr. Chairman.

By the way, the Chief Judge, as I understand it, determines which division, criminal or civil. Has that decision been made? It cannot be made until you are confirmed, I take it.

Ms. SOLTYS. That is correct. There is also a family division, so there are three different divisions.

Senator PORTMAN. Let me ask you a more specific question, and this is, again, sort of getting at this issue of your approach to determining tough calls. Let us say there is a summary judgment motion before you and it is a tough decision. It is a very close call. In deciding whether to grant that motion for summary judgment, would you consider as a tie-breaker that granting the motion would prevent the case from reaching a fact finder? Mr. Salerno.

Mr. SALERNO. I do not think that consideration should play a part in which way to rule on a summary judgment motion. A summary judgment motion, as in any other motion, should be decided based on determination of the record, the determination of what is the applicable law, finding the facts, and applying the law to those facts in an unbiased way. And if it comes out in favor of summary judgment, so be it, and if it does not, that is what trials are for.

Senator PORTMAN. Ms. Soltys.

Ms. SOLTYS. Senator, about 15 years ago, I had an opportunity to serve on a jury, and I learned from that experience that jurors are inclined to base their verdicts on their feelings and their emotions. Ever since that time, in my opening statements to juries and in my closing arguments, I remind them of the oath that they have taken to decide this case based on the facts and the evidence and not based upon their feelings or their emotions or sympathy or prejudice to one side or another.

I understand that if I were confirmed, my role would be to make a factual record for possible appellate review, and I would do that by making findings of fact that are based upon logical determinations of the evidence, and then I would make conclusions of law that are based upon the governing precedent. I do not believe that it is appropriate for a judge's personal views to influence in any way the outcome of a decision.

Senator PORTMAN. So, in this case, the reasonable juror standard that you use when you are deciding whether to grant a summary judgment would be what you would use, but you would use it based on the facts of the case. I like your answers. I do not know if there is a right answer or a wrong answer. I think those are the correct answers for a judge, and I appreciate, again, your willingness to serve and thank all three of you for being here today. I wish you good luck.

Mr. SALERNO. Thank you, Senator.

Ms. SOLTYS. Thank you.

Senator LANKFORD. Let me just say, I will have questions for all three of you, as well, but for the judges, I have a longtime friend of mine who is an attorney. Folks used to say to him all the time, you should consider being a judge, and his answer was always the same every time. "I am not arrogant enough to be a judge." [Laughter.]

And he would just say it over and over again. But guess what he is doing now. [Laughter.]

He is a judge, and a very good one. So, there is a certain sense of humility walking into it, but a certain sense of very thick skin, because you have very difficult issues that the United States has said to you, make this decision. You represent all of us. And we have an expectation that you are going to make the hard call.

And, so, I understand the depth of that decision for you and the difficulty of that at times, but you have gone through a difficult process to get to here, and then we are finishing out this conversation today with that. But, that responsibility is large on you.

Ms. Soltys, let me ask you a little bit, you have a pretty remarkable background in dealing with drugs and narcotics. Given your past record of dealing with high-profile drug cases, how will that

fight continue and how will that affect you as a judge in the issues that we face here in the District dealing with drug issues?

Ms. SOLTYS. Senator, I would say this. My experience as a prosecutor over the years has involved participating in prosecuting homicide cases, rape cases, and narcotics conspiracy, racketeering conspiracy cases. I recognize the problems that are plaguing our community, and when I was a law clerk to Judge Mize, one of the very first assignments that we had was sitting on the child abuse and neglect calendar, in which many of the children that were brought into that courtroom were the children of parents who had addictions. Throughout my entire career, I have seen the harm that drug addiction causes to families and to communities.

I have said, as a judge, I have an obligation to set aside my personal views and to make findings of facts and conclusions of law based upon the evidence that is presented to me and that is a job that I assume willingly. I cannot emphasize any more than my record has demonstrated, that the harm that is caused by the sale of drugs, the violence that is attendant to that, is deeply troubling to our society and has a direct negative impact on the quality of life that our citizens hope to enjoy.

Senator LANKFORD. It is a national issue for us. It is not a D.C. issue. It is a border-to-border issue, that we are dealing with a rapid rise in addiction and the consequences that come with that and the destruction on families and communities that are around it.

You have been able to use your prosecutorial discretion on bringing some cases up and some cases not. Now, you do not have that same ability. You have a full calendar at that point. How will you balance that out between, I am taking every case that is sitting in front of me, knowing full well there will be some cases that will land on your desk that you would think, if I was on the other side of this desk, I would not have brought this. But, how will you balance that out?

Ms. SOLTYS. As you know, the law, there is always a balancing that takes place. As a prosecutor, I have a heavy caseload and I recognize the need to move my caseload, and I recognize that justice delayed is often justice denied. On the other hand, I also recognize that behind every docket number, there is a human face. There is at least one person, one human life that will be affected by the decisions that I make.

One of the things that Judge Mize told me very early on was—and that has stuck with me all these years—is that whatever case you are working on at the time is the most important case that you have. So, I recognize that it is important to move cases along efficiently, but also correctly, and that determining the balance is obviously a challenge that judges face, but it is a challenge for which I am up to the task.

Senator LANKFORD. Mr. Salerno, let me ask you, you have had a long career in private practice. How does that affect you walking onto the bench as far as shaping how you think about all of these issues? What should be an expectation, I guess, of the other attorneys that are then coming to the bench, based on your prior record?

Mr. SALERNO. Sure. I have had a very varied career in private practice, and as a result, I have developed, I think, an ability to

get up to speed quickly on new areas of the law, and I think that is a skill that would serve a judge on the Superior Court well. Also, I believe over years of private practice, I have developed an ability to get to the heart of a dispute and to figure out what is material and what is important and what we should spend our time and energy on. I also think that that is something that I would bring to the bench.

I have been representing clients as an advocate, and when you represent clients as an advocate, you are 100 percent in their corner as an advocate. However, you would be doing a client a disservice by not stepping back, taking an objective and unbiased look at your client's case and explaining to your client how you think the case is going to come out if it were litigated. So, that, in a sense, even though I have been in private practice all the years, I have been, hopefully, honing an ability to do that.

And I have had some recent, as I mentioned in my opening statement, some recent quasi-judicial experience as a hearing committee chair, where I have had a taste of what it would be like to be a judge, and to, again, to put aside any preconceptions and biases and make rulings, findings of fact, conclusions of law based on the evidence. I hope I have done so in a way that the board would be pleased with, and those are qualities that I think I would bring to the bench.

I hope that was responsive to your question.

Senator LANKFORD. Sure. Yes, it is.

Ms. Pope, let me ask you a question. Government funds the FLRA, the Equal Employment Opportunity Commission (EEOC), and the Merit System Protection Board (MSPB), all to adjudicate disputes between Federal agencies and unions and employees. Is there overlap? Is there a need to be able to combine some of these for efficiencies? You have seen this from a long view now and you have experienced some things and you bring some things to the table here that others do not. How do those three work together, and where can the taxpayer be best served, and where is it that the Federal employees and agencies can be best served with the interaction of those three?

Ms. POPE. Thank you for that question. I have learned over the years that there is a very small part of Title 5, the Civil Service Reform Act, where there is overlap with respect to the agencies that you mentioned. We have some 5,800 cases filed a year among the components of the FLRA. We may have an unfair labor practice charge or an arbitration case that comes up through the appeals process to the Authority that may address some aspect of an equal employment opportunity violation or some aspect of some other jurisdiction, some other legal statute.

We have very little overlap that would impact in any way the resources of the FLRA, the EEOC, and any consideration of overlap that would result in any combination of those agencies. It has not happened with any degree of regularity. I do not know that there has been any case where we have worked together on——

Senator LANKFORD. Is there any confusion for individuals, that as they are going through the process of filing and choosing where they are going to go, or through the agencies to say, no, we got this phone call that should really go to here, or where does that land?

Ms. POPE. Well, every Federal agency has carved out through the law created by Congress, the legislative body, their area of jurisdiction. So, it is not unusual for the FLRA to get a call that is a matter of an employee that is under the jurisdiction of the National Labor Relations Board (NLRB). It is not unusual that we would deny a case, dismiss a case, because of a lack of jurisdiction over the issue. There are contractual issues that are not within the purview of the statute under which we review arbitration decisions that interpret the party's contract. So, the overlap is one that, in some regard, the bureaucracy of government contributes to, but it has not been a barrier to the FLRA's performance.

Senator LANKFORD. OK. Let me ask you about some perspective things, as well. There is a case that I know you are familiar with, U.S. Department of Homeland Security, U.S. Customs and Border Protection (CBP), National Treasury Employees Union (NTEU), 2012, that dealt with the role of the Inspector General's (IG) Office. How do we integrate the Inspector General and their work and their unique responsibilities, as well as collective bargaining and negotiation and all of those things? What is the view now of your agency on how the Inspector General fits into collective bargaining and what happens now?

Ms. POPE. Well, one thing that we do not do is set policy, and with respect to the role of Inspectors General or the role of collective bargaining with respect to investigatory interviews conducted by an Inspector General in an agency. What we do review when the issue is presented before us in an individual case, and in that case you mentioned with respect to the negotiability of a provision regarding the union's opportunity under the statute to be a part of an investigatory interview conducted by an Inspector General.

With respect to the FLRA, we look to apply in that case the precedent of the Supreme Court, a National Aeronautics and Space Administration (NASA) decision that touched on a similar issue with respect to the role of the Inspector General that affirmed an FLRA position with respect to that. We were overturned by the courts in our application of the NASA decision, but in every case we make a decision on the facts of that case. We do not set policy with respect to how the Inspector General may interact in investigatory interviews in the workplace.

Senator LANKFORD. OK. Let me ask a little bit on the backlog issue, as well. If I am reading the numbers correctly, about a third of the cases in the past, let us say, 4 or 5 years have been dismissed based on procedural grounds, and I think it is part of just this trying to move things. How does that fit, and help me understand, if I am coming through and it gets dismissed on procedural grounds how it actually still gets heard, the meat of the argument. Is that a matter of refiling? What happens at that point? If it is dismissed for procedural grounds, how does the core of their argument still get heard? Is it a start over process? What happens there?

Ms. POPE. There are different types of cases that come before the FLRA, so a response to your question in some part, in large measure, depends on the type of case that is before us. A procedural matter that would result in the dismissal or the FLRA not addressing the merits of an argument in the review of an arbitration case,

for example, is based on the fact that the parties did not make the argument below and they cannot make it for the first time before the Authority. So, we have very limited grounds for review, and the Authority decision with respect to arbitration cases, which the parties have that process in their contract, they choose an arbitrator, they litigate before the arbitrator, and when the Authority reviews arbitration decisions, it is finality. There is no other opportunity.

So, if they fail to make an argument before the arbitrator—we do a lot of training and education, because we feel as though the parties, in our view, are managers, employees, and union representatives—if they understand their rights and responsibilities, then they know to file a grievance versus an unfair labor practice charge so it does not result in a procedural dismissal.

Senator LANKFORD. What is the speed, typically, that they can get an answer to that? Do they typically go through several months waiting and then find out, no, this is a procedural issue, or is it fairly rapid once they start the process, they will understand there is a procedural process here?

Ms. POPE. The 180 days before the Members does not start counting until we go through the procedural review, our Case Intake and Publication (CIP) office. And, so, we move those cases pretty quickly. It is not in anybody's interest to maintain an inventory in our docket office. So, some of the procedural delay is the time it takes for responses to filings, and so the time period that cases sit in the CIP office are not just because we have not processed them quickly. You have to allow the process to evolve for the responsive filings. But, if there is a procedural deficiency, those cases move forward, move through to decision in 30 to 60 days.

Senator LANKFORD. Good. So, you have a tremendous amount of experience you walk into this with. If confirmed for this next round, and I am impressed you want to take another round in the ring here, if confirmed, what changes do you see immediately that you would say, you have moved the agency in many ways. You have improved the relationships among the body of the staff and the individuals that work there, trying to deal with backlog issues. What is the next mountain you are going to climb?

Ms. POPE. We have a shifting workforce—I think it is true throughout the Federal Government—with the retirement bubble, and, so, one of the challenges, I think, that I would face moving forward, if I am confirmed, is to continue the high quality work, to ensure that we devote enough resources to train and retain a quality workforce. It is also an issue of succession planning, as the senior leadership, the managerial leadership, retires.

We have been very successful in making a commitment to leadership training, to supervisory training. I have learned in this business that a first-line supervisor has the hardest job in the workplace. They often do not get enough information from upper management and they have to deal and resolve with workplace disputes, workplace conflict in an instant without, oftentimes, the ability to consult with labor relations professionals.

So, for me, the challenges moving forward are to retain a highly engaged and qualified staff. Diversity is an important priority moving forward, if I am to be confirmed, as well as continuing to evolve

alternative dispute resolution in areas that we have not done as much work in in the arbitration field.

And, of course, continuing innovation in the workplace is very important. It takes a lot of resources and commitment. The day we publish a new webpage, it is almost obsolete and it is hard to keep up with technology. You have to give technology to every employee in the workplace to retain newer employees as well as to give the services to our customers. So, we devote a lot to that and that is a priority of mine moving forward.

Senator LANKFORD. Great.

Senator Ernst, did you have additional questions?

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman. I appreciate it. Yes.

For Mr. Salerno and Ms. Soltys, please describe your current thoughts on what it means to be an independent judge as well as the importance of judicial independence, just in your own words.

Ms. SOLTYS. Should I go first?

Mr. SALERNO. Sure.

Ms. SOLTYS. Thank you, Senator. Senator, I gave an answer earlier which I would like to repeat for your benefit——

Senator ERNST. OK. Thank you.

Ms. SOLTYS [continuing]. Which is that I served on a jury and I saw that jurors are inclined to decide cases based on their feelings and their emotions, and not on the facts and not on the evidence. And since that time, in every opening statement and in every closing argument that I have made to a jury, I have reminded them of the oath that they took to decide this case based on the facts that they have heard and not based on sympathy or prejudice to one side or the other. And that same oath that I ask the jurors to uphold is the same oath that I would uphold every day as a judge.

Senator ERNST. Very good. Thank you very much.

Certainly, Mr. Salerno.

Mr. SALERNO. Yes. The most important thing for a judge is the unbiased application of the law to the facts, and as a judge, it is our job, and I would believe I can do so, to put aside any personal beliefs, prejudices, and decide in an unbiased, fair manner.

Senator ERNST. Very good. I appreciate it very much. Thank you both for stepping up and accepting this challenge.

And, Chairman Pope, what is your assessment of the current state of Federal labor-management relations, and you have touched a little on this, but if you could just expound a little bit further, please.

Ms. POPE. Thank you for that question. It is an evolution, as any relationship is an evolution. We are in a period where we have worked very hard to encourage collaboration and cooperation in the resolution of workplace disputes. We know that to the extent that we can give the parties the tools that they need, our innovation has contributed to that with respect to web-based, for the first time, web-based training, where supervisors can sit at their desks. We have encouraged in every managerial leadership discussion we have been invited into that labor-management relations should also be taught to a supervisor and it should not be trial by fire.

And, so, in that regard, labor-management relations throughout the government is a factor that we take seriously because it contributes to an effective and efficient government. If there are workplace disputes, it impacts mission performance.

Senator ERNST. Yes, it does.

Well, thank you all. I do not have any further questions, but I want to thank all three of you for, again, stepping up to the challenge and your exceptional service for all of our constituents. Thank you.

Ms. SOLTYS. Thank you.

Mr. SALERNO. Thank you, Senator.

Ms. POPE. Thank you.

Senator LANKFORD. Thank you.

Senator ERNST. Thank you, Mr. Chairman.

Senator LANKFORD. Thank you all for being here. Let me read a final statement, and then we will close all this fun out and let you all get a chance to connect with family and friends for the conversation, and then we will move this on to the full Senate in the days ahead.

Mr. Salerno, Ms. Soltys, and Ms. Pope have filed responses to biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and had financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

The hearing record will remain open until noon tomorrow, December 4, 2015, for the submission of statements and questions for the record.

