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CONFIRMATION HEARING ON THE NOMINATIONS OF RALPH F. BOYD, JR. AND ROBERT D. McCALLUM, JR. TO BE ASSISTANT ATTORNEYS GENERAL

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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CONFIRMATION HEARING ON THE NOMINATIONS OF RALPH F. BOYD, JR. AND ROBERT D. McCALLUM, JR. TO BE ASSISTANT ATTORNEYS GENERAL

WEDNESDAY, MAY 23, 2001

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

The Committee met, pursuant to notice, at 10:17 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Leahy, and Kennedy.

OPENING STATMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. We are happy to welcome everybody out this morning, and today the Committee will consider the nominations of Ralph Boyd to be Assistant Attorney General for the Civil Rights Division, and Robert McCallum to be Assistant Attorney General for the Civil Division.

Now, before we begin, I have to note that during our last confirmation hearing, Senator Specter observed that both nominees were Harvard graduates, and bemoaned the lack of Yale representation, even went so far as to suggest a Harvard conspiracy at work here. So I am sure he will be very disappointed to see Mr. Boyd, another Harvard Law graduate, before the Committee, but I hope he can take some solace from the fact that Mr. McCallum attended Yale, both as an undergraduate and as a law student.

There is a lot I have to say about these positions that are important. I will put the rest of my remarks in the record. These are important positions. We are happy to have both of these really fine gentlemen here before us. Mr. Boyd is no stranger to legal complexity, and we are very pleased to have him here, and the same with Mr. McCallum. He has had extensive experience. He will be a perfect person for, I think, the Civil Division, and Mr. Boyd for the Civil Rights Division.

I am honored to have Senator Kennedy here to introduce Mr. Boyd. I apologize to him personally for the mixup in getting over here a little late, and so I will turn the time to him so he can make that introduction.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Good morning. Today, the Committee will consider the nominations of Robert Boyd to be Assistant Attorney General for the Civil Rights Division, and Robert McCallum to be Assistant Attorney General for the Civil Division.

Before we begin, I must note that during our last confirmation hearing, Senator Spector observed that both nominees were Harvard graduates, and bemoaned the lack of Yale representation. He even went so far as to suggest a Harvard conspiracy at work here. So I am sure he will be very disappointed to see Mr. Boyd, another Harvard Law graduate, before the Committee. But I hope he can take some solace in the fact that Mr. McCallum attended Yale both as an undergraduate and as a law student.

The position of Assistant Attorney General for Civil Rights is one of the most important law enforcement positions in the Federal Government. Perhaps no position more profoundly shapes and implements our Nation's goal of equality under law. The Civil Rights Division was established in 1957 to enforce President Eisenhower's Civil Rights Act of 1957, the first civil firm, Goodwin Proctor LLP, Mr. Boyd has maintained a broadbased litigation practice. Mr. Boyd's extracurricular commitments are also significant. He has spent a considerable amount of time speaking to "at risk" youth and to community and religious groups about reducing violence. He has also addressed various lawyers' groups on topics including racial diversity and the importance of mentoring. I commend you, Mr. Boyd, for your impressive record, and I commend President Bush for exercising excellent judgment in selecting you for this important position.

Turning to Mr. McCallum's nomination, the person who fills the position of Assistant Attorney General for the Civil Division leads the largest litigating division at the Department of Justice. Its attorneys represent not only the United States, its departments, and agencies, but also federal employees, including cabinet officers and even members of Congress - a fact that we all may want to keep in mind during the course of this hearing. Civil Division attorneys enforce and defend such diverse matters as national security issues; contract disputes and other commercial claims; customs and international trade; federal benefits programs; patents and other intellectual property rights; civil fraud actions; tort claims; and violations of the immigration and consumer protection laws. The outcome of such litigation often has significant consequences for the taxpayers, since it involves billions of dollars in claims and recoveries annually. The position of Assistant Attorney General for the Civil Division must therefore be filled by a person who has demonstrated the capacity to expertly handle the most complex legal matters when the stakes are the highest.

Mr. McCallum fits this description perfectly. His matriculation at Yale was the first step in what has proved to be an exemplary legal career. In the course of his nearly thirty years in private practice, he has expertly litigated a wide range of complex matters, including commercial cases, class actions, RICO claims, health care fraud cases, and appeals. For almost ten years, he served as Special Assistant Attorney General for the State of Georgia, handling eminent domain matters. His vast and well-rounded experience, coupled with his keen intellect, meet the rigorous requirements for the job of Assistant Attorney General for the Civil Division. I have no doubt that he will be able to execute his duties skillfully and professionally. Again, I commend President Bush on his wise selection of Mr. McCallum for this position.

It is a great pleasure to welcome both of you to this Committee.

PRESENTATION OF RALPH F. BOYD, JR., NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION BY HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman, and we all understand the Senate schedule makes it A complicated day.

And I see my good friends, Congressman Tierney and Congressman Neal, who are here as well.

I first of all want to thank you for having the hearings, and I am very hopeful that we can move this process forward very expeditiously, because I think it is important, particularly in the area of the Civil Rights Division, that we have someone in there of Ralph Boyd's competency and leadership.

It is a very important position. I congratulate Attorney General Ashcroft for this selection. I congratulate Ralph Boyd for his willingness to take on this responsibility. He brings to this position a superb education at Haverford and Harvard Law School, where he was an outstanding student. He has demonstrated his commitment to public service by having clerked for a District Court Judge, and did it with great distinction. And he later served in the US Attorney's Office, and was known there as a tough prosecutor, but fair, and he had an outstanding record there. Now he is a very successful member of Goodwin, Procter & Hoar, one of the very fine law firms in Boston, where he is highly regarded and respected.

I see members of his family that are here today. I know that his wife, Angela Dawn Johnson, and their five children, Caitlin, Jessica, Magdelene, Jamie and Jeremy are not here. I think we can guess where they are, in school today, but we want them to know that they are very much in our minds. And I know he will introduce his father and mother and two cousins who are here. We welcome them to the Committee.

Just finally, Mr. Chairman, I am enormously impressed by Ralph Boyd's commitment to young people in a very special way. He serves at-risk youth in Boston. He works as well with a stay-in-school program there to try and help young people. He is very active in the mentoring of young people as well, and he has worked with young people that have been involved in the judicial court system. So he has, I think, reflected in his own life a strong commitment to equal justice under the law, to fairness, and to making sure that his life, both by example and commitment, is one that understood the importance of opportunity for all of our citizens and for the respect of all of our citizens. He is truly an extraordinary individual, and I think the Justice Department will be fortunate to have him. And I commend, as I said, the Attorney General and the President for the nomination, and I hope he will be approved very quickly.

[The prepared statement of Senators Cleland and Miller follows:]

JOINT STATEMENT OF HON. MAX CLELAND AND HON. ZELL MILLER, U.S. SENATORS FROM THE STATE OF GEORGIA

Mr. Chairman, we are here to present Mr. Robert D. McCallum, Jr. to the Senate Judiciary Committee as the President's nominee to be Assistant Attorney General for the Civil Division. Mr McCallum comes highly recommended from several of his colleagues for whom we both have a great deal of respect. It is our pleasure to present him today as a fellow Georgian with impressive credentials and support from many in our state.

Mr. McCallum received his undergraduate degree, cum laude, in History from Yale University in 1968. He also attended Oxford University as a Rhodes Scholar and graduated from Yale Law School in 1973. Immediately following law school, Mr. McCallum joined the law firm of Alston, Miller & Gaines, the predecessor firm to Alston & Bird, as an associate in 1973. He is currently a partner in the law firm of Alston & Bird where his specialty is civil litigation with emphasis on appellate practice, commercial real estate litigation, insurance class action litigation and administrative proceedings, and medical malpractice defense. He has written several journal articles in the Mercer Law Review and he wrote a chapter in Gynecological Surgery. Mr. McCallum has also lectured regarding eminent domain law and evidence at Georgia seminars and at the 1992 American

Mr. McCallum is a member of the State Bar of Georgia, the Atlanta Bar Association and the American Bar Association. He is also a member of the Yale Club of Georgia, the Yale Alumni Fund, the Brookwood Hills Civic Association, Butler Street YMCA, and the Rhodes Scholarship Trust. Mr. McCallum is also a member of several civic and cultural organizations such as the High Museum of Art, the Wil-

derness Society, the Atlanta History Center, and Atlanta Preservation Center. He is also the Georgia Representative to the Yale Law School Alumni Association Board.

Mr. McCallum is an excellent attorney and will be a great addition to the Justice Department as an Assistant Attorney General. Therefore, we recommend Mr. Robert McCallum to the Committee and the United States Senate and urge that he be promptly confirmed. Thank you.

Chairman HATCH. Well, thank you, Senator Kennedy. And that is about as high a recommendation as I have heard around here in a long time, and I feel exactly the same. And coming from Senator Kennedy, former Chairman of this Committee in the good old days——

Senator KENNEDY. Soon to return.

[Laughter.]

Senator KENNEDY. It just slipped out, Mr. Chairman.

Chairman HATCH. You mean you are going to come back as chairman?

[Laughter.]

Chairman HATCH. But that is very, very high praise for you, Mr. Boyd.

Congressman Tierney is here. We are really happy to have you here, coming over to back Mr. Boyd. We appreciate you. Would you care to make any statement? We would be very happy to take your statement at this time.

PRESENTATION OF RALPH F. BOYD, JR., NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION BY HON. JOHN F. TIERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Representative TIERNEY. Thank you, Senator. I really do not have a long statement to make. I think Senator Kennedy said it all very well, and I would not even want to try to compete with that, except to say that I have had the opportunity to meet and know Ralph Boyd now, and that we are sure that he is going to make a good representative of our community and of the country, and that all of the things that Senator Kennedy said about him being concerned about individuals and having respect for individuals is absolutely true. We are very supportive of Ralph's nomination, and we do hope that the Senate gives him a speedy confirmation. And we thank you for your hearing here today.

Chairman HATCH. Well, thank you so much, and thanks for taking the time, and I am sure Mr. Boyd appreciates it as well as I do.

I have to say it is fortunate for the Committee that Mr. Boyd is no stranger to legal complexity. He has an informed perspective about civil rights in America today. He is an excellent candidate to lead the Civil Rights Division.

He graduated from Harvard Law School where he was editor of the Harvard Civil Rights Civil Liberties Law Review. As an Assistant US Attorney in Boston, he investigated and prosecuted bank fraud, firearms, homicide, narcotics trafficking, bombing and bank robbery cases, as well as a couple of high-profile gang violence cases. It sounds like they have a pretty rough time up there in Boston.

[Laughter.]

Chairman HATCH. We do in all the other cities in the country too, I am afraid.

He tried 15 to 20 jury trials, conducted 50 to 75 evidentiary hearings and argued approximately 10 appeals in the First Circuit Court of Appeals. And now as a partner at the prestigious law firm, Goodwin, Procter LLP, Mr. Boyd has maintained a broad-based litigation practice.

Mr. Boyd's extracurricular commitments are also significant, as Senator Kennedy, I think, carefully pointed out. He has spent a considerable amount of time speaking to at-risk youth, and to community and religious groups about reducing violence. He has also addressed various lawyers' groups on topics including racial diversity and the importance of mentoring.

So I commend you, Mr. Boyd, for your reputation, for your impressive record, and I commend President Bush for exercising excellent judgment in selecting you for this important position. And I hope that you will work with us, and look at this new Prevention, Education and Treatment Bill that we have filed here in the Committee. I think that could do a lot of good. We are looking for alternatives to prison for some of our young people, and also, naturally, we would like you to look at a wide variety of other things that we are trying to do on the Committee that I think are worthwhile.

Let me just say that Mr. McCallum is to fill the position of Assistant Attorney General for the Civil Division, which would lead the largest litigating division at the Department of Justice.

The Civil Division's attorneys represent not only the United States and its departments and agencies, but also Federal employees, including cabinet officers and even Members of Congress, a fact that we may all want to keep in mind during the course of this hearing.

Civil Division attorneys enforce and defend such diverse matters as national security issues, contract disputes and other commercial claims, customs and international trade, Federal benefits programs, patents and other intellectual property rights, civil fraud actions, tort claims and violations of immigration and consumer protection laws. The outcome of such litigation often has significant consequences for our country and to our taxpayers since this type of litigation involves billions of dollars in claims and recoveries annually.

The position of Assistant Attorney General for the Civil Division must therefore be filled by a person who had demonstrated the capacity to expertly handle the most complex legal matters when the stakes are the highest.

Now, Mr. McCallum fits this description perfectly, as far as I am concerned. His matriculation at Yale was the first step in what proved to be an exemplary legal career. In the course of his nearly 30 years in private practice, he has expertly litigated a wide range of complex matters, including commercial cases, class actions, RICO claims, health care fraud cases, and appeals. For almost 10 years he served as Special Assistant Attorney General for the State of Georgia, handling eminent domain matters.

His vast and well-rounded experience, coupled with his keen intellect, meet the rigorous requirements for the job of Assistant At-

torney General for the Civil Division, and I have no doubt that he will be able to execute his duties skillfully and professionally.

So, again, I commend President Bush for his good choice here, and commend you for being chosen and for the great record that you have. So it is a great pleasure to welcome both of you to the Committee.

I wonder if we can get you both to take your chairs, or if you will both stand, rather, and raise your right hands.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Boyd. I do.

Mr. McCallum. I do.

Chairman HATCH. Thank you. Now we have a complication here. This morning they are trying to finish up the tax bill, and there may be four, five or six votes, and it is apparent that other members of the Committee are stuck over on the floor where I was. So what I am going to do is start this off with both of you, and hopefully some of them will come. We may have to recess till these votes are over. I hate to tell you that, but hopefully, we can get this hearing completed today. I would like to give our colleagues on the other side at least an opportunity to ask questions to both of you.

Let's turn to you, Mr. Boyd. Do you have a statement you care to make?

And then we will turn to you, Mr. McCallum.

STATEMENT OF RALPH F. BOYD, JR., OF MASSACHUSETTS, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL RIGHTS DIVISION

Mr. BOYD. I do, Mr. Chairman, and thank you. I wondered if I might introduce my family members to you, as well as the family members who are not present today.

Chairman HATCH. We would love to have you do that.

Mr. BOYD. And if I could start, Mr. Chairman, by talking about those who are not able to be here today, starting with my wife of almost 13 years, Angela, who wanted to be here today, but has just returned to the East Coast from the Olympia area in Washington State, attending to her family after the death of her father 2 weeks ago.

Chairman HATCH. Sorry about that.

Mr. BOYD. And she would be here otherwise.

In addition, my five children, who—my wife, I should say, is the architect of our family in many meaningful respects, and she is the mother of our five children, who Senator Kennedy noted also are not here. And if I could just introduce them by name. My oldest child is Caitlin Elizabeth. She is 12-years-old, and she along with my second daughter, Jessica, who is 10, are back at the Ipswich Public Schools taking their MCAS examinations today, which is a State examination in Massachusetts, controversial to some, but the theory is that it measures the command that students have of material and certain subject matters, and so they are both facing an examination probably as important to them today as I am. So they are back in Boston with their mother and in school.

In addition, my remaining three children, Maggie, who is 5-years-old, Jamie who is also 5-years-old, and Jeremy, who is 5-

years-old, just turned 5-years-old, they also are back in Ipswich, Massachusetts, our home, and I just wanted to introduce them to you because they are a very, very important part of my universe, and I would love to have them here and show them off to the Committee, but I cannot.

Chairman HATCH. We would love to have them here, but we understand, and we know that you love your family, and we have had some very nice chats in my office about that. We appreciate the love you have for your family and the good example you set.

Mr. BOYD. Thank you, Senator. If I can introduce to you the members of my family who are here, and the two people who got the ball rolling 44 years ago, for better or for worse, hopefully for better, if Senator Kennedy and you, Chairman Hatch are to be believed, I think for the better. First is my father, Ralph, Sr.

Chairman HATCH. Please stand if you will. We are honored to have you here.

Mr. BOYD. And then is my mother, Catherine.

Chairman HATCH. Mom, we are glad to have you here as well.

Mr. BOYD. My cousin, Edward Pitts.

Chairman HATCH. Edward.

Mr. BOYD. And my other cousin, Melvin Jefferson.

Chairman HATCH. Melvin, good to have you, good to have you all here.

Mr. BOYD. If I can proceed, I would like to make my statement to the Committee.

I want to start out by thanking you, Chairman Hatch, and Senator Kennedy for that gracious introduction, and I also want to thank each and every member of this Committee. I am deeply honored to be here, and I am grateful for the careful attention that you have given my nomination, and also for having the opportunity to answer questions you may have of me as President Bush's nominee to be Assistant Attorney General for Civil Rights.

As a former Assistant United States Attorney with proud memories of my work in that office, as a counselor and advocate on behalf of people who are struggling to realize the American dream for themselves and their families, and also as a child and a beneficiary of the civil rights movement, I can think of no greater honor, no greater responsibility, and no greater privilege than to be nominated by the President of the United States to serve my family, my neighbors, my community, my country and all of its people as the head of the Civil Rights Division of the Department of Justice, that is to be, in effect, the country's lawyer on matters of civil rights.

The Civil Rights Division was created in 1957, which coincidentally was the year that I was born. That was a time of meaningful shifts in how America viewed and addressed the rights of its citizens. Since that time no single office has played a more central role in advancing the core values we Americans share, that people should not be singled out or denied opportunities because of the color of their skin, where they worship if they choose to worship at all, where they or their parents came from, what gender they are, how old they are, or whether they are challenged by some disability, and also that no one should fear or fall victim to violence for any reason, but certainly not because of some bias or prejudice harbored against them simply because of who they are.

Our Congress has given us laws designed to protect these core values. These laws advance the prospect of our achieving, by working together, a truly inclusive democracy where no person, and as President Bush has said, especially no child, is left out or left behind. But without the Civil Rights Division's vigorous implementation and enforcement of these anti-discrimination laws, the high ideals of equality and inclusion that we strive for would be chronically deferred and never fully realized. Our laws would, in effect, amount to empty promises.

If confirmed, I would strive to make the ideals of fairness and equality of opportunity a reality for all of America's people today, not in some vague distant tomorrow. We have been given the tools. It falls to us to use them. And with the able assistance of the dedicated and committed career lawyers of the Civil Rights Division, I would seek to enforce our Civil Rights laws like we mean it, in an unassailably fair, consistent and evenhanded way.

Mr. Chairman, my nomination for this position has caused me to consider my life's work and reflect on where I came from and how I came to be here, and that isn't just because of the lengthy questionnaire I had to fill out for this Committee.

As part of my work in the community, I often have the opportunity to teach and mentor young people, as Senator Kennedy pointed out, from middle schoolers, to law students, to young lawyers. Some are start in the making. Others are at risk for violence or face other serious obstacles to achieving success. Regardless, as they mature and learn to tackle issues and deal with matters of increasing importance, I remind each of them that they must always remember who they are, where they came from, and the people and the events that have helped shape them. This advice applies equally to me. I can assure you, Mr. Chairman, that I know where I come from and how I have come to be in this place at this time, prepared to do the heavy lifting required of the person who would serve in the position for which the President has nominated me.

As a child, I grew up in NAACP meetings with my parents. I knew then and I know now the reasons and the need for those meetings and the work that flows from them. I also know that I am, in significant part, the product of the work and commitment of others, including courageous people I have never met, but whose sacrifices I have benefited from. I also know that I am the product of a loving family and of many generous friends, teachers and mentors. No one gets to the place where I am today without the imprint of others. I know this, and I am grateful for it.

Some of these people are here today, and I introduced them to you, my parents, Ralph, Sr. and Catherine. By their presence, they continue the work they started 44 years ago, teaching, nurturing and instilling values. There also have been others who have opened doors for me and added to my learning, from my youth to the time I spent at Haverford College, which in many important respects was a life-changing experience for me. Their efforts on my behalf continue today. These people, almost to a person, have been reluctant to accept any thanks for their role in my accomplishments. They simply ask that I take the time and make the effort to do the same for others. I have tried to honor these requests, Mr. Chairman, in both my professional and personal life. In fact, being here

today is part of that effort. It is an opportunity to serve others by protecting and vindicating the rights of those who struggle with prejudice, unjustified rejection, and in some cases, even hatred in their daily lives.

There are many challenges before us. Our great country affords my five children many more opportunities than it did my father and uncle when they returned from World War II, more than half a century ago. These men and other men who fought and literally bled for America, returned to a country that did not welcome them or embrace them, in many instances simply because of the color of their skin, but they still persevered and worked doggedly to change America. They succeeded, and so I am here today.

But there is still work to be done, Mr. Chairman. Our law has shifted decisively to the side of individual civil rights, but attitudes and hearts can change more slowly. Government and law can lay the groundwork for healthy inclusive communities, but the challenge of transforming legal promises into social and economic reality depends largely on what each of us does as an individual, both in and out of Government. As much progress as we have made in America, we still have more work to do before we can say that color, gender or other immutable traits, or impertinent aspects of a person's life, no longer affect that person's access to opportunities or their ability to partake fully of the American experience without fear of discrimination or violence.

The job of the Assistant Attorney General for Civil Rights is to lead this effort through enforcement and by example. Sometimes we are challenged, Mr. Chairman, in this effort by our differing views and beliefs about what constitutes unlawful discrimination and how we should go about fixing it. These differences are real, but I submit that we agree about much more than we disagree. And the common ground that we share has given us laws that have indeed made our country a better and a more inclusive place.

So I say to you, Mr. Chairman, and members of the Committee, that I cannot promise that we will always agree about what the law is or what is should be, or how best to prioritize the Division's enforcement objectives, and I do not purport to have all the answers. What I can promise, however, is my deep commitment to listening well, to being intellectually honest, and to enforcing vigorously this Nation's laws in an unbiased and unwavering manner.

I am honored to be here, and I am honored by the trust the President and the Attorney General have reposed in me. I hope to justify that trust through my words and deeds. Thank you.

[The biographical information of Mr. Boyd follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Answer: Ralph Fredric Boyd, Jr.

2. **Address: List current place of residence and office address(es).**

   Answer:

   Residence -- Ipswich, MA 01938;
   Office -- Goodwin Procter LLP, Exchange Place, 53 State Street, Boston, MA 02109.

3. **Date and place of birth.**

   Date of Birth: February 7, 1957

   Place of Birth: Niskayuna (Schenectady County), New York.

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   Answer: Spouse – Angela Dawn Johnson; homemaker; Ipswich, MA.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

   Answer:

   College – Haverford College, Haverford, PA (9/75 – 5/79; B.A., Political Science; 5/79).

   Law School – Harvard Law School (9/81 – 6/84; J.D.; 11/84).

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

   Answer:

   - Goodwin Procter LLP (f/n/a Goodwin, Procter & Hoar LLP), Exchange Place, 53 State Street, Boston, MA 02109 (3/97 – present) (partner);
   - United States Department of Justice, Office of the United States Attorney (D. Mass.) (3/91-2/97) (Assistant United States Attorney, Criminal Division);
   - Ropes & Gray, One International Place, Boston, MA 02110 (3/87-3/91) (associate attorney);

- Hale and Dorr, 60 State Street, Boston, MA 02109 (9/85-3/87) (associate attorney);
- Honorable Joseph H. Young, United States District Judge (D. Md.), United States Courthouse, 101 West Lombard Street, Baltimore, MD 21201 (9/84-8/85)(law clerk);
- Harvard Defenders, Austin Hall, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138 (6/84-8/84) (summer staff attorney);
- Morgan, Lewis & Bockius, 801 South Grand Avenue, Los Angeles, CA 90017 (6/83-8/83) (summer associate);
- Gordon, Feinblatt, Rothman, Hoffberger & Hollander, 233 East Redwood Street, Baltimore, MD 21202 (6/82-8/82) (summer associate);
- United States Postal Service, Latham Post Office, 175 Old Loudon Road, Latham, NY 12110 (6/81-8/81) (summer postal carrier);
- Schenectady Public Schools (Mont Pleasant High School), 108 Brandywine Avenue, Schenectady, NY 12307 (3/81 – 5/81) (substitute teacher; taught algebra and trigonometry, chemistry, and social studies);
- Drinker, Biddle & Reath, Philadelphia National Bank Building, Broad and Chestnut Streets, Philadelphia, PA 19107 (7/80 – 8/80) (summer paralegal);
- Office of Admissions, Hilles Hall, Haverford College, Lancaster Avenue, Haverford, PA 19041 (6/79-6/80); (Assistant Director of Admissions)
- Athletic Department, Haverford College, Haverford, PA 19041 (6/79-6/80) (assistant varsity lacrosse coach)
- Louis Brown Peace Institute, 1452 Dorchester Avenue., Dorchester, MA 02124 (1998 to present) (member, Board of Directors).
- Boston Ten Point Coalition, 215 Forest Hills Street, Boston, MA 02130 (1999 to present) (member, annual fundraising committee).
- Ipswich Family YMCA, 110 County Road, Ipswich, MA 01938 (2000 to present) (member, Board of Directors).

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

Answer: I have not served in the military.

8. **<u>Honors and Awards</u>: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Answer:

- Honorary Degree, Doctor of Laws, Suffolk University, Boston, MA (5/20/01).
- John Joseph Moakley Award, Citizen Schools/Federal Court Public Education Project award for "commitment to creating positive opportunities for young people in the legal profession and the judicial system." (5/22/01).
- U.S. Attorney General's Special Achievement Award for Meritorious Acts and Service on behalf of the Department of Justice (1993).
- United States Attorney's Special Achievement Award (1996).
- Greater Boston Federal Executive Board African-American Achievement Award (1996).
- Boston City Council Resolution, Commendation for Advancing U.S. Department of Justice's Urban Anti-Violent Crime Initiative (1997).
- Boston Mayor's Proclamation for Service to Law Enforcement and People of Boston, and Advancing the Mission of the Boston ATF Achilles Task Force (1997).
- Boston Police Commissioner's Commendation (1997).
- Boston Mayor's Award and Proclamation for Community Service (1992).
- Massachusetts Tenants' Organization Pro Bono Award (1990).
- East Boston District Court Community Service Award (1987).
- Alumni Hall of Fame, Colonie Central High School, Albany, NY (1994).
- Henry B. Sheppard Training Award, Goodwin Procter LLP (1999).
- Editor, Harvard Civil Rights Civil Liberties Law Review (1983-84)
- Finalist, James Barr Ames Moot Court Competition, Harvard Law School (1983)
- President, Harvard Defenders, Harvard Law School (1983-84)

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

Answer:

- Judicial Nominating Council (responsible for recruiting, reviewing, and nominating judicial candidates for the Massachusetts Superior Court, Massachusetts Appeals Court, and Supreme Judicial Court of Massachusetts), Member, Executive Committee, March 1996 – present (appointed originally by

then Governor William F. Weld; subsequently reappointed by then Governor A. Paul Cellucci).

- United States Magistrate Judge Selection and Review Panel, Member, 1998 (appointed by the judges of the U.S. District Court, District of Massachusetts).
- Boston Bar Association ("BBA"), BBA Council and Executive Committee Member, 1997-2000.
- Boston Bar Association, Chair, Suffolk County Courthouse Task Force, 2000 – 2001.
- Boston Bar Association, Member, Task Force on Massachusetts Appeals Court (2000).
- Boston Bar Association, Member, Diversity Committee (1998 – present).
- Massachusetts Bar Association, Criminal Justice Section Council Member; Co-Chair, Federal Practice Committee (1995-1997); Program Co-Chair and Faculty Member, Continuing Legal Education Seminar -- Federal Criminal Practice: A Primer (October 1996).

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

Answer:

Organizations which may lobby before public bodies:

- Boston Bar Association.
- Massachusetts Bar Association.
- Boston Ten Point Coalition.
- Louis Brown Peace Institute.

All other organizations to which I belong:

- Governor's Diversity Advisory Group.
- Boston Lawyers' Group (f/n/a the Boston Law Firm Group).
- National Conference for Community and Justice NCCJ (Lead Boston Class of 2001).
- Citizen Schools/Federal Court Public Education Project.
- Haverford College Alumni Association.
- Ipswich Family YMCA.
- Boy Scouts of America, Yankee Clipper Council Eagle Scout Association.

- First (Congregational) Church in Ipswich

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

Answer: I have been admitted to the following courts:

- Supreme Judicial Court of Massachusetts (June 1986);
- United States District Court, District of Massachusetts (June 1986);
- United States Court of Appeals for the First Circuit (July 1986); and
- United States Court of Appeals for the Fourth Circuit (September 1997)

[None of these memberships have lapsed.]

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

Answer:

Published Writings:

- *Conducting Internal Investigations,* co-authored with Andrew Lelling; to be published in Massachusetts Discovery Practice (Massachusetts Continuing Legal Education; to be published Summer 2001)).
- *Litigation Risk Abatement: A New Option For The Legal Threat Against Health Plans,* co-authored with Vikram Khanna, published in On Managed Care (Aspen Publishers, Inc., March 2001).
- *Jury Selection and Jury Contact Issues in Federal Criminal Trials,* co-authored with the Honorable Patti B. Saris (U.S. District Court, D. Mass.), (published in Federal Criminal Practice: A Primer) (Massachusetts Bar Institute, October 1996).

Speeches:

- I am a frequent speaker at area law schools, continuing legal education programs, student and youth mentoring programs, churches, and community and faith-based organizations. I cannot recall of the speeches. Listed below are recent speeches that I can recall. I am unable to provide copies of the speeches I have given because I do not prepare them in long hand – I work from outlines and typically give speeches without notes.

- Exercising Prosecutorial Discretion, the Federal Sentencing Guidelines (talks at Harvard Law School, criminal law and procedure seminars) (1993-1996)).
- Urban Violence in the 90's – Are There Any Solutions? (speech given at Capital District Interfaith Council Annual Meeting, Schenectady, New York, 1995).
- Strategy for Combating Youth Violence (speech given at annual meeting of Law Order and Justice Center, Schenectady, New York, 1996).
- Mentoring is a Two-Way Street (keynote address given at Boston Law Firm Group Annual Kickoff Dinner 2000).
- How to Make Mentoring Work (keynote address at Boston Lawyers' Group Annual Dinner) (March 2001)).
- Students of Color, for Boston? (keynote address given at Boston Bar Association Annual Luncheon for Associates of Color) (1999)).
- How to Make It All Work (kickoff address given at Boston Bar Association Summer Jobs Program) (1999)).
- How to Build Something Great (commencement address given at Brighton High School, Boston, Massachusetts) (June 1997)).
- Am I My Brother's Keeper? (dinner address, Harvard Black Law Students Association Spring Conference) (April 2001)).

Talks:

I have also given several talks to "at risk" young people in a variety of settings, including at alternative schools and inner-city court probation-sponsored programs. Two of these sessions were profiled in national television broadcasts and another was profiled on CBS radio. The first appeared in a report by ABC news correspondent James Walker during the November 14, 1996 evening broadcast of *World News Tonight with Peter Jennings*. The second appeared as part of a 1997 PBS special, which has been rebroadcasted several times.

Recent Sermon:

- *The First Breakfast; The Call to Service* (based on John 21: 1-19) (First Church in Ipswich, Ipswich, MA) (April 29, 2001).

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Answer: I am in excellent health. I run, lift weights, and practice karate (goju). My last physical examination was on May 23, 2000.

14. <u>Public Office</u>: **State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Answer:

- Assistant United States Attorney, United States Department of Justice, Office of the United States Attorney, District of Massachusetts (3/91 – 2/97) (appointed).
- Judicial Nominating Council, Member, Executive Committee, Executive Office of the Governor of Massachusetts (3/96-present) (appointed).
- U.S. Magistrate Selection and Review Panel (1998) *(*appointed*)*.

15. <u>Legal Career</u>:

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

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

I served as a law clerk to the Honorable Joseph H. Young, United States District Judge, District of Maryland, United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201, from September 1984 to September 1985.

2. **whether you practiced alone, and if so, the addresses and dates;**

I have never practiced as a sole practitioner.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

Since graduating from Harvard Law School, I have worked for the following law firms and government agencies:

- Hale and Dorr, 60 State Street, Boston, Massachusetts, 02109. I was an associate (attorney) at Hale and Dorr from September 1985 to March of 1987.
- Ropes & Gray, One International Place, Boston, Massachusetts 02110. I was an associate (attorney) at Ropes & Gray from March 1987 to March 1991.
- Office of the United States Attorney, District of Massachusetts, United States Department of Justice, Room 1107, John W. McCormack Post Office and Court House, Boston, Massachusetts 02110 (current address: John Joseph Moakley United States Courthouse, One Court House Way, Boston, Massachusetts 02210). I served as an Assistant United States Attorney (assigned to the Major Crimes Unit) in the Boston U.S. Attorney's Office

from March 1991 to March 1997. At various times during my tenure, I also lead the office's Urban Anti-Violent Crime Task Force, and was the local coordinator for Operation Triggerlock, a national Department of Justice firearms trafficking prosecution initiative.

- Goodwin Procter LLP, Exchange Place, 53 State Street, Boston, Massachusetts 02109. I am a partner in Goodwin Procter's litigation department. I came to Goodwin Procter & Hoar, as counsel, in March 1997. At Goodwin Procter, I have been a member of the hiring committee for three years, and also am actively involved in the litigation department's training and mentoring programs. For the last three years, I have been the coordinator of the Goodwin Procter summer trial training program.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

2. **What percentage of these appearances was in:**

(a) **federal courts;**

(b) **state courts of record;**

(c) **other courts.**

3. **What percentage of your litigation was:**

(a) **civil;**

(b) **criminal.**

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

5. **What percentage of these trials was:**

(a) **jury;**

(b) **non-jury.**

Answer:

(b)&(c) **Period 1 (August 1984 – August 1985)**

During the initial stage of my career as a practicing lawyer, I served as a law clerk to the Honorable Joseph H. Young, a United States District Judge in Baltimore. My clerkship year (1984-1985) was engaging, and challenging. I arrived at the tail end of the Martin Marietta-Bendix hostile takeover litigation, and soon thereafter the Court was involved in three other high profile cases. The first was a criminal case involving a man who was charged with having participated in a string of abortion clinic bombings in the early 1980s. The second case involved a former intelligence officer who was alleged to have disclosed top secret spy satellite information (concerning Soviet military installations) to a British defense journal. The third case involved civil actions brought by the Federal Savings and Loan Insurance Corporation ("FSLIC") against directors and senior officers of failed savings and loans during the Maryland savings and loans crisis of the 1980's. (I assisted Judge Young in the preparation of the Court's opinion in *FSLIC v. Williams*, 622 F. Supp. 132 (D. Md. 1985) *aff'd in part*, 816 F. 2d 130 (4th Cir. 1987).