With that, this hearing is adjourned. Thank you all for being here.

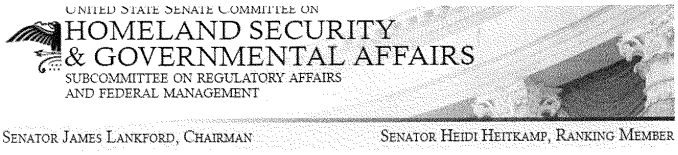
Ms. POPE. Thank you.

Mr. SALERNO. Thank you.

Ms. SOLTYS. Thank you.

[Whereupon, at 11:10 a.m., the Committee was adjourned.]

APPENDIX



December 3, 2015

Opening Statement of Senator James Lankford

Homeland Security and Governmental Affairs Committee Hearing

Nominations of Hon. Carol Waller Pope to be a Member, Federal Labor Relations Authority, and Robert A. Salerno and Darlene M. Soltys to be Associate Judges, D.C. Superior Court

Good morning. Today we will consider the nominations of Mr. Robert Salerno and Ms. Darlene Soltys for the position of Associate Judge on the Superior Court for the District of Columbia, as well as the nomination of Ms. Carol Waller Pope for the position of Chair of the Federal Labor Relations Authority. The Committee takes these nominations very seriously, and so we are pleased to have strong nominees before us.

Mr. Salerno is a native of New Jersey. He received a Bachelor of Arts degree from Brown University, and a law degree from the University of Virginia School of Law. After graduation, Mr. Salerno practiced law with several D.C. area firms, honing skills in civil litigation and white collar criminal defense. This year, he became special counsel of Schulte Roth & Zabel.

Ms. Soltys is a native of Washington state. She received a Bachelor of Arts degree from the University of Maryland, and a law degree from Georgetown University. After graduation, Ms. Soltys clerked for the Honorable Gregory E. Mize on the Superior Court for the District of Columbia. Following her clerkship, she embarked on a 23 year career in prosecution, working for the D.C. Attorney General, the Maryland State Attorney, and the U.S. Attorney's Office.

In addition to these impressive resumes, Mr. Salerno and Ms. Soltys possess the necessary legal skills and judgement to serve the District of Columbia. Committee staff reached out to a variety of these nominees' colleagues and affiliates, who spoke highly of them.

Ms. Pope is a native of Pittsburgh. She received her Bachelor of Arts degree from Simmons College, and a law degree from Northeastern University School of Law. After law school, she worked at Boston University, the Department of Labor, before joining the Federal Labor Relations Authority in 1980.

Committee staff also had the opportunity to interview Mr. Salerno, Ms. Soltys, and Ms. Pope on an array of issues, ranging from notable cases to their community service and pro bono work. They have thoughtfully and competently answered each question to our satisfaction.

To date, the Committee has found you to be qualified for the positions you have been nominated, I look forward to speaking with you a bit more today on your experience and accomplishments and how you intend to bring them to bear in a fair and impartial manner for the FLRA and the District of Columbia.

Statement of Ranking Member Tom Carper:
"Nomination of Carol Waller Pope to be a Member, Federal Labor Relations Authority, and Robert A. Salerno and Darlene M. Soltys to be Associate Judges, D.C. Superior Court"

Thursday, December 03, 2015

As prepared for delivery:

Thank you Mr. Chairman.

Before I read my opening remarks, I'd like to offer my condolences to the loved ones of the victims of yesterday's tragic shooting in San Bernardino, California. I continue to closely monitor the developments as law enforcement conducts its investigation.

I want to thank all of our nominees and their families for being here today. My thanks as well to Senator Lankford for chairing this hearing and for his work in helping us move forward in considering these nominees.

First, I want to welcome Carol Waller Pope, who is no stranger to this committee nor to the position to which she is nominated. Chairman Pope has over 30 years of experience at the Federal Labor Relations Authority, or FLRA. She began as a career employee in 1980, was confirmed as a Member in 2000, and has served as its Chairman since 2009. Under Chairman Pope's leadership, the FLRA has eliminated its case backlog, significantly reduced the average amount of time cases are pending, and vastly improved employee satisfaction and morale.

In addition, the agency has increased the success of alternative dispute resolution to encourage parties to resolve differences without the need for costly and time-consuming litigation. I look forward to hearing more about the work Chairman Pope has done and also her vision for the FLRA going forward. Thank you again for being with us today.

I am very pleased that we are also considering two nominees for the Superior Court of the District of Columbia. Robert A. Salerno has had a long career in private law practice, where he has worked on issues ranging from criminal investigations to commercial litigation to whistleblower protections. Darlene M. Soltys, currently an Assistant U.S. Attorney for the District of Columbia, has many years of experience as a prosecutor. I believe that the background and experience both of these nominees bring makes them extremely well-qualified to serve as judges on the Superior Court. Thank you both for joining us.

Before I close so we can hear from our nominees, I want to note that I am also pleased that, on November 19, the Senate confirmed nominees to fill two other vacancies on the D.C. Superior Court, William Nooter and Steven Wellner.

That said, the length of time that it took to get Judges Nooter and Wellner confirmed is simply shameful. These qualified individuals waited two years for confirmation. We must do better. And I hope we can do better with these two nominees as well as four others that are currently pending in our committee.

Most people – including some of our colleagues who are not on this committee – likely don't know that local judges in the District of Columbia must be confirmed by the Senate. The D.C. Superior Court and Court of Appeals are operated by the federal government. Their judges are appointed by the President from a slate of candidates thoroughly vetted and recommended by a non-partisan nomination commission. They must then be confirmed by the Senate for 15 year terms. But these courts don't handle federal matters. They are the local courts for the District of Columbia and deal with matters such as local crimes and domestic and civil disputes between the people who live here.

Just this past September, Pope Francis addressed a joint session of the Congress. His remarks that day drew great accolades and standing ovations especially when he invoked the Golden Rule, which calls on us to treat others the way we'd want to be treated.

The way that this body has been treating the nominees for court positions in the District of Columbia, as well as the residents of the District who rely on the court system, is a clear violation of the Golden Rule. It's got to stop, and it needs to stop now. No other jurisdiction in our country must have its local judges approved by Congress. And no other state or locality is denied representation in the Senate that might help it pursue its priorities here, including nominations.

Some have suggested that local D.C. judges should not have to go through Senate confirmation. I think we should seriously consider that idea. But at a minimum, we should develop an expedited process for the confirmation of these local judges.

In the meantime, I hope that the Senate will move forward quickly on the nominations of Mr. Salerno and Ms. Soltys and I thank you both for being here and for your responses to our questions.

Opening Statement of Carol Waller Pope

Good Morning. I want to thank the Committee for conducting this hearing. I also thank the Committee staff for their work and meaningful assistance.

It is my honor and privilege to be here today as President Obama's nominee to serve for a fourth term as Member and, if confirmed, to again serve as Chairman of the Federal Labor Relations Authority. I thank President Obama for the trust that he has placed in me to serve in this leadership capacity at the FLRA. I also want to thank my family for their unwavering support and trusted guidance – Lynda White and Fred Grigsby, Jr., who are here today representing those of my family members who could not be here, along with many members of my extended family who are in attendance. I also want to acknowledge the collegiality and support of my fellow Presidential leadership at the FLRA: Members Patrick Pizzella and Ernest DuBester, General Counsel Julie Clark, and Federal Service Impasses Panel Chairman Mary Jacksteit and Panel Member and former FLRA Chairman and Member Donald Wasserman.

I am here today standing on the shoulders of my parents – my father a Pittsburgh steelworker and my mother, a domestic worker, both of whom embodied the principle of hard work. They worked hard to ensure that their four daughters had a foundation of love and education as well as their shared commitment to service and to helping others. I have devoted my entire professional career to public service – first at the U.S. Department of Labor and for twenty-one years as a career employee at the FLRA. I have the distinct honor of being the first career employee to serve as a Member and Chairman of the FLRA; and as the first Member to be nominated by three Presidents: Presidents Clinton, Bush, and Obama, and to be confirmed on three prior occasions by this august body, the United States Senate.

The FLRA encompasses in one small agency the investigator, prosecutor, adjudicator, and interest arbitrator for labor-management disputes involving 1.2 million federal employees. Since its creation as part of the Civil Service Reform Act of 1978, the FLRA has been committed to providing leadership in establishing policies and guidance related to federal-sector labor-management relations, and ensuring compliance with the Federal Service Labor-Management Relations Statute. For over thirty-six years the FLRA has been promoting and protecting labor-management relations for an effective and efficient government. Simply stated, the FLRA must meet the needs of the federal workforce with high-quality legal decisions and alternative-dispute-resolution services to ensure that workplace disputes do not unduly impede the performance of the missions of agencies in service to the American people. I have the honor and privilege to speak to you about the hard work and dedication of the FLRA's nationwide workforce of employees who perform our important mission.

With respect to mission performance, fiscal year 2015 was a strong year for the FLRA. I am proud to report that the Authority completely eliminated its backlog of overage cases, despite a 22 percent increase in case filings, and it also issued 24 percent more merits decisions than it did in the prior fiscal year. The Office of the General Counsel again exceeded all of its strategic and performance goals for the timely resolution of both unfair-labor-practice and representation cases, and it continued to close more cases than it did in previous years. The Federal Service Impasses Panel also exceeded all of its strategic and performance goals. And the FLRA delivered over 300 training, outreach, and facilitation sessions to over 8,000 customers in furtherance of its commitment to train our customers regarding their rights and responsibilities under the Statute. Innovation and technology, including modernization of our IT equipment and infrastructure; a revitalized website, eFiling, and enhanced legal-research capabilities for

our customers; and video conferencing to expedite case processing and reduce travel costs are just some of the improvements during my tenure that have been key to our increased mission performance.

Alternative-dispute resolution, or "ADR," activities throughout the agency also continued to be extremely successful in fiscal year 2015. ADR is deeply embedded in the way that all cases are processed throughout the agency. Of course, making voluntary ADR available and making it work are two different things. Over 80 percent of the FLRA's cases agency-wide are resolved through mediation and ADR. During my tenure as Chairman, we have formally integrated mediation and ADR into all case processing in every component of the FLRA. Successful ADR means voluntary settlements that are more effective in building productive labor-management relationships, the development of parties' experience and expertise to resolve future disputes, and the reduction – and in most cases avoidance – of costly, protracted litigation. In real terms, as just one example, our ADR efforts resulted in parties amicably resolving in only two days of mediation a dispute over 44 contract provisions. As a direct result of our ADR work, the parties' dispute ended without the need for formal adjudication by the Authority, which would have required an enormous amount of staff resources, and the parties were able to quickly return to the business of government.

It is proven in both the private and public sector that mission performance and high levels of employee engagement and morale go hand-in-hand. And the FLRA is no exception. When I began my tenure as Chairman in 2009, employee morale at the FLRA was at an all-time low. In fact, the FLRA was ranked last among all small agencies in the Partnership for Public Service's Best Places to Work in the Federal Government rankings. Our mission performance was also well below our annual performance targets.

I proudly note – on behalf of all us at the FLRA – that in FY 2015 the FLRA captured the rank of #2 on three important indexes in the Office of Personnel Management's Federal Employee Viewpoint Survey (FEVS) – Employee Engagement, Global Satisfaction, and New IQ, which measures the inclusivity of the work environment. We also achieved an all-time-high employee-response rate of 84 percent, demonstrating that employees value the survey process and use the FEVS as a tool to communicate their interests and concerns to agency leadership and managers. Equally important to our mission success, 99% of the FLRA's respondents reported that they are willing to put in extra effort to get a job done; 94% believe that the agency is successful at accomplishing its mission; and 94% know how their work relates to the agency's goals and priorities. Of course our mission-performance outcomes are a direct corollary to these impressive survey results.

This year, the FLRA expects to improve upon its #5 ranking in the 2014 Best Places to Work in the Federal Government rankings, which reflects an impressive and unprecedented improvement of over 300 percent in the FLRA's overall engagement score since 2009. This sustained progress since I first became Chairman nearly seven years ago reflects the commitment of agency leadership at all levels to manage the agency with transparency and accountability, and to truly and meaningfully engage our employees. It also reflects the hard work, dedication, and commitment of our employees at all levels.

If I am confirmed, I will continue to work hard every day with my FLRA colleagues throughout the country – some of whom are here at this hearing, and countless others of whom are following the live stream of this proceeding – to build upon this record of success in our mission performance and employee engagement for an effective and efficient government in service to the American people.

Mr. Chairman, I thank you for the opportunity to be here today and I would be pleased to respond to any questions.

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

REDACTED

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	**Date of Nomination**
Member, Federal Labor Relations Authority (Upon Appointment to be designated Chairman	April 13, 2015

Current Legal Name			
First Name	**Middle Name**	**Last Name**	**Suffix**
Carol	Waller	Pope	

Addresses					
Residential Address (do not include street address)			**Office Address** (include street address)		
[redacted]			Street: 1400 K Street		
City: Washington	DC	20015	City: Washington	State: DC	Zip: 20424

Other Names Used						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
Carol	W.	Pope			05/1980	Present
Carol		Pope			05/1980	Present
Carol	A.	Waller		X	08/1952	05/1980

Birth Year and Place	
Year of Birth (Do not include month and day.)	**Place of Birth**
1952	Pittsburgh, PA

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	**Married**	**Separated**	**Annulled**	**Divorced**	**Widowed**
☐	☐	☐	☐	X	☐

Spouse's Name (current spouse only)			
Spouse's First Name	**Spouse's Middle Name**	**Spouse's Last Name**	**Spouse's Suffix**
N/A			

Spouse's Other Names Used (current spouse only)						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
N/A					Est ☐	Est ☐
					Est ☐	Est ☐

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix
N/A			

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Northeastern University	School of Law	09/1975	05/1978	Juris Doctor	05/1978
Simmons College	Undergraduate College	09/1970	05/1974	Bachelor of Arts	05/1974
Cornell University	Undergraduate College – School of Industrial and Labor Relations. Professional training on 1) Mutual Gains Bargaining/Negotiation Skills and 2)Facilitator Training for Mutual Gains Negotiation	1) 5/1993 Est.X 2) 5/1994 Est.X	1)5/ 1993 Est. X 2/ 5/1994 Est. X	Certificate of completion	1993 and 1994
Federal Executive Institute	Office of Personnel Management Executive Leadership Training	Est. 6/1997 X	Est 6/1997 X ☐	certificate	1997
Harvard Law School	Harvard Negotiation Institute, Program on Negotiation	Est 2/1998 x	Est 2/1998 x	certificate	1998

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment,	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if	Date Employment Ended (month/year) (check box if

State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other				estimate)	estimate) (check "present" box if still employed)
Federal Government	Federal Labor Relations Authority	Chairman and Member	Wash., DC	Chairman and Member – 11/2013- Chairman - 03/2009 – 01/2013 Acting Chairman 2/2009 – 3/2009; Member - 10/2008 (confirmed); 04/2007 – 09/2008 – (recess appt.); 10/2000 – 12/2006 (confirmed)	present
Retired				January 2007 January 2013	April 2007 November 2013
Federal Government	Federal Labor Relations Authority	Assistant General Counsel for Appeals	Wash., DC	10/1998	10/2000
Federal Government	Federal Labor Relations Authority	Director of Appeals and Special Programs	Wash., DC	06/1996	10/1998
Federal Government	Federal Labor Relations Authority	Executive Assistant to the General Counsel	Wash., DC	07/1994	06/1996
Federal Government	Federal Labor Relations Authority	Attorney	Boston, MA	02/1980	07/1994
Federal Government	U.S. Department of Labor	Attorney	Wash., DC	01/1979	02/1980
Unemployed			5/1978	12/1978	
Federally-funded Program	New Careers in Mental Health, Boston University School of Medicine	Job Developer	Boston, MA	06/1974	08/1975

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
None		Est ☐	Est ☐ Present ☐

4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I consulted with the Office of Government Ethics and the Federal Labor Relations Authority's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I entered into with FLRA's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

I have not engaged in any such activity.