In addition, the Court also presided over a Title VII trial arising out of an action brought against the University of Maryland by an African-American woman who alleged that she was denied tenure as a full professor of human ecology because of racial discrimination. I assisted Judge Young in preparing the Court's memorandum and order in that case. *See McAdoo v. Toll, et al.*, 615 F. Supp. 1309 (D. Md. 1985). I also assisted Judge Young with several other matters including -- among others -- an antitrust case, *Ficker v. Chesapeake & Potomac Telephone Co.*, 596 F. Supp. 900 (D. Md. 1984), and a case in which the Court held that Montgomery County's policy of conducting indiscriminate strip searches of temporary detainees was unconstitutional. *Smith v. Montgomery County, MD.*, 607 F. Supp. 1303 (D. Md. 1985).

Although it varied, on average I was in court one or two days a week throughout my clerkship with Judge Young.

Finally, during my clerkship year, approximately 75% of the cases I worked on were civil, and about 25% involved criminal matters. Of the cases that went to trial, all except two were civil, non-jury trials.

Period 2 (September 1985 – February 1991)

During the second stage of my career as a practicing lawyer, I worked as a young litigation associate in two distinguished Boston law firms. First, I spent approximately 15 months at Hale and Dorr (9/85-2/86), followed

by 4 years at Ropes & Gray (3/87-2/91) before joining the U.S. Attorney's Office.

I frequently represented large corporate clients in a range of securities, corporate governance, environmental, real estate, business, and commercial litigation matters. As a young associate, I was heavily involved in discovery matters. As time and my career progressed, I drafted complaints, answers and dispositive motions, including motions to dismiss and for summary judgment, injunctive relief, and civil contempt. I also took and defended numerous depositions, and handled hearings in state and federal courts in Massachusetts and elsewhere.

I was fortunate also to have the opportunity to handle (either as lead counsel or co-counsel) a number of significant *pro bono* cases. These cases provided needed legal services to indigent clients and also allowed me to manage and try significant cases early in my legal career. This early trial and appellate experience was critical to my development as a lawyer. It also allowed me to begin my tenure as an assistant United States attorney with a wide range of courtroom, trial, and case management experience.

During this time the frequency of my court appearances varied, depending on the matters I was involved in as counsel. At times I would go weeks (and sometimes months) without appearing in court. During other stretches, I appeared in court several times a month. For example, in 1986, only a few months after being admitted to the bar, I was lead counsel in a civil rights trial in U.S. District Court in Boston. The trial lasted approximately 2 and ½ weeks, and was preceded by several hearings on dispositive and pre-trial motions, all of which I conducted. Similarly, in 1989 and 1990, I frequently appeared in state court in Boston in connection with four related *pro bono* civil cases that I and Jeffrey Purcell, an attorney with Greater Boston Legal Services, prosecuted on behalf of approximately three dozen working poor tenants of an alleged Boston slum landlord. I conducted (as lead counsel) numerous hearings, many of which were evidentiary hearings that resulted in the court issuing temporary retraining, injunction, and contempt orders, and finally, the appointment of a receiver to manage the landlord's properties.

During this period, I tried two cases to verdict as lead counsel. One was the federal civil rights jury trial I referred to above, and the second was a jury-waived trial in state court. Both were civil cases. I also participated as co-counsel in a jury-waived federal court trial involving a proxy contest for control of a bank holding company. As I recall, that case settled after the third day of trial, before the Honorable Patti B. Saris, U.S. District Judge (formerly a magistrate judge in the U.S. District Court, District of Massachusetts).

I also handled several matters that did not progress to trial, but rather involved evidentiary hearings or oral arguments on motions in federal and state trial courts in Massachusetts, New York, Ohio, Pennsylvania, and New Jersey. I also argued in the Massachusetts Appeals Court and the Supreme Judicial Court of Massachusetts during this period.

From 1985 to 1991, virtually all of my litigation work involved civil cases.

Period 3 (March 1991 – February 1997)

From March 1991 through February 1997, I had the privilege of serving as an assistant U.S. Attorney in the criminal division of the Boston (Massachusetts) U.S. Attorney's Office. During my tenure in that office, I investigated and prosecuted bank fraud, firearms, homicide, narcotics trafficking, bombing and bank robbery cases, as well as high profile cases involving gang violence. At various times I served as the Boston U.S. Attorney's Firearms Prosecution Coordinator, and administered *Operation Triggerlock*, a national firearms prosecution initiative of the U.S. Department of Justice. I also led the *Urban Anti-Violent Crime Initiative Team,* and at one time served as a member of the Mayor's *Anti-Crime Council,* and the *Cease Fire Group* -- a Boston anti-violence campaign involving local, state, and federal law enforcement agencies, courts, and the Boston Public Schools.

In this capacity, I had the opportunity to conduct between 15 and 20 jury trials, 50 to 75 evidentiary hearings, and to argue approximately 10 appeals in the U.S. Court of Appeals for the First Circuit. I was co-counsel in one of the trials, and lead or sole counsel in all of the others. I was in court or the grand jury virtually every week.

The client agencies with which I worked most included the: Boston Police Homicide, Drug Control, Major Crime, Anti-Gang Violence, and Intelligence units; Bureau of Alcohol, Tobacco and Firearms; Federal Bureau of Investigation; United States Secret Service; Drug Enforcement Administration; United States Marshals Service; United States Customs Service; and Massachusetts State Police.

I also worked closely with assistant attorneys general, and community activists and leaders in connection with the Massachusetts Attorney General's Safe Neighborhood Initiative, and with assistant district attorneys in several joint state, local and federal prosecution initiatives.

During this time, all of the cases I handled were criminal, and virtually all were in federal court, except for a high profile murder case I investigated and co-prosecuted in state superior court with assistant Suffolk County district attorney Robert Tochka, my state counterpart and

head of Suffolk County District Attorney Ralph Martin's Gang Unit prosecution team. All of the cases I tried to verdict were jury trials.

Period 4 (March 1997 – Present)

In March 1997, I returned to private practice at Goodwin Procter LLP, first as counsel and then as a partner in the litigation/trial department of the firm. For the last 4 years, my practice has focused on securities and corporate governance matters, product liability, trade secret, business, real estate and civil RICO litigation, and corporate internal investigations. I have done civil trial work, conducted evidentiary hearings, obtained -- and successfully defended against -- injunctions on behalf of corporate and non-profit clients in state and federal courts in Massachusetts and elsewhere. My clients include several Fortune 100 companies, a world renowned (non-profit) museum, and a § 1983 plaintiff who I represent *pro bono* in a federal civil rights case.

During this period, I have appeared in court sporadically. I have conducted evidentiary hearings as lead counsel, and argued (successfully) several dispositive motions and motions for injunctive relief in state and federal courts in Massachusetts and elsewhere; however, I have not tried any cases to verdict during this period. My work has been evenly divided between state and federal court. Approximately 85% of that work has been civil, and 15% criminal.

During this period, I have served on Goodwin Procter's hiring committee, and have been actively involved in the litigation department's training and mentoring programs. For the last three years, I have coordinated the firm's summer trial training program. I also have taught or served as an advisor to the trial advocacy programs at Harvard Law School, Massachusetts Continuing Legal Education ("MCLE"), and the Massachusetts Attorney General's Office. I also have served as an instructor in the Federal Court Public Education Project / Citizen School's law apprenticeship program for inner-city middle school students in Boston.

16. <u>Litigation</u>: **Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

a. the date of representations;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(i) *Commonwealth v. Charles Bogues*, No. SUCR97-10281 (Suffolk Superior Court); ____ Mass. App. Ct. ____ (2001)

(a) (7/96-3/97)

(b) Suffolk (Boston, Massachusetts) Superior Court
Honorable Vieri (Guy) Volterra, Justice of the Superior Court

- Related Case – *United States v. Charles Bogues*, No. 96-10234-RCL (D.Mass.)

(a) (7/96-3/97)

(b) U.S. District Court, Boston, MA

Honorable Zachary Karol, U.S. Magistrate Judge (Deceased)
Honorable Reginald C. Lindsay, U.S. District Judge.

(c) Opposing counsel (for defendant Charles Bogues)
John R. Sprague, Esq.
30 Eastbrook Road
Dedham, MA 02028
781-320-9890

Co-counsel – Robert Tochka, Esq.
Assistant District Attorney for Suffolk County
Chief, Gang Prosecutions Unit
Office of the District Attorney for Suffolk County
One Bulfinch Place, Boston, MA 02114
617-619-4000

Case Summary

These two related cases, *Commonwealth v. Charles Bogues*, and *United States v. Charles Bogues*, arose out of the murder of a high school student five days before Christmas in 1993; the murder occurred during the height of Boston's gang violence problems in the early 1990's. The victim, Louis D. Brown, was an honor student at West Roxbury High School and founder of a student organization known as Teens Against Gang Violence. Louis was known to talk about becoming the first black President of the United States.

On December 20, 1993, Louis innocently walked into a shootout between two warring gangs; during the shootout, more than 30 rounds were fired from .32 caliber, 9mm., .45 caliber, and SWD M-11 ("MAC 11") semi-automatic pistols. He was struck in the back of the head by a bullet fired from a .45 caliber semi-automatic pistol as he walked to his neighborhood subway station while on his way to a Christmas party for Teens Against Gang Violence. Although he was not the only person struck by gunfire, Louis was the only person killed.

For the next three years, Assistant District Attorney Robert Tochka and I, working together with a task force including Boston Police homicide, anti-gang violence, and drug control unit detectives and officers, ATF special agents, state and transit police officers (the "Task Force"), and undercover informants, investigated the Brown murder. As part of a coordinated strategy for the three years following Louis' murder, I prosecuted virtually every narcotics trafficking, firearms, or violent crime occuring in the area of the homicide in order to develop evidence (percipient witnesses and cooperating defendants). This involved bringing about a dozen federal firearms and narcotics prosecutions, including a seven-defendant narcotics and firearms trafficking case and other cases involving undercover controlled purchases of firearms and narcotics. During the course of investigating these cases, the Task Force recovered (during arrests and/or while executing search warrants) substantial quantities of cocaine, crack cocaine, heroin, firearms (*e.g.*, sawed-off shotguns and semi-automatic pistols), a grenade, numerous rounds of ammunition, and thousands of dollars in cash.

This work finally led us to a suspect -- Charles Bogues -- from whom undercover detectives working with the Task Force made several controlled purchases of substantial amounts of crack cocaine, and a TEC-9 semi-automatic pistol. Each of the "controlled buys" was electronically monitored and recorded.

After numerous collateral federal and state investigations, arrests, and prosecutions, Bogues faced the prospect of a near certain conviction on a seven-count federal firearm and cocaine trafficking indictment; a likely 20-year, non-parolable federal sentence; and the fact that the Task Force would continue to develop evidence against him, evidence already arguably sufficient to sustain a murder indictment and eventual homicide conviction, and a resulting lengthy consecutive term of imprisonment.

In January 1997, Bogues entered into plea agreements with the Suffolk County District Attorney's Office and the Office of the United States Attorney for the District of

Massachusetts. The same month, he gave a videotaped confession to Boston homicide detectives. In March 1997, Bogues pled guilty to second degree murder in Suffolk Superior Court (in exchange for dismissal of the federal indictment). He was sentenced to life in prison, and will be eligible for parole in March 2017.

(In September 1999, Bogues filed a motion seeking to vacate his conviction, alleging, among other things, ineffective assistance of counsel, and that the prosecutors had unlawfully "coerced" and "bullied" him into pleading guilty. The Court quickly denied the motion, and characterized the supporting allegations as "meritless" and "spuriously made." (See Memorandum of Decision and Order on Defendant's Motion for Post-Conviction Relief, No. SUCR97-10281 (Suffolk Superior Court, Jan. 5., 2000) (Volterra, J.) (copy attached at Exh. A.))

Case Summary

(ii) *Tammy Rodgers, et al v. Charles Smith*, C.A. No. 27890
Roland Frejuste, et al v. Charles Smith, C.A. No. 27891
Lee Brown, et al v. Charles Smith, C.A. No. 27892
Gerard Carmely, et al v. Charles Smith, C.A. No. 27893
[consolidated cases]

(a) (3/89-12/90)

(b) Honorable E. George Daher, Chief Justice
Boston Housing Court

(c)♦ Opposing Counsel (for defendant Charles Smith)
Michael A. Brown
formerly of Grayen, Brown & Dilday
27 School Street
Boston, MA 02109
617-227-3470
(I understand that Attorney Brown no longer practices law; to date, I have been unable to locate him.)

♦ Co-counsel – Jeffrey W. Purcell, Esq.
Housing Unit
Greater Boston Legal Services
197 Friend Street
Boston, MA 02114
617-371-1234

♦ Kevin O'Connor, Esq.
Testa, Hurwitz & Thibeault LLP
125 High Street
Boston, MA 02110

617- 728-0050

- Herbert L. Holtz, Esq.
  Holtz, Gilman & Grunebaum
  25 New Chardon Street
  Boston, MA 02114
  617-720-2663

Case Summary

During 1989-90, I led a team of Ropes & Gray associates (working with attorney Jeff Purcell of Greater Boston Legal Services) in prosecuting four civil actions that eventually were consolidated in the Boston Housing Court against an alleged "slum landlord" on behalf of approximately 30 low income, working tenants, most of whom were employed in Boston area hotels and were members of the local hotel workers' union. All of the tenants were black, and many were Haitian immigrants.

The tenants' apartments were in four tenement-style buildings in the Dorchester and Mattapan sections of Boston, and were in deplorable condition. Many were without heat or hot water, and in some instances lacked working sanitary facilities. Tenants also endured crumbling ceilings and walls, and a landlord who allegedly collected rents armed with a .38 caliber revolver. The rents typically ranged from $600 to $700 per month.

During the course of the court proceedings, we obtained several temporary restraining, preliminary injunctive, and contempt orders against the landlord, including a contempt order placing the landlord under "house arrest" in one of his slum properties for several days during the Thanksgiving holiday season. Eventually we negotiated a favorable settlement, which resulted in the landlord forfeiting all of the properties to the tenant plaintiffs pursuant to a September 25, 1990 Agreement for Judgment (copy attached as Exh. B). With the assistance of a particularly able real estate associate from Goulston & Storrs, P.C. and lawyers from the City of Boston, we were able to secure public grants and private financing for the renovation of all of the properties.

(iii) *United States v. Charles Powell*, No. CR-92-10380-WD (D. Mass.), *aff'd.* 50 F.3d 94 (1st Cir. 1995)

(a) 2/92-12/95

(b) United States District Court
District of Massachusetts

- Honorable Douglas P. Woodlock
  United States District Judge
  617-748-9293

- Honorable Joyce London Alexander

U.S. Magistrate Judge

(c)♦ Co-counsel – Kevin J. Cloherty, Esq.
(former Assistant U.S. Attorney)
Counsel, Testa, Hurwitz & Thibeault
125 High Street
Boston, MA 02110
617-248-7000

♦ Opposing Counsel (for defendant Charles Powell)
Norman S. Zalkind, Esq.
Zalkind, Rodriguez, Lunt & Duncan
652 Atlantic Avenue
Boston, MA 02110
617-742-6020

♦ Elizabeth Lunt, Esq. (same)
Zalkind, Rodriguez, Lunt & Duncan
652 Atlantic Avenue
Boston, MA 02110
617-742-6020

Case Summary

This trial arose out of a 1992 gang-related shootout in the Roxbury section of Boston. The shootout between rival gang members occurred in the early afternoon in front of an inner-city elementary school while school was letting out. A 15 year-old youth was killed when he was struck in the heart by a round from a .44 caliber handgun fired by the 32-year-old defendant, who at the time was a convicted felon with a lengthy record of drug distribution and firearm crimes. A mother also was struck in the leg by a bullet fired during the shootout as she walked her 5-year-old son home from school.

The state murder prosecution was complicated by the fact that numerous rounds were fired from several weapons by at least three different shooters, two of whom appeared to be shooting at the defendant. Therefore, state homicide charges were dismissed in favor of a federal prosecution. The defendant was charged federally with unlawful possession of firearms and ammunition, including the murder weapon.

At trial, the jury rejected the defendant's self defense claim and convicted the defendant of all charges. At sentencing, the Court imposed an enhanced term of incarceration after concluding by clear and convincing evidence that the defendant: (1) used one of the firearms he was charged with unlawfully possessing in connection with the commission of a homicide; and (2) had committed perjury at trial. The First Circuit affirmed the conviction and sentence. *See United States v. Charles Powell*, 50 F.3d 94 (1st Cir. 1995)

(iv) *United States v. Peter Regan,* No. CR-91-10227MA (D. Mass.); *aff'd* 989 F.2d 44 (1st Cir. 1993)

(a) 6/91-12/93

(b) United States District Court
District of Massachusetts

- Honorable A. David Mazzone
  Senior U.S. District Judge

- Honorable Robert B. Collings
  Chief U.S. Magistrate Judge

(c)
- Co-counsel – Robert J. Lynn
  (former Assistant U.S. Attorney); currently Associate Justice of the Superior Court ,
  Hillsborough County Superior Court
  300 Chestnut Street
  Hillsborough, NH 03101
  603-669-7410

- Opposing counsel (for defendant Peter Regan)
  George F. Gormley, Esq.
  655 Summer Street
  Boston, MA 02210
  617-478-2750

Case Summary

This case involved the prosecution of a senior vice president of the former Shawmut Bank on 55 counts of bank fraud. The case arose out of an embezzlement scheme in which the defendant diverted several million dollars of payments on delinquent and problem commercial loans to his own accounts at banks in Florida, the Cayman Islands, and Switzerland.

After an investigation by the FBI and bank investigators, the defendant plead guilty to a 55 count indictment. At sentencing, the Court rejected the defendant's motion for a downward departure (from the U.S. Sentencing Guidelines) on diminished capacity grounds. Rather, the Court enhanced the defendant's sentence for "abuse of trust" (U.S.S.G. §3B1.3) and "more than minimal planning" (U.S.S.G. §2B1.1(b)(4)). Accordingly, the Court imposed a 40-month term of incarceration, and restitution, fines, and orders that allowed the bank to recover $2.5 million in cash, and other assets and valuables totaling $3.8 million.

The First Circuit affirmed the defendant's sentence on appeal. *See United States v. Peter Regan,* 989 F.2d 44 (1st Cir. 1993).

(v) *United States v. James Berger*, No. CR-94-10058 (D. Mass.).

(a) 1/94-12/95

(b) United States District Court
District of Massachusetts
Honorable Douglas P. Woodlock
United States District Judge

(c) Opposing counsel (for defendant James Berger)
Miriam Conrad, Esq.
Assistant Federal Defender
Federal Defender Office
408 Atlantic Avenue
Boston, MA 02110
617-223-8061

Case Summary

This trial arose out of a gang-related shooting in the Mission Hill Housing project in Boston. During the shooting, a 5-year-old child was struck with a stray bullet as he played in front of the entryway to his apartment. The case was investigated by the Boston police and ATF special agents.

After a week-long trial, the jury convicted the defendant of, among other charges, unlawful possession of a firearm (a TEC-9, 9mm. semi-automatic pistol) by a convicted felon in connection with the shooting. Because of the defendant's criminal record, and the fact that the firearm was used in the shooting, the Court sentenced the defendant to the maximum 10-year, non-parolable federal prison term.

(vi) *United States v. Freddie Cardoza*, No. CR-95-10260 (D. Mass.)
129 F.3d 6 (1st Cir. 1997)

(a) 1/95-8/97 (I argued the appeal of this case as a special assistant U.S. attorney; I had joined Goodwin, Procter & Hoar in March 1997)

(b)
- United States District Court,
District of Massachusetts
Honorable William G. Young
Chief U.S. District Judge

- Honorable Marianne B. Bowler
U.S. Magistrate Judge

(c) Opposing counsel (for defendant Freddie Cardoza)
John M. Moscardelli, Esq.
Peters & Moscardelli
100 Boylston Street
Boston, MA 02116
617-423-6222

Case Summary

This case involved the prosecution of a reputed gang member under the recently enacted Youth Handgun Safety Act ("YHSA"), 18 U.S.C. §922(x), and the Armed Career Criminal Act ("ACCA"), 18 U.S.C. §924(e). The defendant (who Boston police youth violence strike force officers wanted to question about the recent fatal shooting of rap singer Bobby Brown's bodyguard at a local Boston night club) was prosecuted for his role in procuring a 9mm. semi-automatic handgun for a juvenile, and his own possession of a single round of 9mm. ammunition, which he was prohibited by federal law from possessing because of his status as a convicted felon and recidivist violent offender.

After trial, the jury convicted the defendant of possessing a single round of 9mm ammunition. This subjected the defendant to a mandatory minimum, non-parolable federal sentence under the provisions of the ACCA because of his record of violent felony convictions. The jury also convicted the defendant of aiding and abetting possession of a handgun by a juvenile, a violation of the YHSA. At sentencing, the Court sentenced the defendant to a 19 year, 8 month federal prison term under the ACCA, and the Armed Career Criminal provision of the U.S. Sentencing Guidelines.

Prior to trial, the district court denied the defendant's motion to dismiss the indictment on Commerce Clause grounds, *see United States v. Cardoza,* 914 F. Supp. 683 (D. Mass. 1996) (Young, J.). The First Circuit affirmed the defendant's conviction and sentence, rejecting his Commerce Clause and Fourth Amendment challenges to the convictions, and his Eighth Amendment challenge to his sentence. *United States v. Cardoza,* 129 F.3d 6 (1st Cir. 1997).

(vii) *United States v. Frederick Hardy and Raymond Moreno*, No. 91-10180-REK
United States v. Moreno, 991 F.2d 943 (1st Cir. 1993)
(affirming conviction and sentence)
United States v. Hardy, 37 F.3d 753 (1st Cir. 1995)
(reversing conviction)
United States v. Hardy, 99 F.3d 1242 (1st Cir. 1996)
(affirming sentence enhancement after second conviction)

(a) 6/91-6/94

(b) United States District Court
District of Massachusetts

- Honorable Robert E. Keeton
  U.S. District Judge (trial)

- Honorable Marianne B. Bowler
  U.S. Magistrate Judge (pre-trial hearings)

- Honorable Reginald Lindsay
  U.S. District Judge (plea and resentencing of defendant Hardy after first conviction vacated)

(c) ♦ Co-counsel – Michael J. Pelgro,
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Office of the U.S. Attorney
District of Massachusetts
John Joseph Moakley
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617-748-3100

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  617-876-2547
  (former assistant federal defender)

- Kevin S. Nixon, Esq. (for defendant Raymond Moreno)
  65a Atlantic Avenue
  Boston, MA 02110
  617-227-6363

- Henry Owens, III, Esq. (same)
  Lane, Altman & Owens LLP
  101 Federal Street
  Boston, MA 02110
  617-345-9800

Case Summary

This trial arose out of a 1991 gang-related shooting in the Lenox Street Housing Development in Boston. This incident followed on the heels of an earlier incident during which a 15 year-old boy (who testified in this trial) was shot in virtually the same location. At the time of the incident giving rise to this case, one of the defendants was out on bail in connection with the earlier shooting of the 15 year-old boy.

The defendants were apprehended by Boston and Massachusetts state police anti-gang violence unit officers after a foot chase through the development. The officers chased the defendants after hearing gunshots as they (the officers) were conducting a walk-through the development. Officers recovered three firearms, a loaded double-barreled sawed-off shotgun, a .32 caliber Browning semi-automatic pistol, and a Taurus 9mm. semi-automatic pistol. The latter firearm was found with it's slide in the "lock-back" position, indicating that it had recently fired its full complement of ammunition.

After a 10-day trial, both defendants were convicted of unlawfully possessing firearms and ammunition.

Defendant Moreno received an enhanced guideline sentence because he committed the crimes while on release from other charges. The First Circuit affirmed his conviction, finding that certain improper comments by the prosecutors during the opening statement and closing argument, although regrettable, nonetheless constituted harmless error. *United States v. Moreno,* 991 F.2d 943 (1st Cir. 1993) (Boudin, J.; Torrruella, J., dissenting).

Defendant Hardy was sentenced initially to an enhanced 21 year, 10 month sentence under the provisions of the ACCA, and the Armed Career Criminal sentencing guideline. The First Circuit vacated the conviction on the grounds the *Moreno* panel previously concluded were harmless with respect to defendant Moreno. *United States v. Hardy,* 37 F.3d 753 (1st Cir. 1994) (Torruella, J.).

Defendant Hardy was convicted a second time. However, prior to resentencing, Hardy filed post-conviction motions in state court, which resulted in certain violent felony convictions that served as ACCA predicates being vacated in state court. Therefore, at the time of his resentencing in federal court, Hardy was no longer subject to the enhanced sentencing provisions of the ACCA.

Nevertheless, the sentencing judge (Lindsay, J.) departed upwards from the otherwise applicable sentencing guideline range and imposed a (non-ACCA) statutory maximum sentence of 10 years in federal prison. In doing so, the Court noted the defendant's lengthy affiliation with the Columbia Point Dogs, a Boston street gang with a conspicuous history of inter-gang violence and drug distribution, and his "ten-year history of grievous anti-social conduct," which involved possession of dangerous weapons and violent assaults, including charges of attempted murder and assaults against women.

Defendant Hardy appealed this enhanced sentence, but the First Circuit affirmed the conviction and sentence. *United States v. Hardy,* 99 F.3d 1242 (1st Cir. 1996) (Cyr, J.).

(viii) *United States v. Andre McCants*, No. CR-92-10278Z-Z (D. Mass).

(a) 1/92-12/93

(b) United States District Court
District of Massachusetts
Honorable Rya Zobel
U.S. District Judge

(c) Opposing counsel (for defendant Andre McCants)
John W. Laymon, Esq.
101 Merrimac Street
Boston, MA 02114
617-723-4860

Case Summary

This case arose out of the firebombing of a Boston police drug control unit detective's home after the detective seized crack cocaine and a sawed-off shotgun while executing a search warrant at the defendant's apartment. The defendant allegedly orchestrated the firebombing and eventually pled guilty to federal firearm and drug charges. My recollection is that the defendant was sentenced to a 72-month, non-parolable federal prison term.

(ix) *United States v. Louis Andrade*, No. CR-94-10111-NG (D. Mass.); 94 F.3d 9 (1st Cir. 1996); *see also* 1994 WL 54810 (D. Mass., June 7, 1994)(magistrate judge's "dangerousness determination")

(a) 1/94-12/96

(b) United States District Court
District of Massachusetts
Honorable Nancy Gertner, U.S. District Judge

(c) Opposing counsel (for defendant Louis Andrade)
Paul M. Yee, Esq.
52 Temple Place
Boston, MA 02108
617-426-4411

Case Summary

This trial arose out of the attempted shooting of a Boston anti-gang violence unit police officer during a car stop and drug arrest of the defendant. Following his arrest, the lodging of federal firearms and drug distribution charges, and an evidentiary hearing, the Court detained the defendant without bail, finding by clear and convincing evidence that there were no conditions, or combination of conditions, of release that would adequately

assure the safety of the community. The Court noted that "although [the defendant was] barely twenty-three years old, [he was] by no means a stranger to the criminal justice system." The Court continued:

> [w]ithin the past five years, he has been convicted in Massachusetts state court of armed robbery (two separate offenses); armed assault on a dwelling house; and carrying a dangerous weapon. [The defendant] also has been convicted in [federal] court of being a felon in possession of a firearm. In addition to these convictions, he has been charged with numerous other drug and weapons offenses, several of which were pending when the offenses for which he was indicted in this case were allegedly committed.

United States v. Andrade, 1994 WL 548103 (D. Mass. June 7, 1994) (Karol, M.J.)

After the trial, the jury convicted the defendant of possession with intent to distribute cocaine base (crack). The jury hung on the firearms charges. At sentencing, the Court rejected the defendant's argument that the crack cocaine sentencing guideline violated the Fourteenth Amendment, and sentenced the defendant pursuant to that guideline. In addition, the Court (Gertner, J.) enhanced the defendant's sentence concluding, among other things, that the defendant had grabbed a firearm from his ankle and attempted to shoot the police officer as the officer attempted to handcuff him. *See* U.S.S.G. §3A1.2(b) (sentencing enhancement for aggravated assault).

The First Circuit affirmed both the defendant's conviction and sentence. *United States v. Andrade,* 94 F.3d 9 (1st Cir. 1996)

(x) *Roman Gonzalez, et al v. Michael Fair*, No. 87-5380 (Middlesex Superior Court), *rev'd*, 407 Mass 448 (1990).

(a) 5/88-2/91

(b) Middlesex Superior Court
Cambridge, MA
Honorable Hiller B. Zobel
Associate Justice, Superior Court

(c) ♦ Opposing Counsel (for defendant Michael Fair, Commissioner, Department of Corrections, Commonwealth of Massachusetts)
Sandra L. Hautanen
(former Assistant Attorney General, Commonwealth of Massachusetts) (currently
Assistant District Attorney)
Worcester County District Attorney's Office
Courthouse
Worcester, MA 01608

508-755-8601

- Co-counsel – A. Clayton Spencer, Esq.
  Assistant to the President
  Office of the President
  Harvard University
  Cambridge, MA 02138
  (former Ropes & Gray associate, and former Assistant U.S. Attorney, D. Mass (Boston))

Case Summary

While a young associate at Ropes & Gray, my then colleague A. Clayton Spencer and I were appointed to represent *pro bono* a class made up of all inmates in the custody of the Massachusetts Department of Corrections ("DOC"). The inmates had alleged in their *pro se* putative class action filings that they were being charged, tried, and punished in prison disciplinary proceedings based on the unconstitutional use of drug surveillance and testing procedures that were not sufficiently reliable to provide a proper basis for punishment.

At the trial court level, we prevailed on our due process claims, obtaining a judgment and order enjoining the DOC from using as evidence in inmate disciplinary proceedings any test results from the DOC drug testing program until and unless the program employed a methodology for conducting such tests that conformed with certain prescribed, recognized federal guidelines. (copy attached as Exh. C)

The Commonwealth appealed the judgment and order to the Massachusetts Appeals Court. Soon after I argued the appeal in the appeals court, the Supreme Judicial Court took the case *sua sponte* on direct appellate review. Although I argued that the case presented a paradigmatic example of a well settled exception to the mootness doctrine because it was "capable of repetition yet evading review," the Supreme Judicial Court nevertheless vacated the injunction concluding that the case was moot because certain of the class representatives had been released from custody. *See* 407 Mass 448 (1990).

(xi) *Huntingdon Life Sciences v. People for the Ethical Treatment of Animals*, No. 2:97CV597; 986 F. Supp. 982 (E.D. Va. 1997) (Norfolk Division).

(a) 5/97-1/98

(b) United States District Court
Eastern District of Virginia
(Norfolk Division)

- Honorable Henry Coke Morgan, Jr.
  U.S. District Judge

(decided dispositive motions, *see* 986 F.Supp. 982 (E.D. Va. 1997)

- Honorable Robert G. Doumar
  Senior U.S. District Judge
  (presided over 2 day preliminary injunction hearing and entered preliminary injunction against defendants)

(c)
- Co-counsel – Stephen D. Poss, Esq.
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  Exchange Place
  Boston, MA 02109
  617-570-1000

- Opposing counsel (for defendant PETA)
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  Tavss, Fletcher, Earley & King, P.C.
  First Virginia Tower, 14th Floor
  555 Main Street
  Norfolk, VA 23510
  757-625-1214

- Raymond E. Beckering, III, Esq. (for defendant PETA)
  Willey & Chamberlain
  940 Trust Building, 40 Pearl Street, N.W.
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  616-458-2212

- Philip J. Hirschkop, Esq. (for defendant PETA)
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  Alexandria, VA 22313
  703-836-6595

- Glen A. Huff, Esq. (for defendant PETA)
  Huff, Poole & Mahoney
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  757-499-1841

Case Summary

This case arose as a result of the actions of Michele Rokke, a young undercover operative for People for the Ethical Treatment of Animals ("PETA"). Ms. Rokke infiltrated Goodwin Procter client Huntingdon Life Science, Inc.'s ("HLS") New Jersey research center and, among other things, misappropriated extremely sensitive trade secret

documents belonging to HLS and it's pharmaceutical company clients. These documents included drug protocols and experimental designs relating to processes of design, testing, and marketing costing upwards of $500 million dollars.

We filed, on behalf of HLS, a federal injunction and damages action pursuant to, among other laws, the federal RICO statute, 18 U.S.C. § 1962. Initially we obtained an *ex parte* temporary restraining order against the PETA defendants. Following a lengthy two-day evidentiary hearing during which both parties called several witnesses, the Court entered a preliminary injunction prohibiting the defendants from disclosing or disseminating any of the trade secret materials the PETA defendants had obtained from HLS. (Doumar, J.) My co-counsel Stephen Poss and I litigated the injunction hearing. We also filed a contempt motion against PETA, which also was allowed.

At subsequent hearings, the Court allowed the defendants' motion to dismiss certain claims in our client's complaint. The Court, however, ultimately denied the PETA defendant's motions to dismiss HLS's civil RICO claims, and issued a decision of first impression on civil RICO claims in this context. *See Huntingdon Life Sciences, Inc. v. Michele Rokke, et al.,* 986 F. Supp. 982 (E.D. Va. 1997). I prosecuted the civil RICO aspect of the case throughout the litigation. Eventually, the case was settled by the parties under a confidential settlement agreement.