5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Top Five Best Places To Work in the Federal Government. Recognized as #5 among Small Agencies in the 2014 Partnership for Public Service Best Places to Work rankings.

Letter of Congratulations from Senator Daniel Akaka, Chairman Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, September 2010, on "dramatic improvement in the 2010 Best Places to Work Rankings."

Recognized as the Most Improved Small Agency in the 2010 Partnership for Public Service Best Places to Work rankings.

American Bar Association - Federal Service Leadership Award, 2005

Carol Waller Pope Leadership Scholarship Award (for students -- created by Simmons College in honor of my volunteer leadership), 2005

National Partnership for Reinventing Government Hammer Award, 1999

Office of Personnel Management, Federal Executive Institute, Commencement Speaker, 1997

Special Achievement Award, Federal Labor Relations Authority, 1981

Superior Accomplishment Award, Federal Labor Relations Authority, 1991, 1992, 1999

Sustained Superior Performance Award, Federal Labor Relations Authority, 1988, 1989, 1999

Sustained High Quality Performance, Federal Labor Relations Authority, 1997

Special Act Award, Federal Labor Relations Authority, 1997, 1998

Certificate of Appreciation, Federal Labor Relations Authority, 1999

Simmons College Alumnae Service Award, 1998

Commonwealth of Massachusetts State Senate Citation, 1993

Big Sister Association of Greater Boston, 1993

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years. Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of $1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate.)	Position(s) Held
Simmons College Alumnae Association, Boston, MA	1975 – present	President and Vice-President (est. 1991-1993)
Simmons College African-American Alumnae Association, Boston, MA	1995- present	President (est. 2000-2004)
Simmons College Leadership Council	2004-present	Member
Simmons College Board of Trustees, Boston, MA	2004-2013	Trustee
Simmons College Corporation, Boston, MA	2000 - 2013	Corporator
Employment Justice Center, Washington, DC,	2005 - 2013	Secretary and Board Member
Madison Park Development Corporation, Board of Directors, Boston, MA ; Lower Roxbury Development Corporation; Madison Park Housing Corporation; and, Madison Park Economin Development Corp.	1980's - 2013	Director
United States Court of Appeals, First Circuit Bar	1979 - present	Member
Supreme Court of the United States Bar	1990 - present	Member
United States Court of Appeals, Fifth Circuit Bar	1979 - present	Member
American Bar Association	2004-2011	Member

Massachusetts Bar Association	1978 - present	Member
Society of Federal Labor Relations Professionals	1999 - present	Member
Central State University General Alumnae Association	2010 - present	Member

7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
No.			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
Clinton-Gore Campaign	Poll Watcher, VA	Poll Watcher	November 1996
Democratic Party	Volunteer Attorney Voter Protection, PA	Legal Services Team Member to address voter protection issues.	November 2004
Democratic Party	Volunteer Attorney Voter Protection, VA	Legal Services Team Member to address voter protection issues.	November 2008

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution

Obama Victory Fund	500.00	2008
Obama Victory Fund	1,000.00	2008

8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

Title	Publisher	Date(s) of Publication
Careers and the Minority Lawyer -- Career Bios See Attachment #1.	Crimson and Brown Associates	Spring 1999

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

See Attachment # 2.		

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

Title	Place/Audience	Date(s) of Speech
See Attachment #3.		

9. Criminal History

Since (and including) your 18th birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than $300 and did not include alcohol or drugs.) **No.**

- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? **No.**
- Have you been charged, convicted, or sentenced of a crime in any court? **No.**
- Have you been or are you currently on probation or parole? **No.**
- Are you currently on trial or awaiting a trial on criminal charges? **No.**
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? **No.**

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense:

   a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?
   1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
   2) Firearms or explosives: **Yes / No**
   3) Alcohol or drugs: **Yes / No**

D) Location where the offense occurred (city, county, state, zip code, country):

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**

   1) Name of the law enforcement agency that arrested/cited/summoned you:

   2) Location of the law enforcement agency (city, county, state, zip code, country):

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**

   1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

   2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

3) If no, provide explanation:

G) Were you sentenced as a result of this offense: **Yes / No**

H) Provide a description of the sentence:

I) Were you sentenced to imprisonment for a term exceeding one year: **Yes / No**

J) Were you incarcerated as a result of that sentence for not less than one year: **Yes / No**

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:

L) If conviction resulted in probation or parole, provide the dates of probation or parole:

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: **Yes / No**

N) Provide explanation:

10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

Date Claim/Suit Was Filed or Legislative Proceedings Began	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding
No				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

Date Claim/Suit Was Filed	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding
12/1/2014	Supreme Court	Sheryl Taylor v. Colleen M. Kelley, President of the National Treasury Employees Union; Timothy F. either, former Secretary of the Department of the Treasury; and Carol Waller Pope, Chairman of the Federal Labor Relations Authority	Petitioner seeks review of Sixth Circuit ruling affirming District Court's dismissal of all claims and denial of counsel.	Petition for certiorari denied - 2/23/2105.

11/4/2014	MSPB	Adalis Morales v. FLRA. DC-315I-15-0129-I-1	Probationary supervisor appealed Agency decision to remove from supervisory position due to unsatisfactory performance during probationary period. Allegation that employee's removal was because of employee's marital status.	Settled.
4/22/2014. Appeal of FLRA dismissal by Agency EEO Director on timeliness and legal sufficiency grounds filed with EEOC on 9/15/2014.	EEOC	James T. Abbott v. Carol Waller Pope, Chairman, FLRA, 120143173	Allegation that the FLRA discriminatorily refused to reimburse for health care premiums back to date of same-sex marriage in 2008, and alleged retaliation for filing initial complaint.	Pending.
8/30/2013	6th Circuit	Sheryl Taylor v. Colleen M. Kelley, President of the National Treasury Employees Union; Timothy F. either, former Secretary of the Department of the Treasury; and Carol Waller Pope, Chairman of the Federal Labor Relations Authority	Appellant seeks review of a district court decision that dismissed her civil actions which included a challenge to the FLRA General Counsel's decision to not issue a complaint and to enter into a unilateral settlement agreement. On appeal, Appellant challenged only the district court's failure to appoint pro bono counsel.	Affirmed.
1/29/2013	EEOC	Carmen F. Hall v. Carol Waller Pope, Chairman, FLRA	Allegation of discrimination arising out of performance appraisal.	Settled.
1/4/2013	EEOC	Renee H. Thomas v. Carol Waller Pope, Chairman, FLRA	Allegation of race, age, gender discrimination against agency complaining that complainant performed same duties as similarly-situated male employees, but at a lower grade level.	Docketed with Administrative Judge at EEOC on 6.27/2014. Withdrawn at Complainant's request.
12/14/2012	EEOC	Pamela P. Johnson v. Carol Waller Pope, Chairman, FLRA. 570-2013-00959X	Allegation of discrimination arising out of performance appraisal and removal of duties from critical elements of performance plan.	Docketed with Administrative Judge at EEOC, 6/11/14. Motion for Summary Judgment pending.

December 12, 2011	EEOC	Nicholas Hawkins, Jr. v. Carol Waller Pope, EEOC Appeal Docket No. 01-2013-0659	Allegation of discrimination arising out of leave restriction and AWOL citation. Appeal docketed in EEOC, 12/21/2012.	Final Agency Decision found no discrimination or reprisal. EEOC appeal settled.
June 28, 2011	U.S. District Court, Western District of Tennessee	Sheryl Taylor v. Colleen M. Kelley, President of the National Treasury Employees Union; Timothy F. either, former Secretary of the Department of the Treasury; and Carol Waller Pope, Chairman of the Federal Labor Relations Authority, No. 2:11-cv-02540-JTF-dkv	Among numerous issues raised by the complainant, she challenged the FLRA's General Counsels decision to not issue a complaint and to enter into a unilateral settlement agreement with the union that she filed an unfair labor practice charge against.	FLRA's Motion to Dismiss granted -- November 8, 2012
June 22, 2010	EEOC	Sheryl Taylor v. Carol Waller Pope, EEOC Appeal Docket No. 01-2010-3284	The plaintiff alleges that an FLRA Regional Director's dismissal of her unfair labor practice charges was discriminatory and retaliatory.	Dismissed on October 28, , 2011.
August 17, 2010	U.S. District Court , District of Columbia	AGFE, AFL-CIO, Local 2798 and Hussain v. Pope and Clark, No. 1:10-01012	The plaintiff seeks review of the FLRA General Counsel Julie Akin Clark's refusal to issue a complaint in an unfair labor practice case.	Dismissed on September 1, 2011.
July 28, 2008		Ayo Gianton v. Carol Waller Pope, EEOC Appeal Docket No. 440-2009-00104X	Administrative proceeding in which the complainant asserted an Equal Pay Act claim.	Resolved by settlement on May 12, 2009.
July 28, 2008		Kenneth Woodbury v. Carol Waller Pope, EEOC Appeal Docket No. 440-2009-00106X	Administrative proceeding in which the complainant asserted an Equal Pay Act claim.	Resolved by settlement on May 8, 2009.
December 1998	DC Superior Court, Family Division	Carol Waller Pope and Chauncey A. Pope	Divorce proceeding.	Granted.

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. None.

11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed. No.

Name of Agency/Association/ Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? No.

12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). No.

14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Name of Organization	Address of Organization	Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	Position Held	Position Held From (month/year)	Position Held To (month/year)

15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)

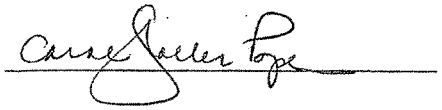
16. Additional Financial Data

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



This 28th day of May, 2015

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

APR 28 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol Waller Pope, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol
General Counsel

Enclosures **REDACTED**

1201 New York Avenue, NW, Suite 500 | Washington, DC 20005
www.oge.gov

December 29, 2014

Fred B. Jacob
Solicitor
Federal Labor Relations Authority
1400 K Street, NW Suite 300
Washington, DC 20424

Dear Mr. Jacob:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Member of the Federal Labor Relations Authority.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

I understand that as an appointee I must continue to abide by the Ethics Pledge (Exec. Order No. 13490) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Sincerely

Carol Waller Pope

Carol Waller Pope

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire
For the Nomination of Carol Waller Pope to be a Member of the
Federal Labor Relations Authority

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I believe that I was selected for nomination as a Member because of my experience, expertise, and record of achievements as a Member (2000 – January 2013; November 2013 - present), a Chairman and CEO (2009 – January 2013; November 2013 - present), and a career employee (1979 – 2000) of the FLRA. I possess the requisite knowledge of the law and its application; litigation experience; dispute-resolution and facilitation experience; managerial experience; and decision-writing expertise to lead the FLRA in fulfilling its statutory mission and successfully achieving its performance goals. In sum, my 35 years of experience working in various capacities at the FLRA make me uniquely qualified to continue my public service as a Member of the FLRA.

During my tenure as a Member and Chairman, I have worked collaboratively with the Presidential leadership and career employees to achieve the following outcomes:

(a) Developed and successfully implemented a multi-year strategy of "Revitalization, Reinvention, and Re-engagement" of internal and external stakeholders to improve mission performance, customer service, and employee engagement;

(b) Established and *met* a multi-year Authority Corrective Action Plan and Case Issuance Strategy with performance goals and progress indicators to eliminate the Authority's case backlog. Eliminated the case backlog and issued decisions in 24% more Authority cases (165) in fiscal year (FY) 2015 than in FY 2014 (133);

(c) Reallocated resources to hire temporary attorneys, paralegals, and re-employed annuitants to improve performance in the Office of Administrative Law Judges, resulting in 160% more decisions issued (78) in FY 2015 than in FY 2014 (30);

(d) Revised the Authority's arbitration regulations to clarify legal standards, specify parties' burdens, and provide for optional forms, expedited decisions, and voluntary alternative-dispute-resolution (ADR) services, along with developing an online *Guide to Arbitration* and related training materials;

(e) Provided over 300 training, outreach, and facilitation sessions to over 8,000 FLRA customers in FY 2015;

(f) Developed and implemented a legal-writing, quality-review, and training initiative, including the development of a Drafting Guide, to enhance employee skills and improve the quality of decisions;

(g) Developed and implemented succession-planning initiatives to develop future leaders and supervisors;

(h) Developed and implemented a multi-year, agency-wide information-technology modernization plan to implement e-filing; improve website and online legal-research capabilities; provide video conferencing to improve efficiencies and reduce travel costs; automate outdated and inefficient manual case-handling processes and integrate with a new electronic case-management system; and ensure compliance with government-wide Federal Information Security Management Act (FISMA) and Continuity of Operations (COOP) requirements.

Throughout my tenure at the FLRA, as both a career employee and political appointee, I have built relationships of trust with my colleagues at the FLRA, as well as with the agency's external stakeholders – federal agencies, unions, employees, and Congress. With that trust and my knowledge of the FLRA's mission, its administrative operations, and the law, I am uniquely poised to continue to adjudicate federal-sector labor-management disputes as a Member of the FLRA.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Member of the FLRA? If so, what are they and to whom have commitments been made?

No.

4. If confirmed, are there any issues that would cause you to recuse or disqualify yourself due to a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out a recusal or disqualification.

No.

II. Background of the Nominee

5. In general, do you think it is appropriate for an FLRA member to have preconceived notions either for or against unions?

   No. The FLRA is a neutral, adjudicative body.

6. In matters before the FLRA do you believe that it is important for Members to be perceived by the interested parties as impartial?

   Yes.

7. If confirmed, is there anything in your background which would preclude you from being a fair and objective Member of the FLRA?

   No.

III. Role of Member, FLRA

8. In your opinion, what is the role of a Member of the FLRA?

   The role of a Member is to work collaboratively and decisively to administer the provisions of the Federal Service Labor-Management Relations Statute (Statute) to: (1) resolve complaints of unfair labor practices (ULPs); (2) determine the appropriateness of units for labor-organization representation; (3) adjudicate exceptions to arbitrators' awards; and (4) adjudicate legal issues relating to the duty to bargain. The FLRA's three Members must fulfill these adjudicative responsibilities through the issuance of timely, well-reasoned decisions that give full effect to the rights afforded to employees, labor organizations, and agencies under the Statute.

9. What do you believe are the top challenges facing Members of the FLRA today? What steps do you plan to take, if reconfirmed, to address these challenges?

   The top challenges facing the Members are: (1) recruitment and retention of a diverse workforce; (2) skills development for new employees; (3) budget-conscious innovation in case-adjudication processes to ensure timely and quality case processing; (4) expansion of the delivery of effective ADR services; and (5) sustaining and increasing high levels of employee engagement and job satisfaction.

   I have collaborated, and will continue to collaborate, with career employees and Presidential leadership to manage resources to address these challenges. Many initiatives are currently underway and will continue. The FLRA achieved greater diversity in its workforce in FY 2015 by increasing strategic and targeted recruitment and posting job

opportunities with career-planning and placement services, local colleges and universities, and professional affinity-group organizations. Consistent with the Office of Personnel Management's Recruitment, Engagement, Diversity, and Inclusion (REDI) Roadmap, the FLRA is using data to help identify and eliminate barriers to recruiting and hiring the diverse talent that it needs. The FLRA also continued to utilize both Student Pathways and summer-internship programs to accomplish mission-related initiatives throughout the agency. Serving as one of three Small-Agency Representatives on the Diversity and Inclusion in Government Council, the FLRA is participating in government-wide discussions concerning the implementation of President Obama's Executive Order 13,583, *Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*, to develop a path forward for federal agencies to create and foster a workforce that includes and engages federal employees and reflects all segments of society.

Further, I have collaborated with career employees and Presidential leadership to develop and provide high-level, mission-based training for its attorneys – nearly 20 percent of whom were new to the FLRA in FY 2014 and FY 2015 – that built upon their existing legal, technical, and ADR skills to improve and maximize performance. For example, we have provided employees with external and internal legal-writing and conflict-resolution classes. Additionally, we have provided employees with case-law-update "Lunch and Learn" sessions and cross-office and cross-component details to develop and enhance employee legal-research-and-writing and ADR skills. Additionally, we have conducted employee-led workgroups and regular meetings of employees in the Member offices (the Decisional Component) to develop case-process innovations and to address workload balance, technology needs, and other issues that relate to job satisfaction and increased employee empowerment.

Moreover, to strengthen and support the FLRA's new cadre of first-time managers and supervisors, the agency identified a series of trainings geared towards developing strategic thinking and other critical skills in preparation for leadership at the FLRA. These training initiatives crossed components, bringing together future agency leaders from all offices to enhance their skills and encourage collaboration among peers.

10. When you served as Chairman of the FLRA during your previous term, to what extent and in what respects did you fulfill your responsibilities in collaboration with the other Members of the FLRA? If reconfirmed, are there any ways in which you intend to fulfill the responsibilities as Chairman differently that you did in the past?

I have learned from my successful and rewarding experience as Chairman that communication, collaboration, accountability, and transparency are the core values of successful leadership and effective mission performance. In all policy and operational matters – human resources; budget development and execution; information technology; strategic planning; case management; and outreach, facilitation, and training – I have collaborated, and will continue to collaborate, fully with the other Members, the FLRA's

General Counsel, and the Chairman and Members of the Federal Service Impasses Panel. I lead Member and Presidential meetings, at least monthly, to consult with senior management and Presidential leadership on all of these operational and policy matters. If confirmed, I will continue to employ these principles and values.

All Decisional Component annual performance goals, as well as performance-management and budget policies and initiatives, are developed collaboratively by the Members with input from career employees. Throughout each performance year, the Members and their staffs work together to review case-tracking data to assess mission performance vis á vis the performance goals. Most recently, I worked collaboratively with Members Patrick Pizzella and Ernest DuBester and their staffs in the development and successful implementation of a Case Issuance Strategy, which allowed us to adjudicate, by the end of FY 2015, all of the cases that had been pending in our inventory for over 180 days. This initiative required ongoing collaboration to manage the assignment – and, in some instances, the reassignment – of cases and staff to ensure a successful outcome.

11. What do you consider to be your main accomplishments during your service at the FLRA so far? What lessons have you learned from that experience and how would your experience inform and guide your actions and decisions if confirmed for another term?

I am most proud of my leadership, in collaboration with my Presidential and career-employee colleagues, to successfully rebuild the FLRA to improve mission performance, employee engagement, and job satisfaction. This multi-year effort began in 2009 with the agency-wide launch of the "Revitalization, Reinvention, and Re-engagement" initiative. These efforts have produced results. The FLRA has restored its credibility with external and internal stakeholders. Agency-wide case backlogs have been eliminated or substantially reduced. Key vacancies have been filled, and robust training and development initiatives are underway. Annual agency-wide and component-level performance goals are substantially met and, in some cases, exceeded.

Significant improvements in the FLRA's use of technology have also been accomplished. Internal network, software, hardware, and wireless capabilities were enhanced. We have made technological improvements to assist FLRA customers, including electronic voting in representation cases, electronic case filing, and, for the first time ever, web-based training modules. These improvements – and our involvement of employees at all levels in development and implementation – contributed to the FLRA's recognition as "Most Improved Small Agency on Innovation" in 2011.

Employee engagement, confidence in leadership, and commitment to the FLRA's mission is at an all-time high. Tremendous improvements have been reflected in our movement from last place in the 2009 Best Places to Work in the Federal Government rankings to our most recent ranking of 5 in the 2014 Best Places rankings. In the first Federal Employees Viewpoint Survey (FEVS) that was conducted after I became

Chairman, the FLRA was recognized as the "Most Improved Small Agency" in the Best Places rankings in the Federal Government with a 250 percent increase in employee morale and satisfaction. Most importantly, the increases in employee engagement and satisfaction have resulted in significant increases in mission performance. Further, in the 2015 FEVS, the FLRA is ranked #2 in employee engagement, global satisfaction, and "new IQ," which measures the agency's inclusiveness and diversity.

As stated previously, I have learned from my prior successful experience as Chairman and Member that communication, collaboration, accountability, and transparency are essential to successful leadership and effective mission performance. If confirmed, I will continue to employ these principles.

IV. Policy Questions

12. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

    Federal labor-management relations are always evolving and can always be improved. Effective labor-management relations operate to improve the efficiency of government services.

    The FLRA continually works to resolve disputes without costly litigation through education, training, and facilitation, with the goal of improving federal labor-management relations. Over the past several years, the FLRA has redoubled its efforts to improve federal labor-management relations without costly litigation. Working with agency and union leadership and the National Council on Federal Labor-Management Relations, which was created by President Obama's Executive Order 13522 (as extended by Executive Order 13591), "*Creating Labor-Management Forums to Improve Delivery of Government Services*," the FLRA has successfully implemented a number of initiatives and delivered services that have improved collaborative federal-sector labor-management relations. These efforts should continue.

13. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

    It is the purview of Congress and the Administration to determine what, if any, changes should be made to the Statute.

14. How has national security affected the nature of FLRA and the decision-making process? How should this area be dealt with when it comes to labor-management relations?

The Statute addresses national security in 5 U.S.C. § 7112(b)(6), which states that "any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security" may not be included in a unit of employees deemed appropriate for representation by a labor organization. The FLRA Members have the statutory responsibility to resolve representation cases that present the issue of whether an employee is excluded from a bargaining unit because the employee's work falls within the exclusions set forth in § 7112(b)(6).

15. In many situations, federal employees work closely with contract workers. Do you believe a blended workforce of federal employee and federal contract personnel has an impact on federal labor-management relations, and, if so, what sort of impact? Do you believe that changes are needed in labor-management policy, and, if so, what changes do you believe would be appropriate?

I am not aware of the effects of a blended workforce on labor-management relations in the federal sector. I note that, under the Statute, 5 U.S.C. § 7106(a)(2)(B), management has the right to "make determinations with respect to contracting out," and that, occasionally, cases arise requiring the Authority to interpret and apply this section of the Statute. *See, e.g., NAGE Local R1-203*, 55 FLRA 1081, 1086-88 (1999) (Authority held that agency was not required to bargain over a proposal prohibiting the agency, in certain circumstances, from contracting out work within 1 year of the date of a reduction in force).

16. When Regional Directors determine, on behalf of the General Counsel, to issue an unfair labor practice complaint, they must decide what remedy will be sought in litigation. What types of remedies do you believe should be available to an aggrieved party and what kind of evidence would be necessary to establish the appropriateness of each remedy?

The Authority has developed certain "traditional" remedies in ULP cases, the most common of which is an order that the violating party post a notice to employees stating that the party violated the Statute. Some other remedies include retroactive bargaining orders, awards of back pay, and orders to provide information that has been improperly withheld. When the General Counsel requests a remedy that would be considered "nontraditional," the Authority assesses whether there are legal or public-policy objections to the requested remedy, and, if not, whether the requested remedy is reasonably necessary and would be effective to recreate the conditions and relationships with which the ULP interfered, as well as to effectuate the policies of the Statute, including the deterrence of future violations. The Authority cannot issue punitive remedies or remedies that require the expenditure of government money unless there is a law that waives the Federal Government's sovereign immunity for the type of remedy at issue. I believe that these remedial principles have served the Authority well for decades and continue to provide a useful framework for assessing the appropriateness of requested remedies.

17. What issues and factors do you believe most frequently give rise to unfair labor practice complaints? What should be done to reduce the number of unfair labor practice complaints?

The Statute sets forth the rights and responsibilities of federal employees, managers, exclusive representatives, and agencies. The interpretation and application of the Statute's provisions in the workplace give rise to ULP charges that are filed with the FLRA. Training on the law, communication techniques, ADR skills, and how to develop collaborative labor-management relationships are factors that can influence and often reduce the filing of ULP charges. The FLRA provides the parties with in-person and web-based training and conflict-resolution tools. In FY 2015, the FLRA, as a whole, provided over 300 training, outreach, and facilitation sessions to over 8,000 participants. Over the last 5 years, the FLRA has provided nearly 1,400 such sessions to over 40,000 participants worldwide.

18. There has been an increase in the use of alternative dispute resolution (ADR) techniques to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations law.

a. What do you believe are the advantages and disadvantages of ADR, from the perspective of the employee, of the employing agency, and of the public interest?

There are many advantages to ADR, which the FLRA has integrated into all phases of its case processing. ADR often is faster and less expensive than litigation, which enables parties and the FLRA to focus their resources in other areas. ADR also enables parties to collaboratively develop solutions to their disputes, which can often result in outcomes that are more satisfying than those that would result from litigation, and can also enable parties to develop more constructive workplace relationships – which, in turn, can promote better mission performance, as well as quality of work life for employees and managers.

In every component and program office of the FLRA, ADR has proven successful. In FY 2015, the Office of the General Counsel (OGC) resolved over 96 percent of the ULP cases in which merit was found and 95 percent of the representation cases in which the parties agreed to use the OGC's ADR services. These successful, voluntary ADR efforts resulted in significant savings of governmental staff and budgetary resources. In the Office of Administrative Law Judges, ADR services are offered as part of the Settlement Judge program by the FLRA's Collaboration and Alternative Dispute Resolution Office (CADRO). In FY 2015, in over 87 percent of cases in which the parties participated in the Settlement Judge Program, they reached agreement and fully resolved their disputes. This is real evidence that the delivery of ADR services at all stages of case processing results in more effective and cost-efficient program performance for the FLRA, as well as the timely resolution of

disputes for its customers. Further, 100 percent of CADRO negotiability cases resulted in full resolution of the underlying dispute and closure of the pending case. And 100 percent of CADRO arbitration cases resulted in at least partial resolution of the underlying dispute. In the Federal Service Impasses Panel (FSIP) of the FLRA, voluntary resolution is sought using mediation-arbitration proceedings and informal conferences. For FY 2015, in cases where the FSIP used mediation-arbitration or informal conferences to resolve federal-sector impasses, it obtained complete, voluntary settlements over 78 percent of the time, surpassing the 60-percent settlement rate that it achieved in FY 2014. As a result of this high percentage of voluntary settlements, in FY 2015, FSIP Members issued only 6 arbitration opinions and decisions imposing contract terms on the parties. I see few if any disadvantages to the use of ADR.

b. What are your views on the use of ADR to resolve federal workplace disputes, and what changes, if any, do you believe should be made in ADR policies and practices in the federal workplace?

   I continue to believe that ADR is an important tool to resolve federal workplace disputes. Evidence shows that it gets results, and its use should be maximized whenever possible and appropriate. I do not recommend any changes regarding how it should be used in the future.

19. In the 2009 Best Places to Work rankings by the Partnership for Public Service, based on the data collected in the Federal Human Capital Survey, the FLRA ranked last out of all the small federal agencies that submitted data. In 2013, the FLRA showed improvement, ranking 8 out of 30 agencies. In 2014, the FLRA showed even more improvement and is ranked 5 out of 30 as a top place to work in the federal government (small agencies).

    a. What were the steps taken to effectively improve employee morale and the agency's overall ranking? What measures are in place to ensure the FLRA's ranking remains high?

       When I became FLRA Chairman in 2009, one of my top priorities was to increase employee morale because I knew that once we did that, it would also lead to increased mission performance. My agenda included communicating with and providing information to employees – at all levels; restoring confidence in the agency – both internally and externally; providing leadership for employees to work together to successfully accomplish the FLRA's mission; building infrastructure and increasing staffing, which was at an all-time low; and building capacity to deliver services – both internally and externally. The initial steps towards tackling those challenges and increasing employee morale included: sitting together with managers and employee representatives to collaboratively identify and develop a plan to perform the mission; establishing agency values (transparency, open dialogue, and collaboration) and priorities (staffing, mission performance); increasing

communication among and between leadership and employees throughout the agency by introducing a weekly employee newsletter, and holding monthly manager, Member, and Presidential meetings; benchmarking with other agencies that had high employee engagement; filling vacancies and increasing staffing – and bringing the human-resources department back in house in order to fill those vacancies; restoring case-law and case-processing guidance to our website; and updating the entire www.FLRA.gov website. We also implemented a multi-year strategy of "Revitalization, Reinvention, and Re-engagement" of internal and external stakeholders to improve mission performance, customer service, and employee engagement. Central to this strategy was communication and collaboration – with employees, with the employee representative, with agency customers, and with our Congressional and Office of Management and Budget (OMB) stakeholders. We also empowered employees to do their jobs again, and gave them the resources, infrastructure, and technology to do so. This included investing in training and development for front-line managers and employees.

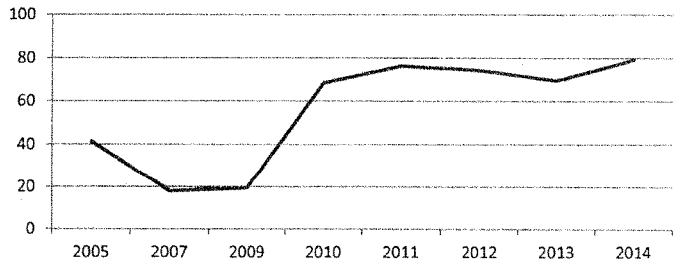
This commitment, which began in 2009, resulted first in the FLRA being named the Most Improved Small Agency in the Partnership for Public Service's 2010 Best Places to Work in the Federal Government rankings. Building on that success in 2011, the agency once again placed among the top of the most improved small agencies, and in 2012 and 2013, it captured the #7 and #8 small-agency Best Places to Work rankings, respectively. In 2014, the FLRA captured the rank of #5 in the Best Places to Work rankings with a remarkable 10-point increase in its index score. With an overall employee-satisfaction score of 79.2 percent, the FLRA exceeded a key objective of the Cross-Agency Priority (CAP) Goal on People and Culture in the President's Management Agenda (PMA) to improve employee engagement government-wide to 67 percent by 2016. This extraordinary accomplishment reflects a dramatic and unprecedented improvement of over 300 percent since 2009 – the year in which the FLRA placed last in the survey. And it reflects the ongoing and sustained commitment of agency leadership at all levels to improving employee satisfaction and morale – as measured by OPM's FEVS – on an ongoing basis by comprehensively analyzing FEVS data and using additional internal surveys to target selected challenges, develop and implement solutions, and review progress. Most notable for 2014 were the FLRA's rankings for certain *Best in Class* categories: #1 in "Effective Leadership - Leaders, Pay," and "Strategic Management"; #2 in "Overall Effective Leadership and Training & Development"; and #3 in "Effective Leadership – Supervisors"; "Teamwork"; and "Performance-Based Rewards & Advancement."

In FY 2015, the FLRA continued its overall success and improvement as measured by the Federal Employee Viewpoint Survey (FEVS). It not only captured the rank of #2 on three important indexes –Employee Engagement, Global Satisfaction, and New IQ (which relates to the inclusivity of the work environment) – but it also achieved an all-time high employee response rate of 84 percent (which is significantly higher than the government-wide average of 50 percent), realized positive-ratings increases from

2014 in 66 items, and had no identified challenges. In addition, the FLRA's Human Capital Assessment and Accountability Framework index scores again increased in *every* category for the third straight year – by as much as 8 percent over 2014. Specifically, the agency scored 86 percent in "Leadership and Knowledge Management," 78 percent in "Results-Oriented Performance Culture," 85 percent in "Talent Management," and 82 percent in "Job Satisfaction" – exceeding the government-wide average in each.