Kevin Purvis v. Greene Parlon

(a) 6/86-1/87

(b) United States District Court
District of Massachusetts
Honorable Douglas P. Woodlock
U.S. District Judge

(c) ♦ Opposing counsel (for defendants Parlon and Greene)
Nancy Merrick, Esq.
(formerly Assistant Corporation Counsel, City of Boston)
Associate Justice of the Superior Court
1417 U.S. Post Office
90 Devonshire Street, 2nd Floor
Boston, MA 02109
617-788-8130 (Boston)
978-744-5500 (Salem)
978-687-7463 (Lawrence)

Case Summary

While a first year associate at Hale and Dorr (in 1986), I first-chaired a two-week jury trial in federal court involving civil rights claims lodged by an inmate plaintiff against the

police. Hale and Dorr had been appointed by the Court to represent *pro bono* a young African American man who had been arrested by police, tried, and convicted of burglarizing homes in a Boston neighborhood. He had filed a *pro se* prisoner complaint under 42 U.S.C. § 1983 against the two arresting officers alleging, in essence, that they had arrested him without probable cause, and that his arrest was based on little more than the fact that he was a black male. As I recall, the description of the "suspect" that the police relied on did not contain much more information than the fact that the suspect was a black male.

During the course of the proceedings, we prevailed against the defendants' motions to dismiss, for summary judgment, and a directed verdict based upon, among other things, qualified immunity grounds. At the conclusion of the evidence, the jury returned a verdict in favor of the defendant police officers after deliberating for a full day. Subsequently, the plaintiff filed a *pro se* motion for a new trial arguing that the judgment should be vacated and a new trial granted because defendant's counsel had acted improperly during the trial and that plaintiff's counsel had not effectively represented him during the proceedings. The Court (Woodlock, J.) denied the motion, concluding that the plaintiff had been well represented and that his claims were wholly without merit. *See Purvis v. Greene, et al.* (Memorandum Decision, copy attached as Exh. D). (The plaintiff subsequently brought two more unsuccessful civil rights actions against authorities during is incarceration, each of which was dismissed.)

(xii) *Historic Salem, Inc., et al v. Peabody Essex Museum, Inc. et al*, No. 00-0717-D (Lawrence Superior Court)

(a) 4/99-present

(b) Essex Superior Court (Lawrence Division)
Honorable Richard E. Welch, III
Associate Justice
Superior Court
617-788-8130 (Boston)
978-744-5500 (Salem)
978-687-7463 (Lawrence)

(c)
- Opposing counsel (for plaintiffs)
  Joan M. Griffin, Esq.
  Testa, Hurwitz & Thibeault
  125 High Street
  Boston, MA 02110
  617-248-7000

- Co-counsel (for defendant Salem Redevelopment Authority)
  George W. Atkins, III, Esq.

Ronan, Segal & Harrington
59 Federal Street
Salem, MA 01970
(978) 744-0350

- Marini Torres-Benson, Esq. (for defendant Division of Capital Asset Management, Commonwealth of Massachusetts)
  Office of the Attorney General
  One Ashburton Place, 20th Floor
  Boston, MA 02108
  (617) 727-2200

17. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

For the past two years, I have served on the Diversity Committee of the Boston Bar Association. My work on this committee has included being a speaker for Diversity Committee and minority bar association sponsored events.

Since the summer of 2000, I have served on Governor A. Paul Cellucci's and Lieutenant Governor Jane Swift's Diversity Advisory Group. The Advisory Group's purpose is to develop a new initiative to increase the diversity of the Commonwealth's Executive Branch workforce. This initiative is based on the Governor's and Lieutenant Governor's desire to improve the number of protected group members, particularly at the highest levels of government, and to create a more diverse pool of candidates so that the Commonwealth's workforce better reflects Massachusetts' people.

I have, for a number of years, been a speaker in the Boston U.S. Attorney's Stay in School program for Boston area high school students. At various times during the last several years, I also have conducted mock trials for inner-city high school students at Cathedral and English high schools, in Boston.

In addition, over the course of the last three years, I have represented Philip Morris, Inc. in various litigation matters. More specifically, I represented the Company in the case brought against Philip Morris and other tobacco companies by the Massachusetts Attorney General. During that litigation, I deposed several high ranking Massachusetts public officials, including for example, the Deputy Commissioner of the Department of Medical Assistance, the Massachusetts Medicaid agency. This case ultimately was settled pursuant to the terms of the Master Settlement Agreement entered into by the defendant tobacco companies and the attorneys general of several prosecuting states, including Massachusetts.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   Answer: I expect to receive a lump sum payment of my partnership share calculated on services rendered through about 5/31/01 within 30 days of my withdrawal from the firm. Although uncertain, I expect the amount to be between $100,000 and $200,000. In addition, I also expect to continue participating in Goodwin Procter LLP's Partnership Sharing Savings Plan, and Goodwin Procter LLP's Partnership Retirement Plan; the income from each will be reinvested in the Fidelity Investments Daily Income Trust.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

   Answer: I will consult with the Department of Justice ethics official in the event of a potential conflict of interest.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.**

   Answer: No.

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

   Answer: *See* attached SF-278.

5. **Please complete the attached financial net worth statement in detail (add schedules as called for).**

   Answer: *See* attached net worth statement.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   Answer: No.

III. GENERAL (PUBLIC)

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

Answer:

In addition to the significant *pro bono* cases I have litigated over the years, I currently represent another *pro bono* plaintiff in a civil rights case currently pending in federal court in Boston. More significantly, I have actively participated in many community-based organizations that are involved in helping people in a variety of ways. They are as follows:

Ten Point Coalition. The Coalition has been at the forefront of the Boston's widely recognized, successful efforts to combat violence on our City's streets, support and reinforce urban families, and rebuild and solidify many of Boston's schools and neighborhoods. To accomplish this, the Coalition has collaborated with the broader faith community, community groups, federal, state, and city governments, and the law enforcement and business communities here in Boston. To these ends, the Coalition has implemented several programs aimed at solidifying and building upon the City's violence prevention and community building successes, including: the *Adopt a Gang* intervention initiative; *Home Visitation Initiative* for at-risk youth; *100 Minutes*, a program involving church-supported organizing on the neighborhood level directed at working with and supporting local schools; *Youth Move - Boston,* a collaboration with the Emmanuel Gospel Center to train, support, and sustain 20 full time youth workers in Boston neighborhoods; *Matchplace,* a mentoring program for at-risk youth, including young people recently released from the custody of the Dept. of Youth Services; and *Fatherhood Initiatives -- Partners for Fragile Families,* a collaborative partnership with six Boston-based community agencies aimed at fostering responsible fathering and delivering a broad range of services and support systems for young fathers and their families.

During my tenure as a federal prosecutor, I worked with the Rev. Ray Hammond, one of the Coalition's founders, and other representatives of the faith community in Boston regarding the Coalition's violence prevention efforts involving at-risk young people. Since leaving the U.S. Attorney's Office, I have assisted in the Coalition's annual fundraising efforts by serving on its annual fundraising committee, and rallying support for the Coalition's programs within the legal community.

Louis Brown Peace Institute. The Louis Brown Peace Institute grew out of the tragic death of Louis D. Brown on a Boston Street corner five days before Christmas in 1993. Brown was a 15-year-old, African- American high school honor student, and a founder of Teens Against Gang Violence. Brown was struck in the back of the head with a .45 caliber bullet when he innocently walked into a shootout between two warring street

gangs. Bob Tochka of the Suffolk County District Attorney Ralph Martin's Office, and I investigated Brown's murder for four years, and eventually successfully prosecuted the murder case against his assailant.

In the wake of this highly visible tragedy, Louis's parents were inspired to start the Peace Institute in his honor. Collaborating with the Harvard School of Public Health (Violence Prevention Programs), the Institute was awarded a grant from the U.S. Department of Education, Safe and Drug Free Schools Program, to, among other things, develop an innovative elementary school violence prevention curriculum entitled, "Peacemaking Skills for Life (PSL)."

The curriculum the Institute developed provides for the direct training of students and school staff in PSI techniques, as well as parent/guardian and community training sessions. The core curriculum includes a review of literature that covers the many diverse issues surrounding violence that frequently confront urban students, reinforces peacemaking values, and introduces peacemaking practices. In addition, the Institute sponsors a *Victims of Violence Outreach Services* and the *Louis D. Brown Peace Fellows* programs. It also successfully lobbied Massachusetts lawmakers, which resulted in the passage of much needed legislation supporting victims of violent crime. Finally, the Peace Institute also sponsors and publishes annually a volume of *Boston's Book of Peace* containing award winning essays written by students involved in the *Louis D. Brown Peace Curriculum.*

I have served on the Board of Directors of the Institute for the last two years, and also have been involved in the Institute's fundraising efforts.

Citizen Schools. For the past few years, I have been involved as a volunteer teacher and mentor in the Citizen Schools/Federal Court Public Education Project law apprenticeship program for inner-city middle school students here in the City of Boston. Along with Allison Buck, a former associate in our firm, I also have promoted Goodwin Procter's ongoing corporate sponsorship and financial support of the legal apprenticeship program.

Each semester, Goodwin Procter sponsors a middle school class, which involves bringing the class to the firm each week and, tutoring, teaching, and mentoring the students, and helping them prepare for the trial of a model case. The semester culminates with the students conducting a mock trial in the United States District Court here in Boston, before actual federal and state court judges, and twelve person celebrity juries.

Boston Bar Association's Summer Jobs Program. I have served as a mentor in the BBA's summer jobs program for inner-city high school students here in Boston. I have initiated Goodwin Procter's participation in the program, served as a mentor to students of color the firm has hired as a corporate participant in the program, and been a speaker for program events.

Boston Lawyers Group (f/n/a The Boston Law Firm Group). For the past few years, I have been involved as a mentor in the Boston Lawyer's Group Mentor Program for law students and young lawyers of color. This organization is dedicated to recruiting,

retaining, supporting, and advancing the careers of young lawyers of color here in Boston. I also have served as a keynote speaker at Mentor Program dinners and breakfasts. In addition, each of the past three years, I have visited Boston-area law schools, speaking to minority law students on behalf of the Boston Lawyers Group.

NAACP-Sponsored Afro-Academic Cultural, Technological, and Scientific Olympics ("ACTSO") Program. During the summer of 1981, I organized and raised money for the Schenectady (N.Y.) NAACP branch's ACTSO program. The ACTSO program provides a vehicle for high school students of color to demonstrate their academic talents and achievements in the context of local, state, regional and national competitions. As I recall, that year we raised enough money to send five local winners to the national ACTSO convention and competition in Denver, Colorado.

Cease Fire Group. The Cease Fire Group was an urban anti-violence campaign involving federal, state, and local law enforcement agencies and the Boston public schools. My role in the group was to speak to students at various Boston middle schools and alternative schools, and "at risk" young people who were under court supervision (on probation). One of these sessions was featured on the November 14, 1996 *"Solutions"* segment of *ABC's World News Tonight with Peter Jennings,* and another on a subsequent *PBS* special.

2. **Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.**

Answer: No.

EXHIBIT A

12

Commonwealth of Massachusetts

Suffolk, ss.

Superior Court
SUCR97-10281

Commonwealth

v.

Charles Bogues

Memorandum of Decision and Order on Defendant's Motion for Post-Conviction Relief

Findings

On February 7, 1997, a Suffolk County grand jury indicted the defendant for Murder in the First Degree (G. L. c. 265, § 1) and Possession of a Firearm (G. L. c. 269, § 10 (a)) On February 26, 1997, defendant represented by Attorney Walter Underhill was arraigned on both offenses. Defendant was ordered held without bail. A mittimus without bail issued from the court. Immediately afterwards, the defendant was transferred to federal custody. On March 12, 1997, a plea agreement, which had been entered into between the defendant and the Suffolk County district attorney's office on January 22, 1997, was filed with the case documents in open court. Simultaneously, a plea agreement which had been entered into between the defendant and the United States Attorney's Office for the District of Massachusetts on January 22, 1997, was filed with the case documents in open court. The defendant's privately retained lawyer, John R. Sprague, negotiated the plea agreements. The defendant alleges that his family paid Sprague approximately$20,000 to represent him in the United States District Court and the Massachusetts Superior Court. Thereafter, on March 12, 1997, the defendant pleaded guilty before this court, to the reduced charge of Murder in the Second Degree and Possession of a Firearm. At this hearing the defendant was represented by Attorney

1

Robert L. Jubinville, Jr. The defendant alleges that Sprague paid Jubinville $2,000 to handle the plea of guilty procedings. This court has reviewed the transcript of the plea colloquy conducted on March 12, 1997. It is apparent that the defendant pleaded guilty voluntarily, intelligently and knowingly. This court detected no procedural or legal defect to the acceptance of the defendant's guilty plea.[1]

On March 12, 1997, the defendant was awarded the mandatory life sentence (with the possibility of parole) on the second-degree Murder charge, and a sentence of not more that five or less than four years to be served concurrently with the murder sentence.

In late April 1997, the defendant filed a motion to revise and revoke, and a motion for free transcript. On May 23, 1997, this court denied the motions without a hearing.

On July 8, 1997, the defendant, through new private counsel, Kevin J. Reddington, Esq. filed a motion for transcript of plea colloquy. On July 16, 1997, this court allowed this motion, and Mr. Reddington was notified.

In September and November of 1999, the defendant filed the instant motion *pro-se*. The defendant seeks post-conviction relief pursuant to Mass. R. Crim. P.30 (a) & (b) through the appointment of counsel to represent him is setting aside his plea of guilty on the ground that his privately retained counsel Robert L. Jubinville, Jr., Esq. was formerly a state police officer. The defendant alleges that there is a question as to whether Attorney Jubinville was an agent of the prosecution at the time defendant pleaded guilty to the crimes. Furthermore, the defendant alleges in his papers that Assistant District Attorney Robert N. Tochka and Assistant United States Attorney Ralph F. Boyd, Jr. utilized the defendant's paid counsel, Attorney John R. Sprague to coerce the defendant to plead guilty involuntarily on March 12, 1997, through the threat of the filing of additional criminal charges and enhanced sentencing terms.

The defendant also alleges that he should be permitted to withdraw his plea of guilty due to the ineffective assistance of counsel that he received from Attorneys Sprague and Jubinville.

The Murder

On the morning of Monday, December 20, 1993, four young men confronted the operator of an automobile that had come to a stop at the intersection of Tonawanda and Geneva Avenue in Dorchester. The operator of the auto was physically assaulted.

The operator of the auto returned on foot armed with a handgun. The young men chased this intruder away from this corner. The young men then dispersed and returned armed with various firearms. One of these young men telephoned the defendant Charles Bogues. Defendant Bogues was informed that his assistance was needed.

Bogues armed himself with a .45 caliber semi-automatic pistol and drove to the corner. Bogues hid the handgun under his car.

The intruder who had been assaulted returned to the area and a shoot-out erupted. Bogues retrieved his automatic pistol running from Tonowanda towards Geneva Avenue.

Bogues with his .45 caliber semi-automatic pistol and an accomplice, who was armed with a .32 caliber pistol, ran after the young man up Geneva Avenue firing at the intruder of their gang's turf. Bogues fired approximately six rounds from his .45 caliber gun.

The victim, Lewis Brown, a fifteen year old honor student at West Roxbury High School who lived in the Fields Corner area, was walking to a Christmas Party organized by Teens Against Violence. Brown heard the shooting, and began to run down Geneva Avenue to escape from the shoot-out. A .45 caliber bullet struck young Lewis Brown in the back of his head. Lewis was rushed to the Boston City Hospital where he died from the trauma of the shooting the following day. A continuing police investigation into this transferred intent murder led in several years to Bogues as the prime suspect in the killing of young Brown. Bogues is the son of a Boston police officer. Bogues is an intelligent, well-educated and articulate individual. Bogues does not suffer from any mental or emotional illness. Bogues was under investigation for the murder of Brown and for unrelated drug and firearm offenses. Both Boston Police and federal investigators were actively pursuing Bogues. The authorities interrogated Bogues, and during questioning made incriminating statements. This caused his lawyers into tactically making plea agreements with both the Suffolk County District Attorney and the United States Attorney. The agreements essentially provided for the U. S. Attorney to drop his charges in return for Bogues agreement to plead guilty to Murder in the Second Degree in the state court. Bogues faced an additional 18 years of potential incarceration in the federal prison system for violation of federal criminal statutes. This court finds that Bogues at the time of his plea colloquy before this court fully concurred with the advice his lawyers had

given to him to plead to the reduced murder charge in the Superior Court in return for the federal authorities dismissing their indictments in the United States District Court for the District of Massachusetts. This court further finds that Bogues knowingly, intelligently and voluntarily agreed to plead guilty to the reduced state charge to: (a) avoid the risk of a first degree murder conviction of life imprisonment without the possibility of parole; and (b) the risk of additional incarceration in the federal penal system.

Bogues asserts that he was coerced and bullied into pleading guilty through the concerted efforts of Assistant District Attorney Tochka, Assistant U. S. Attorney Boyd and his privately retained counsel, Attorney Sprague. These contentions are made spuriously by quoting from passages in letters written to Bogues by Sprague while he was in federal custody. This claim is meritless. The quoted passages are merely sound advice by a competent lawyer advising his client of the naked truth of the situation faced by Bogues. A situation in which Bogues had put himself in by making admissions to law enforcement officials during interrogation, and which even the most skillful lawyer was helpless to eradicate.

Conclusions of Law

1. Mass. R. Crim. P. 30 (a) Claims

The defendant asserts claims to post conviction relief based on Mass. R. Crim. P. 30 (a). This court finds that nothing in the verified motion for withdrawal of guilty plea and motion for new trial which demonstrates any factual basis for concluding that the defendant's incarceration after pleading guilty to murder in the second degree and possession of a firearm was imposed in violation of the Constitution and laws of the United States or of the Commonwealth of Massachusetts. Accordingly this court **DENIES** the defendant's motion based on these grounds.

2. Mass. R. Crim. P. 30 (b) Claims

Hearing

Mass. R. Crim. P. 30 (b) "provides that a new trial may be granted 'if it appears that justice may not have been done.' The motion may be decided on the basis of affidavits and without an evidentiary hearing 'if no substantial issue is raised by the motion or affidavits.' Mass. R. Crim. P. 30 (c) (3), 378 Mass. 900 (1979). 'The decision on a motion for new trial, as well as the decision whether to decide the motion on the

basis of affidavits or to hear oral testimony, is left largely to the sound discretion of the judge.' [(Citations omitted)]. *Commonwealth v. Stewart,* 383 Mass. 253, 257 (1981)." See also *Commonwealth v. Toney,* 385 Mass.575, 579 (1982).

After considering the defendant's motion, his submissions and affidavits, and the adequacy of his factual assertions on the issues presented, this court concludes that there are no substantial issues raised which necessitates an evidentiary hearing.

Indeed the defendant's claims contained in his verified motion fail to raise a substantial issue. It was a reasonable defense strategy to avoid the risk of a first-degree murder conviction and the risk of a long term of incarceration in the federal penal system by "making a deal!" The defendant's submissions to do not substantiate a scintilla of evidence that he was coerced into making the two plea agreements he executed with the federal and state law enforcement authorities.

This court gives no credit to the defendant's claims made in his verified Motion to Withdraw Guilty Pleas and for New Trial. A judge is not obligated to believe verified submissions and affidavits. *Commonwealth v. Cassesso,* 360 Mass. 570, 576 (1971); *Commonwealth v. Lopez,* 426 Mass. 657, 663 (1998). "The credibility, weight and impact of the affidavits in support of [a] motion [for new trial] are entirely within the judge's discretion. [The court] is not required to believe them even if they are undisputed." *Commonwealth v. Pingaro,* 44 Mass. App. Ct. 41, 48 (1997).

3. Ineffective Assistance of Counsel Claims

In order to support a claim of ineffective assistance of counsel, defendant must show "serious incompetency, inefficiency or inattention of counsel...falling measurably below that which might be expected from an ordinary fallible lawyer" and that such inadequacies "likely deprived [the defendant] of an otherwise available substantial ground of defense." *Commonwealth v. Clarke,* 44 Mass. App. Ct. 502, 512 (1998), quoting *Commonwealth v. Saferian,* 366 Mass. 89, 96 (1974)[2]. To succeed on a claim for ineffective assistance of counsel, the defendant must show that "better work [by trial counsel] might have accomplished something material for the defense." *Commonwealth v. Saterfield,* 373 Mass. 109, 115 (1977). A trial counsel's tactical or strategic choices must be "manifestly unreasonable" to constitute ineffective assistance. *Commonwealth v. White,* 409 Mass. 266, 273 (1991), quoting *Commonwealth v. Adams,* 374 Mass. 722, 728

(5)

(1978). Courts must entertain the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Commonwealth v. Florentino,* 396 Mass. 689, 690 (1986), quoting *Strickland v. Washington,* 466 U. S. 668 (1984).

This court concludes that the work of the defendant's lawyers was highly attentive, competent and efficient. Indeed, considering the enormity of the crime, and the strength of the Commonwealth's case, the defendant achieved what could be termed the best case scenario by accepting the plea agreements, which were negotiated by his lawyers.

Order

For the foregoing considerations the defendant's motion for withdrawal of guilty plea and for new trial is **DENIED.**

Vieri Volterra
Justice of the Superior Court

Dated: January 5, 2000

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[1] The plea colloquy transcript contains the following:
THE COURT: Now, sir, have you had ample opportunity to discuss this particular plea agreement that the lawyers made and that they've informed me of with your lawyer, sir? [With] Mr. Jubinville, with your other lawyers in the firm, such as Walter Underhill and another lawyer? Have you had plenty of time to discuss these cases with these lawyers, sir?
THE DEFENDANT: Yes.
THE COURT: And what was the name of the other lawyer, sir, whose name I've forgotten now?
THE DEFENDANT: John Sprague
THE COURT: John Sprague?
THE DEFENDANT: Yes.
THE COURT: Do you believe that these lawyers have advised you properly, sir?
THE DEFENDANT: Yes.
THE COURT: Do you have confidence in these lawyers, sir?
THE DEFENDANT: Yes.
THE COURT: Can you think of anything that these lawyers failed to do that they should have done?
THE DEFENDANT: No

[2] It is unclear whether defendant asserts his claim of ineffective assistance of counsel under both the state and federal constitutions. However, if the *Seferain* test is met, then the requirements of the federal constitution are necessarily satisfied as well. See *Commonwealth v. Haggerty,* 400 Mass. 437 n. 2 (1987). Accordingly, this court is analyzing the defendant's claim under the *Seferian* standard.

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

HOUSING COURT DEPARTMENT
OF THE TRIAL COURT
CITY OF BOSTON DIVISION

TAMMY RODGERS, ET AL.,	)	
Plaintiffs,	)	CIVIL ACTION Nos. 27890
	)	27891
v.	)	27892
	)	27893
CHARLES M. SMITH,	)	
Defendant.	)	

AGREEMENT FOR JUDGMENT

Charles Smith of 42 Otis Street, Somerville, Massachusetts agrees to convey the properties at 8 and 41 Hiawatha Road, Mattapan, 15 and 17 Wildwood Street, Dorchester, and 95 Willowood Street, Dorchester to the Boston Citywide Land Trust or any other entity designated by the plaintiffs in Boston Housing Court Civil Action Nos. 27890, 27891, 27892, and 27893 for the sum of $20,000, payment of which shall be contingent upon the Boston Citywide Land Trust or other entity designated by the plaintiffs receiving ~~s[illegible]~~ MMS RG financing for the redevelopment of the property. Said sum shall be due ~~a[illegible]~~ MMS RG RFB at ~~[illegible]~~ MMS RG the Closing. Five thousand dollars of said sum is due and payable to Michael Brown, Esq.

RFB JMP

RFB JMP

As further consideration, the Boston Citywide Land Trust and/or the plaintiffs referenced above shall assume responsibility for the following liabilities upon conveyance of

the properties by Charles M. Smith to the Boston Citywide Land Trust and/or the above-referenced plaintiffs.

1. Triad Mortgage Real Estate in the amount of approximately $53,000.00;

2. Real estate tax arrearages in the amount of $25,000.00;

3. Gas and water bill arrearages in the amount of approximately $50,000; and

4. Loan from Local 26 in the amount of approximately $40,000.00 as well as any fees or amounts owing to contractors performing services at any of the above-referenced properties during calendar year 1990.

As further and final consideration 14 days after Closing, the plaintiffs agree to dismiss Civil Action Nos. 27890, 27891, 27892, and 27893 with prejudice and without costs. CES MAS JNP RFB

Charles Smith agrees to take all reasonable and necessary steps to convey the above-captioned properties to Citywide Land Trust or other entity designated by the plaintiffs including but not limited to entering into a purchase and sale agreement and consummating the Closing.

If the plaintiffs are unable to obtain financing through the Citywide Land Trust or other entity designated by the plaintiffs, the plaintiffs reserve the right to set aside this agreement and restore this action to the trial list.

This agreement is binding on the properties and enforceable by the Boston Housing Court.

The above stipulations are an agreement which places the parties under the restraint of a direct order of the Court, that they do or refrain from doing the particular acts stated herein.

Any violation of this agreement can result in contempt as the document in question is intended to operate as an injunction.

Attorneys for the Plaintiff
in Civil Action Nos. 27890, 27891,
27892, and 27893.

Ralph F. Boyd, Jr.
ROPES & GRAY
One International Place
Boston, MA 02110
(617) 951-7000

Michael Brown
GRAYER, BROWN & DILDAY
27 School Street
Boston, MA 02108
(617) 227-3470

and

Jeffrey W. Purcell
GREATER BOSTON LEGAL SERVICES
68 Essex Street
Boston, MA 02111
(617) 357-5757 (ext. 3302)

Charles M. Smith

E. George Daher,
Chief Justice, Boston Housing Court

Dated: September 25, 1990

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

41

ROMAN GONZALES, ET AL., Plaintiffs,	)	
v.	)	Civil Action No. 87-5380
MICHAEL FAIR, ET AL., Defendants.	)	

JUDGMENT AND ORDER

In accordance with the Memorandum of Decision and Order of this Court dated May 25, 1989, and entered May 31, 1989, the following Judgment and Order shall enter forthwith; but, except for Paragraph 6, infra, it shall be stayed until an appeal be taken and (unless a court shall otherwise order)*

Test results from the Massachusetts Department of Corrections ("DOC") inmate drug testing program may be used as evidence in inmate disciplinary hearings, provided:

1. The test methodology used shall consist of an initial or screening test followed, in the case of all specimens identified as positive on the initial test, by a confirmatory test by a second analytical procedure which uses a different technique and chemical principle from that of the initial test; and

2. The initial test shall use an immunoassay, such as the SYVA EMIT ST ("EMIT") or radio immunoassay ("RIA"), which meets the requirements of the Food and Drug Administration for commercial distribution and which uses, for the identification of presumptive positive results, the cut-off levels specified in the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs, 53 Fed. Reg. 11,969 (1988) ("HHS Guidelines"), as they may be amended from time to time; and

*during the pendency of said appeal.

Copies

3. All initial positives shall be confirmed by s chromatography/mass spectrometry ("GC/MS") techniques at the cut-off levels specified in the HHS Guidelines, as amended from time to time; and

4. All confirmatory testing shall be conducted by a laboratory certified pursuant to the HHS Guidelines or the College of American Pathologists, Standards for Accreditation of Forensic Urine Drug Testing Laboratories, or by a laboratory capable of meeting such certification standards; and

5. All sampling of inmates, and initial and confirmatory testing, shall be conducted in accordance with proper sampling and analytical procedures, with appropriate safeguards concerning chain of custody and quality assurance and control, as specified in the HHS Guidelines as they may be amended from time to time; and

6. No sanction may be imposed on account of any previously-conducted Disciplinary Board findings based on results from tests or procedures not conducted as specified in this Order.

Hiller B. Zobel
Associate Justice
Superior Court Department

Dated: June 16, 1989

Entered 19 June 1989

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

41

ROMAN GONZALES, ET AL., Plaintiffs,	)	
v.	)	Civil Action No. 87-5380
MICHAEL FAIR, ET AL., Defendants.	)	

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Copies

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6. No sanction may be imposed on account of any previously-conducted Disciplinary Board findings based on results from tests or procedures not conducted as specified in this Order.

Hiller B. Zobel
Associate Justice
Superior Court Department

Dated: June 16, 1989

Entered 19 June 1989

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KEVIN C. PURVIS, Plaintiff,	)	CIVIL ACTION NO. 84-984-WD
v.	)	
JOHN PARLON, JOHN GREENE, Defendants.	)	

MEMORANDUM
December 2, 1988

In this action Kevin Purvis sought damages against Boston Police Detectives John Greene and John Parlon under 42 U.S.C. §1983 alleging lack of probable cause to arrest and use of excessive force in executing that arrest. The jury trial resulted in a defendants' verdict. Now before me are two motions for a new trial.

The first motion for new trial was filed by plaintiff's trial counsel from the Boston law firm of Hale & Dorr ("trial counsel"), appointed pursuant to 28 U.S.C. § 1915(d). That motion alleges that defense counsel's remarks to the jury during her opening statement and closing argument were improper and unfairly prejudicial to the plaintiff.

The second motion for new trial was thereafter filed pro se by the plaintiff himself. He alleges in non-specific terms ineffective assistance of counsel as the basis of his own motion. He also requests appointment of new counsel and a copy of the trial transcript so that he may develop his allegations of ineffective assistance of counsel.

As a result of Mr. Purvis' separate motion for new trial, trial counsel filed a motion to withdraw and requested that new counsel be appointed. Trial counsel did not request that a transcript be provided for Mr. Purvis. At a post-trial motion hearing, a representative of trial counsel and the plaintiff himself argued their respective motions.

I

The party presenting a motion for a new trial under Fed. R. Civ. P. 59 must satisfy a demanding standard.

> [T]he district court may order a new trial only if it is convinced that the jury's verdict is "against the clear weight of the evidence, or is based upon evidence which is false, or will result in a clear miscarriage of justice . . . ." Coffran v. Hitchcock Clinic, Inc., 683 F.2d 5, 6 (1st Cir.) cert. denied, 459 U.S. 1087 (1982). The mere fact that a contrary verdict may have been equally--or even more easily--supportable furnished no cognizable ground for granting a new trial. If the weight of the evidence is not grotesquely lopsided, it is irrelevant that the judge, were he sitting jury-waived, would likely have found the other way.

Freeman v. Package Machinery Co., __F.2d__, __, No. 88-1130, slip op. at 4 (1st Cir. Nov. 22, 1988).

While I was, and remain, troubled by defense counsel's improper remarks, I find--after reading and rereading the transcript I ordered prepared--that neither trial counsel nor plaintiff has met the standard for a new trial. Prejudicial error did not infect the trial; the verdict was fully supported; and, I believe, substantial justice was, in fact, done. Consequently, I will deny the motions for a new trial.

II

This action arose out of the plaintiff's arrest on the evening of January 5, 1982, in connection with a break-in which occurred within the half hour prior to his arrest (the "January 5 Arrest"). The state criminal case against the plaintiff arising out of the January 5 Arrest was later abandoned by the prosecution when the plaintiff was successfully prosecuted for another break-in occurring on January 3, 1982 (the "Mahoney Incident"). Both parties sought to avoid distracting the jury with considerations at best only marginally relevant and not directly related to the events giving rise to the January 5 Arrest. The plaintiff sought to exclude reference to his substantial criminal record and the roughly contemporaneous Mahoney Incident for which he was incarcerated at the time of trial. The defendants sought to restrict reference to the dismissal of the criminal case arising out of the January 5 Arrest, the propriety of which arrest was at issue in this case.

On behalf of the plaintiff, trial counsel filed pre-trial motions in limine seeking in part to bar admission of his prior arrests and convictions. The plaintiff particularly objected to admission of the armed assault conviction, the Mahoney Incident. The plaintiff expressed concern that the jury would improperly conclude that if he had been convicted of armed assault as to the Mahoney Incident, then he probably also committed the crimes for which he was arrested on January 5, 1982, which similarly involved an alleged "break-in." The plaintiff further contended that the jury would be distracted from deciding whether the

defendants had probable cause on January 5, 1982, to arrest Mr. Purvis, at a time before the police had evidence to link him to the Mahoney Incident. In short, the plaintiff feared the jury would view him as a bad person who deserved to be arrested anyway, even if not for crimes committed that night.

Defendants stated that they needed to show the general bias of Mr. Purvis against the police through introduction of prior arrests and convictions, and specific bias against these particular defendants by introduction of evidence of his current incarceration brought about largely by their investigative work, in order both to impeach the credibility of Mr. Purvis and to demonstrate a defense theory of retaliation by civil rights litigation. In addition, defendants sought to introduce evidence of prior convictions and arrests to argue to the jury that damages for pain and humiliation for false arrest would be minimal for a person who had experienced arrest and imprisonment previously and who was presently incarcerated on other charges.

In response to these objections and concerns, I set guidelines for the parties. Evidence of plaintiff's prior criminal convictions was permitted but evidence of his arrests was not.[1/] With reference to the conviction for armed assault for which Mr. Purvis was incarcerated at the time of trial--the Mahoney Incident--defendants were allowed to elicit from Detective Greene and allude in opening statement only to the

[1/] The defendants were thereafter permitted to make reference to arrests of Mr. Purvis actually made by one of the defendants, Detective Greene.

following information: that the charges for this conviction stemmed from an investigation commenced by Detectives Greene and Parlon, that the investigation resulted in a conviction for which Mr. Purvis was then incarcerated, and that the term of incarceration was 10 to 15 years.

The information about the Mahoney Incident was allowed in only to show bias or improper motive on the part of Mr. Purvis. Defense counsel was instructed not to make reference to "street" knowledge about Mr. Purvis. Defense counsel was also warned that if she called Mr. Purvis a "seasoned criminal" in front of the jury, there would be a mistrial. Defense counsel was specifically instructed that if she desired to go beyond these guidelines, she must first apprise the court.