These responses reflect the FLRA's progress toward meeting government-wide human-capital objectives and demonstrating the relationship to improved organizational performance. And, consistent with an agency-wide focus on targeting challenges identified in the survey, the FLRA addresses areas of weakness or concern in full collaboration with employees at all levels through its own Labor-Management Forum. As an example, the FLRA placed special emphasis in FY 2015 on strengthening supervisory skills and improving the supervisor-employee relationship, especially as it relates to giving and receiving feedback on performance. The agency also sought to improve scores relating to the reasonableness of workloads. In this connection, the agency gathered information to identify the source of the issue – through use of pulse surveys, analysis of caseload data, and constant communication. And then it used that information to make data-driven decisions about where to allocate additional, permanent, temporary, or detail staffing. As a result of these efforts, in FY 2015, the agency increased its positive responses to that question by over 23% increase from FY 2014

***Best Places to Work* Score**



The FLRA's dramatic and sustained improvement with respect to employee engagement and satisfaction over the last six and a half years reflects the commitment of leadership – at all levels and throughout the agency – to manage the agency with transparency and accountability and to engage employees. It also demonstrates the commitment and dedication of FLRA employees –employees at all levels understand the mission of the FLRA, understand their role in achieving the mission, and see

themselves as an integral part of achieving agency-wide success. Concurrent with the agency's significant increase in employee morale and satisfaction since 2009, there has been a marked improvement in the FLRA's mission performance and the delivery of services to its customers. Moreover, the agency's values of transparency, open dialogue, and pre-decisional involvement allow for effective collaboration, communication, and continuous feedback around mission performance and agency operations.

Although the FLRA already has a highly engaged workforce, the agency continued to look for ways to improve upon its successes in this area in FY 2015. In this connection, a small, diverse, cross-component group of managers participated in an *Employee Engagement Sprint Initiative*. The team is in the process of developing an agency-wide action plan – in conjunction with the 2015-2018 Strategic Plan – that will serve as the framework for sustaining, embedding, and continuing to improve upon the FLRA's impressive employee-engagement scores and the associated mission results.

b. "Innovation" and "empowerment" were the FLRA's lowest subcategory rankings in 2014. How can these areas be improved?

In 2014, the FLRA ranked #8 for Innovation and #6 for Effective Leadership: Empowerment out of 28 small agencies in the Best Places to Work rankings. Although these were our lowest scores, we were in the upper quartile for Empowerment and above the median government-wide score for Innovation. In addition, we increased our Empowerment score by nearly 6% and our Innovation score by 4.5% over 2013. Although empowerment and innovation are the areas where we rank lowest, our scores are still impressive, and we are making significant progress on improving them. Through increased communication around work processes, such as through component-specific bi-monthly meetings of all staff ("all case writer meetings"), we hope to further empower employees around their work processes and collaboratively look for opportunities to be more innovative. In addition, we are constantly looking for ways to leverage new, innovative technology to further streamline work processes. For example, in the last year, we have introduced video-teleconferencing (VTC) technology agency-wide that allows us to communicate with our Regional Offices and our customers throughout the country. We've also made broadband improvements that not only accelerated processing times but also resulted in cost savings. Further, through a quarterly Tech Council, employees from all levels across the agency come together to discuss technological developments, needs, and suggestions. Moreover, by involving employees at all levels throughout the agency in information-technology initiatives regarding eFiling, a website refresh, and the electronic case-tracking system, we are empowering employees to provide input around decisions that affect their working conditions as we explore, implement, and embrace technological innovations.

20. In 2009 President Obama issued Executive Order 13522 to establish labor-management forums. What are your views on labor-management partnerships? Generally, do you believe it is desirable to promote collaborative labor-management relationships in the federal government?

Effective labor-management relations operate to improve the efficiency of the government's delivery of its services. Collaborative and cooperative labor-management *relationships* lead to more effective labor-management *relations*. The FLRA continually works to resolve disputes without costly litigation through education, training, and facilitation, with the goal of improving federal labor-management relations and relationships. Over the past six years, the FLRA has redoubled its efforts to improve federal labor-management relations without costly litigation by promoting the use of collaborative techniques, including pre-decisional involvement (PDI) and labor-management partnerships, as well as ADR. Working with agency and union leadership, and the National Council on Federal Labor-Management Relations, the FLRA has successfully implemented a number of initiatives and delivered services that have improved collaborative federal-sector labor-management relations. These efforts have reduced the number of cases that require formal adjudication and costly litigation, and they should continue.

21. What has been your role in establishing and conducting the training under E.O. 13522? How have you encouraged participation in the training program, and how effective do you believe it has been?

The FLRA has established and conducted a number of training programs under E.O. 13522. In partnership with the Department of Veterans Affairs, the FLRA developed a web-based, interactive training that is posted on OPM's HR University website for use by all federal employees. The FLRA also partnered with the Federal Mediation and Conciliation Service (FMCS) to develop and present joint training on E.O. 13522.

Most recently, through its work with the National Council on Federal Labor-Management Relations, and in support of OMB's Reduce the Footprint (RTF) Memorandum, the FLRA led a cross-component and inter-agency (with the FMCS and the General Services Administration (GSA)) effort to develop and deliver a specialized, two-day workshop on office moves, space allocations, the labor-relations and collective-bargaining implications of such moves and allocations, and pre-decisional involvement. The workshop focused on resolving labor-relations issues associated with the RTF policy in a cooperative and collaborative manner, and it featured presentations by all components of the FLRA (the Authority, the OGC, and the Federal Service Impasses Panel), the FMCS, and the GSA. As a follow-up to that training, the FLRA – along with the FMCS, the GSA, and the National Federation of Federal Employees – also recently presented a webinar that addressed the requirement in the RTF memorandum that all Chief Financial Officer Act agencies adopt an Office Space Design Standard Policy by March 25, 2016, specifying how requirements to reduce square footage for agency office space will be met, and

including a design standard for maximum useable square feet by workstation for use in the design of owned and leased domestic office space. The webinar covered how this requirement presents opportunities for union pre-decisional involvement, employee engagement, and traditional labor-management relations, which can improve employee satisfaction and mission performance.

The FLRA is listed as a training resource on the National Council's website, and the FLRA promotes all of the trainings described above in its daily interactions with customers, on its own website, and through its work with the National Council. These types of efforts are effective because they help to reduce the number of cases that require formal adjudication and costly litigation, and they lead to more effective and productive labor-management relationships.

22. The purpose of E.O. 13522 is to establish a cooperative and productive form of labor-management relations throughout the executive branch, and to improve delivery of government services to the American people. To what extent do you believe the initiatives under E.O. 13522 have been successful at meeting those two goals? What have been the greatest challenges to meeting these goals?

Effective labor-management relations operate to improve the efficiency of the government's delivery of its services. Government agencies are able to more efficiently and effectively deliver their services to the American people when they can resolve labor-management issues collaboratively and quickly, without the need for costly litigation. E.O 13522 and pre-decisional involvement facilitate more cooperative and collaborative labor-management relationships across government, which, in turn, increases the likelihood of collaborative resolution of disputes, and reduces the need for costly and sometimes protracted litigation.

The greatest challenges to accomplishing the goals of E.O. 13522 seem to arise when workplace cultures are steeped in traditional forms of forms of dispute resolution and case adjudication, and are resistant to even attempting to utilize more collaborative and cooperative approaches. That situation is often the result of fractured labor-management relationships, so providing outreach and assistance to help develop and repair those relationships is key.

23. E.O. 13522 also called for the development of metrics to monitor improvements in labor-management satisfaction, productivity gains, and cost savings. Please describe the metrics that have been developed and applied. What does data show about what has been accomplished and about what more remains to be done?

As set forth on the Metrics page of the website for the National Council on Federal Labor-Management Relations, the three metrics categories include: (1) mission accomplishment and service quality; (2) employee satisfaction and engagement; and

(3) labor-management relationship. In FY 2014, the National Council advised that labor-management forums should be placing more emphasis on mission accomplishment and service delivery as their primary metrics category. It further advised that agency performance-improvement officers are ideal resources to assist forums regarding this category of metrics.

Representatives from both labor and management have jointly developed a "Quick Tips" series of videos on metrics development for labor-management forums, which guide users through the process of developing metrics to measure their forum's performance and progress. The Council's Metrics working group is going to continue to analyze the data that it has, identify forums to interview for further assessment of accomplishments and areas in need of improvement, and develop additional data-collection points.

24. Does pre-decisional involvement (PDI) as promoted by the National Council for Labor-Management Forums (NC) weaken the chain of accountability by which agency management is held responsible for the administration of government? Why or why not?

In my view, PDI as promoted by the National Council for Labor-Management Relations does not weaken the chain of accountability by which agency management is held responsible for administration of the government. Management continues to be ultimately responsible for its actions – PDI simply envisions employees and their union representatives as stakeholders whose viewpoints and input should be obtained in a collaborative labor-management engagement process before agency leaders make decisions. PDI also allows for increased transparency around agency decision-making, and it often results in eliminating the need for costly formal adjudication around those decisions, while preserving all rights guaranteed under the Statute.

25. Would you agree that PDI, as advanced by the NC, presents inherent conflicts of interest for the member unions? If not, please explain.

I do not agree that PDI, as advanced by the National Council, presents inherent conflicts of interest for member unions. PDI presents unions with a unique opportunity to provide input into decisions affecting represented employees' conditions of employment – before their statutory right to do so is triggered. This not only leads to better, more thorough agency decision-making, but it also increases employee engagement and overall agency efficiency because it allows the agency to secure union – and thereby employee – buy-in about workplace changes, leading to more efficient, timely, and successful changes in the workplace.

26. According to 5 USC §7131, federal employees can be granted official time, or time to perform representative functions, in "any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest." What kind of activities do you consider to be "reasonable, necessary, and in the

public interest?" What kind of representative functions should not be considered "reasonable, necessary, and in the public interest?"

Section 7131 establishes the authority for the granting of official time under the Statute, and expressly addresses under subsections (a), (b) and (c) the authorization of official time for contract negotiations, impasse proceedings, and proceedings before the Authority, respectively. While subsection (d) authorizes the granting of official time to employee representatives in "any amount" that the parties agree to be "reasonable, necessary, and in the public interest," such authorization is expressly limited to those matters that are not already provided for in the other portions of § 7131.

FLRA case law provides that subsection (d) clearly can be read to authorize only the negotiation of official time for other labor-management-related representational matters such as contract administration, participation in grievance arbitration, and the like. The Statute does not define the terms "reasonable and necessary" as used in § 7131(d). However, "Congress has provided that the agency and the union together should determine the amount of official time 'reasonable, necessary, and in the public interest.'" *Am. Fed'n of Gov't Emps., Council of Locals No. 214 v. FLRA*, 798 F.2d 1525, 1530 (D.C. Cir. 1986) (emphasis deleted). In determining what activities are – or are not – "reasonable, necessary, and in the public interest," I would be guided by the wording of the Statute, Congressional intent, and FLRA case law.

27. According to an October 2014 GAO report, OPM does not accurately compute official time, and should require agencies to better track official time costs. What is the most effective way for federal agencies to track the use of official time to ensure that it helps them meet their goals? How could federal agencies, federal employee unions, and the American public all benefit from a more accurate accounting of official time?

It is the purview of Congress and the Administration to determine what, if any, is the most effective way for federal agencies to track the use of official time to ensure that it helps them meet their goals, as well as how the American public and federal agencies, employees, and unions could benefit from a more accurate accounting of official time.

28. How do the FLRA and Federal Courts compare as venues for resolving federal employment disputes?

In the Statute, Congress vested the FLRA with broad authority to resolve Executive-branch labor disputes. 5 U.S.C. §§ 7103, 7105. Under that statutory scheme, the FLRA brings its institutional knowledge to expeditiously decide negotiability, representation, and ULP disputes, and to review federal-sector arbitrators' decisions. 5 U.S.C. § 7105(2)(A)-(I). The Supreme Court has observed that Congress intended the FLRA "to develop specialized expertise in its field of labor relations and to use that expertise to give content to the principles and goals set forth in the [Statute]." *Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 97 (1983).

Congress, in turn, envisioned a more limited role for the federal courts in resolving federal-sector labor disputes. Section 7123 of the Statute gives the federal courts of appeals jurisdiction to review Authority orders in ULP and negotiability cases. 5 U.S.C. § 7123(a). But Congress denied the courts of appeals the power to review most arbitration cases and certain representation decisions. 5 U.S.C. § 7123(a)(1), (2). It is also settled that the federal district courts have no jurisdiction to consider FLRA decisions. *Griffith v. FLRA*, 842 F.2d 487, 491 (D.C. Cir. 1988).

Consequently, the role of the Federal Courts in resolving federal labor disputes is similar to their role in resolving other administrative-law disputes. The well-settled principles of judicial review of administrative agency action apply, which requires the courts to give the FLRA "considerable deference when it exercises its 'special function of applying the general provisions of the Act to the complexities' of federal labor relations.'" *Nat'l Fed'n of Fed. Employees, Local 1309 v. Dep't of Interior*, 526 U.S. 86, 99 (1999) (internal quotations omitted).

29. What is your view of the level of timeliness and quality of case processing and decision-making within the FLRA at present? How do you believe the FLRA can best achieve timeliness and high quality in the future?

In FY 2015, the FLRA's Decisional Component eliminated its backlog of "overage" cases – cases that had been pending with the Member offices for more than 180 days. And the average age of pending cases dropped from 182 days at the beginning of the fiscal year to 40 days at the end of the fiscal year. However, due to the backlog of cases that resulted from the extended period in FY 2013 when the Decisional Component lacked a quorum of Members to issue decisions (January to November 2013) – as well as the Component's focus in FY 2015 on issuing the oldest cases – the Component did not meet several of its performance goals for the timely issuance of cases. Nevertheless, the Component performed better in all timeliness categories than it did in FY 2014. And as a result of successful elimination of our backlog, the Decisional Component, with a full complement of Members and staffing at the budgeted level, is well-positioned to issue timely decisions at or above our targeted level of performance moving forward. As to quality, beginning in 2009, the Decisional Component has engaged in initiatives to review and improve upon how our decisions are written, such as the development of a Drafting Guide, the implementation of a "decision-writing initiative" that changed the way that Authority decisions are written, and the provision of continual training and education such as legal-writing training and "Lunch and Learn" case-law updates. These initiatives have resulted in higher quality Authority decisions.

Additionally, the OGC exceeded its strategic-performance goals for the timely resolution of both ULP and representation cases, and it continued closing cases at increased rates – closing over 4,600 ULP cases and 220 representation cases, and conducting over 70 secret-ballot representation elections, in FY 2015. Similarly, in FY 2015, the FSIP exceeded all of its strategic-performance goals, including timeliness goals. And, in both of those components, exceeding timeliness goals has not come at the expense of quality.

In sum, I believe that the FLRA currently in a good position with respect to the timeliness and quality of its case processing and decision-making. Looking to the future, I believe that, by continuing case-processing efficiencies that we have developed in the past, and looking for new efficiencies as well, we can meet or exceed our timeliness goals. Further, with regard to quality, I believe that a continuation of previous quality initiatives and planned FY 2016 initiatives – such as revising the Drafting Guide and implementing additional employee-driven training activities, which were developed as a part of an agency-wide strategic-planning initiative – will ensure and enhance high-quality case-processing and decision-making in the future.

V. Relations with Congress

30. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

31. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

VI. Assistance

32. Are these answers your own? Have you consulted with FLRA or any other interested parties? If so, please indicate which entities.

Yes. I have consulted with FLRA and Administration staff.

Chairman Ron Johnson
Supplemental Pre-hearing Questionnaire For the Nomination of
Carol Waller Pope to be a Member of the
Federal Labor Relations Authority

1. Private sector unions pay for the activity of their union leaders and representatives out of union dues. Do you think that public sector unions should pay for union activity in a similar manner? Why or why not?

   Financial matters of labor organizations are not within the jurisdiction of the FLRA. I have no views regarding the manner in which public-sector unions should pay for union activity.

2. OPM reported that 77 percent of official time was used on "General Labor-Management Relations," or activities other than negotiated collective bargaining agreements or resolving disputes between bargaining unit employees and agencies, for an estimated cost of over $120 million in salaries and benefits. Do you believe that this is an appropriate use of federal resources? If so, please explain.

   Section 7131 establishes the authority for the granting of official time under the Federal Service Labor-Management Relations Statute (Statute), and expressly addresses under subsections (a), (b) and (c) the authorization of official time for contract negotiations, impasse proceedings, and proceedings before the Authority, respectively. While subsection (d) authorizes the granting of official time to employee representatives in "any amount" that the parties agree to be "reasonable, necessary, and in the public interest," such authorization is expressly limited to those matters that are not already provided for in the other portions of § 7131.