For his part, plaintiff was allowed to introduce evidence that the charges for the January 5, 1982, arrest were dismissed without any determination on the merits. The jury was to be instructed that the reasons for this dismissal in the state court was not a matter to be considered by them.

In her opening statement, defense counsel strayed beyond the constraints set forth in the orders. She referred to Mr. Purvis as someone who was not a stranger to the criminal enforcement system. She also described Mr. Purvis as being on a field trip to Boston, implying that his only reason for filing suit was to get a day away from prison. With reference to the Mahoney Incident, defense counsel went beyond the court's order merely to delineate the present incarceration, the length of sentence, and the fact that the defendants conducted the investigation which

led to the conviction. She described the assault in detail, in particular twice telling the jury that Mr. Purvis had put a gun to Mr. Mahoney's head and threatened to blow his brains out. Plaintiff moved for a mistrial immediately after this opening statement. The motion was denied.

During her closing argument, defense counsel reminded the jury that several gold chains were found on Mr. Purvis the night of his arrest. While this reminder had a basis in the record, see 9/11/86 Tr. at 93,[2/] in the context of the argument it was a thinly veiled suggestion that the plaintiff supported himself through habitual criminal conduct.

Strongly worded curative instructions were given at several points to defuse the potentially adverse effect of defense counsel's improprieties.

III

While the First Circuit has adhered to the position that the trial judge has "considerable discretion in exercising supervision over counsel's remarks," Emery-Waterhouse Co. v. R.I. Hosp. Trust Nat. Bank, 757 F.2d 399, 410 (1st Cir. 1985), the Court has shown an increased rigor in evaluating allegations of misconduct in argument. See, e.g., Polansky v. CNA Insurance Co., 852 F.2d 626 (1st Cir. 1988); Forrestal v. Magendantz, 848 F.2d 303 (1st Cir. 1988); Computer Systems Engineering, Inc., v.

[2/] The motion for new trial filed by trial counsel asserts prejudice because "the fact that gold chains were found on [the plaintiff] during his arrest [was] not in evidence . . ." A review of the transcript shows, however, that such a reference had been made.

Qantel Corp., 740 F.2d 59 (1st Cir. 1984). The First Circuit has adopted the standard set forth by the Sixth Circuit in assessing the improper argument:

> a court must examine, on a case-by-case basis, the totality of the circumstances, including the nature of the comments, their frequency, their possible relevancy to the real issues before the jury, the manner in which the parties and the court treated the comments, the strength of the case (e.g. whether it is a close case) and the verdict itself.

Forrestal v. Magendantz, 848 F.2d at 309 (quoting City of Clevelend v. Peter Kiewit Sons' Co., 624 F.2d 749, 756 (6th Cir. 1980)).

The totality of the circumstances in this case does not require a new trial. The errors in this case were not fundamental. Counsel's remarks, while insufficiently restrained, were unlikely to have achieved prominence in the minds of the jurors or to have affected the trial's outcome. Cf. United States v. Mandelbaum, 803 F.2d 42, 45 (1st Cir. 1986); United States v. Cox, 752 F.2d 741, 746 (1st Cir. 1985); United States v. Capone, 683 F.2d 582, 586 (1st Cir. 1982). There is no reason to believe that counsel's remarks affected the jurors in such a way that they were unable to appraise the evidence in a fair and objective manner. United States v. Socony-Vacuum Oil Co., Inc., 310 U.S. 150, 239 (1940). Counsel's comments cannot be said to have so undermined the fairness of the trial that they contributed to a miscarriage of justice.

Curative instructions were given promptly after the misconduct occurred. I am satisfied these instructions cured any prejudice which may have been caused by defense counsel's comments. Gonzalez-Marin v. Equitable Life Assur. Soc., 845 F.2d 1140, 1147-48 (1st Cir. 1988).

Finally, there was substantial evidence, which I myself found credible, from which the jury could conclude that the defendants were not liable. Cf. United States v. Hastings, 461 U.S. 499, 510-512 (1983) (prosecutor's misconduct did not justify new trial where it was clear beyond a reasonable doubt that the jury would have returned a verdict of guilty).

The only counterweight in this totalling of circumstance is my view that defense counsel's argument was at best in reckless disregard for the limiting instructions she received and quite possibly in intentional disregard thereof. I believed at the time that her protestations of inadvertence in response to plaintiff's motions were disingenuous. My review of the transcript fortifies that belief. As a strategic matter, however, her arguments were worse than wrong; they were stupid because they drew forceful curative instructions from the Court which served only to emphasize her impropriety to the jury. If all that was at issue was whether to sanction defense counsel, I would consider taking away a verdict for a party whose counsel had acted less than professionally. But on a motion for a new trial, I deal with issues of substantial justice. A palpable injustice would be done defense counsel's clients if the defendants were to lose the verdict that the jury's fair

examination of the evidence establishes they deserved, because of misconduct by their counsel. The sanction of mistrial would be visited primarily on the defendants, who gained no benefit from defense counsel's disregard of the instructions. In this case, bearing the cost of opposing the motions, see, e.g., note 3, infra, when coupled with the reprimand imported by this opinion and the curative instructions, is sufficient sanction for defense counsel personally.

I have reviewed the transcript carefully[3/] to assure myself that my determinations during trial not to grant the mistrials requested by plaintiff are fully supported. I recognize that reading the cold transcript can give a substantially different sense of the trial than experiencing the unfolding of counsel's presentation in person. I recognize as well that trial counsel on behalf of the plaintiff also skated close to the proscribed comment on the dismissal of the underlying state criminal charges arising from the challenged arrest. My review of the record and recognition of the context in which argument was presented at trial, however, confirms the wisdom of the First Circuit's general approach to these issues:

> The district court ha[s] considerable discretion in exercising supervision over counsel's remarks during the closing argument. . . . Trials are adversarial processes in which things may be said which the other side regards as incorrect and sometimes offensive. The usual way these are dealt with is through rebuttal by the opposing side, although

[3/] Because the impropriety of defense counsel in her opening and closing statements to the jury had precipitated the need for careful consideration of the transcript, I ordered defense counsel to assume the cost of preparing that transcript for my review.

> the court may and should intervene in instances of unfairness and impropriety.

Mitchell v. Weaver, 806 F.2d 300, 302 (1st Cir. 1986).

I made what I believed to have been the appropriate interventions at trial. I report them in this opinion. My revisitation of the record satisfies me that such error as there was could not reasonably have been construed to have affected the outcome of the trial. Thus, for the reasons stated above, the motion for new trial filed by Mr. Purvis' trial counsel will be denied.

IV

Despite the extraordinary diligence of his trial counsel--two skilled litigators practicing at one of Boston's foremost law firms--the plaintiff himself has filed a separate motion for a new trial. The plaintiff's own motion does not adequately particularize the grounds on which a new trial is sought. Ordinarily a party may not, without express permission from the court, reserve grounds for a new trial that may be discovered upon examination of the transcript. Cf. United States v. Banks, 369 F. Supp. 951, 954 (M.D.Pa. 1974). As the Banks court observed, it would be incongruous that a party could be required under the rules to state all grounds for a new trial within ten days and yet reserve the right to secure a free transcript to comb the record he observed developed in an effort to identify additional grounds. Id.

Of course, as a general proposition, a court is under the obligation to read a pro se complaint with great liberality to determine if the allegations provide for relief on any possible theory. Childs v. Duckworth, 705 F.2d 915, 922 (7th Cir. 1983); White v. Walsh, 649 F.2d 560, 561 (8th Cir. 1981). I regard that obligation to extend to consideration of motions for new trial as well. Requiring that a pro se moving party's motion be specific should not become a formalistic barrier to consideration of his claims.

But reading the plaintiff's motion expansively, one finds only a bare, conclusory allegation of ineffective assistance of counsel without reference to any supporting facts. His argument at the hearing provided no additional particulars.

I am satisfied after my own review of the transcript and, of course, my direct observation at trial, that plaintiff's claims lack particularity because the claims are groundless. Plaintiff received extraordinarily diligent and vigorous counsel. His counsel conducted appropriate discovery, filed and argued pertinent motions in limine, timely objected during trial, and filed their own carefully prepared motion for new trial. Their conduct during the trial--where two attorneys represented the plaintiff--was more than competent. It was well above the standard set for effective assistance of counsel under the Sixth Amendment in a criminal case. Indeed, it was as effective as the plaintiff's quite modest case would permit any advocate. For these reasons, Mr. Purvis' motion for new trial is denied.

V

As my disposition of the substance of plaintiff's pro se motion for a new trial makes clear, I find that motion to be without merit. Under the circumstances, I find no purpose to be served in appointing yet another set of counsel for plaintiff or ordering that he be provided with his own copy of the transcript at public expense.

-A-

The motions for appointment of new counsel filed both by trial counsel and the plaintiff under Title 28 U.S.C. §1915(d) will be denied. Section 1915(d) provides:

> The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

A district court has discretion under §1915(d) to appoint counsel for an indigent to commence, prosecute, or defend a civil action. It is well settled that in civil actions counsel should only be appointed when the indigent litigant can demonstrate exceptional circumstances. See, e.g., Cookish v. Cunningham, 787 F.2d 1, 2 (1st Cir. 1988); United States v. McQuade, 579 F.2d 1180, 1181 (9th Cir. 1978) cert. denied, 455 U.S. 958 (1982); Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975).

While there are a series of considerations to determine whether counsel should be appointed under §1915(d), the threshold inquiry is whether the claim is of sufficient merit. Childs v. Duckworth, 705 F.2d at 922; McKeever v. Israel, 689 F.2d 1315, 1320 (7th Cir. 1982); Lockhert v. Faulkner, 574 F. Supp. 606, 608

(N.D.Ind. 1983). The plaintiff need only establish a prima facie claim in the pleadings which, if proven, would result in some form of relief for the plaintiff. Nelson v. Redfield Lithograph Printing, 728 F.2d 1003, 1005 (8th Cir. 1984). If the claim is frivolous, however, the court must dismiss it.

Having heard and considered the evidence at trial and having denied both motions for new trial, I am convinced that the claims lack sufficient merit to justify the appointment of another set of counsel.

-B-

For similar reasons, I will also deny the motion for a copy of the trial transcript under 28 U.S.C. §753(f). Section 753(f) provides in pertinent part:

> Fees for tanscripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

For the purposes of this Memorandum, I will interpreted §753(f) as applying to motions for new trial. See United States v. Banks, 369 F. Supp. at 953-54; Deshotels v. Liberty Mutual Ins. Co., 116 F. Supp. 55, 65 (W.D.La. 1953), aff'd 219 F.2d 271 (5th Cir. 1955).

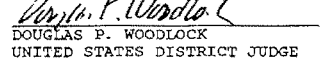
Doubts about the substantiality of the issues on appeal--and presumably in a motion for new trial--and the need for a transcript to examine these issues should, of course, be resolved in favor of the petitioner. But, in this case, Mr. Purvis has demonstrated no particular need for a transcript. Given the

relative brevity of the trial, the fact that the original trial counsel was pursuing post trial motions for a new trial, and the fact that in ruling on the motions for new trial, I have myself reviewed the transcript, there is no reason to provide a copy of the transcript at public expense to the plaintiff. The plaintiff has failed to raise a substantial question concerning ineffective assistance of counsel. Cf. Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir. 1985) cert. denied, 471 U.S. 1126 (plaintiff failed to bring to the court's attention any facts requiring close examination of transcript, nor had he raised a substantial question); Deshotels, 116 F. Supp. at 65 (without basis for granting new trial, no need to order transcript).

Trial counsel quite properly did not request a copy of the trial transcript with their motion for new trial. It is inconceivable to me, after personally reviewing the record, that any grounds for the unspecified claim of ineffective assistance can be found.

VI

For the reasons set forth above, all motions are DENIED with the exception of trial counsel's motion to withdraw, which is ALLOWED.



DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

U.S. Department of Justice

Washington, D.C. 20530

APR 30 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Ralph F. Boyd who has been nominated by the President to serve as Assistant Attorney General, Civil Rights Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Boyd recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Pursuant to his partnership agreement with his law firm, he will receive a lump sum payment of his partnership share calculated on service performed through the date he withdraws from the firm. He expects to receive this payment within 30 days of his withdrawal which will occur upon confirmation.

We have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have a covered relationship with his firm, his former clients and the other organizations listed on Schedule D of his financial disclosure report. Upon confirmation, he will resign his positions with all of the listed organizations. Mr. Boyd understands that for at least one year he should seek advice before participating in matters involving

any of these organizations as well as his firm and clients.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: Boyd			First Name and Middle Initial: Ralph F.	
Position for Which Filing	Title of Position: Assistant U.S. Attorney General Civil Rights			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (for forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Goodwin Procter LLP Exchange Place, Boston, MA 02109			Telephone No. *(Include Area Code)*: 617-570-1000	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held: None				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Judiciary Committee			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual			Date *(Month, Day, Year)*: April 26, 01	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Gaden			Date *(Month, Day, Year)*:	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: Lois Montana			Date *(Month, Day, Year)*: 4/27/01	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Annotations per conversations w/ Silar - Mary Gaden - DOJ - 4/27/01

(Check box if filing extension granted & indicate number of days _____*)* ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

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U.S. Office of Government Ethics

Reporting Individual's Name: Ralph F. Boyd, Jr.

SCHEDULE A

Page Number: 2 of

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Asset	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x						x										
	Doe Jones & Smith, Hometown, State			x																												Law Partnership Income $130,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Goodwin, Procter LLP Exchange Place, Boston, MA 02109				X	partnership share																										Law Partnership Income $335,000	
2	Fidelity Investments Cincinnatti, Ohio 45277 (Spartan Mass Muni Income Fund)				X									X								X											
3	Sovereign Bank of New England (checking/savings account) Boston, MA		X																X		X												
4	Goodwin Procter LLP Partnership Sharing Savings Plan Fidelity Daily Income Trust Fund			X										X							X												
5	Goodwin Procter LLP Profit Sharing Savings Plan Fidelity Daily Income Trust Fund			X										X							X												
6																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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U.S. Office of Government Ethics

Reporting Individual's Name: Ralph F. Boyd, Jr.

SCHEDULE A continued
(Use only if needed)

Page Number 3 of

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1																																	
2																																	
3																																	
4																																	
5																																	
6																																	
7																																	
8																																	
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: Ralph F. Boyd Jr.

SCHEDULE B

Page Number: 4

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common				2/1/99												
1																	
2																	
3																	
4																	
5																	

*This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name: Ralph F. Boyd, Jr.

SCHEDULE C

Page Number 5 of

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☒

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Continuing participation Goodwin Procter LLP Partnership Sharing Savings Plan	Goodwin Procter LLP, Boston, MA	12/00
2	Continuing participation Goodwin Procter LLP Profit Sharing Savings Plan, Partnership Retirement Plan	Goodwin Procter LLP, Boston, MA	12/00
3	Pursuant to partnership agreement, will receive lump sum payment of partnership share calculated on service performed through 5/01	Goodwin.Procter LLP, Boston, MA	4/01
4	within 30 days of withdrawal from firm.		
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Ralph F. Boyd, Jr.		6 of

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

* will resign upon confirmation. None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Goodwin, Procter LLP	law firm	partner *	3/97	present
2	Louis Brown Peace Institute	community based anti-violence education	board member *	9/98	present
3	Ipswich MA YMCA	non-profit youth org.	board member *	12/00	present
4	Boston Bar Association	bar association	Council & exec. committee *	9/97	present
5	Judicial Nominating Council	executive comm. to select state judges	member-committee *	3/96	present
6	Boy Scouts of America Eagle Scout Association	non-profit - youth	board member & sec. * Yankee Clipper Council	9/00	present

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Philip Morris USA, Inc. New York, New York (client of Goodwin Procter)	Legal services in connection with various civil actions
2	General Electric Mortgage Insurance Corp. Raleigh, N.C. (client of Goodwin Procter)	Legal services in connection with class actions
3	Peabody Essex Museum, Inc. Salem, MA (client of Goodwin Procter)	Legal services in connection with various civil actions
4	Abbott Laboratories Abbott Park, Illinois (client of Goodwin Procter)	Legal services in connection with qui tam action
5	Loeb Realty Partners New York, N.Y. (client of Goodwin Procter)	Legal services in connection with civil action
6	Ridgewood/Masar Power Partners L.P. Ridgewood, N.J. (client of Goodwin Procter)	Legal services in connection with arbitration and civil action

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Part II: Compensation in Excess of $5,000 paid by one source (continued)

	Source	Brief Description of Duties
7.	General Electric Company Fairfield, CT (client of Goodwin Procter LLP)	Document review and advice regarding subpoena
8.	Telco Communications Group, Inc. Reston, VA (client of Goodwin Procter LLP)	Legal services in connection with civil action
9.	State Health Policy Systems LLC Columbia, MD (client of Goodwin Procter LLP)	Legal advice in connection with proposed legislation
10.	Merck & Co., Inc. Westpoint, PA (client of Goodwin Procter LLP)	Legal services in connection with document subpoena
11.	There is one remaining Goodwin Procter client for whom I provided legal services and with respect to which my firm was paid more than $5,000. However, identifying the client effectively would disclose confidential client information	

Goodwin Procter LLP Legal Services
Boston MA

FINANCIAL STATEMENT

NET WORTH

Ralph F. Boyd, Jr.

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

ASSETS			LIABILITIES		
Cash on hand and in banks	13,877	(1)	Notes payable to banks—secured	N/A	
U.S. Government securities—add schedule	N/A		Notes payable to banks—unsecured	N/A	
Listed securities—add schedule	N/A		Notes payable to relatives	N/A	
Unlisted securities—add schedule	N/A		Notes payable to others	See below	
Accounts and notes receivable:			Accounts and bills due	See Below	
Due from relatives and friends			Unpaid income tax	N/A	
Due from others			Other unpaid tax and interest	N/A	
Doubtful			Real estate mortgages payable—add schedule	426,000	(8)
Real estate owned—add schedule	650,000	(2)	Chattel mortgages and other liens payable	N/A	
Real estate mortgages receivable	N/A		Other debts—itemize:		
Autos and other personal property	57,166	(3)	MBNA MasterCard	4,659	(9)
Cash value—life insurance	N/A		Ipswich Bank MasterCard	1,900	(10)
Other assets—itemize:			Ford Motor Credit Co.	24,500	(11)
GP LLP P'Ship Savings Plan	3,500	(4)	Chrysler Financial LLC	12,349	(12)
GP LLP Retirement Plan	16,000	(5)			
Spartan Mass. Muni Income Fund	3,021	(6)	Total liabilities	469,408	
Goodwin Procter LLP Profit Share	150,000	(7)	Net worth	424,156	
Total assets	893,564		Total liabilities and net worth	893,564	

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	N/A	Are any assets pledged? (Add schedule.)	No
On leases or contracts	N/A	Are you defendant in any suits or legal actions?	No
Legal Claims	N/A	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	N/A		
Other special debt	N/A		

SCHEDULE

(1) as of 5/02/01
(2) estimated as of 5/02/01 (residence, Ipswich, MA)
(3) 2000 Ford Excursion
2000 Dodge Durango
(estimated as of 5/02/01
(4) Fidelity Daily Income Trust Fund (Goodwin Procter LLP Partnership Savings Plan)
(5) Fidelity Daily Income Trust Fund (Goodwin Procter LLP Retirement Plan)
(6) Fidelity Investments
(7) Estimated payout upon withdrawal from partnership
(8) Wells Fargo - $386,000 (estimated as of 5/02/01) (on residence, Ispwich, MA)
Chase Manhattan Mortgage $40,000 (estimated as of 5/02/01) (on residence, Ipswich, MA)
(9) as of 5/02/01
(10) as of 5/02/01
(11) Ford Motor Credit $24,500 (estimated as of 5/02/01) (Ford Excursion)
(12) Chrysler Financial LLC $12,349 (Dodge Durrango)

Chairman HATCH. Well, thank you for your fine statement. We are very happy to have members of your family here. You must be very proud, and you should be, as he is a fine man, and he is going to do a fine job at the Justice Department. And I am going to try and back him every way I can, and I am sure other members of the Committee will as well.

I would like to put a statement by Senators Max Cleland and Zell Miller into the record immediately following Senator Kennedy's statement, on behalf of Robert D. McCallum, Jr., to be Assistant Attorney General for the Civil Division. And it is a very nice statement about how much they support you, and we are grateful that they took the time to do that. They would be here personally, except, as you can see, we are having a very difficult time on the floor on this tax bill, and everybody is tied up, so I am just glad I could be here at this time.

So, we will turn to you, Mr. McCallum. We are proud of you and proud that you have this opportunity, and we will take your statement at this time.

STATEMENT OF ROBERT D. McCALLUM, JR., OF GEORGIA, TO BE ASSISTANT ATTORNEY GENERAL FOR THE CIVIL DIVISION

Mr. MCCALLUM. Thank you, Mr. Chairman. I am honored to appear before you for consideration for confirmation of the Assistant Attorney General for the Civil Division. I am very grateful for the confidence which President Bush and Attorney General Ashcroft have shown by nominating me, and I will look forward, not just at this hearing, but also afterwards, to providing you, as Chairman, and any members of the Committee with whatever information will be helpful to the Committee and to the Senate in discharging its constitutional responsibilities to advise the President on its nominees.

Like Mr. Boyd, I would like to take this opportunity to introduce to you my family that is present. My wife, Mimi, who has been encouraging in supporting me for 32 years, is here.

Chairman HATCH. If you could stand, so we can all see. Glad to have you here, Mimi.

Mr. MCCALLUM. Senator, I started, as we southerners say, courting her when I was 15-years-old, and finally, through my eloquent persuasive powers, convinced her to marry me when I was 22, and she has been behind me all the way ever since.

Chairman HATCH. I can see that you had to really examine him pretty carefully.

[Laughter.]

Mr. MCCALLUM. My son, my elder son—I have two boys—my elder son, Davis, is also present, and he has just moved to Brooklyn to try and become a constituent of Senator Schumer, who is not here, but——

Chairman HATCH. David, happy to have you here.

Mr. MCCALLUM. I intend to mention his presence in his Senator district to him. My younger son, Bailey, is a senior at Williams College, and is finishing his exams and celebrating his liberation from burdens and responsibility, so he has not been able to get with us today.

My parents are also not able to be present. My father, in another couple of weeks, will have his 90th birthday, and my mother is 83, and it was difficult and really hard for them to travel to Washington from Memphis, where I was born and raised, but I send you their regards, and they wish that they could be here.

I'd also like to take this opportunity to thank Senator Zell Miller and Max Cleland for encouraging and supporting me in this nomination.

And one other person that I feel duty bound to recognize and express my thanks to is your former colleague, Senator Paul Coverdell. I think of Paul Coverdell as Senator Coverdell, but most of you think of him as a U.S. Senator, whereas I think of Paul as a Georgia State Senator, an institution that he served for years. He was the senator from my district, and it was Paul who first encouraged me to participate in local government activities, which in Atlanta, Georgia, like many other places, revolves around neighborhood civic associations and county and municipal races. The thing that impressed me as a young lawyer, a young citizen in Atlanta, and impressed members of this Senate, was that Paul Coverdell was always willing to do the hard work that didn't gain necessarily a lot of public attention, but it was hard work that was in fact absolutely necessary to help his constituents, to assist his fellow legislators, of whatever political persuasion, and to debate and consider the views of all sides so that the job of legislation could get accomplished. He always gave thoughtful consideration to the positions that he took before he took them, and if confirmed, I would hope to follow in his example in my own public service. I would like to think that Paul Coverdell would have been pleased and proud of my nomination by the President.

I also would like to thank and publicly acknowledge two other individuals who have had a tremendous influence on me as a trial lawyer, because the position for which I have been nominated is to be a trial lawyer, and to lead what I consider to be the largest trial firm in the United States with the most complex trial issues.

The first is Judge Sidney O. Smith, a former Chief Judge of the United States District Court for the Northern District of Georgia. Judge Smith was my law partner, and Sidney is now retired from the practice of law. He set a remarkable example of what a lawyer should be, and he was always available with both wit and wisdom, to advise younger lawyers like me as we came along. He inspired many to seek public service, me probably the least of them. For instance, two of his law clerks now sit on the Eleventh Circuit Court of Appeals, Judge Stan Birch and Judge Larry Edmondson.

The second is G. Conley Ingram, a former justice of the Georgia Supreme Court, appointed to that position by then Governor Jimmy Carter. Conley is also one of my law partners, and no one, absolutely no one, has had a greater influence on me, in my development as a trial lawyer. I was privileged to try cases with him, to argue appeals with him, and perhaps best of all, to laugh with him when the burdens and responsibilities of a law practice might have seemed overwhelming and oppressive. Conley Ingram has now returned to judging. He sits as a senior judge of the Superior Court of Cobb County, Georgia, a bench on which his daughter, Lark Ingram, also serves with distinction. So when you call us the

Superior Court of Cobb County and ask for Judge Ingram, you have to specify which judge you are talking about.

I very much appreciate this Committee affording me this opportunity to discuss issues that are of interest to the Committee in evaluating my qualifications for this position, and I will look forward to providing whatever information might be helpful. Thank you, Mr. Chairman.

[The biographical information of Mr. McCallum follows:]

QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

Robert D. McCallum, Jr.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Robert Davis McCallum, Jr.

2. Address: List current place of residence and office address(es).

   Home address: **Atlanta, Georgia 30309**
   Weekend House: **Highlands, North Carolina**
   Office address: **c/o Alston & Bird LLP**
   One Atlantic Center
   1201 West Peachtree Street
   Atlanta, Georgia 30309

3. Date and place of birth.

   January 30, 1946; Memphis, Tennessee

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married June 28, 1969 to Mary Rankin Weems McCallum.

   "Mimi" McCallum is not employed outside the home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   B.A., ***cum laude*****, History, Yale University, June 1968; attended September 1964 to June 1968**

B.A., First Class Honors, Jurisprudence, Christ Church, Oxford University, United Kingdom, November 1971; attended October 1969 to November 1971

J.D., Yale Law School, January 1973; attended September 1968 to June 1969 and January 1972 to January 1973.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer 1968	First National Bank of Memphis (now First Tennessee Bank), trainee;
Summer 1969	Canada, Russell & Turner, a law firm in Memphis, Tennessee (now the Memphis office of Wyatt, Tarrant and Combs), summer associate;
January 1973 to present	Alston, Miller & Gaines, predecessor firm to Alston & Bird LLP; associate and then partner in 1979;
June 1968 to June 1978	Yale Class of 1968; Treasurer;
1973 to present	Yale Club of Georgia; President 1985-86;
June 1979 to present	Yale Alumni Fund; Jonathan Edwards College Agent for Class of 1968; Twentieth Reunion Co-Chair Special Gifts Committee; Member of Special Gifts Committee for Twenty-fifth and Thirtieth Reunion;
October 1983 to 1987 and 1993 (approx) to present	Yale Law School Alumni Association Board, Georgia Representative;

1977 to present	Brookwood Hills Civic Association, Atlanta, Georgia; Board Member and President, 1981 - 83(approx);
1990 - 1995 and 2000 to present	YMCA Blue Ridge Assembly in Black Mountain, North Carolina, Board Member;
1991 - 2001	Choate Rosemary Hall Foundation in Wallingford, Connecticut; Vice-Chair Board of Trustees; term ends June, 2001;
1975 - 1976	National Junior Tennis League of Atlanta, Inc.; Board of Directors;
1998 to present	Rhodes Scholarship Trust; Oxford, United Kingdom; Georgia Secretary and District Secretary for Selection Committee;
1979 -1987	Special Assistant Attorney General for the State of Georgia; eminent domain counsel.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

National Merit Scholarship to Yale University; *cum laude* graduate

Gordon Brown Prize, Yale University;

Rhodes Scholarship to Oxford University at Christ Church;

John Radcliffe Exhibition, Christ Church, Oxford University;

NCAA Post-Graduate Scholarship to Yale Law School.

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

Georgia Bar Association, 1973 - present;

American Bar Association, 1982 - present;

Lawyers Club of Atlanta, 1980 - present;

Old War Horse Lawyers Club, Atlanta, 1990(approx) - present;

The Lamar Inn of Court, Master, 1999 - present;

Author's Court, 1985(approx) - 1995(approx).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I know of no organizations to which I belong, other than the Georgia Republican Party, the American Bar Association, the Georgia Bar Association, The Wilderness Society, and the Trust for Public Land, which are active in lobbying before public bodies. Other organizations to which I belong include:

The Yale Club of Georgia, Atlanta, Georgia (former President);

Yale Alumni Fund, New Haven, Connecticut;

Yale Law School Alumni Association, New Haven, Connecticut (Georgia representative);

Butler Street YMCA, Atlanta, Georgia;

YMCA Blue Ridge Assembly, Black Mountain, North Carolina, Director;

Brookwood Hills Civic Association, Atlanta, Georgia (former President);

Choate Rosemary Hall Foundation Board of Trustees, Wallingford, Connecticut, Vice-Chair;

Rhodes Scholarship Trust, Oxford, United Kingdom, District Secretary;

American Association of Rhodes Scholars, Vienna, Virginia;

Piedmont Driving Club, Atlanta, Georgia;

The Chattooga Club, Cashiers, North Carolina;

High Museum of Art, Atlanta, Georgia;

Atlanta Botanical Gardens, Atlanta, Georgia;

The Wilderness Society, Washington, D.C.;

The Trust for Public Land, San Francisco, California;

Atlanta History Center, Atlanta, Georgia;

Piedmont Park Conservancy, Atlanta, Georgia;

Atlanta Preservation Center, Atlanta, Georgia;

Friends of the Atlanta Public Library (spouse was Board Member in 1980s), Atlanta, Georgia;

Georgian Republican Party, Atlanta, Georgia.

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

The Georgia Supreme Court, The Georgia Court of Appeals, and The Superior and State Courts of Georgia (1973 - present);

United States District Court for the Northern District of Georgia (1973 - present);

United States District Court for the Middle District of Georgia (1980 - present);

United States Eleventh Circuit Court of Appeals (1981 - present);

United States Fifth Circuit Court of Appeals (1981 - present).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

My books, articles, and other published materials are listed below. However, to my knowledge, none of these materials are readily available except for the Georgia Appellate Practice Handbook. I am providing my only copies of the materials, and I would like to have them returned to me. Other than these seminar presentations, I have given no speeches which involve constitutional law or legal policy issues. I may have made one or two other seminar presentations on trial practice related issues in the 1970s or early 1980s, but I did not keep the materials and do not remember the subjects, the dates, or the events.

Co-Author, "Practice and Procedure," 29 Mercer Law Review 1037 (1978), 30 Mercer Law Review 925 (1979), and 31 Mercer Law Review 951 (1980)(one copy provided);

Author of Chapter entitled "Gynecological Errors in Medical Malpractice" in *Gynecological Surgery; Errors, Safeguards, and Salvage*, Second Edition, January, 1981, Edited by John H. Ridley, M.D. (Williams and Wilkins Publisher)(one copy provided);

Lecturer and author of written materials on eminent domain law at Georgia ICLE Seminars on "Condemnations

under Georgia Law," 1981, 1985, 1989-1997 (copies of 1985, 89-92, 94-97 provided);

Lecturer on evidence to Georgia Superior Court Judges at Georgia Institute of Continuing Judicial Education, 1994, Athens, Georgia (I am unable to find a copy of these materials);

Lecturer on environmental issues in eminent domain litigation at Georgia ICLE Seminar for county and municipal attorneys in 1997 (copy provided);

Lecturer, 1992, American Bar Association Convention, San Francisco, on "Batson" Jury Strikes (copy provided);

Lecturer/Program Chairman, Georgia ICLE Seminar on Georgia Appellate Practice, 1996, 1997, 1999, 2000 (copy of Georgia Appellate Practice Handbook provided).

13. Health: What is the present state of your health? List the date of your last physical examination.

The general state of my health is excellent, other than arthritis in my hips which inhibits long-distance running. The date of my last physical examination was April 30, 2001.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have not been a candidate for public office. The only appointed office which I have held was Special Assistant Attorney General for the State of Georgia under Attorney Generals Arthur Bolton and Michael Bowers, 1979-87. In that position, I represented the Georgia Department of Transportation in eminent domain matters.

15. Legal Career:

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

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; **NO.**

2. whether you practiced alone, and if so, the addresses and dates; **NO.**

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Less than a week after graduating from Yale Law School in 1973, I began work as an associate at Alston, Miller & Gaines, the predecessor firm of Alston & Bird LLP, and I have been engaged in the practice of law with that firm since that date. I became a partner in 1979. This firm was originally located at 1200 The Citizens & Southern Bank Building, 35 Broad Street, Atlanta, Georgia 30303 and is now located at One Atlantic Center, 1201 West Peachtree Street, Atlanta, Georgia 30309.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The general character of my law practice has been civil litigation throughout my entire career. My practice has focused upon commercial litigation including consumer class actions and RICO cases, regulatory matters involving insurance companies, real estate litigation including eminent domain matters, appellate practice (including Georgia state constitutional issues), fiduciary

and estate litigation, and health care litigation including medical malpractice defense.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Typical clients have included insurance companies, banks, business corporations, partnerships, and individuals involved in commercial disputes, regulatory issues, or personal injury claims.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates. **Frequently.**

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

I have appeared in court frequently throughout my entire career. I would estimate that 20% of my appearances have been in federal courts with the remaining 80% being in state court, predominantly within the State of Georgia.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

My litigation practice has been 100% civil litigation.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not kept track of the number of cases which I have tried to verdict or

judgment. If one were to include special master proceedings, administrative proceedings, and arbitrations as well as jury and non-jury civil trials, I would estimate in excess of 50 such verdicts, judgments, or final decisions. In the vast majority of those cases, I served as lead counsel.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

All of the special master proceedings, arbitrations, and administrative proceedings were "non-jury matters" by virtue of the nature of the proceeding. If one were to combine non-jury civil trials with special master proceedings, arbitrations and administrative hearings, I would estimate that 65% of those "trials" were jury trials and 35% non-jury.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representations;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In contrast to many litigators today who specialize in a narrow area, I have consciously attempted to maintain a true trial practice in a variety of areas. Rather than focus on 10 particular cases, I

will describe the 10 most significant areas of my practice with a few representative cases in each:

1. General Commercial Litigation:

(a) *United Investors Life Insurance Company v. Waddell & Reed Financial, Inc., et al.*, Civil Action CV00-2720 in the Circuit Court of Jefferson County, Alabama, before the Hon. T. M. Smallwood, Jr.: I am currently representing United Investors Life Insurance Company, an issuer of variable annuities and variable life insurance contracts, in a suit filed in March, 2000, against the broker/dealer distributor of its variable products, Waddell & Reed, Inc., relating to the wrongful appropriation by Waddell & Reed of approximately $6 million per year of funds due to United Investors from Target United Funds, Inc. (a Waddell & Reed managed mutual fund). Although the case remains pending on multiple claims, a partial summary judgment has been granted to United Investors eliminating any continuing right of Waddell & Reed to the $6+ million per annum. The remaining issues concern approximately $10 million of funds which Waddell & Reed continues to hold and the improper replacement by Waddell & Reed of United Investors existing $2.3 billion block of variable business with unsuitable products. William Baxley (a former Attorney General of Alabama) of Baxley, Dillard, Dauphin & McKnight in Birmingham is co-counsel with me for United Investors along with William Sampson of Shook, Hardy & Bacon of Overland Park, Kansas. James Gewin, Hobart McWhorter and Michael Pennington of Bradley, Arant, Rose & White in Birmingham are counsel for counterclaim defendants Torchmark Corporation and Ronald K. Richey. Waddell & Reed is represented by Perry Brandt of the Berkowitz, Feldmiller firm in Kansas City, Missouri, along with Robert Baugh of the Sirote, Permutt firm in Birmingham, Alabama and David Loper of the Campbell, Waller firm in Birmingham, Alabama. The addresses and phone numbers for these firms are:

Baxley, Dillard, 2008 Third Avenue South, Birmingham, Alabama 35233, (205) 271-1100;

Shook, Hardy, 84 Corporate Woods, 10801 Mastin, Suite 1000, Overland Park, Kansas 66210, (913) 451-6060;

Bradley, Arant, 2001 Park Place, Suite 1400, Birmingham, Alabama 35203, (205) 521-8000;

Berkowitz, Feldmiller, 2 Emanuel Cleever II Boulevard, Suite 550, Kansas City, Missouri 64112, (816) 561-7007;

Sirote & Permutt, 231 Highland Avenue South, Birmingham, Alabama 35205, (205) 930-5100;

Campbell, Waller, 200-A South Bridge Parkway, Suite 330, Birmingham, Alabama 35209, (205) 803-0051.

(b) *Katrina Stubbs v. Allstate Insurance Co., et al.*, Civil Action 1:99-CU-219-3 in the United States District Court for the Middle District of Georgia, Albany Division, before Judge W. Louis Sands: I represent the defendant Allstate Insurance Company as lead counsel in this pending matter filed in 2000 which involves a RICO claim arising from an alleged "bad faith refusal to settle" a tort claim against an insured within the policy limits. The case has just entered the discovery phase. Fife M. Whiteside, 3575 Macon Road, Suite F-23, Columbus, Georgia 31906 (706) 526-8709, represents the plaintiff, and William Erwin of the Hodges/Erwin firm, P.O. Box 2320, Albany, Georgia 31702 (912) 883-7463 represents a co-defendant.

(c) *Disaster Services, Inc. v. ERC Partnership,* 228 Ga. App. 739 (1997) before Judge Elizabeth Long in the Superior Court of Fulton County, Georgia: I represented the defendants against a claim of tortious interference with contractual relations. The court entered summary judgment in the defendants' favor and, after an

appeal, also awarded approximately $75,000 in attorneys' fees to my clients on a counterclaim for abusive litigation. Disaster Services, Inc. was represented by Don Huprich of Huprich & Associates, 1726 Montreal Circle, Suite B, Tucker, Georgia 30084, (770) 934-4044.

2. Class Actions:

(a) *R. Lee Taylor III v. Holly Farms Corporation, Tyson Foods, Inc. and Wachtell, Lipton, Rosen & Katz*, Civil Action File No. 97621-3 in the Chancery Court of Shelby County, Tennessee before Chancellor Allessandratos: I was lead trial counsel in this 1991 class action representing a plaintiff class of former employees of Holly Farms suing for certain stock plan benefits. Tyson Foods accomplished a hostile takeover of Holly Farms, and the takeover triggered certain benefits for various Holly Farms employees under a restricted stock bonus plan, drafted by Wachtell, Lipton in anticipation of the hostile takeover fight. Class claims were asserted against Tyson Foods and Holly Farms under the plan and, in the alternative, against Wachtel Lipton for errors and omissions in drafting the plan. The case was settled on terms favorable to the class through contributions by both Tyson Foods and Wachtell, Lipton. Thomas Cates of Burch, Porter and Johnson in Memphis, Tennessee was co-counsel for the class. Anthony Clark of the Skadden, Arps firm in New York and Leo Bearman, Jr. of the Baker, Donaldson law firm in Memphis represented Tyson Foods and Holly Farms. Michael Schwartz of Wachtell, Lipton in New York and Saul Belz of the Waring, Cox firm in Memphis represented Wachtell, Lipton. James Moffitt of the Leitner, Warner firm in Chattanooga represented an intervening class of plaintiffs. The addresses and phone numbers for these firms are:

Burch, Porter & Johnson, 130 Memphis Court Avenue, Memphis, Tennessee 38103; (901) 524-5000;

Skadden, Arps, 919 3rd Avenue, New York, New York 10022, (212) 735-3000;

Baker, Donaldson, First Tennessee Bank Building, 20th Floor, Memphis, Tennessee 38103, (901) 526-2000;

Wachtell, Lipton, 299 Park Avenue, New York, New York 10017, (212) 371-9200;

Waring, Cox, Suite 1300, Morgan Keegan Tower, 50 North Front Street, Memphis, Tennessee 38103, (901) 543-8000;

Leitner, Warner, Third Floor, Pioneer Building, Chattanooga, Tennessee 37402, (615) 265-0214

(b) *Gerald Crichlow, et al. v. Torchmark Corporation, et al.*, Civil Action 4:96-CV-0086-HLM in the United States District Court for the Northern District of Georgia, Rome Division, before the Hon. Harold L. Murphy: I represented the defendants as lead counsel in this national consumer class action filed in 1996 by insureds alleging breach of contract, fraud, and RICO violations in the development and sale of a surgical-benefits health insurance policy by Globe Life & Accident Insurance Company and United American Insurance Company. My clients obtained a summary judgment from the trial court. A similar state class action involving substantially the same attorneys was filed in 1998 as *Charlene Greco, et al. v. Torchmark Corporation*, Civil Action 1:98-CV-196-D-D in the United States District Court for the Eastern District of Mississippi, Aberdeen Division, before the Hon. Glenn H. Davidson, referred to Magistrate Judge Jerry A. Davis. Summary judgment in favor of the defendants in that action was obtained as well. The plaintiff class in each case was represented by John Klamann and Dirk Hubbard of the Klamann & Hubbard firm, Suite 120, 7101 College Boulevard, Overton Park, Kansas 66210, (913) 327-7600.

(c) *The Seckinger-Lee Company v. Allstate Insurance Company*, Civil Action File No. 1:97-CV-0978-TWT in the United States District Court for the Northern District of Georgia, Atlanta Division, before the Hon. Thomas W. Thrash: I served as lead counsel for the defendant Allstate. George Fryhoffer and Al Pearson of the Butler, Wooten firm represented the plaintiff in this 1997 class action claim against Allstate Insurance Company alleging fraud in the settlement of claims relating to "stated value" or "stated amount" auto insurance. Allstate obtained a summary judgment in its favor. The Butler Wooten address and phone number is 2719 Buford Highway, Atlanta, Georgia 30324, (404) 321-1700.

3. Special Appeals:

(a) *Phoenix Airline Services, Inc. v. Metro Airlines, Inc.*, 260 Ga. 584 (1990); *Phoenix Airlines Services, Inc. v. Metro Airlines, Inc.*, 194 Ga. App. 120 (1989): Along with my then partner G. Conley Ingram, I served as appeal counsel for Phoenix Airline Services, Inc. relating to an adverse $34 million judgment which, at that time, was the largest jury verdict rendered in the State of Georgia. The plaintiff claimed fraud and the wrongful misappropriation of a corporate opportunity. The case had been tried before Judge William Daniel of the Superior Court of Fulton County. The case was reversed in part by the Georgia Court of Appeals and then reversed and remanded in its entirety by the Georgia Supreme Court. After the reversal, the case was settled on favorable terms prior to retrial. The trial counsel for Phoenix was David H. Flint of Schreeder, Wheeler & Flint, Suite 1600, 127 Peachtree Street, N.E., Atlanta, Georgia 30303, (404) 681-3450. Appeal counsel for the plaintiff, Metro Airlines, Inc., was David Brown of Smith, Gambrell & Russell, Suite 3100, Promenade II, 1230 Peachtree Street, N.E., Atlanta, Georgia 30309, (404) 815-3564. G. Conley Ingram now serves as a Senior Judge on the Superior Court of Cobb County,

30 Waddell Street, Marietta, Georgia 30090; (770)528-8153.

(b) *Broward County v. Unisys Corporation v. SCT Government Systems, Inc.*, Case No. 00-16030-BB, in the United States Court of Appeals for the Eleventh Circuit: I currently represent SCT Government Systems, Inc. as appeal counsel with respect to a $3 million judgment entered by United States District Judge William Dimitrouleas in the Southern District of Florida. The brief on behalf of SCT was filed on April 13, 2001, and no decision has been rendered by the Court of Appeals. Trial counsel for SCT was Richard McElroy of the Blank Rome firm, One Logan Square, Philadelphia, Pennsylvania 19103, (215) 569-5500. The attorney for Unisys is James Wing of the Holland & Knight law firm, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131, (305) 374-8500. The attorney for Broward County is Michael Kerr, Office of the County Attorney, 115 South Andrews Avenue, Suite 423, Fort Lauderdale, Florida 33301, (954) 357-7600.

(c) *Mary Roden v. Care More Management Company, Inc.*, Civil Action No. 00SV152, in the State Court of Coweta County, Georgia, before Judge John Cranford: I am currently representing as appeal counsel a nursing home defendant with respect to a $3.3 million judgment entered on a jury verdict in a personal injury case. The plaintiff claims that the injury was allegedly caused by patient neglect. Post-trial motions have been filed with the trial court and are scheduled for a hearing in June, 2001. The trial counsel for Care More was Drew Graham of the Hall Booth firm, Suite 2500, 230 Peachtree Street, Atlanta, Georgia 30303, (404) 954-5000. The attorney for the successful plaintiff was Michael G. Kam, Esq., c/o Kam & Ebersbach, P.O. Box 17609, Newnan, Georgia 30264, (770) 251-7100.

4. Real Estate Litigation:

(a) *Earth Management, Inc. v. Heard County*, 248 Ga. 442 (1981): I represented Earth Management, Inc. in the Superior Court of Heard County, Georgia before Judge Jackson contesting the eminent domain "taking" of its property by the County in order to prevent the development by Earth Management of a hazardous waste disposal site. The action by the County was invalidated by the Georgia Supreme Court, establishing the seminal case relating to a "bad faith taking" by an entity with the power of eminent domain. The County was represented by Ted Duncan of the Duncan Thomasson law firm, 18 North Lafayette Square, LaGrange, Georgia 30240, (706) 882-7731.

(b) *Blair Bishop, et al. v. Valley Holdings, Inc., et al.*, Civil Action No. 86-1-4011-18, in the Superior Court of Cobb County, before the Hon. George Kreeger and *Valley Investors, Ltd., et al. v. Decatur Federal Savings & Loan Assoc., et al.*, Civil Action File No. 94A-1514-6, in the Superior Court of Gwinnett County, before the Hon. Fred A. Bishop, Jr.: I represented a real estate developer who purchased an undeveloped tract of land within a multi-phased and partially built condominium project. When the developer attempted to sever certain undeveloped parcels from the developed tracts, protracted litigation ensued with the existing condominium owners. In the middle of the litigation, I was retained to replace the existing counsel of record. The matter was resolved in 1996 through negotiations with the majority of condominium owners resolving the complicated title issues as well as the liability claims relating to my client's alleged obligation to develop the remaining tracts in accordance with the original condominium declaration. Judgments approving the settlements were entered in both these related cases despite objections from some owners. The condominium owners were represented by Wendell Willard, Suite 310, 400 North Park Town Center,

1000 Abernathy Road, Atlanta, Georgia 30328, (770) 481-7100.

(c) Other reported real estate cases of note include *F.W. Woolworth Co. v. Buford Clairmont Co.*, 769 F.2d 1584 (1985), which related to Woolworth's closing all of its "Woolco" stores nationwide and established Woolworth's entitlement under its form lease to sublease the vacated premises at a profit; and *Gallogly v. Bradco, Inc.*, 260 Ga. App. 311 (1990), affirming a trial court judgment relating to specific performance of an extraordinarily valuable twenty year old option to purchase property. The *Woolworth* case was before Judge Robert Hall of the United States District Court for the Northern District of Georgia, and my opposing counsel was Dorothy Kirkley of Kirkley & Payne, 999 Peachtree Street, Suite 1640 Atlanta, Georgia 30309. The *Bradco* matter was before Judge Osgood Williams of the Superior Court of Fulton County, Georgia, and my opposing counsel was Joseph R. Manning, Morris, Manning & Martin LLP, 1600 Atlanta Financial Center, 3343 Peachtree Road, Atlanta, Georgia 30326; (404) 233-7000.

5. Georgia Constitutional Litigation:

(a) *Bowers v. Board of Regents*, 259 Ga. 221 (1989) and *Board of Regents v. The Atlanta Journal*, 259 Ga. 214 (1989): Through my firm's appointment by then Governor Zell Miller, I was privileged, along with G. Conley Ingram, to represent the Board of Regents in a suit brought by Georgia Attorney General Michael Bowers. The Attorney General had provided legal advice to the Board of Regents regarding its obligations under an open records statute. After establishing an attorney client relationship and without obtaining the approval or consent of the Governor, the Attorney General then sued his own client, the Board of Regents, when the Board rejected the Attorney General's legal advice and refused to produce for publication certain documents. In a related case, *The Atlanta Journal* sued the Board of Regents in order to enforce the

same obligations under the open records statute. I was responsible for arguing the issues relating to the breach of ethical standards, the violation of the attorney-client privilege, and the lack of constitutional authority in the Attorney General to sue a state entity without authorization from the Governor. The Supreme Court refused to decide the case on grounds of mootness despite the potential for reoccurrence. This 1989 case was heard in the Superior Court of Fulton County, Georgia before Judge Don Langham. The opposing counsel was Michael Bowers who is now in private practice at Meadows, Ichter & Trigg, Suite 300, 8 Piedmont Center, 3525 Piedmont Road, Atlanta, Georgia 30305, (404) 261-6020.

(b) *Smith, et al. v. Miller, et al.*, 261 Ga. 560 (1991): I served as special counsel to Presiding Justice George T. Smith of the Georgia Supreme Court and Presiding Judge Harold Banke of the Court of Appeals to assist former Supreme Court Justice Hardy Gregory, their trial counsel, in challenging an administrative interpretation of a state employee retirement statute. This statute effectively required Justice Smith and Judge Banke to retire at age 75, rather than at the end of their elected terms, in order to avoid statutory penalties eliminating their retirement benefits. All of the sitting Justices of the Georgia Supreme Court disqualified themselves, and the three officers and the four immediate past presidents of the Council of Superior Court Judges of Georgia were designated to hear and dispose of the matter. Although I was not counsel of record, I prepared the pleadings and briefing for Hardy Gregory. The Court determined that Justice Smith and Judge Banke had waived any right to pose a constitutional challenge to the plan's requirements, and both retired at the age of 75.

Justice Smith is now in private practice with Browning & Tanksley LLP, Suite 225, 166 Anderson Street, Marietta, Georgia 30060, (770) 424-1500. Judge Harold R. Banke now serves as a Senior

Appellate Judge, c/o The Georgia Court of Appeals, State Judicial Building, Atlanta, Georgia 320303, (404) 656-3450.

Counsel of record for Justice Smith and Judge Banke was Hardy Gregory of the Davis, Gregory law firm, 708 16th Avenue East, Cordele, Georgia 31015, (229) 273-7150. Counsel for Governor Miller and the Employees Retirement System of Georgia was then Attorney General Michael J. Bowers, whose current address is listed above.

(c) Other representative constitutional appeals of note include *Lutz v. Foran*, 262 Ga. 819 (1993) relating to the constitutionality of a tort reform "affidavit" statute; and *Smith v. Cobb County-Kennestone Hospital*, 262 Ga. 566 (1992) relating to the constitutionality of a statute of limitations.

6. Eminent Domain:

(a) *Concept Capital Corporation v. DeKalb County*, 255 Ga. 452 (1986), 172 Ga. App. 838 (1984) ultimately tried before Judge Dan Coursey in the Superior Court of DeKalb County: I represented a property owner challenging the right of the Metropolitan Atlanta Rapid Transit Authority ("MARTA") to condemn air rights above its property for a surface parking lot. The case was based upon the assertion that MARTA was condemning more property than needed for the rapid rail system in order to "go into the real estate business" in future years through the leasing and development of "air rights." In the litigation, MARTA was forced to produce documents confirming its planning for valuable commercial development of "air rights" above MARTA stations and adjoining property. The Georgia Supreme Court held in favor of MARTA, and MARTA is now leasing and developing such property and utilizing the revenue to subsidize transit operations. MARTA was represented by Charles N. Pursley, Jr. of the Pursley Howell law firm, Suite

4540, SunTrust Plaza, 303 Peachtree Street, N.E., Atlanta, Georgia 30308, (404) 880-7180.

(b) Other representative eminent domain cases include *DeKalb County v. Perimeter Mall, Inc.*, Civil Action No. 93-11678-8, in the Superior Court of DeKalb County, which involved the acquisition in 1993 of property in a regional mall from the Rouse Company for a MARTA station; and *DeKalb County v. Exxon Corporation*, Civil Action File No. 965694-2 in the Superior Court of DeKalb County, which involved environmental contamination and safety issues arising from the condemnation of a road right-of-way through the middle of an existing gasoline distribution facility on the Colonial pipeline in Doraville, Georgia. I represented Rouse and Exxon, and both of these cases were resolved through negotiated settlements. Charles N. Pursley (whose address and telephone number are listed above) represented DeKalb County in the Perimeter Mall case. Richard Carothers of Carothers & Richards, Suite 200, 4350 South Lee Street, Buford, Georgia 30518, (770) 932-3552, represented DeKalb County in the *Exxon* case.

7. Fiduciary and Estate Litigation:

(a) *Frances Woodruff v. Trust Company Bank, et al. re the Estate of George Woodruff;* Civil Action File No. D42550 in the Superior Court of Fulton County, Georgia before Judge Don A. Langham. On the death of Coca Cola magnate George Woodruff in 1987, G. Conley Ingram, Robert G. Edge, and I were retained to represent six charitable beneficiaries of Mr. Woodruff's estate in litigation brought by his estranged daughter, Frances "Tut" Woodruff. Asserting a theory of "monomania," Ms. Woodruff sought to invalidate her father's estate plan (which eliminated her as a beneficiary), thereby jeopardizing approximately $150 million of charitable bequests. The charitable beneficiary clients included Egleston Hospital for Children, The Georgia Tech Foundation, The Woodruff Medical Center, Agnes Scott College,

The Rabun Gap - Nacoochee School, and The Walter F. George School of Law at Mercer University. A negotiated settlement preserving the charitable bequests was achieved. Tut Woodruff was represented by Alex McLennon, and I understand that Mr. McLennon is now deceased. The Woodruff estate was represented by Frank Jones and Joseph Loveland of King & Spalding, 191 Peachtree Street, N.E., Atlanta, Georgia 30303, (404) 572-4600. One other charity was represented by Michael Egan (Associate Attorney General under Attorney General Griffin Bell) of Sutherland, Asbill & Brennan, Suite 2300, 999 Peachtree Street, Atlanta, Georgia 30309 (404) 853-8000. Other beneficiaries were represented by John T. Marshall of the Powell Goldstein firm, 191 Peachtree Street, Atlanta, Georgia 30303 (404) 572-6600; John J. Dalton of the Troutman, Sanders firm, Suite 5200, 600 Peachtree Street, Atlanta, Georgia 30308, (404) 885-3120; and J. Barrington Vaught of the Hatcher, Stubbs firm, P.O. Box 707, Columbus, Georgia 31902, (706) 324-0201.

(b) *Eric S. Murrah v. Patricia S. Hodgson et al.*, Civil Action No. 2000CV25012, in the Superior Court of Fulton County, before the Honorable Stephanie Manis: I represented a trustee of a charitable remainder trust in litigation filed in 2000 against his co-trustees seeking to obtain appropriate income distributions to the life beneficiary, the trustee's mother. The trustee's mother was the second wife of the deceased grantor of the trust, and the other trustees were children of the deceased grantor by his first wife. The trust corpus involved in excess of $11 million. A satisfactory settlement of the dispute was negotiated and approved by the trial court through the entry of an appropriate consent judgment this year. The defendant co-trustees were represented by A. Stephens Clay of Kilpatrick, Stockton, Suite 2800, 1100 Peachtree Street, Atlanta, Georgia 30309, (404) 815-6500. The charitable remainder trust was represented by John Wallace of King & Spalding, 191 Peachtree Street, N.E., Atlanta, Georgia 30303, (404) 572-4600. The charitable

remainder beneficiaries were represented by Grace Evans Lewis of the Georgia Attorney General's Office, Department of Law, Suite 132, 40 Capitol Square S.W., Atlanta, Georgia 30334, (404) 651-9457.

8. Arbitrations:

(a) *John Hancock Life Insurance Company v. Fortis, Inc. et al.*, Civil Action No. 01CV-2469, in the United States District Court for the Southern District of New York before the Honorable John S. Martin: I represent Fortis, Inc. and related entities in an arbitration matter and in civil litigation relating to an alleged $14 million post-closing adjustment to actuarial loss reserves arising from the sale of a block of long-term care insurance policies. The matter is currently ongoing. Opposing counsel is Donald F. Luke of Clifford, Chance, Rogers & Wells, 200 Park Avenue, New York, New York 10165, (212) 878-8000.

(b) *In re: Superior Sealants, Inc.*: In this arbitration proceeding relating to a 1991 sale of assets, I represented the seller of a caulk and sealant business against claims by the buyer alleging misrepresentations in the sale of the assets. The matter was arbitrated before Jack P. Etheridge, a former Judge of the Superior Court of Fulton County, Georgia, and Judge Etheridge issued a binding arbitration ruling in favor of my client. Judge Etheridge's address is 4715 Harris Trail, N.W., Atlanta, Georgia 30327 (770) 240-1582. Opposing counsel was William Boice of Kilpatrick, Stockton, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309, (404) 815-6500.

(c) *In re: Richard Howell v. Kenny Anderson*: I represented Richard Howell, an Atlanta sports agent, in a 1997 claim against Kenny Anderson, then an NBA "all-star" guard for the New Jersey Nets. My client had, with Mr. Anderson's authority and involvement, negotiated a contract extension with a value in excess of $30 million. Mr. Anderson

unexpectedly rejected the extension immediately prior to execution, fired my client, retained David Faulk, and agreed to a substantially similar contract with another NBA team after a trade. My client claimed compensation for the successful negotiation of this extension prior to termination. Under the rules of the NBA Players Association, the claim for compensation was subject to arbitration, and the arbitrator held, on a motion, that no compensation was owed unless and until a binding contract was signed regardless of the stage of the negotiations or the effort expended. The arbitrator was George Nicolau, 125 East 10th Street, New York, New York 10003, (212) 777-5032, and counsel for Mr. Anderson was Irwin Levy, 950 Third Avenue, New York, New York 10022, (212) 355-7220.

9. Regulatory Proceedings:

(a) *In re: Allstate Insurance Company,* No. 94C-075, in the Georgia Department of Insurance, before Molly Fleeman as Hearing Officer for Georgia Insurance Commissioner Tim Ryles: I represented Allstate Insurance Company in this 1994 regulatory proceeding involving what was, at the time, the largest fine ever imposed by the Georgia Insurance Commissioner ($3,547,000). The fine was based upon alleged violations of statutes and regulations on the non-renewal of automobile liability policies. The matter was tried before the Commissioner's Hearing Officer to establish a record for an appeal to the Superior Court of Fulton County. After the administrative record was made, the matter was settled through a consent order on terms which involved no fine but other accommodations to former policyholders by the insurer. The Insurance Department was represented Susan Hutcheson, Chief of the Enforcement Division, and Ms. Hutcheson now resides at 2650 Audubon Road, Norristown, Pennsylvania 19403, (610) 650-2372.

(b) *In re: MAG Mutual Insurance Company,* Case No. 87C-11 in the Georgia Department of Insurance, before Warren D. Evans, Georgia

Insurance Commissioner: I represented an insurer in this 1987 regulatory proceeding which was the first challenge by an insurer of a rejection by the Insurance Commissioner of a premium increase filing. The matter was settled favorably to the insurer after the Department's actuary on cross-examination eventually agreed that the proposed premium increases were justified by the actuarial data. The Insurance Department was represented again by Susan Hutcheson whose address is listed above and by Kirkland McGhee whose address is now Long, Aldridge & Norman, 303 Peachtree Street, N.E., Suite 5300, Atlanta, Georgia 30308, (404) 527-4934.

(c) Other representative regulatory cases includes: *Garamendi v. Ryles,* 204 Ga. App. 747 (1992), in which I represented the Insurance Commissioner of California in a dispute with the Insurance Commissioner of Georgia concerning the disposition of the assets of an insolvent insurer; and *Heritage Insurance Company of America v. Evans,* 205 Ga. App. 98 (1992), in which I represented the Insurance Commissioner of Illinois in a similar dispute concerning the disposition of assets of an insolvent insurer. In both cases, the Georgia Insurance Commissioner was represented by Thomas A. Cox, Jr. now practicing with the Johnson Freeman firm, 1069 Spring Street, Atlanta, Georgia 30309, (404) 873-0093. Terrence Croft of King & Croft, 707 The Candler Building, 127 Peachtree Street, Atlanta, Georgia 30303, (404) 577-8400, represented a claimant in the Heritage case.

10. Health Care Litigation:

(a) *U.S. ex rel. Mark Parker v. Apria Health Care Group, Inc. et al.,* in the United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action File No. 1-95-CV-2142-FMH, before the Honorable Frank Hull: I represented Provident Memorial Hospital of El Paso, Texas in this *qui tam* action under the False Claims Act. The United States intervened in the action

brought originally in 1995 by a relator, and the case was settled through mediation by former Superior Court Judge Jack Etheridge whose address is listed above. The relator was represented by Michael Bothwell, 304 Macy Drive, Roswell, Georgia 30076 (770) 643-4606. The United States was represented by Daniel Caldwell, U.S. Attorney's Office, 1800 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30335, (404) 581-6000 and by Laurie Oberembt of the Department of Justice, Civil Division in Washington, D.C. The co-defendant was represented by Stephen Cowen of King & Spalding, 191 Peachtree Street, N.E., Atlanta, Georgia 30303, (404) 572-4688, and by Robert Fabikant of Sidley & Austin, 555 West 5th Street, Suite 4000, Los Angeles, California.

(b) *Winter v. Ronald Roper, M.D.,* Civil Action File No. 93A-001535-4, in the State Court of Cobb County, Georgia, before Judge A. Harris Adams: I represented the defendant physician in this medical malpractice case, a case which is representative of many "iatrogenic injury" cases that I have tried over the years. An "iatrogenic injury" is an injury indisputably caused by the doctor in his treatment of the patient, in this case the perforation of the patient's ureter during an endoscopic procedure to remove a kidney stone. The patient subsequently lost kidney function above that ureter, and the kidney was removed in a subsequent operation. A week long jury trial resulted in a defense verdict. The plaintiff was represented by James Poe of Drew, Eckl & Farnham, P.O. Box 7600, Atlanta, Georgia 30357, (404) 885-1400.

(c) *Lisa Clark v. Robert Palmer, M.D.,* Civil Action File No. 89-V-8860, in the State Court of Fulton County, Georgia, before Judge Dorothy Vaughn: Again, I represented the defendant physician in an iatrogenic injury claim, the perforation of the patient's bowel during a laparoscopic sterilization procedure. The bowel perforation was discovered only after the patient

had been discharged from the hospital and developed a severe infection. The patient was readmitted for surgery which involved an ileostomy and a bowel resection. Several months after recovering from the surgery, the patient became pregnant. The suit sought damages not only for the bowel perforation but also for the "wrongful pregnancy." The case was tried to a defense verdict and then settled on a satisfactory basis after the trial judge ordered a new trial. The plaintiff was represented by an attorney with a medical degree, William Morton, M.D., 170 Beavers Road, Canton, Georgia 30115, (770) 345-6783, and by Tony L. Axam, Suite 310, 1280 West Peachtree Street, Atlanta, Georgia 30309 (404) 524-2233).

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Some of the significant non-litigation legal matters in which I have been involved include:

(a) I represented Trigon, Inc. (formerly Blue Cross/Blue Shield of Virginia) in connection with its negotiation for the purchase of Cerulean, Inc. (formerly Blue Cross/Blue Shield of Georgia) in an auction competition with Wellpoint, Inc. (formerly Blue Cross/Blue Shield of California). Wellpoint won the auction with a purchase price valued in excess of $500 million. My role involved the "due diligence" monitoring and assessment of a class action filed by Blue Cross/Blue Shield policyholders in Georgia and the monitoring and assessment of the "Form A" regulatory proceedings filed by Wellpoint as a necessary prerequisite for any change in control of a licensed insurer. Corporate counsel for Trigon was Gordon Smith, of the McGuire, Woods firm, One James Center, 901 East Cary Street, Richmond, Virginia 23219, (804) 775-4347.

(b) I represented a nonprofit corporation in conjunction with the filing of amended federal tax returns to recognize "unrelated business income" which had, through an accountant's oversight, gone unreported and untaxed. My efforts were to obtain a waiver of any penalty and interest and to utilize tax loss carry-forwards to reduce as much as possible the tax due. The sums involved were substantial, and, ultimately, no interest or penalty was required. The identify of the entity is omitted because of attorney-client privilege.

(c) I represented certain outside directors of a major corporation regarding their fiduciary obligations in investigating possible misfeasance by the company's chief executive officer and in acting upon the results of that investigation. The identity of the entity is omitted because of attorney-client privilege.

(d) I have served as the litigation partner on the legal team for Mohawk Industries, Inc. In addition to various litigation matters in which Mohawk was a party, I have provided general advice regarding "due diligence" evaluations of pending litigation in merger and asset purchase transactions, confidentiality obligations and rights under letters of intent, tortious interference with contractual relations issues, entitlement to "bust-up" fees in terminated transactions, and other contractual matters.

(e) In connection with a private placement of securities, I provided insurance and risk management advice to the Canadian parent of the issuer and to the broker-dealer regarding potential medical malpractice liability exposure for the operation of medical care facilities within the United States. The identities of the entities are omitted because of attorney-client privilege.

(f) I have served various management functions within my law firm including Hiring Partner 1983-85; Assistant Financial Partner 1987-1989; Partner-in-Charge, Galleria Office 1990-93; Administrative Committee 1995-97 and 2000-present; Chair, Associates Committee 2000-present; Investment Committee 1995-present.

QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

Robert D. McCallum, Jr.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

If confirmed by the Senate, I would "retire" as a partner at Alston & Bird LLP. Under the partnership agreement, I am currently eligible for certain retirement benefits. Upon retirement, I would receive a lump sum payment of my capital account from the partnership and would remain entitled to my partnership share of the firm profits calculated on services performed through my retirement date. I can also elect to continue participation at my own expense in certain life insurance and health insurance programs applicable to partners. I can also elect to leave my profit sharing/401(k) plan assets in place to be administered by First Union or whatever third party administrator may become responsible for the Alston & Bird LLP plans. In addition, all retired partners are entitled to utilize certain office space and administrative and secretarial support designated for retired partners. Finally, I am currently eligible for retirement payments from the firm for a five-year period after retirement with the annual amount being equal to 30% of my average annual budgeted compensation determined from the highest five years of my budgeted compensation within the last ten years prior to my retirement. This annual compensation is payable monthly at age 60 or at my election beginning, at the earliest, in the January following my retirement date. In the event that I elect to receive such payments prior to attaining 60 years of age, a 7% annual discount rate applies for each year

under the age of 60. Any such retirement payments remaining outstanding at my death are payable to my estate.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I intend to coordinate closely with the Departmental Ethics Office of the Department of Justice to identify and resolve potential conflicts of interest during the period of my service, if I am confirmed by the Senate.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   I have no current plans to pursue outside employment during my service.

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

   I am attaching a copy of the Form SF 278 Public Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

   I am attaching a copy of a detailed financial statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I served as co-campaign chairman for John Lupton in his candidacy for and eventual election to a seat in the Georgia Legislature in two different campaigns in the late 1970's or early 1980's. I served on the Finance Executive Committee in Bill Campbell's first campaign for Mayor of Atlanta in 1992. I served on the Georgia Finance Committee for the George W. Bush Presidential Campaign in 1999-2000, and I served as an alternate delegate to the Republican National Convention in Philadelphia at which George W. Bush was nominated as the Republican Party candidate for President. I have also allowed my name to be associated with campaigns for local and state offices (especially judicial offices); however, I have not managed or played a significant role in any of those campaigns.

QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

III. GENERAL (PUBLIC)

Robert D. McCallum, Jr.