   It is the purview of Congress and the Administration to determine what, if any, is the most appropriate use of federal resources as it relates to official time under the Statute.

3. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

   Yes.

4. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

   Yes.

5. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

Ranking Member Tom Carper
Supplemental Pre-hearing Questionnaire For the Nomination of
Carol Waller Pope to be a Member of the
Federal Labor Relations Authority

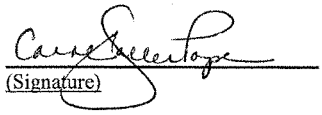
1. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

   Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

   Yes.

I, Carol Waller Pope, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



(Signature)

This 18th day of November, 2015

Opening Statement of Robert A. Salerno
Nominee to be an Associate Judge of the Superior Court of the District of Columbia
December 3, 2015

Mr. Chairman and members of the Committee, I am honored to appear before you today as a nominee for Associate Judge of the Superior Court of the District of Columbia. I would like to thank the District of Columbia Judicial Nomination Commission and its chair, District Judge Emmet Sullivan, for recommending me to the White House, President Barack Obama for nominating me, and Congresswoman Eleanor Holmes Norton for introducing me to the Committee.

With me today are my wife, Juanita, and my son, Evan. My daughter, Alex, is finishing up her Fall semester at Skidmore College in New York. She and other family members are watching the streaming video on the Committee's website. My parents are no longer with us, but they would have been proud today if they were – especially my father, who always encouraged me to become a lawyer. Finally, I want to recognize friends and colleagues in attendance. I would not be here today without their support and encouragement.

I am excited by the opportunity to serve on the Superior Court. I would bring to the position more than two decades of experience as a litigator in the District of Columbia, recent "quasi-judicial" experience, and a deep commitment to this City.

I have been a resident of the District of Columbia for 25 years and raised two children here. During that time, I have had a varied and rewarding career in private practice. I have litigated civil and criminal matters in federal and state courts across the country, as well as administrative proceedings and arbitrations. I have handled everything from high-stakes commercial litigation, to alleged criminal conduct by individual clients, to pro bono matters on behalf of our most vulnerable residents. I have been fortunate to work on sophisticated matters with extremely talented colleagues. At the same time, I have also always had a strong interest in public service. Prior to becoming a lawyer, I was a Peace Corps Volunteer in Ecuador, where I met my wife. I also volunteered to serve as a Hearing Committee Chair for the Board on Professional Responsibility. In that capacity, I conducted evidentiary hearings on formal charges of professional misconduct by members of the District of Columbia Bar.

I am at a point in my life where I am ready and able to focus 100% of my energy on public service. It would be a privilege for me to do so as an Associate Judge of the Superior Court. Judges have a unique ability to make a difference in the community on a daily basis, and for many citizens, judges are the personification of the judicial system. I can think of no greater honor for a lawyer than to be entrusted with the responsibility that comes with being a judge. My broad and diverse experience in private practice and my experience as a Hearing Committee Chair make me confident that I would be a good judge and that I would enjoy serving in that role. If I am confirmed, I would work hard every day to achieve fair outcomes, in accordance with the law, for all persons who come to the Superior Court seeking justice and due process, and to do so as efficiently as possible.

Thank you for considering my nomination. I look forward to answering your questions.

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

   Robert Alan Salerno

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a United States citizen.

3. **Current office address and telephone number.**

   Schulte Roth & Zabel LLP
   1152 15th Street, N.W.
   Washington, D.C. 20005
   (202) 729-7473

4. **Date and place of birth.**

   September 14, 1961; Newark, New Jersey.

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Juanita Cordova Salerno, formerly Juanita Cordova Jaramillo. She is not currently employed.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   Alexandra Dolores Salerno, age 20, student.
   [redacted]

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   University of Virginia School of Law; 1987 to 1990; Juris Doctor,1990.
   Brown University; 1979 to 1983; Bachelor of Arts (with honors), 1983.
   Seton Hall Preparatory School; 1975 to 1979; High School Diploma, 1979.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

September 1986 – May 1987 (approximately)
Pierson, Ball & Dowd (now Reed Smith)
1200 18th Street, N.W. (location in 1987)
Washington, D.C. 20036
Paralegal

February 1984 – July 1986 (approximately)
U.S. Peace Corps
1111 20th Street, N.W.
Washington, D.C. 20526
Peace Corps Volunteer in Loja, Ecuador

9. **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.**

- Recognized as a top white collar criminal defense lawyer in Super Laywers (2015).
- "Capital Pro Bono High Honor Roll," District of Columbia Courts (2012).
- "Life Sciences All-Star," as recognized in *LMG Life Sciences* (2012, 2013 and 2014).
- "Distinguished Service," as recognized in *Main Justice: Politics, Policy & the Law* (2013).
- "Top-Rated Lawyer" in Litigation and Criminal Defense-White Collar, as recognized in *Legal Leaders* (2013).
- Recognized by *Washington Lawyers' Committee for Civil Rights and Urban Affairs* for litigation against a restaurant chain for violations of the Americans with Disabilities Act, the District of Columbia Human Rights Act, and the District of Columbia Consumer Protection Procedures Act (2010).
- Martindale-Hubbell "AV" rate[illegible]

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

None beyond my law firm partnerships, which are listed in response to Question 16.

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and**

provide titles and dates of any offices which you have held in such groups.

American Bar Association, Member (approximately 1992 – present)
Edward Bennett Williams American Inn of Court (approximately 1997 – 2005)
District of Columbia Court of Appeals, Hearing Committee of the Board on Professional Responsibility (2008 – present)
Hearing Committee Chair (2010 – present)
Hearing Committee Member (2008 – 2010)

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Field School Parents Association (2006 – present)
Murch Elementary School Home Association (1999 – 2009)

None of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

Supreme Court of Virginia, October 5, 1990
U.S. District Court for the Eastern District of Virginia, December 14, 1990
District of Columbia Court of Appeals, November 1, 1991
U.S. District Court for the District of Columbia, June 1, 1992
U.S. Court of Veterans Appeals, January 12, 1993
U.S. District Court for the Western District of Virginia, February 14, 1995
U.S. Bankruptcy Court for the Eastern District of Virginia, August 16, 1995
U.S. Court of Appeals for the Fourth Circuit, March 11, 1997
U.S. Court of Appeals for the Ninth Circuit, June 30, 1998
U.S. Court of Appeals for the Third Circuit, March 9, 2001
U.S. Court of Appeals for the District of Columbia Circuit, September 28, 2001

There have been no lapses in membership.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

Articles:

- "Sharing Privileged Information During Due Diligence" in *Corporate Counsel*, December 6, 2013.
- "Fighting Off-Label *Qui Tam* Suits: Have Federal Courts Encouraged Filing of Speculative FCA Claims?" in *Legal Backgrounder*, Vol. 25 No. 14, Washington Legal Foundation, April 23, 2010.

Morrison & Foerster Client Alerts
(available at http://www.mofo.com/robert-salerno/?op=publications&ajax=no):

- "DOJ Turns FCPA Spotlight on Financial Services Sector as Enforcement Efforts in Latin America Continue," May 15, 2013
- "Second Circuit Delivers Blow to Off-Label Promotion Prosecutions in *U.S. v. Caronia*," December 5, 2012
- "Physician Payment Sunshine Act: Challenge for Companies, Tool for Enforcers," October 19, 2012
- "DOJ Escalates Its War on Health Care Fraud," November 4, 2011
- "FCPA Backgrounder: What You Need to Know About the Foreign Corrupt Practices Act," September 20, 2010
- "New Whistleblower Provisions Likely to Increase FCPA Enforcement," July 21, 2010
- "Department of Justice Issues Memoranda Addressing Discovery Obligations of Prosecutors in Criminal Cases," January 5, 2010
- "New Mandatory Disclosure and Compliance Requirements Will Impact All Government Contractors," November 19, 2008
- "Securities Litigation, Enforcement, and White-Collar Criminal Defense Newsletter," Summer 2008
- "Proposal Would Make Business Ethics Rules Mandatory for Companies," December 20, 2007.
- "DOJ's Renewed Focus on Procurement Fraud: What It Means for You," January 18, 2007

DLA Piper Rudnick Gray Cary LLP Client Alert

- "DOJ to Focus on Procurement Fraud," June 16, 2005.

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None

16. Legal career.

A. Describe chronologically your law practice and experience after graduation from law school, including:

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

I have not served as a law clerk to a judge.

(2) Whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

January 2015 – present
Schulte Roth & Zabel LLP
1152 15th Street, N.W.
Washington, D.C. 20005
Special Counsel

April 2006 – January 2015
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Partner

January 2000 – April 2006
DLA Piper (U.S.) LLP (formerly known as Piper & Marbury LLP and DLA Piper Rudnick Gray Cary LLP)
1200 19th Street, N.W.
Washington, D.C. 20036
Partner

July 1998 – December 1999
Piper & Marbury LLP (currently known as DLA Piper (U.S.) LLP)
1200 19th Street, N.W.
Washington, D.C. 20036
Associate

September 1990 – July 1998
Schwalb, Donnenfeld, Bray & Silbert, P.C.

1025 Thomas Jefferson Street, N.W.
Washington, D.C. 20007
Associate

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

I have a broad civil litigation and white collar criminal defense practice that includes investigations, discovery, motions, trials, and appeals. Throughout my career, I have done everything litigation-related from "soup to nuts," including conducting factual investigations, drafting pleadings, arguing motions, taking and defending depositions, evidentiary hearings, trying cases to both judges and juries, briefing and arguing appeals, enforcing judgments, negotiating civil settlements, representing clients in connection with grand jury proceedings, negotiating criminal pleas, and handling sentencing proceedings.

My litigation practice has been court-focused throughout my 24 years as a lawyer. In recent years, however, I have also advised clients regarding compliance programs and training, internal investigations and voluntary disclosures, and due diligence for corporate transactions. Still, even with the increase of these non-court focused matters, the majority of my practice continues to be traditional, court-centered litigation.

For the last six years, I have served two three-year terms on Hearing Committees of the D.C. Board on Professional Responsibility. For four of the last six years, I have been a Hearing Committee Chair. As Chair, I led three-member panels to conduct evidentiary hearings on formal charges of professional misconduct by members of the D.C. Bar. I also conducted independent reviews of decisions by the D.C. Office of Bar Counsel to institute disciplinary proceedings, issue informal admonitions, and dismiss complaints.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

I have represented a wide variety of clients over the years. My typical clients are employees and businesses that have been sued in civil cases, are subjects or targets of federal grand jury investigations, are otherwise involved in litigation as a third party, or are involved in internal investigations in response to allegations of wrongdoing. However, I have also represented a diverse group of individuals, including law enforcement officers, a former Central Intelligence Agency officer, three Department of Justice trial lawyers, a Colombian doctor seeking asylum, disabled individuals seeking access to dining establishments, and four young men in a racial discrimination case.

My civil litigation practice has included civil rights, breach of contract, breach of fiduciary duty, legal malpractice, civil RICO, consumer protection, civil False

Claims Act, real property, insurance coverage and indemnification disputes.

My criminal practice has focused on white collar federal crimes such as mail fraud, wire fraud, bank fraud, defense contracting fraud, healthcare fraud, campaign finance, bribery and corruption (Foreign Corrupt Practice Act), and antitrust.

I have also represented attorneys in disciplinary proceedings brought by the D.C. Office of Bar Counsel (prior to becoming a Hearing Committee member).

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

I appear in courts approximately 10-15 times each year. Prior to the last five years, my appearances in court were more frequent (approximately 15-20 times each year) than they have been over the past five years.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) Other courts and administrative bodies.

I estimate that 60% of my court appearances have been in federal courts, 10% in state courts of record, 20% in D.C. courts, and 10% before administrative bodies (e.g., D.C. Board or Professional Responsibility, U.S. Department of Health and Human Services).

(3) What percentage of your litigation has been:

(a) civil;
(b) criminal.

Overall, the percentage of my litigation has been roughly 50% civil and 50% criminal, but the percentages have varied over the years. Earlier in my career, the percentage of civil litigation was higher. Later in my career, the percentage of criminal litigation (including grand jury investigations) has been higher.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in

these cases.

To the best of my recollection, over the past 24 years of my legal career:

- approximately four cases were tried to verdict, all as co-counsel with other law firm colleagues; and
- approximately eleven cases were litigated to final judgment on dispositive motions, all as co-counsel with other law firm colleagues.

The above approximations do not include appeals, arbitrations, or administrative trials.

(5) What percentage of these trials was to

(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

Of the cases tried to verdict, approximately 75% were tried to a jury and 25% were bench trials.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. *State of Idaho v. Lon T. Horiuchi*, 253 F.3d 359 (9th Cir. 2001) (en banc); 215 F.3d 986 (9th Cir. 2000); No. CR-97-097-N-EJL (D. Idaho May 14, 1998) (Lodge, J.).

   This case arose out of the armed confrontation between the U.S. government and white supremacists at Ruby Ridge, Idaho in 1992. The F.B.I. Hostage Rescue Team ("HRT") was sent to Ruby Ridge after a confrontation the prior day ended with a U.S. Marshal being shot and killed. Our client, who was a member of the HRT, fired a shot on day two of the confrontation that killed Vicky Weaver and wounded Kevin Harris. He was thereafter charged with manslaughter by a local Idaho county prosecutor. This was a highly charged and politically sensitive case that involved challenging and cutting-edge legal issues with limited precedent. The principal issue litigated was the nature and extent of a federal officer's immunity from state criminal prosecution under the Supremacy Clause of the U.S. Constitution. The issue was litigated in the district court, before a Ninth Circuit panel, and the before the Ninth Circuit *en banc*. I teamed with two of my partners

on this matter. I drafted the motions in the district court and the briefs in the Ninth Circuit, but I did not argue. The representation in the criminal case and in related civil litigation spanned from approximately 1996 through 2002.

Opposing Counsel:
Former U.S. Attorney General Ramsey Clark (Special Prosecutor)
Current contact information unknown

Stephen Yagman (Special Prosecutor)
Current contact information unknown

Denise Woodbury (then-Boundary County Prosecuting Attorney, Bonners Ferry, Idaho)
Current contact information unknown

Counsel for the United States:
Seth Waxman (then-U.S. Solicitor General)
WilmerHale
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6800

2. *United States v. Higgins,* No. 2:09-cr-00403-LDD-4 (E.D. Pa.) (Davis, J.)

This case involved application of the responsible corporate officer ("RCO") doctrine, which was approved by the Supreme Court in *United States v. Park*, 421 U.S. 658 (1975). The doctrine permits a corporate officer to be held strictly liable based on a showing that the officer's position in a corporation gave the officer responsibility and authority to prevent or correct violations by the corporation, and the officer failed to do so. This type of offense is unusual in the criminal law because it permits criminal liability even without knowledge or awareness of wrongdoing. Our client was the president of a global biotech company (Thomas Higgins) who failed to prevent violations of the Food, Drug and Cosmetic Act by his company. He and three other officers pled guilty to a strict liability misdemeanor under the RCO doctrine, based on their positions in their company. At sentencing, the government sought the maximum one-year sentence and the District Court held a "mini-trial" at the sentencing phase. This case was closely watched in the healthcare industry because the RCO doctrine is rarely used and not well understood, and because the government used it as a vehicle to send a message to healthcare companies. The government had announced that it would begin using the RCO doctrine to increase deterrence and then aggressively did so by seeking jail sentences for a strict liability offense in this case. I teamed with two colleagues on this matter, attended meetings with the U.S. Attorney's Office, drafted motions and a sentencing memorandum, and presented evidence at the two-day long sentencing hearing. The representation began in approximately 2006. Related administrative proceedings at the Department of Health and Human Services are

pending.