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

I have not kept track of the precise number of hours devoted to pro bono activities for the disadvantaged as opposed to other pro bono activities. However, I have served each year over the last 5-10 years as a solicitor for the Atlanta Legal Aid Society in its annual fundraising campaign and participated in its first capital campaign in 2000. At the request of Douglas Eakeley, Chairman of the Legal Services Corporation, my firm has hosted various functions relating to legal services programs, and I also arranged for my firm to be one of ten law firms nationally to sponsor a special twenty-fifth anniversary annual report to be presented to Congress. Through my membership in the Butler Street YMCA (a historically African-American, inner-city "Y" which still maintains its separate existence from that of the Atlanta "Y"), I have over many years sponsored the memberships of 4-5 youngsters each year in that organization. I have also served on the Board of Directors of the YMCA Blue Ridge Assembly in Black Mountain, North Carolina, a YMCA convention center for "Y's" throughout the Southeast, which sponsors various "leadership schools." Finally, as the member of my firm's Administrative Committee and as Chair of the Associates Committee with responsibility for our young lawyers, I have administered our merit bonus compensation system and our annual review/evaluation system to ensure that the "pro bono" activities of our younger lawyers are recognized, encouraged, supported, and rewarded, such as

our four month fellowship programs at the Atlanta Legal Aid Society (initiated by my firm in 1995) and at the Fulton County Public Defender's Office (initiated by my firm in 2000). This past year, my firm received the State Bar of Georgia Will Spann Award for community service (named for a deceased Alston & Bird partner) for starting the Legal Aid Fellowship program in which other firms are now participating. Another measure of my firm's commitment to community service is reflected in the President's Award of Atlanta Bar Association for community service which has been awarded fourteen times, and my firm has been the recipient of that award seven times, the same number as all other Atlanta firms combined.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies.

No, other than all male fraternities and organizations at Yale when it was an all male institution.

ROBERT D. McCALLUM JR. AND MARY W. McCALLUM
FINANCIAL STATEMENT
Net Worth
As of 12/31/2000

ASSETS	Amount
Cash/Checking Bank of America account, Atlanta SouthTrust account, Atlanta	$ 50,000
Bank of America Common Stock	250,000
Coca-Cola Company Stock	10,000
Alston & Bird Investment Partners 2000, LLC	4,000
Alston & Bird LLP Capital Account	30,000
American Funds Group Mutual Funds	600,000
Water Street and Polar Limited Partnerships: Stock "hedge" funds, Jacksonville, FL	1,600,000
Joint Purchase Agreement, remainder interest Berkshire Hathaway Stock	900,000
Alston & Bird LLP Profit Sharing/401(k) Plans: Various mutual funds	1,700,000
IRAs - Equitable 300 Series	150,000
Medical Savings Account-Evergreen Funds, Boston, Mass.	17,000
Residence, Atlanta, Ga.	1,500,000
Home Furnishings (estimated)	50,000
Automobiles Lexus 400 Volvo Cross-Country	50,000
Mountain Home, Macon County, NC	750,000
Greene County, Tenn. Pasture	5,000

Total Assets	**$7,666,000**

LIABILITIES

Residence Mortgage –Atlanta, Ga.	$ 215,000
Mountain Home - Macon County, NC	250,000
Alston & Bird Investment Partners 2000, LLC; commitment to fund when called	11,000
Total Liabilities	**$ 476,000**
NET WORTH	***$7,190,000***
TOTAL LIABILITIES AND NET WORTH	***$7,666,000***

I have no contingent liabilities, whether as an endorser, comaker, guarantor, or otherwise. None of the assets listed above are pledged other than the Atlanta property and the Macon County, NC property. I am not a defendant in any lawsuits or legal actions. I have never taken bankruptcy.

The above information is true and accurate as of the date indicated to the best of my knowledge.

Robert D. McCallum, Jr.
ROBERT D. McCALLUM, JR.

U.S. Department of Justice

Washington, D.C. 20530

APR 30 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Robert D. McCallum, Jr who has been nominated by the President to serve as Assistant Attorney General, Civil Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. McCallum recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Because of the payments he will receive through the Alston & Bird supplemental retirement plan, we have asked him to seek advice before participating in matters involving the firm. Pursuant to his partnership agreement with his law firm, he will receive a full return of his capital account and his partnership share of income through the date he withdraws or retires from the firm. He is likely to receive these payments within 60 days of his retirement. Mr. McCallum has also agreed to divest of his interest in Alston Investment Partners 2000, LLC within 60 days of his retirement.

We have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have a covered relationship with his

firm, his former clients and the organizations for which he has served or will continue to serve as an officer or board member. If confirmed, Mr. McCallum has agreed to resign from his positions with the YMCA Blue Ridge Assembly and the Yale Alumni Fund. He understands that for at least one year he should seek advice before participating in matters involving any of these organizations. He has already resigned from his position as trustee for the family trusts listed on his financial disclosure report except for the Charitable Remainder Trust.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Janis A. Sposato
Acting Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐ Termination Date *(If Applicable) (Month, Day, Year)*
Reporting Individual's Name	Last Name: McCallum			First Name and Middle Initial: Robert, Jr. D	
Position for Which Filing	Title of Position: Assistant Attorney General, Civil Division			Department or Agency *(If Applicable)*: Department of Justice	
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: c/o Alston & Bird LLP, One Atlantic Center, 1201 West Peachtree Street NE, Atlanta, Georgia 30309-3424			Telephone No. *(Include Area Code)*: 404/881-7640	
Position(s) Held with the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination			Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No	
Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Robert D. McCallum Jr.			Date *(Month, Day, Year)*: Ap 25, 2001	
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Braden			Date *(Month, Day, Year)*: 4/27/01	
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/ Reviewing Official: Laura Matz			Date *(Month, Day, Year)*: 4/27/01	
Office of Government Ethics Use Only	Signature			Date *(Month, Day, Year)*	

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

Reviewed by Mary Braden, DEO, JMD, DOJ

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A -- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of date of filing.

Schedule B -- Not applicable

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D -- The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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APR 25 2001

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Reporting Individual's Name: McCallum, Robert, Jr. D.

SCHEDULE A

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				X												X						X										
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $130,000	
	Kempstone Equity Fund					X								X										X									
	IRA: Heartland 500 Index Fund							X						X											X								
1	Alston & Bird LLP Atlanta, Georgia; see Item 16 below for capital account asset value	✓																														Law Partnership $800,000	
2	Bank of America Common Stock						✓										✓							✓									
3	American Funds Group: various publicly traded mutual funds, specific list attached Ex A							✓						✓													✓						
4	IRA: Equitable 300 Series through the American Bar Assoc., specific list attached Ex B					✓								✓							✓												
5	Alston & Bird LLP Prof Share/401(K) Plan: varied mutual funds, specific list attached Ex C									✓				✓							✓												
6	Waterstreet Partners LTD, Jacksonville, Florida Stock Hedge Fund									✓				✓														✓					

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name: McCallum, Robert, Jr. D.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
7	Polar Fund LTD, Jacksonville, Florida Stock Hedge Fund						✓							✓														✓					
8	4/30/87 Jt. Pur. Agrmnt with parents and syblings; held in Berkshire Hathaway stock									✓											✓												
9	Alston & Bird Investment Partners 2000 LLC: investment pool, see Ex D for details		✓																		✓												
10	Bank of America Checking Account, Atlanta, Ga.			✓															✓			✓											
11	SouthTrust Checking Account, Atlanta, Ga.			✓															✓			✓											
12	Trustee: 09/25/71 Trusts for sons; various mutual funds, see Ex E; have no interest						✓							✓												✓							
13	Trustee: 03/02/70 Trust for sons; Berkshire Hathaway stock; have no interest									✓											✓												
14	Green County, Tennessee pasture lot on Ottway Road		✓																		✓												
15	Common Stock, Coca Cola Co		✓														✓					✓											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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U.S. Office of Government Ethics

Reporting Individual's Name: McCallum, Robert, Jr. D.

SCHEDULE A continued
(Use only if needed)

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period. — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
16	Alston & Bird LLP:Capital Account as partner			✓																	✓												
17	Trustee Charitable Remainder Trust 12/16/90 Longleaf Partners Fund, Kansas City, Mo.									✓				✓															✓				
18	Alston & Bird LLP Supplemental Retirement Plan; see Ex F.						✓														✓												
19	Medical Savings Account, Money Market Fund, Evergreen Funds, Boston, Mass.			✓										✓								✓											
20																																	
21																																	
22																																	
23																																	
24																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name
McCallum, Robert, Jr. D.

SCHEDULE B

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	X			2/1/99			X									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name: McCallum, Robert, Jr. O.

SCHEDULE C

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☑

	Creditors *(Name and Address)*	Type of Liability	Date incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			X								
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand					X						
1																
2																
3																
4																
5																

Category of Amount or Value (x)

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to partnership agreement, I will receive lump sum payment of my capital account and my partnership share of income through the date I withdraw or retire. These payments are likely to be made within 60 days of retirement.	Alston & Bird LLP, Atlanta, Georgia	01/97
2	Pursuant to the partnership agreement, I am eligible for supplemental retirement plan payments over a five year period. See Ex F. I can also elect to continue participation at my own expense in certain life, health, and other benefit programs applicable to partners.	Alston & Bird LLP, Atlanta, Georgia	01/97
3	I can also elect to leave my profit sharing/401(K) plan assets in the investment alternatives offered by First Union as described above in Sch. A, par. 5 and Ex C	same	12/66
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
McCallum, Robert, Jr. D.		7 / 8

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	YMCA Blue Ridge Assembly, Black Mountain, North Carolina	Non-profit	Director*	00/01	Present
2	Choate Rosemary Hall Foundation, Wallingford, Connecticut	Non-profit, educational institution	Trustee, Vice Chairman of Board	10/91	06/01
3	Alston & Bird LLP, Atlanta, Georgia	Law firm	Partner*	01/79	Present
4	Rhodes Scholarship Trust, Oxford England	Non-profit, educational organization	Georgia Secretary and District Secretary	00/98	Present
5	Yale University, New Haven, Conn.	Non-profit, educational organization	Yale Alumni Fund, Class agent for Jonathan Edwards College*	06/68	Present
6	Yale Law School, New Haven, Conn. *Will resign upon confirmation.	Non-profit, educational organization	Ga. representative to the Alumni Board	09/83	Present

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Alston & Bird LLP	Legal services rendered as reflected in attached Ex G.
2	See Exhibit G for list of clients.	
3		
4		
5		
6		

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Reporting Individual's Name	SCHEDULE D	Page Number
McCallum, Robert, Jr. D.		8 / 8

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From *(Mo., Yr.)*	To *(Mo., Yr.)*
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
7	Trustee of Trusts described in Sch. A, par. 12 and 13	Family trusts for the benefit of sons	Trustee	03/70	04/22/01
8	Trustee of Charitable Remainder Unitrust described in Sch. A, par. 17	Family charitable trust paying life income to parents with remainder to a family charitable foundation.	Trustee	12/90	Present
9	Trusts for sister and brother-in-law	Family trusts	Trustee	12/97	04/22/01
10					
11					
12					

Part II: Compensation in Excess of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

None

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (Client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
7		
8		
9		
10		
11		
12		

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EXHIBIT A TO FORM SF278
Robert D. McCallum, Jr.
Sch. A, par. 3

I hold the following mutual funds managed by the American Funds Group of Norfolk, Virginia:

(a) EuroPacific Growth Fund and SMALLCAP World Fund, each with a value between $15,000 and $50,000; and

(b) the Growth Fund of America, New Perspective Fund, and the Investment Company of America, each with a value between $100,000 and $250,000, and

(c) each of these mutual funds had income between $5,000 and $15,000, except that Growth Fund of America and New Perspective Fund each had income between $15,000 and $50.000.

EXHIBIT B TO FORM SF278
Robert D. McCallum, Jr.
Sch. A par. 4

My IRA is managed through the Equitable Life Assurance Society of the United States, New York, New York and is invested in various mutual fund alternatives under the Equitable 300 Series. The investment alternatives which I have elected include the Stock Fund, the Balanced Fund, the Aggressive Stock Fund, the Global Fund, the Growth Fund, and the Growth and Income Fund. The value for each investment fund is between $15,000 and $50,000. The income for these mutual funds is not reported by the plan administrator.

EXHIBIT C TO FORM SF278
Robert D. McCallum, Jr.
Sch. A, par. 5

Alston & Bird LLP has a profit sharing plan and a 401(k) plan established in the December, 1966 in which partners and employees can participate. The custodian for these plans is First Union National Bank, and First Union invests participants' assets in various mutual funds as elected by the participant. I currently hold an interest in the following mutual funds:

(a) Evergreen Short Duration Bond Fund, Pimco Equity Income Fund, and Evergreen Foundation Bond Fund, each with a value between $50,000 and $100,000; and

(b) Franklin Growth Fund, Fidelity Contra Fund, Fidelity Low Priced Fund, Invesco Dynamics Fund, Templeton Foreign Fund, PIMCO Small Cap Fund, and Warburg Pincus Emerging Growth Fund, each with a value between $100,000 and $250,000.

(c) The income for these mutual funds is not reported by the plan administrator.

EXHIBIT D TO FORM SF278
Robert D. McCallum, Jr.
Sch. A, par. 9

Alston Investment Partners 2000, LLC is an investment partnership established April 13, 2000, as an investment pool for partners of Alston & Bird LLP who chose to participate. I have committed to contribute $15,000 to the investment pool when called upon to do so. To date, I have contributed approximately $4,000 of that $15,000 commitment. The Investment Committee has made two investments so far: a limited partnership interest in Noro-Moseley Partners V, LP, a venture capital investment partnership in Atlanta, Georgia, and an investment in Aries Domestic Fund II, LP, a stock "hedge" fund focused on investing in companies predominantly in the bio-technology industry. An obligation for an additional $11,000 of capital contribution remains to be paid when a call for contributions is made. The income from the existing investments is less than $200. I will divest my interest in this investment pool within 60 days of my retirement because the details of its investments are not now and will not in the future be available to me. I will also arrange to eliminate the above-described existing obligation for $11,000 of future contributions when calls are made.

EXHIBIT E TO FORM SF278
Robert D. McCallum, Jr.
Sch. A, par. 12

As the trustee of a trust for the benefit of each of my sons, I have invested in certain mutual funds managed by the American Funds Group. The value of each trust is in excess of $250,000 but less than $500,000. Those mutual funds include:

(a) EuroPacific Growth Fund, Small Cap World Fund, and the Investment Company of America, each of which has a value between $50,000 and $100,000; and

(b) The Growth Fund of America and New Perspective Fund, each of which has a value between $100,000 and $1,000,000, and

(c) the income for each of these funds was between $5,000 and $15,000, except that Growth Fund of America had income between $15,000 and $50,000.

EXHIBIT F TO FORM SF278
Robert D. McCallum, Jr.
Sch. C, Part. II, par 2

Pursuant to the Alston & Bird partnership agreement, I am currently eligible for retirement payments from the firm for a five year period after retirement with the annual amount being equal to 30% of my average annual budgeted compensation determined from the five years of my highest budgeted compensation within the last ten years prior to retirement. This annual compensation is payable monthly at my election beginning the January following my retirement date. In the event that I elect to receive such payments prior to attaining 60 years of age, a seven percent annual discount rate applies for each year under the age of 60. If I were to die before receiving all such payments, the payments will be made to my estate. My estimate of the present value of these future payments is between $250,000 and $500,000.

EXHIBIT G TO FORM SF278
Robert D. McCallum, Jr.
Sch. D, Part II, par. 1

Robert McCallum 1999 - Clients over $5K

Client Name	Location
Torchmark Corporation, Etal	McKinney, TX
Russell Bloodworth, John Dicken, Paul Jepson	Memphis, TN
Camp Oil Company	Rome, GA
Fortis, Inc.	New York, NY
Mohawk Industries, Inc.	Calhoun, GA
The Fulton - DeKalb Hospital Authority	Marietta, GA
MAG Mutual Insurance Company	Atlanta, GA
Marshall Wingo	Norfolk, VA
Charles Smithgall, Jr.	Atlanta, GA
John F. Smithgall	Atlanta, GA
Allstate Insurance Company	Northbrook, IL
Kaiser Permanente	Atlanta, GA
Ophthalmic Mutual Insurance Company	San Francisco, CA
Palay Frank Brown Gottlieb Leaderman Shulman, PC	Atlanta, GA
Adolphus B. Orthwein, Jr.	Atlanta, GA
Goodyear Tire & Rubber Company	Akron, OH
McDonald Investments Inc.	Cincinnati, OH
Sears Roebuck & Co.	Hoffman Estates, IL
The Prudential Insurance Company of America	Jacksonville, FL
Cincinnati Insurance Company	Cincinnati, Ohio
AB Borgstena Textile, Ltd.	Elkin, NC/Borgstena, Sweden

EXHIBIT G TO FORM SF278
Robert D. McCallum, Jr.
Sch. D, Part II, par. 1

Robert McCallum 2000 - Clients over $5K

Client Name	Location
Laura M Bleekrode MD dba Alpharetta Pediatrics	Roswell, GA
Fortis Insurance Company	Milwaukee, WI
William G. Crowder	Marietta, GA
Trigon Blue Cross Blue Shield	Richmond, VA
Golden Peanut Company	Alpharetta, GA
City of College Park, Georgia	College Park, GA
Roberta Murrah Hodgson	Charlotte, NC
Ogden Forklift, LLC	Atlanta, GA
Henry Harris Ogden	Atlanta, GA

EXHIBIT G TO FORM SF278
Robert D. McCallum, Jr.
Sch. D, Part II, par. 1

Robert McCallum 2001 - Clients over $5K

Client Name	Location
Systems & Computer Technology Corporation	Malvern, PA
Georgia Hospital Association	Marietta, GA
FABREEKA International	Stoughton, MA
Air Liquide America Corporation	Houston, TX

AFFIDAVIT

I, **Robert D. McCallum, Jr.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5-3-2001
(DATE)

(NAME)

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My Commission Expires June 11, 2001

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Chairman HATCH. Thank you, Mr. McCallum. You have excellent qualifications, and we look forward to your confirmation.

I would be happy to turn to the ranking member, the Democrat leader on the Committee, Senator Leahy.

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

Senator LEAHY. Thank you, Mr. Chairman. I keep anticipating votes over there.

Chairman HATCH. Yes, I do too.

Senator LEAHY. They have had a pile of them, but they have all been voice votes, and so I apologize for not being here earlier. I know Senator Kennedy has already been here, and of course the Chairman has.

I know that this is the fifth hearing this year on the President's nominations of leadership positions at the Department of Justice. We have probably been moving faster than certainly this Committee has moved for a number of years, and I think that is right. We have usually had the Assistant Attorney General heading the Civil Rights Division considered on his own, but I am glad to see that moving forward.

I do not think anybody is going to do to Mr. Boyd what happened to his predecessor. You will get, I think, confirmed, and not have to wait the three and one-half years Mr. Lann Lee did.

Mr. McCallum, your predecessor was pending for over a year in Committee and 18 months in the Senate, and I know the Chairman does not intend that to be the situation with you, nor would anybody on this side expect to do that. I am not the one in charge, but I can assure you that the Democrats in the Senate want to move forward quickly.

I will put the rest of my statement in the record, and thank you for having this hearing, Mr. Chairman.

[The prepared statement of Senator Leahy follows:]

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

This is the fifth hearing this year on the President's nominations to leadership positions at the Department of Justice. Again this morning we proceed on two important Executive Branch nominations.

Given the interest in the protection of the civil rights of all Americans and the importance of the Assistant Attorney General to head the Civil Rights Division, we have traditionally considered that nomination on its own. At times, nominations to head the Civil Rights Division have faced controversy, delay and opposition. Indeed, the nomination of Bill Lann Lee, which was initially received by the Senate in 1997 was never accorded a vote by the United States Senate and was kept pending before this Committee for almost three and one-half years.

I know of no one who intends to treat the nomination of Mr. Boyd in that fashion. Senator Kennedy's introduction of the nominee and the commitments that the nominee is able to give to the Committee regarding the vigorous enforcement of our civil rights laws should go a long way toward clearing the way for Committee consideration and consideration by the Senate as soon as all Senators have had a reasonable opportunity to ask questions and receive responses.

The Chairman has again decided to combine a hearing on a nomination that traditionally takes place on its own with another important Executive Branch nomination. This time he has chosen to include the nominee to be the Assistant Attorney General to head the Civil Division, as well. The Civil Division has its own very important responsibilities with respect to Government litigation.

The confirmation process for Mr. McCallum's predecessor was pending for over a year in Committee and 18 months the Senate. None of us anticipates such an ex-

tended process in connection with Mr. McCallum's nomination. I was always puzzled why those extended delays kept David Ogden from being confirmed promptly, especially since his eventual confirmation by the Senate was by unanimous consent. If all goes well today, it is my hope to see the Senate consider Mr. McCallum's nomination before the June 30 date on which the Senate confirmed Frank Hunger to be President Clinton's Assistant Attorney General for the Civil Division back in 1993 and long before the Senate confirmed Stuart Gerson to be the first President Bush's head of the Civil Division back in October 1989.

1 want to thank the Chairman for reconsidering his decision of the last few days and ultimately deciding not to add judicial nominations to this hearing at the last minute. I stand ready to consult with him on a realistic hearing schedule for those nominees.

Chairman HATCH. Well, thank you, Senator. We will turn to you for any questions you have of these two witnesses, and begin with you.

Senator LEAHY. Mr. Boyd, as you know, many of the civil rights organizations represent the interests of African-Americans and Hispanics that criticized the conduct of last year's Presidential election, particularly in Florida. You will be the head of the Civil Rights Division in an administration led by one who has said, and can justly say, that his election as President hinged on what was seen as the results of Florida. With that in mind, the President of the United States has every reason to want to feel that there are no problems in Florida, but also is charged with upholding all the laws of the country, as is the Attorney General. Will you assure us that you will look into and fully and honestly investigate the complaints of African-Americans and Hispanics who said that they were shut out, in one way or another, of the Presidential race in Florida last year?

Mr. BOYD. Senator, thank you for that question, and giving me an opportunity to talk about an issue that is of genuine importance to all Americans, as it should be.

The simple answer to your question, Senator, is I will go wherever the evidence and the law lead without flinching, and I think, if I may, Senator, that that is one respect in which my experience particularly well suits me to do. As the Senator may know, I spent 6 years as an Assistant United States Attorney, doing exactly that. I understand that this is taking place now in a crucible where the scrutiny is greater, the lights are brighter, and the stakes perhaps higher, and I understand that people have concerns about the fairness and the impartiality and the vigor with which the investigations regarding allegations of voting impropriety, voter intimidation, limitations on access to voting, especially on the part of people of color, is of real concern.

And I can assure you, Senator, that I would investigate any allegations, any allegations supported by any credible evidence of any kind of voter fraud, impropriety, limitations on access to voting. That would be a top priority. And, frankly, Senator, I think that the President and the Attorney General have indicated their commitment to that mission by announcing that the voting section of the Civil Rights Division will be enhanced by an additional eight full-time lawyers, and I'm happy to be able to have additional resources to make sure that no American is excluded from being able to exercise the most important franchise.

So the simple answer to your question, Senator, is yes.

Senator LEAHY. Mr. Boyd, frankly when asking the question, I did not expect any different answer from you. I fully expect to be supporting your nomination on the floor. If that one chance out of 100,000 you had answered differently, I can assure you, I would not be supporting. But if you had answered differently, to be fair to both President Bush and Attorney General Ashcroft, I suspect that they would want to withdraw your nomination. I am not trying to redo last year's election. The Supreme Court has ruled on that, and that is the end of it. I support whomever is President, whoever has been inaugurated. In a great and powerful Nation like ours, we can do no differently.

But I asked you the question also to give you some protection should there by anybody who would suggest you do not believe in looking for any question, whether it is Florida or Vermont or Utah or anywhere else, on voting irregularities. Note, this Committee will back you. I think Senator Hatch and I would be the first to back you on something like that. Democracy only works if everybody can feel that it is a fair election. One side or the other is always going to feel they wished their person had won, but we are not going to get people to turn out and vote unless they know that their votes are going to be counted and they are going to have a chance to vote.

It is deplorable, when I go around the rest of the world and see people literally die, literally die to have a chance to vote, who are willing to put their life on the line, put their family's lives on the line, sometimes their communities on the line to vote, and we do not all go out and vote. And you will be the one who can assure people know they can vote. One side always wins, one side always loses. That does not bother me. What bothers me is that they cannot vote.

Mr. Chairman, we have a roll call on. I would suggest that maybe we submit questions for the record. I know Mr. McCallum, I have questions about the Department of Justice lawsuit against the tobacco industry. Senator Durbin and I have written to Attorney General Ashcroft about that, and I have questions for you.

Chairman HATCH. Would it be acceptable to you if we do submit questions?

Senator LEAHY. Certainly, Mr. Chairman, because I have a feeling we are probably now back to the floor.

Chairman HATCH. I have a feeling we are not going to get back. That is satisfactory to you then?

Senator LEAHY. Of course.

Chairman HATCH. Well, then you two have had a better shorter hearing than I thought you would have.

Senator LEAHY. Well, but I am going on the assumption that the questions are fully answered.

Chairman HATCH. That you will answer questions.

Senator LEAHY. The questions are fully answered, not on the one hand this, on the other hand that—I mean, seriously answered like Mr. Boyd just did now, further questions to him or to Mr. McCallum, because if they were not, of course, I would expect that somebody would request on one side or the other to have further hearings. But I think they will answer them.

Chairman HATCH. Well, we will keep the record open till 5 o'clock today for questions from any or all members of the Committee, and then I would recommend that you answer them as quickly as you can, because when we get those back, we will be able to perhaps set a——

Senator LEAHY. I——

Chairman HATCH. You need more time?

Senator LEAHY. I think we need a little bit more time.

Chairman HATCH. How much time would you like?

Senator LEAHY. You know, we have got this on the floor.

Chairman HATCH. 6 o'clock tomorrow?

Senator LEAHY. That would be fine.

Mr. BOYD. Senators, Mr. McCallum and I are both trial lawyers, and we respond well to deadlines, so I can assure you——

Senator LEAHY. You will have even more incentive than worrying about your client in this case.

[Laughter.]

Chairman HATCH. Well, we are glad to hear that, and what we will do is keep the record open until 6 o'clock tomorrow evening, and if you can answer these questions as quickly as possible, it will be very helpful to the Committee.

With that then, we will end the hearing, and recess until further notice. Thanks so much.

[Whereupon, at 10:58 a.m., the Committee was adjourned.]

[Questions and Answers follow:]

QUESTIONS AND ANSWERS

RESPONSES OF RALPH F. BOYD, JR., TO QUESTIONS SUBMITTED BY SENATORS LEAHY, KENNEDY, BIDEN, FEINGOLD, SCHUMER AND DURBIN

Question 1. What are the main goals you hope to accomp:ish as head of the Civil Rights Division?

Answer. With respect to priorities, out of respect for the Senate's role in giving advice and consent on my nomination, I have not consulted with the career staff of the Civil Rights Division to formulate enforcement priorities. I regard such consultations to be a prerequisite to informed decision making. However, I share the Attorney General's commitment to the vigorous enforcement of voting rights laws, to eradicating racial profiling and worker trafficking, and to swift implementation of the President s New Freedom Initiative. If confirmed as Assistant Attorney General foi Civil Rights, I would expect the Civil Rights Division to tackle, and effectively deal with, the high priorities of this Administration.

Question 2. The Supreme Court has held that race-conscious relief or sex-conscious relief is sometimes the only effective form of relief for past discrimination, or to prevent ongoing discrimination. (A) As Assistant Attorney General, will you continue the policy of the Justice Department to seek such relief in appropriate cases? (B) If not, what type of relief will you seek instead? (C) What will you instruct the Civil Rights Division to do, if there is no other form of relief that would be effective?

Answer. It is my view that race and gender-conscious remedies are appropriate under some circumstances. I would therefore anticipate that, if confirmed, depending on the facts and circumstances of each particular case, race and gender-conscious remedies could be pursued by the Civil Rights Division in the future.

Question 3. As [Assistant] Attorney General, do you intend to re-open any existing court orders to seek changes in race-conscious relief or sex-conscious relief? If so, which cases, and what types of changes?

Answer. I do not at present have my plans to reopen. or revisit any existing court order. Whether any particular order should continue in force is a question that can only be answered after a thorough review of the facts and circumstances of that particular case and the applicable law. As I have not undertaken any such review of pending Civil Rights Division cases, I am reluctant to comment on any particular

case. To address the question more generally, however, the factual and legal landscape that exists when a given order is entered will often change over time, anti it is possible that some orders could be modified in the future to reflect any changes applicable to that particular case.

Question 4. Many private attorneys are ready and able to file discrimination cases involving only one or two individuals, but few of them can handle cases involving large-scale patterns and practices of discrimination. The Justice Department has sometimes handled the large cases that few outside the government can bring, and has sometimes spent its resources handling individual cases that many private sttorr—eys ;.an bring. As Assistant Attorney General, what will your instructions to the Civil Rights Division be, with respect to the kinds of cases they are to bring?

Answer. I agree that, as the primary federal law enforcement agency, the Department of Justice is often uniquely well suited to litigate large, complex: civil rights cases. Out of respect for th-Senate's role in giving advice and consent in connection with my nomination, however, I have not been involved in the operations of the Civil Rights Division, and thus have not reviewed, nor had the benefit of, a careful review of the demands on the Civil Rights Division's resources, or the Division's enforcement priorities in light of those demands. I have not, therefore, formulated instructions regarding what kinds of cases the Civil Rights Division should bring.

Question 5

Answer. This June, the Justice Department will file a brief with the Supreme Court in the Adarand case, in which the Department of Transportation's disadvantaged business enterprise program is being challenged as unconstitutional. The Attorney General had originally pronused to defend the program, telling NBC, "Obviously, I will defend the Department of Transportation's regulations." Subsequently, however, the Attorney General said that the Administration might abandon, or "reformulate," the program rather than defend it. I am concerned that this Congressionally-supported and properly implemented program—which the Tenth Circuit found to be constitutional—will not receive a vigorous defense before the Supreme Court. Can you promise this Committee that you will urge the Justice Departmentto defend this regulation to the best of its ability?

Answer. It is my view that the Department of Justice has an obligation to defend Acts of Congress from constitutional challenge whenever a reasonable argument can be made in support of a statute. My presumption is that the Department of Justice will apply this principle to the Adarand case and, if confirmed, I will urge itto do so. Of course, particular decisions related to the position of the United States before the Supreme Court would rest with the Office of the Solicitor General.

Question 6. Do you agree that affirmative action programs in government programs like the Transportation Department's Disadvantaged Business Enterprise Program are constitutional and -hoidd continue?

Answer. The Supreme Court has stated that governmental race-based classifications are subject to strict scrutiny—that is, race-based classifications are permissible only where a compelling governmental interest is served and where programs using race-based classifications are narrowly-tailored. A determination of whether a compelling governmental interest is served and whether a program is narrowly tailored is necessarily an individualized one. It is therefore difficult for me to agree or disagree with the broad statement that affirmative action programs like the Transportation Department's Disadvantaged Business Program are constitutional. It is likely that, when subjected to a strict scrutiny analysis, some governmental affirmative action programs will be found to satisfy the strict scrutiny standard while some will require modification. Indeed, in the Adarand case itself, the Tenth Circuit reached different conclusions regarding the constitutionality of different versions of the Department, of Transportation regulations at issue. See *Adarand* v. *Slater*, 228 F.3d 1147, 1187 (10th Cir. 2000)("[W]e conclude that the 1996 SCC [Subcontractor Compensation Clause] was insufficiently narrowly tailored as applied in this case and is thus unconstitutional under Adarand Ill's strict standard of scrutiny. Nonetheless . . . we conclude that the 1996 defects have been remedied, and the relevant programs now meet the requirements of narrow tailoring.").

Question 7. Would you defend these programs internally by, for example, urging the Solicitor General to take a position that such programs are constitutional?

Answer. I will vigorously urge the Solicitor General to defend any government affirmative action program that serves a compelling governmental interest and is narrowly tailored. Again, however, given tae individualized inquiry required by the strict scrutiny standard, it is difficult to generalize about affirmative action programs.

Question 8. As you may know, the Civil Rights Division has an important role in government programs because it provides guidance to federal agencies on imple-

menting affirmative action in these programs. Can you assure the American people that under your leadership, the Civil Rights Division will continue to provide guidance to federal agencies to facilitate affirmative action in government programs?

Answer. Should I be confirmed, the Civil Rights Division will continue to provide guidance to federal agencies with respect to affirmative actions programs.

Question 9. Many public school districts have adopted diversity policies which result in racial desegregation at the K through 12 level. These policies have been attacked in the courts as impermissible race-consciousness, and the Civil-Rights Division has supported these policies in a number of lawsuits, for example in Montgomery County, Maryland and in Rochester, New York. Will you continue to support these policies?

Answer. As I have said previously, I believe that diversity is very important to our nation's schools. This includes not only universities, but also K through 12. It is certainly of the utmost importance as a tool to overcoming vestiges of segregation. Indeed, I have benefitted personally from efforts to promote diversity, and from having had the opportunity to learn and work in increasingly diverse environments. I will continue to support efforts to overcome vestiges of segregation and achieve unitary status in public school districts. With respect to the lawsuits to which the Senator refers, I am unfamiliar with the details of the policies in those cases.

Question 10. In past decisions, the Supreme Court said that school districts should not be declared unitary unless they have taken all feasible action to eliminate all vestiges of discrimination including educational deficits and housing segregation caused by school segregation. (A) Will you look closely at requests for unitary status in which Department of Justice is involved to assure that these vestiges are adequately addressed? (B) Will you ensure that all such vestiges are eliminated before agreeing to any motions for unitary status?

Answer. (A) Yes.

(B) I share the Attorney General's view that segregation is inconsistent with the 14th Amendment's guarantee of equal protection for all of its citizens. If confirmed as Assistant Attorney General for Civil Rights, I would work to ensure that school districts that have not achieved unitary status take all feasible action to eliminate all vestiges of discrimination. However, it would not be appropriate for me to commit to a particular course of action regarding future cases, except to say that I would follow the goveraing law, and apply that law in an intellectually honest manner.

Question 11. As head of the Civil Rights division, would you support the right of public universities to consider race in deciding whether to admit students? (A) For what purposes, if any, do you believe that public universities may consider race? (B) Do you believe that fostering diversity within a student body is a constitutionally sufficient rationale to support the use of affirmative action? (C) What is your view of the constitutionality in recruitment efforts that are specifically designed to broaden the pool of minorities and women? Do you believe that Justice Powell's decision in the Bakke case is the law of the land?

Answer. Like all government race-based classifications, the use of racial classifications by public universities in admissions is permissible where the racial classifications are narrowly tailored to serve a compelling governmental interest. Thus, I would support public universities' consideration of race where the program in question met these requirements. I believe that diversity is important to our nation's universities, particularly its public universities. This diversity advances important educational (and, for that matter, workplace) objectives, and promotes fairness and equality of opportunity for all people. Indeed, I have benefitted personally from efforts to promote diversity; and from having had the opportunity to learn and work in increasingly diverse environments.

(A) and (B) For me therefore, the importance of diversity in our universities (and in other institutions throughout our society) in virtually inarguable. However, whether, as a legal matter, the goal of fostering diversity is a constitutionally sufficient rationale to support the use of non-remedial racial classifications is a harder question.

The contours of the boundary between the constitutional and unconstitutional 1ise of race in public university admissions are unclear and in need of clarification by the Supreme Court. As many commentators have noted, with the exception of the one paragraph of Justice Powell's opinion holding that the California Supreme Court's decision should be reversed as to its holding that the use of race in Davis' admissions program was never permissible, none of the six *Bakke* opinions issued by the Supreme Court in that case were supported by a majority of the Court. Thus, while five Justices agreed that the University of California at Davis was not prohibited from ever considering race in its admissions process, there was disagreement

as to what rationale or rationales justified consideration of race. In particular, no other Justice joined that portion of Powell's opinion discussing "diversity" as a constitutionally permissible basis for consideration of race in admissions. Accordingly, subsequent lower Court decisions have stpzggled to discern which rationales foi consideration of race are permissible in the admissions context. In particular; while the law seems well-settled that it is permissible to consider race as a remedial response to well documented past discrimination by the institution implementing the racially conscious program, the lower courts have split on the question of whether Justice Powell's "diversity" rationale articulates a compelling governmental interest. While the Supreme Court's affirmative action decisions in Croson and Adarand raise the question of whether nonremedial racial classifications will ever survive strict scrutiny analysis, the Court has not—learly overruled *Bakke*.

Therefore, I view the question as an open one, and would have to review each program on a cases by case basis to determine if a diversity-based race-conscious admissions program was narrowly tailored to further a compelling state interest.

(C) I would have to review any specific recruitment program before reaching a firm conclusion, but I generally support efforts to broaden the pool of applicants to educational institutions and increase the number of qualified applicants of all races, genders, and backgrounds.

My views on *Bakke* are expressed above, and the *Bakke* decision is the law of the land only with respect to its actual holdings. Because the six *Bakke* opinions each failed to gather five votes (with the exception of the one paragraph of Justice Powell's opinion discussed above), considering any of the six opinions as expressing the reasoning of the Court is problematic.

Question 12. Many observers have suggested that the current litigation involving the use of affirmative action by the University of Michigan in both undergraduate and law school admissions will ultimately be resolved by the Supreme Court. As you know, there are currently conflicting decisions in that litigation, as one District Court judge has upheld the university's use of affirmative action for undergraduates, and another has struck down the use of affirmative action by the law school.

(a) Are you familiar with the District Court opinions in the Michigan cases?

Answer. Yes.

(b) Do you find the District Court's opinion striking down Michigan Law School's affirmative action program persuasive:

Because the Civil Rights Division may be called upon to take a position in one or both of the Michigan cases, I hesitate to engage in a specific evaluation of these cases, especially without the benefit and insight that I would hope to gain by discussing this with the career attorneys at the Division. The different outcomes in these two cases clearly illustrate just how fact intensive these cases can be and how correspondingly great our obligations are as government attorneys to examine carefully the specific facts of each case. In my experience, powerful facts typically drive or substantially influence litigation outcomes.

(c) From what you know of this case, do you believe it would provide an appropriate vehicle for the Supreme Court to rule on the use of affirmative action by colleges and universities?

While I do think the Supreme Court should directly address the question of when racial classification by public universities is permissible, I hold no opinion as to whether the Michigan Law School case, as opposed to any other pending admissions' affirmative action case, would present the most appropriate vehicle for it to do so.——

Question 13. In the University of Michigan cases, a range of evidence was put in the record showing that there were compelling educational justifications for pursuing racial and ethnic diversity. This evidence included the expert testimony of William Bowen and Derek Bok, former president of Princeton and Harvard respectively, who, relying on evidence from their study, The Shape of the River, showed the benefits of a racially and ethnically diverse student body in producing leaders from under-represented minority groups and in promoting racial understanding, and Patricia Gurin, a psychology professor at Michigan, who testified on the cognitive benefits of racial and ethnic diversity in the classroom, as well as the long-term benefits gained through increased ability to deal with others from different racial backgrounds. Quite apart from the question of whether *Bakke* is good law, do you think that a University may ever have a compelling interest in pursuing racial and ethnic diversity, because of the cognitive and democracy benefits gained by diversity? What kind of evidence would you require to show this?

Answer. I believe that racial and ethnic diversity is vitally important to our nation's universities, particularly its public universities. This diversity advances important educational (and, for that matter, workplace) objectives, and promotes fair-

ness and equality of opportunity for all people. Indeed, I have benefitted personally from efforts to promote diversity, and from having had the opportunity to learn and work in increasingly diverse environments.

For these reasons, I have spent most of my adult life furthering this cause. I have worked especially hard to include and involve young people of color in educational and legal institutions with which I have had the good fortune to be affiliated. I have worked with young people of color in the NAACP's ACTSO (academic Olympics) program, and in the Boston Bar Association's summer jobs program, which places urban high school students in summer jobs at Boston law firms. I worked vigorously on outreach and the recruitment of minority students when I served as the Assistant Director of Admissions at Haverford College, my alma mater. I was extensively involved in recruiting lawyers of color at the United States Attorney's Office, and more recently at Goodwin Procter LLP, my law firm, where I serve on the hiring committee. I also have worked diligently to recruit (and retain): young lawyers of color to Boston law firms and public law offices through my work with the Boston Lawyer's Group; lawyers of color for judicial positions in Massachusetts through my work on the Judicial Nominating Council; and professionals of color to jobs in Massachusetts state government through my work on the Governor's Diversity Advisory Group.

The importance of diversity in our universities is thus for me quite clear. However, whether, as a legal matter, such diversity constitutes a compelling governmental interest is a harder question. The Supreme Court and Congress have repeatedly insisted that mere racial balancing or quota systems are not appropriate, and thus diversity cann,)t justify a policy of racial proportionality. Moreover, the .Supreme Court has made clear that all governmental racial classifications are inherently suspect and therefore must satisfy strict scrutiny to be permissible. It is a close question about which I do not enjoy the comfort or certainty of having a well-settled view, and for this reason I continue to have an open mind on the matter.

As a matter of conscience, I believe deeply that government should first help people in need—all people. Government must therefore, act cautiously and carefully when it classifies people by race, even to achieve an important objective such as diversity. Although I am not inalterably opposed to it for the reasons I stated earlier, grouping people by race does give me some pause.

Question 14. What is your view of the Supreme Court's decisions in *Shaw* v. *Reno* and its progeny, and in particular its decision earlier this year in *Hunt* v. *Cromartie*? In light of those decisions, how would you advise those States covered under the Voting Rights Act to treat race in the redistricting process?

Answer. Under Section 5 of the Voting Rights Act, covered jurisdictions may not implement any redistricting plan that has the purpose of effect of denying or abridging the right to vote on the basis of race. Thus, in some instances, the Act requires covered jurisdictions to consider race in their redistricting deliberations. *Shaw* v. *Reno* and progeny essentially impose a ceiling on the use of race in redistricting by holding that covered jurisdictions violate the Fourteenth Amendment if race is a "predominant" factor in redistricting efforts. Though I am not yet fully familiar with the Supreme Court's jurisprudence in this area, my reading of *Hunt* v. *Cromartie* is that the Court's decision rested more on a re-review of the factual record, not on any alteration in the Court's predominant factor standard. The Court held that a three judge panel in the Eastern District of North Carolina was clearly erroneous in finding that North Carolina's Twelfth Congressional District, as then configured, was drawn predominantly for racial reasons. Based on the foregoing, it appears that any covered jurisdiction seeking preclearance under Section 5 must submit a redistricting plan that is not motivated predominantly by race, but also does not cause a retrogression in minont;, voting strength.

Question 15. In 2007, Congress will consider the extension of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. (A) what is your position regarding the continued need for this civil rights

provision? (B) Would you advocate for its extension when it comes up for renewal in 2007?

Answer. Section 5 continues to be the primary means of ensuring that covered jurisdictions preserve and promote minority voting strength. The decision to revisit Section 5 is a legislative prerogative. I can assure the Senator, however, that, if I am confirmed, the Civil Rights Division will take seriously its preclearance obligations under Section 5 for as long as Section 5 is existing law.

Question 16. Federal observers have been sent to monitor elections in a variety of circumstances, including when local jurisdictions request them, and when the Department's pre-election investigation indicates there may be intimidation, harassment, or other interference with minority voters at the polls on election day. Are

you willing to maintain this program at its current levels or will you cut back on the number of observers sent by the Department to monitor elections?

Answer. I share the Attorney General's view that the use of election observers in covered jurisdictions and election monitors in non-covered jurisdictions should be increased in order to better discourage voter fraud and help ensure voting rights.

Question 17. What priority will you give as Assistant Attorney General to enforcing the provisions of Section 2 of the Voting Rights Act, which prohibits electoral practices that dilute minority voting strength by denying minority voters an equal opportunity to elect candidates of their choice to office?

Answer. I share the Attorney General's view that enforcement of the Voting Rights Act should be a priority. I believe that Section 2 is one of the most important federal laws ensuring equal access for minority voters. If confirmed and presented with credible evidence that a jurisdiction has imposed a practice or procedure that dilutes minority voting strength in violation of Section 2, I would expect to direct the Voting Section to investigate the matter and enforce Section 2 as appropriate.

Question 18. Supreme Court decisions have re:iad upon the 14th Amendment to strike down majorityblack and Hispanic congressional and legislative.districts enacted by state legislatures. Isn't that an example of judicial activism, in which the Court is substituting its view of a proper redistricting plan for the view of the state legislatures?

Answer. My understanding of the Court's decisions in *Shaw* v. *Reno*, Miller v. Johnson and other similar cases is that the Court is not imposing on the states its view of a proper redistricting plan, but is instead preventing covered jurisdictions from violating the Fourteenth Amendmei.t by relying too heavily on racial classifications.

Question 19. As Assistant Attorney General, will you continue to enforce the "discriminatory effects" standard under the Voting Rights Act?

Answer. I understand the Senator to be referring to the "discriminatory effects" prong of Section 5 of the Voting Rights Act, and to the Civil Rights Division's responsibilities to preclear redistricting plans under that section. If confirmed, I would continue to enforce Section 5 to prevent implementation of redistricting plans having an improperly retrogressive effect on minority voting strength.

Question 20. Are you willing to vigorously enforce Section 203 of the Voting Rights Act which requires the ballots and other election-related materials be translated in certain areas of the country where a number of citizens are limited English proficient?

Answer. Yes.

Question 21. Do you agree that certain states, with a history of using discriminatory methods to intentionally keep black voters from being able to register to vote, such as literacy tests, should still be required to submit changes in election laws or procedures to the Justice Department or the District Court for the District of Columbia for review before those laws or procedures are allowed to take effect?

Answer. Section 5 continues to be the primary means of ensuring that jurisdictions with a history of minority voter disenfranchisement preserve and promote minority voting strength. If I am confirmed the Civil Rights Division will continue to enforce Section 5 of the Voting Rights Act, as it will all existing federal statutes falling within its jurisdiction, including careful review of all redistricting plans submitted to the Voting Section by covered jurisdictions.

Question 22. Will you ensure that the Justice Department carefully reviews all new redistricting plans drawn after the 2000 census that are submitted to it to guarantee that such plans do not have the purpose or effect of discriminating against minority voters?

Answer. If confirmed, I would ensure that the Voting Section carefully reviews all redistricting plans submitted to it by covered jurisdictions under Section 5 of the Voting Rights Act.

Question 23. Will you allow the Civil Rights Division to continue bringing meritorious claims under Section 2 of the Voting Rights Act where it appears that the voting strength of minority voters is being diluted by unfair redistricting plans?

Answer. Yes.

Question 24. As Assistant Attorney General, will you allow Department of Justice (DOJ) personnel who have gained expertise in the area of clinic access to continue to work in this area if they so desire?

Answer. Having served for several years as a career Assistant United States Attorney, and having been a litigator for almost 17 years, I believe as a general matter that experience and expertise are important factors in decisions regarding personnel assignments.

Out of respect for the Senate's role in giving advice and consent, I have not reviewed, nor had the benefit of, a careful review of the Department of Justice personnel who have gained expertise in the area of clinic access. I am unaware of any proposals to reassign such personnel and have no such plans of my own. It would not be appropriate for me to make any additional statements, however, concerning the future employment status of Department personnel whom I have not met, and with respect to whose performance I have no knowledge.

Question 25. In *Alexander* v. *Sandoval*, the Supreme Court recently held that private plaintiffs cannot sue in federal court to enforce the regulations under Title VI of the Civil Rights Act of 1964 that prohibit recipients of federal funds from using practices that have a discriminatory effect. Because the Court did not invalidate these regulations, organizations that receive federal funds might be violating federal regulations due to discriminatory practices, but the individuals affected by those practices now cannot sue to enforce the regulations. This makes it even more important for the federal government to vigorously enforce the Title VI disparate impact regulations, through both lawsuit and administrative investigations. What plans doyou have to ensure the continued vitality of these regulations.

Answer. I agree with the Senator that, because private litigants may no longer bring suit under Title VI to enforce disparate impact regulations passed under Section 602 of that law, added responsibility falls on the federal government to monitor Title VI compliance Out of respect for the Senate's advice and consent function I have not yet consulted with the Attorney General regarding this issue, nor have I formulated any specific plans regarding Title VI regulations. I do note, however, that private litigants, depending on the circumstances, may have other means of enforcing regulations promulgated under Title VI, e.g., private actions under 42 U.S.C. § 1983. One recent decision has so held. See South Camden Citizens in *Action* v. *New Jersey* Department of Environmental Protection, Civil No. 01–702 (D.N.J., May 10, 2001).

Question 26. One way to promote trust between the police and communities is to ensure that we are recruiting and hiring a diverse police force that has the requisite skills to engage in community oriented policing. For many years, the Civil Rights Division has brought lawsuits against police departments using hiring tests that have an adverse impact on minority applicants, where the tests have not been shown to predict successful job performance. Police tests that focus only on cognitive skills are said to do a worse job at predicting success as a police officer than tests that add elements to evaluate other skills and personality traits, such as problem solving and teamwork. Will you continue bringing lawsuits against departments using tests that have a disparate impact, where alternative selection devices with less adverse impact are available?

Answer. 1, too, believe that hiring tests that impose an adverse impact on minority applicants, where those tests have not been shown to adequately predict successful job performance, are unlawful. I hesitate to comment, however, regarding the job relatedness of specific groups' tests without having the opportunity to review carefully the specific tests and the facts of each case, and without the benefit of opinions of the career attorneys at the Civil Rights Division. I commit, however, to continuing to enforce the disparate impact provisions of Title VII.

Question 27. Last year, President Clinton issued Executive Order 13166, which is aimed at providing persons who have limited English proficiency (LEP), often as a result of their national origin, with meaningful access to federally conducted and federally assisted programs and activities; for example, federally funded hospitals taking reasonable steps to provide translation services to LEP patients, so they can understand the medical advice and trezt:.zcnt they are receiving. Will you commit to supporting and carrying out the existing Executive Order, and oppose efforts to eliminate it?

Answer. If confinned, I would steadfastly implement and enforce Executive Order 13166. As a personal matter, I believe that people with limited English skills should rot be left behind, especially in the circumstances discussed in your question. People simply cannot have meaningful access to health care if they are not able to understand the medical advice and treatment they are receiving.

Although the factors set forth in the guidance documents under Executive Order 13166 appear to reflect a reasoned approach to deciding when programs receiving federal assistance must provide limited English proficiency services, it would not be appropriate for me to commit to a course of action regarding the Order without the benefit of careful study, and without considering the views of affected components of the Department of Justice and other agencies within the Administration. If confirmed, I would welcome your views on this important matter.

Question 28. The Justice Department's power to initiate inquiries to determine whether there is a "pattern or practice" of abuse and poor accountability in particular police departments has become an essential tool in combating unchecked police nusconduct. Investigations in Pittsburgh, Los Angeles, and New Jersey, for example, have not only lead to improvements in those particular department, but also send a strong signal to all police departments about the 'best practices" the Justice Department supports. (A) Can you assure us there will be no retreat from these investigations? (B) Are you committed to the continuing the Division's commitment to employing consent decrees to remedy the patterns and practices in the subject jurisdictions?

Answer. Congress enacted U.S.C. § 14141 to promote police integrity, combat police misconduct, and ensure the protection of civil rights for all Americans. I agree with those goals and I share the Attorney General's stated commitment to enforce this statute.

In this area, the Civil Rights Division's job is to identify problems and help solve them, preferably cooperatively, but through the adversarial litigation process if necessary. At least as air initial matter, cooperative efforts to work with local law enforcement agencies, victims groups, and civil rights organizations may in some instances be more productive and efficient. The Division can provide consulting, training, and other technical assistance to police departments that are engaged in serious efforts to correct problems and put in place processes and practices designed to minimize, if not eliminate entirely "pattern or practice" problems. Where they are not, if confirmed, I would expect to instruct the Special Litigation Section to pursue adversarial litigation, utilizing a range of remedial tools, including consent decrees.

Question 29. How would you, as [Assistant] Attorney General, encourage enforcement of fair housing laws under a disparate impact theory?

Answer. The Civil Rights Division uses a vanety of tools to prevent discrimination in housing and related activities, e.g., the Fair Housing Act and Title II of the Civil Rights Act, and I am aware that many courts hold, in certain circumstances, that the Fair Housing Act may be violated on a showing of disparate impact, absent evidence of discriminatory intent. Pursuant to 42 U.S.C. § 3614, the Attorney General may initiate a civil enforcement action where he has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice that violates the Fair Housing Act. If confirmed, I will enforce these laws fairly and evenhandedly. Equally important to this fair and evenhanded commitment is my commitment to review every suit recommendation presented to me to ensure that where discrimination exists, it is ended and remedied.

Question 30. In recent years as a Congress we have gone to great length to increase homeownership generally and specifically in minority communities. A major component to owning a home is the acquisition of property insurance. Over the last five years we have seen significant evidence demonstrating that some major national insurance carriers intentionally discriminate in low income, predominantly minority neighborhoods. In light of this, what is your view on discrimination in the homeowners' insurance market? And in your opinion is such discrimination covered under the Fair Housing Act?

Answer. Home ownership, especially in minority communities, is a basic part of the American dream. I agree with the Senator's view that acquisition of property insurance is a necessary prerequisite to home ownership and that intentional discrimination in the insurance market is unacceptable. When discrimination is at work in illegally denying persons home ownership, I will work to enforce all applicable laws, including the Fair Housing Act, to end that discriminatory conduct.

Question 31. The disabled community continues to face, a number of frustrations, one of which is finding accessible housing. A number of people feel that one of the biggest impediments to overcoming this hurdle is the implementation of the Fair Housing Acts "new construction" requirements. As Assistant Attorney General you will be asked to uphold this requirement will you strongly enforce this provision of law. Do you believe that the accessibility for the disabled is a matter suitable for federal intervention?

Answer. Yes.

Question 32. The Department of Justice, Civil Rights Division, operates a well coordinated and effective "testing" program to detect discriminatory housing practices. Will you continue to use testing to establish pattern and practice evidence of civil rights abuses and discrimination in housing.

Answer. Yes.

Question 33. The Civil Rights Division has been very active in prosecuting lending discrimination cases. (A) Will you continue to prosecute lending discrimination

cases? (B) What is your position on the use of an effects test to prove lending discrimination?

Answer. The right to own a home and to access credit are basic to the American dream. These rights should be avaiiahle to every person. When discrimination plays a role in either denying persons these rights or exploiting their vulnerabilities, I will work to end that discriminatory conduct and make the victims whole. My understanding of the proof in such cases is that it can be exceedingly ccmplex, covering a wide range of practices and offices, and involve the conduct of many employees of the lender. My judgment and experience tell me that it would be the rare and unusual case that relied only on a simple effects test as proof of discrimination. It is much more likely that when Division attorneys recommend that a suit be brought in this area, I will be presented with fact patterns that require a review of a broad range of evidence.

Out of respect for the Senate's advice and consent function, I have not yet had the opportunity to confer with the career staff on this issue. I believe it is important to speak with them regarding the Division's history in these cases and the specific evidence presented before making specific determinations in the fair lending area.

QUESTION SUBMITTED BY SENATOR LEAHY AND SENATOR KENNEDY

Question 1. Many Senators on this Committee have been strong supporters of the Americans with Disabilities Act. In recent years, there has been an increase in litigation between the Department of Justice and private industry concern-ing the regulations issued in furtherance of this Act. Will you encourage the Civil Rights Division to engage in serious and substantial negotiations with responsible industries that seek in good faith to clarify the requirements of the ADA?

Answer. Yes.

QUESTION SUBMITTED BY SENATOR BIDEN

Historically; the most important tool the Civil Rights Division has wielded in enforcing the law is the so-called pattern-or-practice suit. As the name implies, this tool allows the Division to go after patterns of discrimination, rather than the misdeeds of individuals. For instance, the Civil Rights Division has used pattern-or-practice litigation to reach consent decrees with several lawenforcement agencies. The problem there was rooted not so much in discriminatory conduct by individual officers, but in policies and patterns those agencies adopted years ago that no longer reflect our law.

Question. Can we have your full commitment to the use of pattern-or-practice litigatior—in enforcing our civil rights laws?

Answer. Yes. If confirmed, and in consultation with the Attorney General, I would use 42 U.S.C. § 14141 where appropriate to redress patterns of discrimination, especially in situations where efforts to put an end to persistent, unlawful conduct are not successful through other means.

QUESTIONS SUBMITTED BY SENATOR TED KENNEDY

Question 1. A federal district court judge in the University of Michigan undergraduate case recently ruled in favor of the University on summary judgment, finding that: "a racially and ethnically diverse student body produces significant educational benefits such that diversity, in the context of higher education, constitutes z compelling governmental interest under strict scrutiny." Do you agree with the court's view that diversity can be a compelling governmental interest in the higher education context?

Answer. I believe that diversity is very important to our nation's universities, particularly its public universities. This diversity advances important educational (and, for that matter, workplace) objectives, and promotes fairness and equality of opportunity for all people. Indeed, I have benefitted personally from efforts to promote diversity, and from having had the opportunity to learn and work in increasingly diverse environments.For these reasons, I have spent most of my adult life furthering this cause. I have worked especially hard to include and involve young people of color in educational and legal institutions with which I have had the good fortune to be affiliated. I have worked with young people of color in the NAACP's ACTSO (academic Olympics) program, and in the Boston Bar Association's summer jobs program, which places urban high school students in summer jobs at Boston law firms. I worked vigorously on outreach and the recruitment of minority students when I served as the Assistant Director of Admissions at Haverford College, my alma mater. I was extensively involved in recruiting lawyers of color at the United States

Attorney's Office, and more recently at Goodwin Procter LLP, my law firm, where I serve on the hiring committee. I also have worked diligently to recruit (and retain): young lawyers of color to Boston law firms and public law offices through my work with the Boston Lawyer's Group; lawyers of color for judicial positions in Massachusetts through my work on the Judicial Nominating Council; and professionals of color to jobs in Massachusetts state government through rrmy work on the Governor's Diversity Advisory Group.

For me therefore, the importance of diversiry in our universities (and in other institutions throughout our society) in virtually inarguable. However, whether, as a legal matter, such diversity constitutes a compelling governmental interest such that government is permitted to classify people by race for the purpose of assigning opportunities is—for me—a harder question. The Supreme Court and Congress have repeatedly insisted that mere racial balancing or quota systems are not appropriate, and thus diversity cannot justify a policy of racial proportionality. Moreover, the Supreme Court has made clear that all governmental racial classifications are inherently suspect and therefore must satisfy strict scrutiny to be permissible. It is a close question about which I do not enjoy the comfort or certainty of having a well-settled view, and for this reason I continue to have an open mind on the matter. Similarly, I also do not have a settled view regarding the nature and scope of the proof necessary to establish diversity as a compelling governmental interest.

As a matter of conscience, I believe deeply that government should first help people in need—all people. Government must therefore act cautiously and carefully when it classifies people by race, even to achieve an objective as important as diversity.

Question 2. Although America experienced a significant drop in violent crime during the 1990s, the number of hate crimes has continued to grow. In fact, according to FBI statistics, in 1999 there were 7,876 reported hate crimes committed in the United States. That's over 20 hate crime per day, every day.

During the last Administration, the Assistant Attorney General for Civil Rights was a strong and vocal supporter of needed federal hate crimes legislation. In an Op/Ed that appeared in the L.A. Times, he stated that: "(j]ust as our laws punish crimes more severely when guns are involved, or when there is deliberate planning and premeditation, so should they when there is bias motivation." Do you support passage of a federal hate crimes law?

Answer. If confirmed, I would work vigorously to fulfill the Attorney General's pledge to take all reasonable and appropriate steps to combat hate crimes at the federal level. I would welcome the opportunity to have a dialogue with you and other Senators about this important issue. At this time, however, it would not be proper for me to state a policy position on such a measure without the benefit of careful study and without the views of others in the Department of Justice and the Administration.

Question 3. In light of the Supreme Court's recent federalism decisions, what is your understanding of the nature and scope of Congress's powers under the Commerce Clause and 14' Amendment to protect basic rights?

Answer. Following the Supreme Court's decisions in *United States* v. *Lopez* and *United States* v. *Morrison*, congressional power remains broad. These decisions seem to suggest that Congress may act to regulate and protect: (i) the use of channels of interstate commerce; (ii) instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and (iii) activities substantially affecting interstate commerce. It would seem however, that these cases suggest that the Commerce Clause, without more, does not allow Congress to regulate purely intrastate criminal activity.

As for Congress' powers under the Fourteenth Amendment, Section 5 of that Amendment allows Congress to pass laws abrogating states' Eleventh Amendment immunity if needed to enforce the requirements of the Fourteenth Amendment. As the Supreme Court has observed, while congressional enactments pursuant to Section 5 need not exactly track judicial developments concerning what is prohibited by the Fourteenth Amendment, such enactments must exhibit congruence and proportionality between the injury to be prevented and the means adopted to prevent it. See, e.g., *Board of Trustees* v. *Garrett*, 531 U.S. (Feb. 21, 2001).

Question 4. If federally funded programs or activities are shown to have a discriminatory effect on minorities or women, should private plaintiffs be allowed to bring suits challenging those programs or activities?

Answer. The Supreme Court's recent decision in Alexander v. Sandoval holds that private parties may not sue to enforce the Title VI disparate impact regulations. However, even after Sandoval, these Title VI disparate impact regulations remain on the books. Moreover, private parties can still sue in situations where evidence

of discriminatory effect, standing alone or with other evidence, can be said to reflect discriminatory intent on the part of those administering a federally funded program or activity.

In addition, a federal court recently held that a private party may sue a state actor based on the fact that its federally supported program had a discriminatory effect (or disparate impact) on racial minorities, pursuant to 42 U.S.C. § 1983. See South Camden Citizens in *Action* v. *New Jersey* Department of Environmental Protection, No. 01–702 (D.N.J., May 10, 2001). Title VII also remains a viable statutory ground for private party actions alleging disparate impacts on minorities and women.

If confirmed, I would welcome the opportunity to work with the Senator, and others, on issues relating to Sandoval and its effects on the fair administration of federally funded programs and activities.

Question 5. If it is appropriate for the federal government to play an active role in prosecuting gunrelated crimes, why is it not appropriate for the federal government to also play a role in prosecuting hate-motivated crimes?

The Civil Rights Division plays an active role in prosecuting certain bias-motivated crimes, e.g., 18 U.S.C. δδ 245 (bias-motivated violence directed at school attendance, seeking public employment, and using public facilities or accommodations), 247 (bias-motivated conduct obstructing religious freedom), and 42 U.S.C. 3631 (bias-motivated violence directed at enjoyment of housing). I believe that this is an appropriate, important role for the Civil Rights Division.

If confirmed, I would work hard to fulfill the Attorney General's pledge to take all reasonable and appropriate steps to combat crimes, whether they be motived by bias, hate or otherwise. This would include a careful study of how best to combat such crimes, and what the federal government's role should be in achieving this important objective. Whatever the federal government's ultimate role in addressing this sonous problem, either through federal legislation, litigation, or subsidization of state law enforcement efforts, that role should reflect—and send a clear and unequivocal message about—the extent of our unwillingness to tolerate this criminal activity.

Question 6. Do you believe a public institution of higher education—without a history of past discrimination—can ever use race or gender as one factor among many in creating a diverse student body without violating the constitutional strict scrutiny standard?

Answer. I believe that diversity is important to our nation's universities, particularly its public universities. This diversity advances important educational (and, for that matter, workplace) objectives, and promotes fairness and equality of opportunity for all people. Indeed, I have benefitted personally from efforts to promote diversity, and from having had the opportunity to learn and work in increasingly diverse environments.

For these reasons, as I previously detailed, I have spent most of my adult life furthering this cause. I have worked especially hard to include and involve young people of color in educational and legal institutions with which I have had the good fortune to be affiliated. I have worked with young people of color in the NAACP's ACTSO (academic Olympics) program, and in the Boston Bar Association's summer jobs program, which places urban high school students in summer jobs at Boston law firms. I worked vigorously on outreach and the recruitment of minority students when I served as the Assistant Director of Admissions at Haverford College, my alma mater. I was extensively involved in recruiting lawyers of color at the United States Attorney's Office, and more recently at Goodwin Procter LLP, my law firm, where I serve on the hiring committee. I also have worked diligently to recruit (and retain): young lawyers of color to Boston law firms and public law offices through my work with the Boston Lawyer's Group; lawyers of color for judicial positions in Massachusetts through my work on the Judicial Nominating Council; and professionals of color to jobs in Massachusetts state government through my work on the Governor's Diversity Advisory Group.

For me therefore, the importance of diversity in our universities (and in other institutions throughout our society) is virtually inarguable. However, whether us a legal matter such diversity, absent a history of past discrimination, satisfies strict scrutiny, is a harder question. While the Supreme Court's affirmative action decisions in Croson and Adarand raise the question of whether non-remedial racial classifications will ever survive strict scrutiny analysis, the Court has not clearly overruled *Bakke*.

Question 7. Do you believe that charter schools should have to comply with federal civil rights laws?

Answer. Yes.

Question 8. Will your office review current congressional redistricting plans to ensure that they do not have the purpose or effect of discriminating against minority voters?

Answer. Yes, if confirmed I will ensure that the Voting Section carefully reviews redistricting plans to ensure that they do not violate the Voting Rights Act.

Question 9. Since January, we have heard nothing from the Department of Justice regarding its investigation into voting irregularities in the 2000 Presidential election. Is the investigation a top priority for you, and what steps will you take to ensure that it is completed as soon as possible?

Answer. If confirmed, I would make voting rights investigations and voting reform a top priority. I would investigate any alleged voting rights violation supported by credible evidence, whether in the context of the November 2000 election, or with regard to any other voting matter. In connection with any such investigation, I would go, as I stated in my response to a similar question from Senator Leahy during my confirmation hearing, "wherever the evidence and law lead without flinching."

With respect to the November 2000 presidential election investigation, I am not yet privy to, and in any event should not comment on, the details of an ongoing investigation. However, if confirmed, I would look forward to bringing my skills, judgment, and experience as a federal prosecutor to bear on that, and any other civil rights, investigation.

Question 10. As you know, the Department of Transportation has a Disadvantaged Business Enterprise Program designed to overcome past and present racial discrimination in federally funded highway programs. Do you believe it is the Justice Department's responsibility to defend the constitutionality of this program when the Supreme Court reviews it later this year in the Adarand case?

Answer. It is my view that the Department of Justice has an obligation to defend Acts of Congress from constitutional challenge whenever a reasonable argument can be made in support of a statute. My presumption is that the Department of Justice will apply this principle to the Adarand case and, if confirmed,'. will urge it to do so. Of course, particular decisions related to the position of the United States before the Supreme Court would rest with the Office of the Solicitor General.

Question 11. Attorney General Ashcroft has stated that he, believes that the practice of racial profiling by police should be eliminated. What litigation efforts should the Civil Rights Division take in pursuit of this goal? Will you support legislation establishing a federal cause of action allowing individuals to challenge racial profiling by local, state, and federal law enforcement agencies?

Answer. Where a pattern or practice of profiling exits and local law enforcement is neither cooperative nor taking meaningful steps to eliminate those practices, an enforcement action pursuant to 42 U.S.C. δ 14141 must remain an option. I do not believe, however, this should be the only step taken by the Civil Rights Division to address the issue of racial profiling.

First, we need more hard data on racial profiling. We need careful study to determine definitively the scope, magnitude, permutations and manifestations of the problem. The Attorney General has asked Congress to enact legislation authorizing the Department of Justice to collect data for this purpose. The Civil Rights Division should be involved in this effort. Second, the Civil Rights Division should make certain that specific procedures are in place under which individual complaints of racial profiling are given expedited review by Division attorneys. Third, the Division should be ready to work cooperatively with local law enforcement by providing technical assistance regarding data collection, data interpretation and analysis, training, policy development, and community outreach.