Opposing Counsel:
Assistant U.S. Attorney Mary Crawley
U.S. Attorney's Office for the Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(215) 861-8200

Counsel for Co-Defendants:
Howard Shapiro
Brent Gurney
WilmerHale
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6800

William Lawler
Vinson & Elkins
2200 Pennsylvania Avenue, N.W. #500
Washington, D.C. 20037
(202) 639-6676

Gregory Poe
Poe & Burton PLLC
1030 15th Street, N.W., Suite 580 West
Washington, D.C. 20005
(202) 583-2500

Catherine Recker
Welsh & Recker P.C.
2000 Market Street
Philadelphia, PA 19103
(215) 972-6430

3. *Horn v. Huddle, et al.*, No. 09-5311 (D.C. Cir.); 636 F. Supp. 2d 10 (D.D.C. 2009) (Lamberth, J.); 647 F. Supp. 2d 55 (D.D.C. 2009) (Lamberth, J.); 699 F. Supp. 2d 236 (D.D.C. 2010) (Lamberth, J.).

   This case involved complex issues regarding the effect of the government's assertion of the state secrets privilege on a plaintiff's ability to proceed with his claim and on defense counsel's ability to defend his individual client. My client, Arthur Brown, was a former Central Intelligence Agency officer who was sued by a former State Department employee in a *Bivens* action arising from an incident in Asia. After our client asked for independent counsel to represent him, I was hired by the Department of Justice to do so. I obtained a security clearance so that my

client could communicate the underlying facts of the case to me, and then successfully argued in the district court that the government should be required to authorize my client to share classified information with his counsel despite the assertion of the state secrets privilege. Shortly thereafter, the government settled the case with the plaintiff. I was the principal lawyer handling this matter.

Opposing Counsel:
Brian Leighton
Law Offices of Brian C. Leighton
701 Pollasky Avenue
Clovis, CA 93612
(559) 297-6190

Counsel for Co-Defendant:
David Maria
Latham & Watkins LLP
555 L Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200

Counsel for the United States:
Barbara L. Herwig
Douglas N. Letter
H. Thomas Byron III
United States Department of Justice
Appellate Staff, Civil Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 616-5367

4. *Cooke, et al. v. Davis, et al.*, No. 07-cv-2189 (D. Md.) (Motz, J.).

I represented four African-American young men, *pro bono*, who were stopped on Interstate 95 in Maryland, north of Baltimore, while they were on their way to a family gathering. Working with two law firm associates, whom I supervised, we sued the Maryland Transportation Authority Police and four officers for violating our clients' rights to be free of unreasonable searches and seizures and to equal protection of the law. After successfully defending against efforts to dismiss the case, the case settled during discovery. While our clients recovered a small amount of money, the settlement required the Maryland Transportation Authority to change its practices regarding recordation of traffic stops and to implement training for its officers. The case was litigated in approximately 2008 to 2009.

Opposing Counsel:
David Moore, Assistant Attorney General
Maryland Attorney General's Office

200 St. Paul Place
Baltimore, MD 21202
(410) 576-7906

5. *Ahan v. Grammas, et al.*, Md. App. No. 2363 (Md. Ct. of Special Appeals); No. CAL 02-09937, 2004 WL 2724111, *6 -7 (Md. Cir. Ct. Nov. 19, 2004) (Platt, J.), *available at*:
http://www.courts.state.md.us/businesstech/pdfs/mdbt9_04_opinion.pdf

This case involved the interaction between attorney ethics rules and malpractice claims, and the difficult situation faced by a lawyer representing a corporation where the principal owners are deadlocked and cannot make decisions. Beyond the interesting and challenging legal issues, the damages claimed by the plaintiff were so high that, if awarded, may have caused the law firm to fail. After a two-week jury trial, the court granted judgment in favor of our clients – the law firm and one of its lawyers. I was a principal lawyer on the trial team and worked on all phases of the case, from answering the initial complaint through trial and appeal.

Co-counsel:
Timothy Maloney
Joseph Greenwald & Laake, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
(301) 220-2200

Charles B. Wayne
DLA Piper
500 8th Street, N.W.
Washington, D.C. 20004
(202) 799-4253

Opposing Counsel:
Creighton R. Magid
Dorsey & Whitney
1801 K Street, N.W., Suite 750
Washington, D.C. 20006
(202) 442-3555

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to my litigation practice, I have served two three-year terms on Hearing

Committees of the D.C. Board on Professional Responsibility for the past six years. For four of the last six years, I have served as the Hearing Committee Chair. As Chair, I led three-member panels to conduct evidentiary hearings on formal charges of professional misconduct by members of the D.C. Bar. I also conducted independent reviews of decisions by the D.C. Office of Bar Counsel to institute disciplinary proceedings, issue informal admonitions, and dismiss complaints.

In recent years, a growing portion of my practice has involved internal investigations. In one such significant matter, I was part of a team at my law firm conducting an internal investigation into potential violations of anti-corruption laws at European and Asian affiliates of a global technology company. This challenging matter spanned multiple countries and involved law enforcement authorities in at least four jurisdictions. It involved a complex web of payments through numerous shell companies around the world. Our work involved implementation of global strategy, coordination with local counsel in multiple jurisdictions, overseeing criminal proceedings and engagement with prosecutors in two foreign countries, fact development and witness interviews, document collection and review, advice on data privacy issues, implementation of compliance measures and a divestiture of operations in one jurisdiction.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

Although I have not held a judicial office in a court, I have served two three-year terms on Hearing Committees of the D.C. Board on Professional Responsibility. I was appointed by the D.C. Court of Appeals to this volunteer position. This is a "quasi-judicial" role – Hearing Committees conduct evidentiary hearings on formal charges of professional misconduct by members of the D.C. Bar and draft reports containing their findings of fact and conclusions of law. I have provided copies of all Hearing Committee reports that I have written and to which I have contributed.

A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

Not applicable

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a**

candidate or applicant.

None

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

  None

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

  2004: John Kerry for President, $250
  2003: Piper Rudnick LLP Political Action Committee, $1,000

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

    No

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

    No. Law firms at which I was a partner may have been involved in lawsuits, but no such lawsuits related to legal work performed by me.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

    No

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   When I was a partner of Morrison & Foerster LLP, I was required to make an equity investment in the firm. The specific amount of the equity investment was based on a percentage of my budgeted income. In most instances when partners leave the firm, this equity investment is returned in annual installments over a five-year period. However, I understand that my equity investment will be returned to me immediately if I am confirmed to become a judge.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None to my knowledge

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None to my knowledge

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   None

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

To my knowledge, no current or former clients currently have matters before the Superior Court. Nor am I aware that any current or former clients anticipate having matters before the Superior Court. If a matter were to come before me involving a former client, I would consider and apply the Code of Judicial Conduct to determine whether I could hear the case.

8. If confirmed, do you expect to serve out your full term?

Yes

III. FINANCIAL DATA

REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes

2. **Are you a member of the bar of the District of Columbia?**

   Yes

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted in November 1991.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**
   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**
   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**
   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. Since February 1996, I have lived at [redacted] Washington, D.C. 20008.

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No

8. **Have you been a member of either of these Commissions within the last 12 months?**

No

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

Four copies have been provided.

AFFIDAVIT

Robert A. Salerno, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 8th day of May, 2015.

Notary Public

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 8th day of May, 2015
Virginia M. Austin, Notary Public, D.C.
My commission expires May 31, 2018.

"Nomination of Carol Waller Pope to be a Member, Federal Labor Relations Authority, and Robert A. Salerno and Darlene M. Soltys to be Associate Judges, D.C. Superior Court"
Question for the Record for Robert Salerno and Darlene Soltys
Ranking Member Tom Carper

As you know, over the past few years the Senate has been extremely slow to confirm judicial nominees to the D.C. Courts. In fact, the two well qualified judges, William Nooter and Steven Wellner, who were confirmed by the Senate last month, had been waiting for at least 2 years to be confirmed. This delay can be very difficult for nominees who have already gone through a vigorous vetting process prior to their nomination and may be putting their careers on hold as they wait for confirmation.

To what extent do you think our serious delays here in the Senate make it harder to get good and qualified candidates to consider going through this process to serve as judges in the D.C. Courts?

Response of Robert A. Salerno:

Under our system for selection of judges for the local D.C. courts, the Senate – and this Committee in particular – play an important role in ensuring that D.C. residents have competent, experienced judges who possess the highest levels of professionalism and ethics. To fulfill that role, careful vetting by the Committee is necessary, and understandably takes time. I appreciate the Committee's thorough consideration of my nomination.

The District of Columbia is fortunate to have such a well-qualified bench. The length of time between nomination and confirmation, however, could have an adverse impact on the willingness of others to serve, particularly with respect to lawyers from the private sector who face economic realities that their counterparts in the public sector do not face. In the private sector, lawyers need to maintain their practices and carry their weight within their firms. It can be difficult for a nominee to continue to do so over an extended period. Because clients and law firm colleagues know that a nominee is unlikely to be available to work on a legal matter through completion, they may choose a different lawyer to handle anything but short-term legal matters. The longer the process takes, the more difficult it becomes for a nominee to maintain his or her practice. These factors may contribute to the pool of candidates being both smaller in number and more heavily skewed towards public sector lawyers than it otherwise might be.

Opening Statement of Darlene M. Soltys
Nominee for Associate Judge, District of Columbia Superior Court
December 3, 2015

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you as a nominee for a position as an Associate Judge in the District of Columbia Superior Court. I thank the Judicial Nomination Commission, and its Chairman, the Honorable Emmet G. Sullivan for recommending me to the White House, and to the President for nominating me. Thank you also to Congresswoman Norton for her kind words in introducing me this morning. I am honored by the presence of those who are here today, my law enforcement partners from the FBI and the Metropolitan Police Department, and my colleagues from the United States Attorney's Office. I would like to acknowledge and thank my parents, who are here today, Al and Emily Soltys. I am who I am because of them. I am also grateful for the love and support of my spouse, Pilar Suescum and our daughters, Gabriela and Lilian.

I was raised in Anne Arundel County, Maryland. My father's 32 years at the National Security Agency taught me the value of hard work and the importance of public service. I came to Washington, D.C. in 1987 to attend law school at Georgetown University. Since then, I have lived on Capitol Hill. Serving the community and the public interest is one of the most satisfying aspects of my profession. My legal career began as a judicial law clerk to the Honorable Gregory E. Mize of the Superior Court, who, I am honored to report, is in attendance at this hearing. Thereafter, I have served as a prosecutor, handling diverse criminal offenses in Washington D.C., in both the Superior Court and in federal district court for the District of Columbia, and in the circuit court for Prince George's County, Maryland. This career path has exposed me to the myriad of issues plaguing our community and impressed upon me the importance of the Governments' responsibility to ensure justice in our society. I have had the privilege to appear before many fine jurists who care deeply about the fair administration of justice and due process for all. These inspiring role models are essential to the effective functioning of our legal system.

I would be honored to put my experience to work, to ensure that the people of our city receive impartial and thoughtful consideration of their matters, and that justice is served, with fairness and respect for all.

Thank you for considering my nomination. I look forward to answering any questions you may have.

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

   Darlene Michele Soltys

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a United States citizen.

3. **Current office address and telephone number.**

   United States Attorney's Office for the District of Columbia
   555 Fourth Street, NW
   Washington, D.C. 20530
   202-252-7685

4. **Date and place of birth.**

   August 13, 1965; Bellingham, Washington.

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Maria del Pilar Suescum, who is a freelance translator, homemaker, and an Attorney/Partner at Environment Three, LLC, a start-up business. The registered address of Environment Three, LLC is:

   8176 Inverness Ridge Road
   Potomac, MD 20854

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   [redacted]

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

Georgetown University Law Center, Washington, D.C., August 1987 – May 1990, Juris Doctor received May 1990.

University of Maryland, Baltimore County, Catonsville, MD, August 1983 – June 1987, Bachelor of Arts received June 1987.

Glen Burnie High School, Glen Burnie, Maryland, August 1980 – June 1983, High School Diploma received June 1983.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

September – December 1989; November 1988 – April 1989
Popham, Haik, Schnobrich & Kaufman
1300 I Street, NW
Suite 500 East
Washington, D.C. 20005
Law Clerk

May – July 1989
Miles and Stockbridge
10 Light Street
Baltimore, MD 21202
Law Clerk

May – October 1988
Federal Trade Commission
601 Pennsylvania Avenue, NW
Washington, D.C. 20004
Law Clerk

August 1987 – May 1988
Georgetown University Law Center
Fred Dennis Law Library
600 New Jersey Avenue, NW
Washington, D.C. 20001
Circulation Assistant

June – August 1987
Backfin Seafood Restaurant
1116 Reisterstown Road
Pikesville, MD 21208
Waitress

9. **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.**

Senior Litigation Counsel (2013)
Director's Award for Superior Performance as an Assistant United States Attorney (2007)
Department of Justice Special Achievement Award (2006, 2007, 2012, 2013, 2014)
Academic Athlete, University of Maryland, Baltimore County (1987)
Pi Sigma Alpha Honor Society, University of Maryland, Baltimore County (1987)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

Trustee, Capitol Hill United Methodist Church, Washington, D.C. (2015 – present)

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Charles Fahy American Inn of Court, 1989 – 1990
Department of Justice Pride, 2007 – present
International Law Society, Georgetown University Law Center, 1989 – 1990
Prince Georges' County Bar Association, 1996 – 1998
Women's Bar Association of the District of Columbia, 2014 – present
University of Maryland, Baltimore County Judicial Board, Chief Justice, 1986 – 1987

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Capitol Hill United Methodist Church, 2014 – present
Friends Community School, College Park, MD, Parent Association, 2012 – present
Foundry United Methodist Church, 2005 – 2014
Human Rights Campaign, 2000 – present
Tyler Elementary School, Washington, D.C., PTA, 2009 – 2012
Women's Field Hockey, University of Maryland, Baltimore County, 1983 – 1987
Women's Rugby Football Club, University of Maryland, Baltimore County, 1984 – 1987

Membership in Women's Field Hockey and Women's Rugby Football Club at the University of Maryland, Baltimore County, is restricted to women. Nonetheless, both organizations have male-counterparts. None of the other organizations listed currently

discriminates or formerly discriminated on the basis of race, sex, or religion.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

District of Columbia, December 1991
Maryland, December 1990 (inactive since 1995)

There have been no lapses in membership, although as indicated, my membership in Maryland has been inactive since 1995.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

None.

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

16. **Legal career.**

A. **Describe chronologically your law practice and experience after graduation from law school, including:**

(1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I clerked for the Honorable Gregory E. Mize on the Superior Court for the District of Columbia from September 1990 to August 1992.

(2) **Whether you practiced alone, and if so, the addresses and dates;**

I have never practiced alone.

(3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

September 1990 – August 1992
Chambers of the Honorable Gregory E. Mize
Superior Court for the District of Columbia
500 Indiana Avenue, NW

Washington, D.C. 20001
Law Clerk

August 1992 – February 1996
Office of the Attorney General (formerly Office of Corporation Counsel)
Criminal Division, Juvenile Section
441 Fourth Street, NW
Washington, D.C. 20001
Assistant Corporation Counsel

February 1996 – September 2003
Office of the State's Attorney
Circuit Court Division
14735 Main Street, Suite M3403
Upper Marlboro, MD 20772
Assistant State's Attorney

September 2003 – November 2004
United States Attorney's Office for the District of Columbia
555 Fourth Street, NW
Washington, D.C. 20530
Special Assistant United States Attorney (on detail)

November 2004 – present
United States Attorney's Office for the District of Columbia
555 Fourth Street, NW
Washington, D.C. 20530
Assistant United States Attorney

B. **Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

After I completed my clerkship in 1992, I have held three consecutive appointments as a prosecuting attorney. While the area of my practice has remained constant (i.e., prosecuting criminal cases), the type of offenses I have handled has varied. At the Office of Corporation Counsel, I prosecuted juveniles for numerous types of offenses including homicide, in the Superior Court for the District of Columbia. At the State's Attorney's Office, I primarily prosecuted child abuse and rape cases for two years and then homicide offenses for five years, in the Circuit Court for Prince Georges' County. At the United States Attorney's Office, I have spent the past eleven years in the Violent Crime and Narcotic Trafficking section of the Criminal Division, prosecuting multiple-defendant conspiracy cases, involving drug trafficking and acts of violence, in the District Court for the District of Columbia.