With respect to legislative proposals, I would welcome the opportunity to study any legislation that the Senator may propose to eradicate unlawful racial profiling and to work with him and other Senators on this issue. At this time, however, it would be improper for me to take a position with respect to legislation without the benefit of careful study and the views of others in the Department of Justice and the Administration.

Question 12. During his 2000 campaign, President Bush expressed his general disapproval of Department of Justice investigations into "patterns and practices" of wrongdoing by police departments, stating that "the federal government should not instruct state and local authorities on how police department operations are conducted, becoming a separate internal affairs division." Do you agree with this statement? If so, how do you intend to carry out the Department's "pattern and practice" jurisdiction under The Violent Crime Control and Law Enforcement Act of 1994?

Answer. I share the President's belief that the Civil Rights Division should not micro-manage the internal affairs of local law enforcement. Deference to local authority, however, does not excuse a police department from complying with the law.

I believe that the Civil Rights Division has a responsibility to investigate alleged patterns or practices of unlawful wrongdoing by law enforcement. Where such investigations uncover reliable evidence of such unlawful practices, the Civil Rights Division should take effective measures to eradicate such practices, either with the voluntary cooperation of the subject police department, or through adversarial litigation pursuant to 42 U.S.C. § 14141, if necessary. Moreover, criminal prosecutions may be warranted where the government has a reasonable prospect of proving beyond a reasonable doubt that law enforcement officers acted with specific intent to deprive a person of her federally protected rights while actin under the color of law. See 18 U.S.C. § 242.

Question 13. Legal Services attorneys are prohibited by law from representing inmates. Aren't their services essential to protect basic rights. Doesn't the lack of effective representation encourage abuses. What role you believe the Civil Rights nivisinn should have in ensuring safe and humane conditions of confinement in jails and prisons?

Answer. Lack of access to legal services hinders the cause of protecting basic civil rights. This is in part why in 1988 my then-colleague A. Clayton Spencer and I represented pro bong the entire class of inmates in the custody of the Massachusetts Department of Corrections in a class action suit against the Department. The suit alleged violations of the inmates' due process rights under the United States Constitution and the Massachusetts Declaration of Rights in connection with the Department's drug surveillance and testing program, a program against which we obtained injunctive relief, until the injunction eventually was vacated by the Supreme Judicial Court of Massachusetts. See *Gonzalez* v. *Fair*, 407 Mass. 448 (1990).

The Civil Rights Division (through its Special Litigation section) has statutory authority to investigate institutional conditions of confinement and file lawsuits to rPmcdy a pattern cr practice of unlawful conditions of confinement in state-operated facilities under the Civil Rights of Institutionalized Persons Act of 1980. Furthermore, the Division has similar responsibilities to seek judicial redress in situations where juvenile offenders are subjected to a pattern or practice of uunlawful behavior that violates their federally protected rights under the Violent Crime Control and Law Enforcement Act of 1994. If confirmed, I would enforce these important statutes.

QUESTIONS SUBMITTED BY SENATOR FEINGOLD

CIVIL RIGHTS EXPERIENCE & GOALS/PRIORITIES

Question 1. The Civil Rights Division is responsible for enforcing the civil rights laws of our nation in areas such as education, employment, housing, voting rights, and disability rights. You have spent most of your legal career in criminal matters, as an Assistant U.S. Attorney, and in commercial litigation practice, as an associate and later a partner with various Boston law firms. It appears that you have no substantial experience enforcing civil rights laws. Can you tell this Committee how your experience has prepared you to undertake the responsibilities of the Assistant Attorney General for Civil Rights?

Answer. I have been involved in civil rights, and dealt with civil rights-related issues, all my life. As a child, I grew up attending civil rights and community action program meetings with both of my parents, who—along with other committed people—were co-founders of the Schenectady, N.Y. branch of the NAACP. While in Schenectady, I served as co-chair of the Schenectady, N.Y. NAACP branch's Afro-Academic, Cultural, Technological, and Scientific Olympics Program ("ACTSO"), which provides opportunities for high school students of color to demonstrate their academic talents and achievements in local, state and national competitions. During the year that I organized and raised money for this effort, the Schenectady NAACP branch sent five local high school students to the national competition in Denver, Colorado.

While at Harvard Law School, I served as an editor of the Civil Rights Civil Liberties Law Review, and as President of the Harvard Defenders, a student public defender organization. During my second and third years of law school, I represented numerous indigent criminal defendants in the Roxbury (Boston), Dorchester (Boston), and East Boston district courts.

Following law school, I clerked for the Honorable Joseph H. Young, United States District Judge, District of Maryland. During my clerkship, I assisted Judge Young in the preparation of two published civil rights decisions. See *McAdoo* v. *Toll*, 615 F. Supp. 1309 (D. Md. 1985) (Title VII case discussed in response to Question No. 15(a)(1), Judiciary Committee Questionnaire), and *Smith* v. *Montgomery County*,

MD., 607 F. Supp. 1303 (D. Md. 1985) (strip search case discussed in response to Question 15(a)(1), Judiciary Committee Questionnaire).

As a practitioner, I have handled pro bono approximately five civil rights or civil rightsrelated cases as lead counsel. In fact, I have been lead counsel in two federal civil rights cases against police officers, who were alleged to have violated the constitutional rights of criminal defendants. In a third case, I was co-counsel in a state court civil rights class action brought against the Massachusetts Department of Corrections, a case that I argued from the lower court through to the Supreme Judicial Court of Massachusetts. See Responses to Question 15(b) and (c).

As a federal prosecutor, I spent six years investigating, managing, and prosecuting a variety of federal (and state) criminai cases, including firearms and narcotics trafficking, homicide, bombing, and bank fraud cases. I also led an urban anti-violent crime initiative, which involved coordinating investigations and cases among numerous federal and state law enforcement agencies, including the Boston Police, Massachusetts State Police, Bureau of Alcohol, Tobacco and Firearms, Drug Enforcement Administration, United States Marshal Service, Suffolk County District Attorney Ralph Martin's Office, Massacl:usetts.Attorney General Scott Harshbarger's Office, and Massachusetts Attorney General Tom Reilly's Office.

All of these experiences have enhanced my knowledge and understanding with respect to: (i) the fundamental importance of the rule of law; (ii) making informed and sensible judgments about the principled and fair application of the law to a given set of facts; (iii) how to prosecute complex cases successfully; (iv) setting investigative and prosecutorial priorities; (v) working with people, both in and out of law enforcement; (vi) deciding when to use litigation as a necessary enforcement tool, and when more cooperation-based alternatives may be appropriate to achieve important governmental and societal objectives; and (vii) the need for vigorous, fair and sensible enforcement of our laws.

Question 2. What do you believe are the greatest civil rights challenges facing our nation today? What steps would you expect to take to address these challenges?

Answer. I believe that there are many civil rights challenges facing our nation today. They include, among other things: (i) ending unlawful racial profiling; (ii) ensuring faith and confidence in the fairness of law enforcement; (iii) opening up opportunities for all people, especially those who historically have been excluded; (iv) protecting the voting rights of all Americans; (v) protecting people from violence or threatened violence, especially where an immutable characteristic, an irrelevant aspect of an individual's personal life, or a person's exercise of a fundamental constitutional right serves as the impetus for violence or threatened violence against them; and (vi), lowering the temperature, and raising the level of ear national discourse about race.

If confirmed, I would work with the Attorney General and the career staff of the Civil Rights Division to enforce existing federal law and implement civil rights initiatives (e.g., the Attorney General's racial profiling and voting rights initiatives).

Question 3. What are your priorities for the Civil Rights Division? In what areas do you think the Division has been lacking or is in need of improvement?

Answer. Out of respect for the Senate's role in giving advice and consent on my nomination, I have not consulted with the career staff of the Civil Rights Division to determine areas of improvement or to formulate enforcement priorities beyond those already outlined in these answers. I regard such consultations a prerequisite to informed decision making in this area. However, I share the Attorney General's commitment to the vigorous enforcement of voting rights laws, to eradicating racial profiling and worker trafficking, and to swift implementation of the President's New Freedom Initiative. If confirmed as Assistant Attorney General for Civil Rights, I would expect the Civil Rights Division to tackle, and effectiveiy deall with, the high priorities of this Administration.

Question 4. Are there areas where you expect to lead the Civil Rights Division to take a different approach or set a different course than it has had for the last eight years under the previous Administration?

Answer. Out of respect for the Senate's role in giving advice and consent on my nomination, I have not consulted with the career staff of the Civil Rights Division. I think that consultation with them is a prerequisite to informed decision making about approaches the Civil Rights Division should take with respect to particular issues. I note that the Attorney General has made clear that racial profiling, voting rights, worker trafficking and implementation of the New Freedom Initiative will be priorities for this Administration.

Question 5. As you know, there is significant concern in the civil rights community and among minority populations generally that this Administration will not be as

vigorous as the previous Administration in enforcing the civil rights laws. What assurances can you give this Committee that that will not be the case?

Answer. Time and again the President and Attorney General have expressed their intentions to make civil rights enforcement a priority of this Administration. I would not be before this Committee as the President's nominee to head the Civil Rights Division if I did not think the President and Attorney General were sincere about their commitments in this area. I can assure the Committee that, if confirmed, I would, to the best of my ability, work strenuously to ensure that our nation's civil rights laws are enforced to protect the civil rights of all Americans—rich or poor, black, white or otherwise, religious or non-religious, gay or straight, able bodied or disabled, native or foreign born.

RACIAL PROFILING & POLICE MISCONDUCT

Question 1. I believe one of the greatesi civil rights challenges facing our nation today is racial profiling by law enforcement agents. This practice has seriously eroded the important trust between the police and the communities they are charged to protect and serve. I was pleased when President Bush pledged earlier this year to end racial profiling in America. Attorney General Ashcroft has said he believes racial profiling is unconstitutional and has pledged to work to end this practice. I am working with Rep. John Conyers on legislation to eliminate this practice once and for all. You've spent a good part of your career as a prosecutor working with law enforcement officials to fight crime, particularly urban and youth violence.

(a) Do you agree with the President and Attorney General that racial profiling is wrong and should be banned?

Answer. Yes.

Question (b). Do you agree that racial profiling is unconstitutional?

Answer. Yes. The ;use of racial stereotypes as the basis for law enforcement action is wrong and unconstitutional.

Question (c). Do you agree that the federal government has a responsibility to ensure that discriminatory police practices like racial profiling are eliminated, not only at the federal level, but at the state and local levels?

Answer. Yes.

Question 2. The Special Litigation Section of the Civil Rights Division has played an important role in helping to combat racial profiling and other police misconduct by state and local law enforcement agencies. Under the Violent Crime Control and Law Enforcement Act of 1994, or 42 U.S.C. δ 14141, the Justice Department can take legal action against a law enforcement agency that has engaged in a pattern or practice of conduct that deprives persons of their constitutional rights. In addition, under the Safe Streets Act of 1968, the Justice Department is authorized to intervene to eliminate a pattern or practice of discrimination based an race, color, religion, national origin or sex in connection with any law enforcement agency that receives financial assistance from the Department of Justice.(a) Have you had any experience with these statutes as an Assistant U.S. Attorney?

Answer. These are civil statutes. I was assigned to the Criminal Division of the U.S. Attorney's Office and thus have not previously enforced these provisions.

Question (b) Do you agree that Justice Department action pursuant to these statutes is an effective and necessary tool to combat discriminatory policing practices like racial profiling and other police misconduct?

Answer. I agree that Justice Department enforcement of these statutes has proven to be an important and effective tool in combating police misconduct.

Question 3. In addition to authority given to the Justice Department to investigate and prosecute civil rights violations by state and local law enforcement, certain of our civil rights laws also provide for private rights of action. For example, with thousands of law enforcement agencies across the country, the Special Litigation Section does not have the resources to investigate and pursue ali allegations of racial profiling. I understand that in private practice you represented some inmates in a federal civil rights class action challenging a state prison's drug testing program. You were acting in that case as a "private attorney general." Do you agree that, in addition to the authority of the Justice Department to intervene, an effective protection and enforcement of our nation's civil rights laws has been the ability of individuals to pursue legal action against law enforcement officials, state actors or other wrongdoers?

Answer. Yes. The case in which I represented the class of inmates in the custody of the Massachusetts Department of Corrections ("DOC") was a state court class action. The case involved allegations that the DOC violated inmates' due process

rights guaranteed by the United States Consutution and the Massachusetts Declaration of Rights.

VOTING RIGHTS

Question 1. The Voting Rights Act is one of the most comprehensive civil rights statutes ever enacted, eliminating literacy tests and poll taxes, outlawing intimidation during the electoral process, and creating various methods for enforcing minority voting rights. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, has been interpreted by the United States Supreme Court as prohibiting the dilution of minority voting strength and requiring that electoral district plans provide minority voters an equal opportunity to elect their candidates of choice. *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). As a result of the Voting Rights Act and, especially Section 2, racial and ethnic minorities have enjoyed unparalleled opportunities to participate in the electoral process, cast meaningful votes, and elect their candidates of choice.

(a) What is your position regarding whether compliance with Section 2 of the Voting Rights Act can serve as a compelling justification supporting the need to avoid diluting minority voting strength during redistricting?

Answer. Section 2 of the Voting Rights Act is a fundamental provision for protecting minority voting rights. Section 2 prohibits vote diiut:of, in redistricting and other contexts, just as Section 5 prevents covered jurisdictions from implementing redistricting plans that dilute minority voting strength in a manner that has a retrogressive effect on minority voting strength. E.g., Reno v. Bossier Parish Schl. Bd., 528 U.S. 320, 335–36 (2000). As to whether Section 2 compliance is a "compelling" interest, my understanding is that the Supreme Court has been willing to assume, without directly deciding, that Voting Rights Act compliance can be a compelling state interest. See, e.g., *Bush* v. *Vera*, 517 U.S. 952, 976–979 (1996). The use of race is also governed by the Court's decisions in *Shaw* v. *Reno*, Miller v. Johnson, and similar cases.

If confirmed, I would ensure that federal voting laws, including Sections 2 and 5, are consistently and vigorously enforced according to the parameters set forth by the Supreme Court and the Voting Rights Act itself.

Question (b) What is your position regarding the Department of Justice's responsibility and authority to enforce Section 2 of the Voting Rights Act?

Answer. The Department of Justice, as a federal law enforcement agency with considerable resources, plays an important role in enforcing Section 2. If any jurisdiction imposes a practice or procedure to dilute minority voting strength, and the necessary preconditions exist for a viable dilution claim, see *Thornburg* v. *Gingles*, 478 U.S. 30, 50–51 (1986), that jurisdiction could be subject to suit under Section 2 and to an appropriate remedy, by injunction or otherwise. If confirmed as Assistant Attorney General, I will work to ensure that the Voting Rights Section of the Civil Rights, Division receives the necessary resources to vigorously enforce Section 2.

Question 2. Confronted with "unremitting and ingenious defiance of the Constitution," *South Carolina* v. *Katzenbach*, 383 U.S. 3015 309 (1986), Congress enacted the Voting Rights Act of 1965 to "banish the blight of racial discrimination in voting." Id. at 308. "Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment." Id. at 309. The Voting Rights Act, in particular Section 5 of the Act, represent the culmination of Congress' efforts to establish these new remedies designed to "rid the country of racial discrimination in voting." Id. at 315.

(a) In 2007, Congress will consider the extension of Section 5 of the Voting Rights Act, 42 U.S.C. δ 1973c. What is your position regarding the continued need for this civil rights provision?

Answer. Section 5 continues to be the primary means of ensuring that covered jurisdictions preserve and promote minority voting strength. The decision to revisit Section 5 is a legislative prerogative. I can assure the Senator, however, that, if I am confirmed, the Civil Rights Division will take seriously its preclearance obligations under Section 5 for so long as Section 5 is existing law.

Question (b) What is your position regarding the Department of Justice's respensibil—ity and authority to enforce Section 5 of the Voting Rights Act?

Answer. The Voting Rights Act assigns to the Department of Justice the primary responsibility for enforcing Section 5. The Voting Rights Sectiun of the Civil Rights Division has authority to review redistrictingplans submitted for preclearance by covered jurisdictions. If I am confirmed, I will work to ensure that the Voting Rights Section receives the resources necessary to vigorously enforce Section 5.

Question 3. Congress passed the National Voter Registration Act of 1993 (the "NVRA") to dismantle obstacles to voter registration such as discriminatory voter purges and complicated, arbitrary voter registration procedures. The NVRA opened the electoral process by making voter registration more convenient and by simplifying the registration process, requiring states to provide voter registration at, for example, motor vehicle and many social service offices. After many years of declining voter registration, the NVRA established procedures designed to encourage voter participation throughout the country. It is clear these procedures have significantly increased voter registration.

Indeed, the Federal Election Commission, the agency charged with reporting the impact of the NVRA on the administration of elections, reports that in 1996, over 27 million people were registered to vote pursuant to the statute. See Federal Election Commission's Report to the Congress on the Impact of the National Voter Registration Act of 1993 on the Administration of Federal Elections, June 1997, at 27. Specifically, the Federal Election Commission noted that "[t]he mail registration provisions of the NVRA [under which voters are permitted to register to vote by mail] caused very few problems for the States and accounted for nearly one third of all voter registration applications from 1995 through 1996." Id. at 1: Despite the success and the relative ease in implementing the statute, there have been legislative attempts over the years to amend the NVRA to remove many of the features which have made it most successful or to repeal the statute altogether.

(a) What is your position regarding these legislative efforts?

Answer. I am not specifically familiar with the findings of the Federal Election Commission or the legislative efforts to amend the NVRA. I do agree that increased voter participation is vital to the continuing health and vibrancy of our democracy.

Question (b) What is your position regarding the Department of Justice's responsibility and authority to enforce the NVRA? What priority will you give this responsibility?

Answer. The Department of Justice has authority to pursue declaratory and injunctive relief under the NVRA, and to prosecute those found in violation of its provisions. If confirmed as the Assistant Attorney General for Civil Rights, I would take seriously my obligation to see that the requirements of NVRA are enforced. I would make this, along with the enforcement of the Voting Rights Act, a priority.

Question 4. The Department of Justice will have substantial responsibilities to enforce Section 5 of the Veting Rights Act, 42 U.S.C. § 1973c, as well as other voting rights provisions simultaneously. What are your priorities as Assistant Attorney General for Civil Rights among the various voting rights enforcement activities?

Answer. Because of the redistricting efforts now ongoing in light of the 2000 census, reviewing redistricting plans submitted for preclearance under Section 5 will be an important and ongoing activity for the Voting Section. The recent allocation of additional lawyers to that Section will help greatly with this and other voting-related enforcement efforts. As to the proper order of priority among these efforts, out of respect for the advice and consent function of the Senate I have not been involved in the daily operation of the Voting Section (or the Civil Rights Division generally), and thus I am not yet sufficiently familiar with the Voting Section's current activities to say how best to allocate its resources.

Question 5. Over four million Americans are prohibited from voting in this country because they are ex-felons. Approximately 1.4 million are African Americans—that's 13% of the adult male African American population. In Alabama and Florida, about 30 percent of African American males are prohibited from voting under their state laws.

(a) Do you agree that the impact of felony disenfranchisement on minority populations is a civil rights issue?

Answer. Any condition or event that adversely affects a protected class of Americans could be a civil rights issue. This is especially true when the adverse effect implicates rights as fundamental as the right to vote. So, yes, I believe this is a civil rights issue.

Question (b) Will you agree to study this issue and consider undertaking appropriate civil rights enforcement action or proposing legislative remedies?

Answer. Yes, I believe that this issue is worthy of study. If I am confirmed by the Senate for the position of Assistant Attorney General for Civil Rights, I would study the issue and would consider taking appropriate action. If confirmed, I also would enforce existing civil rights law without hesitation; proposing legislation, however, is not my prerogative as a law enforcement official.

QUESTIONS SUBMITTED BY SENATOR SCHUMER

Question 1. If confirmed as Assistant Attorney General for the Civil Rights Division, will you give the enforcement of the laws against clinic violence and obstruction the same priority that it has been given in the last six years?

§ Can you commit to enforce FACE, both civilly and criminally, as vigorously as your predecessors? That is, can you commit not to weaken the standards of prosecution or to exclude categorically types of cases that have previously been successful in the courts?

Answer. I cannot speak authoritatively as to how vigorously the prior Administration enforced FACE. However, if confirmed as Assistant Attorney General for Civil Rights, it would be my job to enforce the nation's laws, of which the FACE statute is an important one. No woman seeking constitutionally protected services should fear being threatened or coerced. Accordingly, if the conduct of anyone violates the law regarding the access of women to reproductive health services, I would enforce the law vigorously.

• As Assistant Attorney General, will you allow Department of Justice (DOJ) personnel whe have gained expertise in the area of clinic access to continrle to work in this area if they so desire?.

Answer. Having served for several years as an Assistant United States Attorney, and having been a litigator for almost 17 years, I believe as a general matter that experience and expertise are important factors in decisions regarding personnel assignments.

Out of respect for the Senate's advice and consent function, I have not reviewed, nor have had the benefit of, a careful review of the Department of Justice personnel who have gained expertise in the area of clinic access. I am unaware of any proposals to reassign such personnel and have no such plans of my own. It would not be appropriate for me to make any additional statements, howevef, concerning the future employment status of Department personnel whom I have not met, and with respect to whose performance I have no knowledge.

Question 2. The National Task Force on Violence Against Health Care Providers. In response to violence against reproductive health care providers generally and the murder of Dr. Barnett Slepian specifically, Attorney General Janet Reno formed the National Task Force on Violence Against Health Care Providers in November 1998. Will you work to maintain the Department of Justice's Task Force on Violence Against Health Care Providers and work to ensure that it has the resources it reeds to cont;nue to be effective? Do you anticipate reducing the Task Force's resources in any way? How and why? (National Task Force on Violence Against Health Care Providers, Report on Federal Efforts to Prevent and Prosecute Clinic Violence 1998–2000,1]

• Will you commit to maintaining or increasing the size of the Task Force?

Answer. I believe that inter-agency coordination is an important part of effective law enforcement efforts. The National Task Force on Violence Against Health Care Providers has effectively coordinated law enforcement efforts related to FACE. If confirmed, I would seek to ensure that it has the resources necessary to continue its work.

• One of the Task Force's main objectives is to coordinate national investigation and prosecution of incidents of abortion violence, focusing on connections that may exist between perpetrators of anti-abortion crimes. Will you continue to support such efforts? [National Task Force on Violence Against Health Care Providers, Report on Federal Efforts to Prevent and Prosecute Clinic Violence 1998–2000,5]

Answer. Out of respect for the Senate's role in giving advice and consent, I have not reviewed or assessed the details of the work of the Task Force. I do believe that it is important to coordinate enforcement of FACE on a national level and that the Task Force is an important vehicle for accomplishing this goal. I would continue those efforts.

Question 3. Crack/Powder: Can you give me your views on the disparity in sentencing between crack and powder cocaine offenses?

Answer. In *United States* v. *Louis Andrade*, I argued that the cocaine base sentencing guideline is constitutional, and prevailed in that argument in both the district court (Gertner, J.) and the United States Court of Appeals for the First Circuit. See 94 F.3d 10 (1st Cir. 1996) (Lynch, J.). I agree with those decisions.

I am concerned about the conditions that contribute to the number of young men of color who are convicted of selling crack cocaine, and sentenced under the cocaine base sentencing guideline. I am even more concerned about the fact that—as re-

flected in the congressional testimony in connection with the promulgation of the cocaine base sentencing guideline—disadvantaged, urban communities of color are disproportionately (indeed almost exclusively) devastated by the crack cocaine trade and violence associated with that trade. See *United States* v. *Singleton*, 29 F.3d 733, 740–41 (lst Cir.), cert. denied 1:5 S.Ct. 647 (1994).

QUESTIONS SUBMITTED BY SENATOR DURBIN

Your bio states that as a member of the Boston U.S. Attorney's office, you were the office's Firearms Prosecution Coordinator, and you administered "Operation Triggerlock," which is a national firearms prosecution initiative of the Justice Department. Yet, according to press accounts, since leaving the U.S. Attorney's office, you have represented the gun industry in your private practice.

An article in the February 13, 1999, edition of the Boston Globe, discussed a court case in Brooklyn, New York, brought by families of shooting victims against gun manufacturers. While that was occurring, the City of Boston was planning to file a similar lawsuit against manufacturers. The article states that "industry advocates say Boston's proposed suit is purely political." It then quotes you as saying, "'We've got a lower violent crime rate than we've had in 40 years,'" said Ralph Boyd, former assistant US attorney and an adviser to the American Sports Shooting Council, an industry group. "It didn't occur to anybody to sue firearms manufacturers then. This is preposterous.'"

Question 1. Please explain how you came to represent the American [Shooting Sports] Council and describe the extent of your activities with this client.

Answer. I did not represent the American Shooting Sports Council in any litigation. At the request of one of the members of the Council, I did make a presentation to members of the Council regarding threatened litigation against firearms manufacturers by the City of New Orleans, Louisiana and other cities.

The Boston Globe article also quotes you as saying that the plan by the City of Boston to sue gun manufacturers is "taxation and regulation by litigation. The city has an agenda they can't accomplish in the legislative forum, so they're going the judicial route to tax a product some people don't like."

Question 2. In the area of civil rights, history has demonstrated that one of the most effective ways to enforce civil rights laws is to regulate behavior by litigation. There are countless examples where the federal government has initiated suits against state and local governments as well as private entities to get them to change their discriminatory policies. Do you believe that it is appropriate for the government to "regulate by litigation"? If no, why? If yes, explain in what situations do you believe it is appropriate?

Answer. I believe that it is appropriate for the government to bring lawsuits to redress violations of law, especially where such litigation is expressly authorized by statute or settled common law principles. More specifically, it is appropriate for the government to bring lawsuits to induce local governments or private entities to eliminate illegal and discriminatory policies. For example, it is appropriate, and indeed the affirmative duty of the Civil Rights Division to bring actions to enforce a variety of laws, for example, the various titles of the Civil Rights Act of 1964 and the Educational Amendments of 1972, and the Voting Rights Act of 1965.

Question 3. According to press accounts, you have apparently represented the tobacco industry in your law practice. Please explain who these clients were, and describe the extent of your activities with these clients.

Answer. Goodwin Procter LLP has a long standing relationship with Philip Morris Incorporated. As a partner at Goodwin Procter, I worked with many other lawyers representing the company in litigation brought against it and other tobacco companies by the Attorney General of Massachusetts. In connection with that litigation I deposed state officials and assisted with general trial preparation. This case was settled pursuant to a Master Settlement Agreement between the tobacco companies and the attorneys general of the various litigating states.

Question 4. If you are confirmed to this position, and cases involving the tobacco industry were to come before you, would you recuse yourself from those cases?

Answer. Yes, I will follow the Department of Justice Guidelines for professional ethics and-conflicts of interest strictly and without hesitation. I understand that these will require my recusal from all matters involving Philip Morris Incorporated, and from all other matters concerning the effects of tobacco smoking on health.

Though the vast majority of police carry out their duties responsibiy and professionally, the insidious practice of racial profiling continues to undermine public confidence in law enforcement and damages the credibility of police forces around the

country. Most importantly, racial profiling creates an atmosphere of distrust and alienation that isolates broad segments of the American population.

As you know, this issue affects federal, as well as state and local law enforcement activities. In fact, a GAO study of profiling practices of airline passengers concluded that the U.S. Customs Service was intrusively searching African American. women and other minorities for contraband at much higher rates than they searched other segments of the population.

Specifically, GAO found that African American women were nearly three times as likely as African-American men to be strip-searched, even though they were only half as likely to be found carrying contraband. Furthermore, African American men and women were nearly nine times as likely, and Hispanic American men and women were nearly four times as likely, as White American men and women to be x-rayed, even though they were not more likely to be carrying contraband. Ironically, the women being targeted were statistically less likely than other passengers to be found carrying contraband.

I have introduced legislation to specifically address the concerns raised in the GAO study and help the U.S. Customs Service make more effective use of its resources, and avoid unwarranted searches.

Question 5. Do you agree that the racial profiling practices of the U.S. Customs Service should be eliminated?

Answer. No law enforcement agency should improperly target private citizens based on race, color, or ethnicity. This includes the U.S. Customs Service. To the extent such practices occur, they should be aggressively eliminated. While I am not familiar with the GAO study the Senator is referring to, I would look forward to discussing this issue with the career attorneys at the Civil Rights Division and taking appropriate action.

Question 6. Will you support my legislation and urge a favorable statement of the Administration's position on this proposal?

Answer. If confirmed, I would work to fulfill the President's and the Attorney General's commitment to take all reasonable and appropriate steps to end racial profiling. I would welcome the opportunity to work with you and other Senators in support of this important effort. At this time, however, it would not be proper for me to take a policy position on proposed legislation without the benefit of careful study and consideration of the views of others in the Department of Justice and the Administration.

Question 7. Do you believe that invidious discrimination, in the form of racial profiling, occurring at any and all stages of the criminal justice process (i.e., stops, investigations, arrests, charging offenses, prosecutions, and sentencings including penalties and incarceration terms) should be given zero tolerance? What suggestions or solutions would you recommend to eradicate this pervasive problem?

Answer. Racial profiling can occur at all stages of the criminal justice system. Attorney General Ashcroft—at the President's direction—has made this a top Justice Department priority. I share that view.

In consultation with the Attorney General, I would suggest that racial profiling be addressed on several levels. First, we need more hard data on this issue. We need careful study to determine definitively the scope, magnitude, permutations and manifestations of the problem. The Attorney General has asked Congress to enact legislation authorizing the Department of Justice to collect data for this purpose, and the Civil Rights Division should be involved in this effort. Second, the Civil Rights Division should make certain that specific procedures are in place under which individual complaints of racial profiling are given expedited review by Division attorneys. Third, the Division should be ready to work cooperatively with local law enforcement by providing technical assistance regarding data collection, data interpretation and analysis, training, policy development, and community outreach. Where a pattern or practice of profiling exists and local law enforcement is neither cooperative nor taking meaningful steps to eliminate illegal practices, an enforcement action pursuant to 42 U.S.C. § 14141 must remain an option.

Question 8. What are your views on affirmative action, and how do you define affirmative action?

Answer. Although I have not developed a specific personal definition, generally speaking I believe deeply in proactive efforts to break down barriers to opportunity, and also to provide opportunities—first and foremost—for disadvantaged and needy people, regardless of race, religion, ethnicity or gender. In my view, assisting peopie in need and people who are disadvantaged is one of the first obligations of citizenship, and of government.

Question 9. Do you believe your views on affirmative action are consistent with those of President Bush and Attorney General Ashcroft? If not, how do yeu plan to reconcile such conflicting views as the head of the Civil Rights Division?

Answer. I agree with the President's and Attorney General's commitments to break down racial barriers, ensure effective access to opportunity for all people, and to open up opportunities so that no person is left behind.

To the extent that differences may emerge and manifest themselves in competing views about legal positions the Department of Justice should take in a particular case, or with respect to specific legislation, I would do as I always do; I would marshal every resource reasonably available to me, and make as well reasoned, sincere, and respectful argument as I am able in a determined effort to persuade.

Question 10. Do you believe hate crimes are a problem today? Are the current federal and state laws against hate crimes sufficient to prosecute all the hate crimes committed in our country?

Answer. Yes, hate crimes are a problem today, and if confirmed I would work hard to fulfill the Attorney General's pledge to take all reasonable and appropriate steps to combat them. at the federal level and where appropriate to assist state and local law enforcement agencies to combat them at the local level. This would include a careful study of how best to combat these crimes, and what the federal government's role should be in achieving this important objective.

Whatever the federal government's ultimate role in addressing this serious problem, either through further federal legislation, subsidization of state law enforcement efforts, or both, that role should reflect—and send a clear and unequivocal message about—the extent of our unwillingness to tolerate this pernicious form of criminal activity.

I have not undertaken a multi state review of all of the evolving state laws against biasmotivated crimes. I am however, familiar with 18 U.S.C. δδ 245 (biasmotivated violence directed at school attendance, seeking public employment, and using public facilities or accommodations), and 247 (bias-motivated conduct obstructing religious freedom), and 42 U.S.C. δ 3631 (bias-motivated violence directed at enjoyment of housing). If confirmed, I would consult with the career prosecutors at the Civil Rights Division's Criminal Section to identify, to the extent possible, the circumstances in which hate crimes are not adequately prosecuted under these and other existing federal and state laws.

Question 11. Would you favor expanding federal hate crimes legislation to include vict—ms who Pre targeted based on their sexual orientation, gender, or disability? Please explain in detail.

Answer. All Americans should be protected by our laws, including those targeted out of hate. If cop—firmed, I would welcome the opportunity to work with you and other Senators on these issues. At this time, however, it would not be proper for me to state a policy positiop—on such a measure without the benefit of careful study and the views of others in the Department of Justice and the Administration.

Question 12. A ban on so-called partial birth abortions has been a very hot topic in Congress for a number of years. Many of us believe that this ban should include an exception for the health of the woman, as well as her life. The Supreme Court in Stenberg v. Carhardt struck down a Nebraska law that purported to ban these abortions, but which did not provide an exception for the health of the mother. What are your views generally on partial birth abortions?

Answer. The Supreme Court addressed the constitutional limitations on laws banning so-called "partial birth abortions" in Stenberg v. Carhardt. If confirmed, I would follow the law, i.e., the Supreme Court's instruction on this and any other matter that came before me as Assistant Attorney General for Civil Rights.

Question 13. If confirmed, will you give the enforcement of laws against reproductive healthcare clinic violence and obstruction the same high level of priority that it was given under the previous administration?

Answer. I cannot speak authoritatively about the leve, of priority given to such enforcement under the previous administration. However, if confirmed as Assistant Attorney General for Civil Rights, it would be my job to enforce the Liation's laws, of which the FACE statute is an important one. No woman seeking constitutionally protected services should fear being threatened or coerced. Accordingly, if the conduct of anyone violates the law regarding the access of women to reproductive health services, I would enforce the law vigorously.

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