C. **Describe your typical former clients and describe the areas of practice, if any,**

in which you have specialized.

As noted above, since 1992, my area of practice has been criminal law, while serving in local, state and federal government prosecutor's offices.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

The frequency of my court appearances has varied over time. Between 1992 and 1996, I regularly appeared in court for the entire day, handling the daily docket. I regularly tried cases that could be completed within two days. Between 1996 and 2003, I appeared in court on a daily basis, where I handled specially assigned cases and regularly tried cases that could be completed within a week. For the past eleven years, I have regularly and exclusively appeared in District Court for the District of Columbia on a weekly basis, handling specially assigned cases. As these cases are more complex, the number of my court appearances has decreased, while the length of the trials has increased significantly.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

Since September of 2003, 99% of my court appearances have been in federal courts, specifically, the District Court for the District of Columbia. (While on the detail, in February 2004, I tried one case in state court, pursuant to my employment as a state prosecutor.) From February 1996 to September 2003, 100% of my appearances were in state courts of record. From 1992 to February 1996, 100% of my appearances were in D.C. Superior Court.

(3) What percentage of your litigation has been:

(a) civil;
(b) criminal.

My practice is exclusively criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include

cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I have tried approximately 50 murder cases (7 involving juveniles), 12 cases involving federal offenses, and an estimated number of 50 trials for other felony offenses. In all of the cases, with the exception of four federal trials, I was sole counsel or lead counsel. In those four federal trials, which are listed in response to question 17, I had an equal co-counsel.

(5) **What percentage of these trials was to**

(a) **a jury;**
(b) **the court (include cases decided on motion but tabulate them separately).**

Of the cases tried to verdict, approximately 85% were tried to a jury and 15% were bench trials.

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

(1) United States v. Franklin, Cr. No. 04-128 (D.D.C.) (Collyer, J.). The "M Street crew" established dominance and control of the 18th and M Street, NE, neighborhood of Washington, D.C., between 1997 to 2004 and converted this neighborhood into a large, open-air drug market notable for the widespread availability of PCP, ecstasy and crack cocaine. Multiple murders and other shootings helped the crew establish and control the drug market for their own personal profit. The government prosecuted five members of the "M Street crew" for their participation in narcotics and racketeering conspiracies, for various violent crimes in aid of racketeering, and (as to the leader) for continuing criminal enterprise. This prosecution included presenting 85 government witnesses and evidence of 100 overt acts in furtherance of the conspiracies. This prosecution, aided by the FBI/MPD Safe Street task force, effectively disrupted and dismantled this violent crew and returned the neighborhood to its law-abiding residents. I presented the government's opening statement and rebuttal argument and questioned half of the government's witnesses. The jury trial occurred from March 6 through May 22, 2006, before the Honorable Rosemary M. Collyer, of the District Court for the District of Columbia. Verdicts of guilty against the five men were returned on 93 counts, and not guilty verdicts were returned on 17 counts. Convictions were affirmed on appeal. United States v. Wilson, 605 F.3d 985 (D.C. Cir.

2010).

Co-Counsel:

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202-639-0999

William Purpura (Defendant Simmons)
Purpura & Purpura

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Cary Clennon (Defendant Wilson)
Solo Practitioner
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202-269-0969

(2) United States v. Gooch, Cr. No. 04-128 (D.D.C.) (Collyer, J.). This jury trial concerned the prosecution of Mr. Gooch, the self-designated enforcer of the "M Street crew," charged with five homicides, narcotics and racketeering conspiracies and related offenses, including attempting to kill a police woman. The United States sought the death penalty in this prosecution, only the third such trial since the 1950's in this jurisdiction. The prosecution against Mr. Gooch included presenting over 100 government witnesses, along with evidence of five homicides, and numerous overt acts in furtherance of the conspiracies. I presented the government's opening statement and rebuttal argument and questioned half of the government's witnesses. This trial occurred from February 7 through May 8, 2007, before the Honorable Rosemary M. Collyer, of the District Court for the District of Columbia. Mr. Gooch was convicted of 26 counts and acquitted of 12 counts. The death penalty portion of the trial was divided into two parts; after arguments in June 2007, the jury concluded Mr. Gooch was ineligible for the death penalty. Mr. Gooch's convictions were affirmed on appeal. United States v. Gooch, 665 F.3d 1318 (D.C. Cir. 2012). Three other co-defendants were charged with related offenses and each pled guilty during jury selection, but sought to withdraw their guilty pleas after the trial against Mr. Gooch was completed. Denials of the attempts to withdraw guilty pleas were affirmed on appeal. United States v. Jonte Robinson, 587 F.3d 1122 (D.C. Cir. 2009).

Co-Counsel:

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Jensen Barber (Defendant Gooch)
(deceased)

James Connell (Defendant Gooch)
Guantanamo Bay Military Commission
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202-223-6539

Christopher Davis (Defendant Dorsey)
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Washington, D.C. 20036
202-234-7300

(3) United States v. Gordon, Cr. No. 09-153 (D.D.C.) (Urbina, J.). Mr. Gordon was tried for murdering a DEA confidential informant to prevent that witness from testifying against the defendant in a drug case then pending in federal district court. Evidence in this case was largely circumstantial – historical cell site data and DNA evidence were used to prove opportunity and to rebut Mr. Gordon's alibi. Several of the defendant's family members were indicted and/or convicted of offering perjured testimony or suborning others to commit perjury regarding a false alibi before a federal grand jury. I delivered the government's closing argument and questioned half of the government's witnesses. This jury trial lasted from February 6 through February 15, 2012, before the Honorable Ricardo

M. Urbina of the District Court for the District of Columbia. The defendant was convicted of all counts. No appeal has been filed yet.

Co-Counsel:

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Shawn Moore (formerly of the Federal Public Defender Service)
Lara Quint (formerly of the Federal Public Defender Service)
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Mark Carroll (Defendant K. Clements)
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(4) United States v. Jones, Cr. No. 05-386 (D.D.C.) (Huvelle, J.) This was a retrial after the defendant's reversal of conviction was upheld by the United States Supreme Court in United States v. Jones, 565 U.S. ___ (2012). This narcotics conspiracy case involved the seizure of almost 100 kilograms of cocaine, the largest such seizure in our region. Significant pre-trial legal issues involved proving the discovery of the stash house independent of and without reliance on the GPS tracking device attached to Mr. Jones's vehicle (ruled invalid by the Supreme Court) and demonstrating good-faith reliance on then-proper court orders used to obtain prospective cell site data. I delivered the government's closing argument and questioned half the government's witnesses. Trial lasted from January 25 through February 19, 2013. Although the jury was unable to reach a unanimous verdict and a mistrial was declared, the defendant later entered a guilty plea. No appeal was filed. This case was tried before the Honorable Ellen S. Huvelle of the District Court for the District of Columbia.

Co-Counsel:

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Errin Scialpi (standby counsel for Jones, acting *pro se*)
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(5) United States v. Powell, Cr. No. 10-235 (D.D.C.) (Sullivan, J.). This matter involved the criminal prosecution of twelve defendants for participating in a narcotics conspiracy involving cocaine, heroin and other narcotics. This investigation, aided by the FBI/MPD Safe Street task force, relied on evidence obtained from wiretap interceptions of four defendants, undercover controlled buys, cooperating co-defendants and related searches and seizures. After protracted motions litigation, all defendants entered guilty pleas before trial. The case was presided over by the Honorable Emmet G. Sullivan, of the District

Court for the District of Columbia beginning in November 2010. No appeal was filed.

Co-Counsel:

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James Rudasill (Defendant Twyman)
(retired)

Gary Sidell (Defendant Wiggins)
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202-783-0060

18. **Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve**

litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I was assigned a rape investigation when I was an Assistant State's Attorney in Prince George's County, Maryland, in 1999. Both the victim and her assailant were Haitian nationals. After brutally raping the victim, the assailant stole her under pants. This victim had suffered a terrible physical attack, but mentally, she had also been traumatized. As I came to understand, the theft of the underwear caused her significant anxiety as she firmly believed that by possessing an intimate article of clothing, the assailant was able to place a spell on her. The victim developed a genuine stomach malady, which she attributed to the defendant's actions. Communicating with the victim was a challenge as she spoke only Creole. While the State provided an interpreter for court hearings, on other occasions, I relied on her ten-year-old daughter and her fellow church members to communicate with her. The victim wanted her assailant to receive the maximum possible sentence, and she wanted her underwear returned. I was able to negotiate a plea agreement, which resulted in the imposition of a ten-year sentence and the return of the victim's underwear. This case taught me important lessons about the challenges of seeking justice for victims of crime who face cultural and language barriers.

Between 2013 and 2014, I participated in an FBI investigation into a heroin drug trafficking organization in which law enforcement used Title III wiretap capabilities to intercept both telephone conversations and oral communications occurring inside a vehicle, undercover controlled drug buys, search warrants and other methods of surveillance. During the spring of 2014, the investigation resulted in the successful recovery of almost $1,000,000 in cash, firearms, 1.5 kilograms of heroin and other contraband, as well as the indictment of four members of this conspiracy, all of whom had lengthy criminal records. However, in the fall of 2014, a FBI special agent, who provided substantial assistance during the execution of the search warrants that were central to this investigation, was discovered to have been stealing heroin evidence from other cases for his personal use. At the government's request, the indictment against the four members of the heroin conspiracy was dismissed and with that result, the many hours of painstaking work had been in vain. This agent had also assisted in other investigations involving over 200 defendants during the previous years, and the discovery of the agent's misconduct forced my office to evaluate those other cases to determine whether his actions tainted the evidence and undermined our respective prosecutions. A separate United States Attorney's Office investigated the agent and shared their voluminous findings with our office. My colleagues and I spent countless hours in which we reviewed the body of evidence gathered regarding the agent's wrongdoing, made decisions regarding which cases would be dismissed in the interests of justice and which cases were not compromised, shared much of that incriminating evidence with defense counsel for the cases that were not dismissed, and dealt with the consequences, which ranged from defending our decisions before judges and opposing counsel, to repairing relationships with our law enforcement partners.

19. **Have you ever held judicial office? If so, please give the details of such service,**

including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

I have never held judicial office.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

I have not ever been a candidate for elective, judicial, or any other public office.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

  None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

  None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

  8/23/2011, Obama for America, $50
  5/31/2012, Obama for America, $50
  7/25/2012, Obama for America, $50
  9/19/2012, Obama for America, $100
  11/2/2012, Obama Victory Fund, $100

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

No.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative**

proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

(1) Petitioner, Adoption Proceeding, A-208-06, Superior Court for the District of Columbia, December 2006.
(2) Party-in-interest, Adoption Proceeding, A-08-ADA-216, Superior Court for the District of Columbia, February 2009.
(3) Witness for the prosecution, United States v. Joseph Ebron, Cr. No. 08-36, Judge Crone District Court for the Eastern District of Texas, May 2009.
(4) Witness for the prosecution, case name unknown, Circuit Court for Prince George's County, Maryland, early 2000.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   I retained Michele Zavos, Esq. as counsel in a family adoption case in 2006.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   If attorney Michele Zavos were to appear as an advocate in my courtroom, I would disclose the potential conflict and recuse myself, if there was an appearance of a conflict of interest or if requested.

8. **If confirmed, do you expect to serve out your full term?**

   Yes.

III. FINANCIAL DATA REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted to practice on December 4, 1991.

4. **If the answer to Question 3 is "no" –**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. [redacted] Washington, D.C. 20003.

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

   No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

   Four copies have been provided.

AFFIDAVIT

Darlene Michele Soltys being duly sworn, hereby states that she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of her knowledge, current, accurate, and complete.

Darlene Michele Soltys

SUBSCRIBED and SWORN TO before me this 10th day of July 2015.

Notary Public

Jessica McCormick
Notary Public, District of Columbia
My Commission Expires December 14, 2016

"Nomination of Carol Waller Pope to be a Member, Federal Labor Relations Authority, and Robert A. Salerno and Darlene M. Soltys to be Associate Judges, D.C. Superior Court"
Question for the Record for Robert Salerno and Darlene Soltys
Ranking Member Tom Carper

As you know, over the past few years the Senate has been extremely slow to confirm judicial nominees to the D.C. Courts. In fact, the two well qualified judges, William Nooter and Steven Wellner, who were confirmed by the Senate last month, had been waiting for at least 2 years to be confirmed. This delay can be very difficult for nominees who have already gone through a vigorous vetting process prior to their nomination and may be putting their careers on hold as they wait for confirmation.

To what extent do you think our serious delays here in the Senate make it harder to get good and qualified candidates to consider going through this process to serve as judges in the D.C. Courts?

Response of Darlene Soltys:

As a government attorney, I do not feel that my career has been adversely affected by the length of the confirmation process. I embarked upon this path with the full understanding that the confirmation process would be lengthy. I simply cannot speak as to whether other attorneys are discouraged from applying. Persistence is an important character trait, and that trait has served me well throughout my career.

U.S. SENATOR PAUL STRAUSS
DISTRICT OF COLUMBIA (SHADOW)

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PREPARED STATEMENT OF

THE HONORABLE PAUL STRAUSS
SHADOW SENATOR
DISTRICT OF COLUMBIA

On the Nomination of

Mr. Robert A. Salerno, Esq.

And

Ms. Darlene M. Soltys, Esq.

To be Associate Judges on the
District of Columbia Superior Court

Before the

United States Senate

Committee on Homeland Security and Governmental Affairs

Dirksen Senate Office Building - Room SD-342

10:00 a.m. - December 3, 2015

Senator Lankford, Ranking Member Carper, and other Members of the Senate Committee on Homeland Security and Governmental Affairs, I am Paul Strauss, a United States Senator elected by the voters of the District of Columbia, a position sometimes referred to as the Shadow Senator. I am also an attorney practicing in our local courts. In each of these capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia. I wish to express my enthusiastic and wholehearted support of the two candidates nominated by President Barack Obama to be Associate Judges of the Superior Court of the District of Columbia. The nominees, Darlene M. Soltys and Robert A. Salerno, are both distinguished members of the legal profession and long-time practitioners in the District of Columbia. I have taken the time over the last several weeks to study their career records, and I have spent time to get to know them on an individual and personal basis. As a result of these efforts, I am confident that these two distinguished lawyers possess excellent qualifications to be judges and that they both would be additions to the District of Columbia Superior Court bench.

I would like to take this opportunity to address the specific qualifications of each nominee.

Darlene M. Soltys

I begin with Ms. Darlene M. Soltys, who has pursued a distinguished career in government service. Ms. Soltys graduated from the University of Maryland and earned her law degree at the Georgetown University Law Center in 1990. She continued on to clerk for the Honorable Gregory E. Mize, Associate Judge of the Superior Court for the District of Columbia. From that point on, Ms. Soltys has served in the government as a prosecuting attorney. She was first an Assistant Corporation Counsel for the District of Columbia, then, an Assistant State's Attorney in neighboring Prince George's County, Maryland, and finally, she served as an Assistant United States Attorney in Washington, D.C. Ms. Soltys has prosecuted a wide array of cases, including homicide, violent crimes, narcotics trafficking, and child abuse. For the past eleven years, Ms. Soltys has served as a senior attorney in the Violent Crime and Narcotic Trafficking Section of the United States Attorney's Office trying complex, multiple-defendant conspiracy and high-profile cases in District Court for the District of Columbia. Ms. Soltys' dedication and excellence has been recognized via numerous awards. She has been distinguished to receive Department of Justice Special Achievement Awards in 2006, 2007, 2012, 2013, 2014 and 2015, as well as a Director's Award for Superior Performance as an Assistant United States Attorney in 2007. Ms. Soltys' dedication to government service is a family tradition. Her father, whom I understand is present today, served this nation for 32 years with the National Security Agency. The President has clearly chosen wisely in nominating Ms. Soltys to the bench.

○